

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Dated the 7th October, 1993

CORAM:

HON'BLE MR. N DHARMADAN, JUDICIAL MEMBER

AND

HON'BLE MR S KASIPANDIAN, ADMINISTRATIVE MEMBER

O.A.No.470/93

N.Viswambharan - Applicant

M/s P Santhalimgam & John Thomas - Advocate for the applicant

Vs.

1. Union of India represented by
Secretary to the Government,
Ministry of Communications,
Sanchar Bhavan, New Delhi.

2. The Director,
Department of Telecommunications,
(Ministry of Communications)
Sanchar Bhavan, New Delhi.

3. The Superintending Engineer,
Telecom Civil Circle,
Madras.

4. The Superintending Engineer(Civil)
Telecom Civil Circle,
Ponni Building, Power House Road,
Trivandrum - Respondents

Mr Tomy Sebastian, ACGSC - Advocate for the respondents

JUDGEMENT

N DHARMADAN, JUDICIAL MEMBER

Applicant is a Casual Jeep Driver working under the 5th respondent. He is aggrieved by the refusal of the respondents to regularise him in the existing sanctioned vacancy as per Annexure-IV.

2. According to the applicant, he was engaged as a Casual Driver on daily wages from 24.4.1986 to 5.6.1986. He produced Annexure-I certificate to support his case that he was working with effect from 1986. He was continuously working as a Casual Driver in the same office after 1987. As per Annexure-II, the Superintending Engineer, Telecom Civil Circle, Trivandrum has informed the Executive Engineer that the applicant can be appointed as Casual Driver in the existing vacancy. A further communication issued by the Director to the Chief

General Manager, Annexure-IV states that a temporary vacancy has been sanctioned in the said office upto 28.2.1994 and casual employees who are already in service can be considered for filling up of the said vacancy. The relevant portion reads as follows:

"..already driving the vehicles passing the qualification for appointment to the post of Driver and possessing Driving Licence."

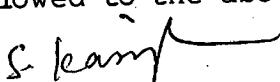
According to the applicant, he is the only person who has been engaged as a casual driver and working from 1987 to till date under the 5th respondent. Hence he is fully qualified and eligible to be appointed in the sanctioned post as per Annexure-IV in preference to any other candidates. The request of the applicant for engagement in the sanctioned post as per Annexure-IV was not considered the applicant. Hence he has filed this application under Section 19 of the Administrative Tribunals Act for a declaration that he is entitled to be appointed as a Driver in the sanctioned vacancy of Driver.

3. The respondents in the reply have stated that since the applicant was appointed after the ban order dated 30.3.1985, he is not qualified and his prayer cannot be granted. The period of the sanctioned vacancy as per Annexure-IV is to expire on 28.2.1994 and hence the applicant cannot be appointed in that vacancy, particularly, when other senior persons from other offices are waiting in the queue for getting regularisation and appointed in the vacancies.

4. We have heard the learned counsel on both sides. It is a fact that the applicant is working under the 5th respondent continuously as a Jeep Driver from 1987. He is the only person working in that office as Casual Driver. The Superintending Engineer while writing a letter, Annexure-III to Executive Engineer, has indicated that the applicant can be allowed to continue as Casual Driver for driving the vehicle available in

the office on a provisional basis. It is also to be noted that the Director also indicated in Annexure-IV communication that Casual Drivers already working in the office can be appointed in the sanctioned post on a provisional basis at least upto the expiry of the period of Sanction namely, 28.2.1994. Since this is not a regular appointment to be made in terms of the recruitment rules for filling up the post, it will be fair and proper to appoint the applicant in the sanctioned post as per Annexure-IV at least till its expiry in the light of Annexure-III and IV, having regard to the fact that he has been working in the same office continuously from 1987 onwards. Of course when regular vacancy arises after the expiry of the sanctioned period, the respondents can fill up the post in accordance with law following the procedure under the Recruitment Rules. But for the time being, in the light of the statements contained in Annexure-III and IV, we are of the opinion that the applicant has got a better claim than the other senior Drivers working in other offices as stated in the reply statement, notwithstanding the fact that he was appointed after ban order. There is no justification why he was engaged as Casual Driver if there was actually a ban for engagement of Casual Drivers.

5. Accordingly, we allow the application and direct the respondents to fill up the sanctioned post by appointing the applicant on a provisional basis at least till the expiry of the period of sanction as indicated in Annexure-IV. It goes without saying that the respondents are free to conduct the regular selection in accordance with law under the recruitment rules after the expiry of the present sanction, if they propose to make such a regular selection for filling up the post. The application is allowed to the above extent. There will be no order as to costs.


(S KASIPANDIAN)
ADMINISTRATIVE MEMBER


(N DHARMADAN)
JUDICIAL MEMBER

Dated, the 7th October, 1993

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LIST OF ANNEXURE

1. Annexure-I : A true copy of the certificate issued to the applicant by the 4th respondent
2. Annexure-II: A true copy of the certificate issued to the applicant dated 18.12.1987
3. Annexure-III: A true copy of the letter No.9(86)/SET/TVM/87/1293 dated 2.6.1987.
3. Annexure-IV: A true copy of the letter No.12-4/90/CSE dated 9.12.1992.