

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No. 468
T.A. No.

1990

DATE OF DECISION 22.3.1991

Sebastian Ouseph _____ Applicant (s)

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

Versus

The Divisional Engineer, Telegraphs, Alleppey and others Respondent (s)

Mr. George Joseph, ACGSC _____ Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. S. P. MUKERJI, VICE CHAIRMAN

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

MR. N. DHARMADAN, JUDICIAL MEMBER

1. The second applicant in O.A. K. 192/87 has filed the present application for a declaration that he is entitled to be deemed to have continued as a Casual Mazdoor under respondents 1 & 2 from 10.6.1988. He also seeks for a direction to the respondents to regularise him as a Group 'D' employee in the light of Annexure-II.

2. The applicant commenced service on 19.3.1984 as a Casual Mazdoor under the second respondent. His name was included in the Muster Rolls. Annexure-I certificate shows that he has worked 159 days under the second respondent. He along with another Casual Mazdoor filed O.A.K. 108/87 which was disposed of at the admission stage itself on 10.6.1988 as per Annexure-III judgment with

the following directions:

"In the result we allow the M.P. and admit the O.A. On the O.A. we direct the respondents to consider the applicants for engagement as casual mazdoor as and when a new item of work is taken up by them, of course, subject to the eligibility of the applicants."

3. The applicant filed Annexure-IV representation for getting work with approved Mazdoor Card considering his claim for regularisation under Annexure-II Office Memorandum dated 7.5.1985. Since the respondents neither disposed of the representation nor engaged him to do work, the applicant has filed the present application under section 19 of the Administrative Tribunals' Act, 1985.

4. The learned counsel for the applicant contended that the respondents 1 and 2 haventaken up new items of work after Annexure-III judgment and engaged his juniors without considering his representations and his right for being engaged for discharging new items of work as indicated in the directions of this Tribunal. He submitted that in the light of Annexure-II office memorandum :xxxxxxxxxxxxxx:xxxx:xxxxxxxxxxxxxx:xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx:xxxxxxxxxxxxxx the applicant is eligible for regular appointment.

5. The learned counsel for the respondents on the other hand contended that the applicant is not eligible to be engaged for the new items of work in the light of the instructions issued by the Government of India, Ministry of Home Affairs, memorandum No. 15/10/66-Estt. (D) dated 2.12.1966, which provides as follows:

"Casual labourers appointed through employment exchange and possessing experience of a minimum of two years continuous service as casual labour in the office/establishment to which they are so appointed will be eligible for appointment to posts on the regular establishment, without any further reference to the employment exchange."

6. According to the learned counsel since the applicant has not completed two years of continuous service as casual

labourer in the office of the respondents 1 and 2, he is ineligible to be engaged for future work. We are not prepared to accept this argument. It is after this instruction that the applicant was engaged by the respondents and he approached the Tribunal with the grievance that the respondents are refusing to give engagement to the applicant and this Tribunal directed the respondents to consider the applicant as casual mazdoor as and when new item of work is taken up by them. This direction was issued on 10.6.1988. The respondents have no case that they have not taken up any new items of work after the judgment. So admittedly work was available ever since 10.6.1988 for engaging the applicant. Had he been engaged as directed by the Tribunal, he would have completed the minimum period for regularisation by this time and consequently he should have been appointed to a regular post. Due to the delay and default of the respondents the applicant is now compelled to approach this Tribunal again.

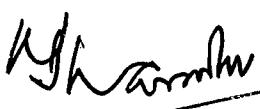
7. Having considered the matter in detail we are of the opinion that because of the respondents' failure to engage the applicant when new items of works were undertaken by them, the applicant lost his right for engagement as Casual and consequent regularisation as Group 'D' employee. ^h Mazdoor. The applicant in the earlier case, O.A.K. 192/87, only prayed for continued employment and not for regularisation. He really wanted continued employment for qualifying himself for regularisation by completing two years of regular service. Since after the judgment Annexure-III the respondents failed to engage the applicant in connection with new items of works in spite of specific directions, he is now deprived of not only/regular work but also an early regularisation under the respondents as a Group 'D' employee.

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In fact the instruction dated 12.12.1966 does not prevent continued engagement of the applicant by the respondents pursuant to the directions in Annexure A-III judgment as contended by the learned counsel for the respondents. In this view of the matter the applicant has got a right for engagement as Casual Mazdoor by the respondents taking into account his prior service under them in the light of the directions in Annexure-III judgment notwithstanding the circular dated 2.12.1966 which really applies for regularisation of casual workers.

8. In the result, we declare that the applicant is entitled to continue as Casual Mazdoor under the respondents to be [✓] 1 & 2 for doing new items of work/undertaken by them in in terms of the direction in O.A.192/87 future/and they shall regularise the service of the applicant when he completes the necessary minimum period of service under them in accordance with the instructions applicable to casual mazdoors.

9. The application is disposed of as above. There will be no order as to costs.


(N. DHARMADAN)
JUDICIAL MEMBER

22.3.91


(S. P. MUKERJI)
VICE CHAIRMAN

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