

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

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

478

1991

DATE OF DECISION 3.1.1992

P. R. Surendran Applicant (s)

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

Versus

The Sr. Dupdt. of Postoffices, Respondent (s)  
Ernakulam and others

Smt. K. B. Subhagamani ACGSC Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. N. V. KRISHNAN, ADMINISTRATIVE MEMBER

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

The short question that arises for consideration in this application is whether the applicant who is working as contingent Water Carrier in the office of the Senior Postmaster, Ernakulam from 1987 onwards, is entitled to be considered for regularisation and appointment as Extra Departmental Letter Box Peon without being sponsored by the Employment Exchange in terms of Annexure-III letter of the Director General, Posts dated 17.9.90.

2. According to the applicant he was taken as a casual mazdoor in August, 1982 in the office of the Sr. Postmaster,

Ernakulam as evidenced by Annexure-I order. Later, he was appointed by the Sr. PM, Ernakulam by order <sup>h</sup> Annexure-II dated 23.6.87 as a contingent Water Carrier. While he was continuing in that capacity, regular post of E.D. Letter box Peon was created and the first respondent initiated <sup>h</sup> steps for calling off nominations from the Employment Exchange. Though the applicant has registered his name with the local Employment Exchange on 3.7.81, he was sure that his name would not have been sponsored by the Employment Exchange on account of fixation of cut off date for sponsoring candidates. Under these circumstances, he filed Annexure-IV representation before the first respondent requesting to consider him for the post of E.D. Letter Box Peon, taking into account his prior service in the same establishment from 1982. Since this request was not considered, he filed this application with the following two prayers:

- "i) To direct the respondents to regularise the service of the applicant in regular establishment as a Group-D government servant in accordance with law.
- ii) To direct the respondents to consider the applicant as regular appointment as E.D. Letter Box Peon, in preference to any fresh hands and to appoint him in that capacity in accordance with law..."

3. On the facts and circumstances of the case, only the second prayer survives for consideration by us.

4. The respondents in the counter affidavit stated that in the light of DG's letter dated 6.6.88, it was stated that preference in appointment as E.D. Agents may be given to <sup>h</sup> ~~part-time~~ contingent casual labours with minimum service of one year (240 days in a year) provided that initial appointment

as parttime casual labour was done on being sponsored by the Employment Exchange. Since the applicant does not satisfy this requirement, his contention in the case for giving preference in appointment as E.D. Letter Box Peon cannot be accepted as per the existing rules.

4. Annexure-III prescribes the procedure for absorption of casual mazdoors in the vacancies of E.D. posts. The relevant portion of Annexure-III reads as follows:

"For this purpose a service of 240 days in a year, may be reckoned as one year's service. It should be ensured that nominations are called for from Employment Exchange to fill up the vacancies of casual labourers so that ultimately the casual labourers who are considered for ED vacancies have initially been sponsored by Employment Exchange.

These instructions take effect from the date of their issue.

This also disposes of d.o. letter No. Rectt/27-1/85-II dated 25.9.87 received from the office of PMG Trivandrum.

It is reiterated that the above instructions may be kept in view, while filling up ED posts. It may be ensured that those casual labourers who are employment exchange sponsored and who fulfil the conditions and qualifications required for ED posts are considered for appointment to ED posts."

5. The selection through the Employment Exchange is only one of the methods for absorption by limiting the number of persons who are continuing in a particular post. Merely because a person has not been sponsored by the Employment Exchange cannot be treated as a disqualification when such a person has long prior service in the establishment in which regular vacancies arose. This Tribunal is taking the view that persons who are having prior service in the establishment should be considered for regular selection even in spite of the fact that his name has not been sponsored by the Employment Exchange.

6. The ~~Principal~~ Bench of Central Administrative

Tribunal in Chet Bahadur v. Union of India, 1990 (13)

ATC 163 observed as follows:

"7. The mere fact that the names of the applicants were sponsored by a letter purported to have been sent by the Employment Exchange which turned out to be fake, would not disentitle them to be considered for appointment on ad hoc basis as Peons. They have worked as Peons from September 29, 1988 to April 21, 1989. The respondents have admitted in their counter affidavit that there was no cause for complaint against the applicants in regard to their performance of duties as Peons.

8. As regards the practice of appointing persons through nominations received from the Employment Exchange, the Supreme Court has held in Union of India v. N. Hargopal that the object of the Employment Exchanges (Compulsory Notification of vacancies) Act, 1959 is not to restrict, but to enlarge the field of choice so that the employer may choose the best and the most efficient and to provide an opportunity to the worker to have his claim for appointment considered without the worker having to knock at the door for employment. The Court has held that the said Act does not oblige an employer to employ those persons only who have been sponsored by the Employment Exchange (vide para 6 of the judgment). However, the Supreme Court held that in the absence of a better method of recruitment, any restriction that employment exchanges, does not offend Articles 14 and 16 of the Constitution (vide para 8 of the judgment)."

