

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No.
~~XXXXXX~~

460 of 199 2.

DATE OF DECISION 3-11-92

C.K.Vijayakumar Applicant (s)

Mr.M.R.Rajendran Nair Advocate for the Applicant (s)

Versus

Union of India rep.by Respondent (s)
Secretary, Ministry of
Communications, New Delhi and others

Mr.C.Kochunni Nair, ACGSC Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. **S.P.Mukerji**, Vice Chairman

and

The Hon'ble Mr. **N.Dharmadan**, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *No*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. To be circulated to all Benches of the Tribunal? *No*

JUDGEMENT

(Hon'ble Shri **S.P.Mukerji**, Vice Chairman)

The applicant who commenced service as Reserve Trained Pool (RTP) Telecom Office Assistant having been selected in the 1983 recruitment has prayed for the following reliefs:

- "(i) To declare that applicant is entitled to get the benefit of his entire service commencing from the date of initial engagement as Short Duty Telecom Office Assistant for the purpose of annual increments, bonus and other emoluments and also for reckoning the minimum service period for departmental examination, seniority and also for pension.
- (ii) Direct the respondents to fix the pay of the applicant at the minimum of the pay scale of Telecom Office Assistant with effect from the date of initial engagement and to refix the pay of the applicant accordingly and to pay the arrears of salary to the applicant.

- (iii) Direct the respondents to allow the applicant to appear for the departmental examination for P.I/J.T.O. etc. reckoning his service with effect from the date of initial engagement as short duty Telecom Office Assistant.
- (iv) Declare that the rejection of applicant's request for age relaxation for the purpose of appearing in J.T.Os examination is illegal.
- (v) Grant such other reliefs as may be prayed for and the Tribunal may be deem fit to grant, and
- (vi) Grant the cost of this Original Application."

He has argued that while working as R.T.P. candidate as Short Duty Assistant before regularisation and after training he was performing all the duties attached to the post of Telephone Operators but had lesser rate of wages. From 10.11.86 he continued as such till he was regularly absorbed as Telecom Office Assistant with effect from 7.2.89. However, when he applied for the post of J.T.O. and sought age relaxation on the basis of his service as R.T.P. candidate he was informed that he cannot be given any age relaxation nor is he found to be eligible as he had not completed three years of continuous regular service. The applicant's case is that had his R.T.P. service been counted as regular he would have entitled to get the age relaxation and would have been eligible to apply for the post of Jr. Telecom Officer (JTO).

2. When the case was taken up for arguments the learned counsel for both the parties conceded that this application is fully covered by earlier judgments of this Tribunal in similar cases.

3. Same issue arose in a large number of applications including O.A.814/90 which were decided by a common judgment dated 21.4.92 to which one of us (S.P.Mukerji) was a party. It was held that the continuous service as R.T.P. candidate should be treated on the same lines as casual service for the purpose of regularisation. The Tribunal rejected the plea that the R.T.P. service should be taken into account for the purpose of seniority etc. as adhoc service on the ground that since R.T.P. candidates before regularisation are not holding particular posts, they cannot claim to have rendered officiating service to be reckoned for regularisation. The Tribunal also relied upon the following observations made by the Hon'ble Supreme Court in All India Postal Employees Union Vs. Mahanagar Telephone Nigam, Bombay (1990(1) SLR 839):

"The two remaining writ petitions relate to the Department of Posts. Though an assurance had been held out by the learned Additional Solicitor General that a separate scheme for the Postal employees would be prepared and placed before the Court within a time frame, that has not been done. At the hearing, a note containing tentative proposals and a statement as to what has been done by way of improving the conditions have, however, been placed before the Court. The statement relating to improvements brought about indicates that after April, 1986, about seven thousand R.T.Ps have been absorbed. Since the R.T.p. category is no more expanding, only about 2,900 of them remain to be absorbed. We have been told by the learned counsel for the Department that equal number of justified and supernumerary posts are being created and the Ministry's proposal is in the hands of Ministry of Finance for approval and is expected to be finalised soon. This has to

be done within a time frame and we direct the posts of both the categories to be created by the end of January, 1990, and the process of absorption to be completed by 31.3.1990. With such absorption made, the RTPs will become regular employees. All their claims would, thereafter, be regulated on the basis of entitlement in accordance with extant rules."

The Tribunal held that since no rules or instructions have been brought out to indicate that on regularisation by absorption, the service rendered prior to regularisation in the capacity as R.T.P. should be counted for seniority etc. that service cannot be taken to be regular service. However, like the casual employees the R.T.P. service also qualified for grant of temporary status for the purpose of counting service for pension. This Tribunal was prepared to grant only the following benefits for the R.T.P. service:

" In the conspectus of facts and circumstances, we dispose of these applications with the following directions:

(a) Those of the applicants in these cases who after their recruitment as R.T.P. candidates have been rendering service for 8 hours a day continuously, on completion of one year of such service, should be deemed to have attained temporary status and half the period of eight hours a day service after attaining temporary status should be reckoned for the purpose of qualifying service for pension.

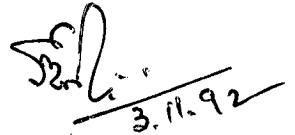
(b) All other benefits if any available to the casual mazdoors after attaining temporary status and subsequent regularisation under the scheme should also be extended to the applicants if they satisfy the above conditions; and

- (c) The applicants should be paid productivity linked bonus if like casual labourers they had put in 240 days of service each year for 3 years or more as on 31st March of each bonus year after their recruitment as RTP candidates, ie., the benefit of the judgment in O.A.612/89 and O.A.171/89 should be extended to the applicants in all these cases."

3. In the conspectus of facts and circumstances we allow the application in part to the extent ^{allowing} of the benefits given to the applicants in O.A.814/90 by the aforesaid judgment dated 21.4.1992. There will be no order as to costs.


3.11.92.

(N.D.HARMADAN)
JUDICIAL MEMBER


3.11.92

(S.P.MUKERJI)
VICE CHAIRMAN

03-11-92

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