7. The Punjab High Court considering the provisions of Employment Exchange (Compulsory Notification of Vacancies) Act, 1959 held as follows in The Municipal Committee,

Amritsar V. The State of Punjab and others, 1971 SLR 420:

"... A plain reading of sub section (4) leaves no room for doubt that no obligation is cast on the employer that he must recruit the person sponsored by the Employment Exchange simply because the vacancy had been notified to the latter under sub section (1) or sub section (2). In its true analysis, the position is that after having notified the vacancies, the employer may go on rejecting the candidates sent up by the Employment Exchange so that an opportunity was available to them in a public or private sector as the case may be and not that the whole law of master and servant be put through Employment Exchange, no matter whether he is fit for the job or not, nor is any appointment made without complying with the provisions of section 4, rendered invalid. Section 7 provides for penalties and it is only the failure to notify the vacancies that has been made punishable. No amount of executive instructions can over-ride a direct

provision in a statute to any provision of law under which those instructions could be deemed to have been issued. Even in the instructions itself, it is stated in most unambiguous terms that it is only the notification of vacancies that is compulsory and that no such compulsion arises for recruitment. Instructions asking an employer not to recruit any one unless a non-availability certificate is obtained from an employment exchange is directory only and more in the nature of advice, but it cannot have any statutory sanction rendering an appointment in contravention of those instructions illegal or invalid."

8. The procedure prescribed in Annexure-III does not specify and restrict consideration of persons, who have long service in the establishment, for regular appointment in E.D. vacancies only if they come through employment exchanges. Their right for consideration in the regular E.D. vacancies does not appear to have been included in this letter. Merely because such persons' name had not been sponsored by the Employment Exchange, they cannot be denied even the consideration for regularisation and posting in regular vacancies, considering their long experience in the establishment.

9. In the instant case, the applicant has registered his name in the employment exchange on 3.7.81 even before his original engagement as casual mazdoor in August, 1982. If the respondents insisted, at the time of earlier engagement of the applicant that he would be considered and given engagement only if his name was sponsored by the Employment Exchange and called for names from the Employment Exchange, his name would necessarily have been included and he should have fulfilled this condition as well. No such requirement was insisted upon by the respondents in the case of the applicant either at the

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time when he was taken as casual mazdoor in 1982 or at the time when he was given Annexure-II appointment on 23.6.87 as contingent water carrier. In the light of these facts, no fault can be attributed to the applicant in satisfying the requirement as provided in Annexure-III even if we accept the condition that this letter applies to the persons like the applicant having long service in the same establishment.

10. In the result, having considered the matter in detail, I am of the view that the applicant is entitled to be considered for regular appointment as E.D. letter Box Peon along with fresh hands sponsored by the Employment Exchange. Accordingly, I direct the respondents to consider the applicant also along with others for appointment to the post of E.D. (letter box) Peon, Head Post Office, Ernakulam. I further direct the respondents to consider the claim of preference by the applicant in view of his prior service if he is eligible for the same in accordance with the law.

11. The application is allowed as indicated above.  
There will be no order as to costs.

  
(N. DHARMADAN)  
JUDICIAL MEMBER

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N.V.Krishnan, Administrative Member

I agree with the conclusions in para 10 of my learned brother's judgement, but for different reasons.

2. There is a restriction that only persons sponsored by the Employment Exchange should be engaged as casual labourers. The last para of Annexure-III makes it clear that only casual labourers sponsored by the Employment Exchange be considered for E.D. posts, if they are otherwise eligible and qualified.

3. I am of the view that if the Head of Department has prescribed that only persons sponsored by the Employment Exchanges should be engaged as casual labourers, that direction is binding on the subordinate authorities and they cannot make any exception to the rule.

4. The validity of that direction has been considered in Hargopal's case [1988 (1) SLR 5] <sup>by the Apex Court</sup> and upheld. The following extracts from that judgement bear reproduction:

"8. It is clear that it is the desire of the Government of India that all government departments, government organisations and statutory bodies should adhere to the rule that not merely vacancies should be notified to the Employment Exchanges, but the vacancies should also be filled by candidates sponsored by the Employment Exchanges. It was only when no suitable candidates were available, that other sources of recruitment were to be considered."

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"9. The further question is whether the instructions issued by the Government that in the case of government departments the field of choice should, in the first instance, be restricted to candidates sponsored by the Employment Exchanges offend Articles 14 and 16 of the Constitution. Shri P.Parmeshwara Rao, learned counsel appearing for some of the respondents strenuously urged that such a restriction would offend the equality clauses of the Constitution, namely, Articles 14 and 16. He urged that when Parliament had gone into the question and decided that there should be no compulsion in the matter of appointment by way of restriction of the field of choice, it was not

open to government to impose such compulsion. He argued that it would be unreasonable to restrict the field of choice to those sponsored by the Employment Exchange. In a country so vast as India, in a country where there was so much poverty, illiteracy and ignorance, it was not right that employment opportunities should necessarily be challenged through the Employment Exchanges when it is not shown that the network of Employment Exchanges is so wide, that it reaches all the corners of this vast country. He argued that it is futile to expect that persons living in distant places could get themselves registered with Employment Exchanges situated far away. The submission of Shri Parmeshwara Rao is indeed appealing and attractive. Nonetheless we are afraid we cannot uphold it. The object of recruitment to any service or post is to secure the most suitable person who answers the demands of the requirements of the job. In the case of public employment, it is necessary to eliminate arbitrariness and favouritism and introduce uniformity of standards and orderliness in the matter of employment. There has to be an element of procedural fairness in recruitment. If a public employer chooses to receive applications for employment where and when he pleases, and chooses to make appointments as he likes, a grave element of arbitrariness is certainly introduced. This must necessarily be avoided if Articles 14 and 16 have to be given any meaning. Employment Exchanges advances rather than restricts the rights guaranteed by Articles 14 and 16 of the Constitution. The submission that Employment Exchanges do not reach everywhere applies equally to whatever method of advertising vacancies is adopted. Advertisement in the daily press, for example, is also equally ineffective as it does not reach everyone desiring employment. In the absence of a better method of recruitment, we think that any restriction that employment in government departments should be through the medium of employment exchanges does not offend Articles 14 and 16 of the Constitution." (emphasis added)

5. In the matter of recruitment of ED agents, we have consistently held that, if a person is appointed to a vacant ED post provisionally, then, <sup>if</sup> even his name is not sponsored by the employment exchange, his candidature for regular selection should necessarily be considered as a right. The main reason is that natural justice demands that such a person, who is serving the Department on the post for which regular selection is being made, should not be unceremoniously thrown out without considering his candidature on merits.



6. More or less a similar situation obtains in this case. The applicant is admittedly a contingent water carrier in the Ernakulam Head Post Office. A group D post of Letter Box Peon is vacant in the same office. The post is to be filled by considering the claims of casual labourers only, but restricted to those sponsored by the employment exchange. Keeping in view the consistent stand being taken, the applicant, being a casual labourer in the same office, has to be considered.

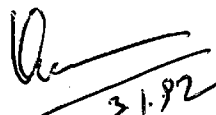
7. The most formidable objection of the respondents is that even if he satisfies all other conditions, he cannot be considered because he does not satisfy one important condition, i.e. his first engagement as casual labourer should have been after being sponsored by the Employment Exchange. I would have upheld this objection on the basis of the Supreme Court's ruling <sup>in</sup> Hargopal's case and dismissed the application but for one important consideration, to which the respondents have not adverted in their reply or arguments.

8. It is the policy of Government not to penalise the casual labourers who had been engaged, though not sponsored for initial engagement by the Employment Exchange. That apart, repeatedly, Government have permitted such casual labourers to be considered for regularisation to Group D posts, if they satisfy other conditions of eligibility. The latest order is in G.M.No. 49014/4/19-Estt(C) dated 8.4.91 of the Department of Personnel and Training (copy placed in the case) which directs that casual workers recruited before 7.4.88 and who are in service on the date of issue of the OM may be considered for regular appointment to Group D posts in terms of the general instructions, even if they were recruited otherwise than through the

Employment Exchange and had crossed the upper age limit prescribed for the post, provided they are otherwise eligible for regular appointment in all other respects.

(emphasis added). If such be the case for Group D posts, there is no justification for the insistence that only those casual labourers will be considered whose initial engagement was due to sponsorship by the Employment Exchange for ED posts, which are far less attractive than Group D posts. I am of the view that the Annexure-III instructions should be reconsidered by the Department in the light of the instruction dated 8.4.91 of the Department of Personnel.

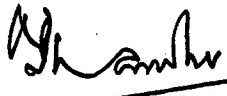
9. In the circumstances, the applicant is entitled to be considered even though his name is neither sponsored now by the employment exchange in the panel sent by them nor sponsored earlier at the time of his initial engagement as casual labourer, provided he satisfies all other eligibility conditions. Hence, I agree with para 10 of the judgement.

  
(N.V. Krishnan)  
Member (Administrative)

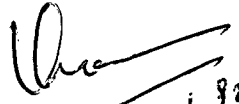
Order of the Bench

The application is thus allowed directing the respondents to consider the applicant also along with others for appointment to the post of E.D. (Letter Box) Peon, Head Post Office, Ernakulam. We further direct the respondents to consider the applicant's claim for preferential treatment taking into consideration his

prior service in accordance with law.

  
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(N. DHARMADAN)  
JUDICIAL MEMBER

  
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(N. V. KRISHNAN)  
ADMINISTRATIVE MEMBER

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