

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No.

511

1990

DATE OF DECISION

16/10/91

K.K. RAJU

Applicant (s)

Mr. M.R. Rajendran Nair

Advocate for the Applicant (s)

Versus

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

Mr. Mathews J Nedumpara, ACGSC

Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. N.V. Krishnan, Member (Administrative)

The Hon'ble Mr. N. Dharmadan, Member (Judicial)

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

N. Dharmadan, M(J)

The applicant is aggrieved by the refusal on the part of the respondents to grant regular engagement to him as casual mazdoor. The applicant submits that he commenced his service in 1984 as casual mazdoor under the 3rd respondent as indicated in Annexure-I certificate. He produced Annexure-II, the particulars of his casual engagement from 4-8-84 to 13-4-89. Later when the applicant was refused

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engagement, he filed Annexure-III representation and waited for some time. Since no relief was granted by the respondent he filed this application for a direction to the respondents to engage him as casual mazdoor in preference to his juniors and regularise him in service as Group-D staff.

2. The respondents filed counter affidavit without clearly indicating as to whether the statements contained in Annexure-II produced along with OA are correct or not. Hence we passed on 9-9-91 an order directing the respondents to file affidavit either accepting the statement in Annexure-II or stating the true facts pertaining to their engagement of the applicant.

3. Accordingly, the respondents ^{have} filed an affidavit dated 24th September 1991 with the seniority list of the casual mazdoor engaged in Ernakulam SSP. In the affidavit the General Manager, Telecom District, Ernakulam stated that genuiness of the statement ^{about} ~~and~~ the previous engagement of the applicant is not disputed.

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But he has clarified that the applicant was not engaged under the third respondent in the same division coming under the General Manager.

4. In the light of the aforesaid admission in the affidavit ~~and the submission of~~ ^{by} the learned counsel for the applicant submitted that this application can be disposed of after recording the statement in the ~~concern~~ ^{said by} affidavit with suitable directions. We are inclined to dispose of this case in the interest of justice with directions. The learned counsel for the respondent also agreed that such a course ~~should~~ be adopted in this case. Accordingly, we direct the respondents to engage the applicant as casual mazdoor in preference to his juniors and grant him regularisation in service as Group-D in accordance with law in his turn based on his seniority and suitability ~~counting his prior service admissible~~ in the affidavit. ^{be}

5. The Original Application is accordingly disposed of as above. There will be no order as to costs.


(N. Dharmadasan) 16/1/91
Member (Judicial)


(N.V. Krishnan) 16/1/91
Member (Administrative)

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Shri NV Krishnan, Administrative Member

6 While agreeing with my learned ~~Brother~~'s judgment, I would like to add a few words of my own.

7 The respondents have denied the reliefs sought by the applicant on the following grounds as stated by them in the reply affidavit.

" In reply to the averments made in para 4.2 of the above OA, it is respectfully submitted that he had worked for 14 days, as stated above, during the period from 20.5.84 to 10.8.84 under the AE External, Kochi. Thereafter, he had been continuously absent. He did not report for work thereafter even for a single day. In fact, no casual mazdoor was engaged under the 3rd respondent since 20.5.1984. This is evident from the seniority list of Casual Mazdoor as on 31.3.1990."

" Casual Mazdoors who had worked in the department before 30.3.85 and had completed 240 days in any year and working at present in the department alone are eligible for regularization in the long run. Such casual mazdoors are considered as approved mazdoors and are conferred temporary status." *(emphasis added)*

" Even Mazdoors who are approved and whose names are included in the seniority list are given work only according to the availability of work. Since 10.8.84 no Casual Mazdoor was engaged by the 3rd respondent under whom he claimed to have worked."

" In reply to the grounds raised in Para 5(c) it is submitted that the question of regularisation of service arises only in the case of mazdoors who had been engaged prior to 30.3.1985 and completed 240 days of work in any year prior to that and who are continuing in service. The applicant being not engaged since 10.8.1984 cannot seek a claim for regularization." *(emphasis added)*

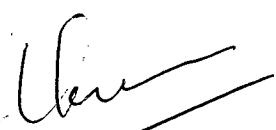
8 The learned counsel for the respondents produced a seniority list (Exbt.R2(A) alongwith, additional counter affidavit dated 24.9.1991. In the additional counter affidavit the respondents admit the engagement of the applicant as claimed by him in the Annexure-II statement, but states that this was not under the 3rd respondent.

The engagement after 4.8.1984 is now admitted.

9 We see from this seniority list that persons engaged as late as in January, 1987 have found a place in the seniority list (Sl.No.1147 and 1153). Therefore, while the Respondent 3 may not have engaged persons after 20.5.1984, the Department certainly has engaged persons even ~~as~~ late as in 1987. Persons though engaged as early as in 1982 - but who have worked for a total number of 80 days only - which obviously implies long spells of broken periods, also been included in the seniority list (vide Sl.No.1170). This also belies the statement that only those who have 240 days of service in any year before 30.3.1985 can be regularized.

10 Compared to such instances, the applicant has a much better claim in all respects. I am, therefore, of the view that the claims made by the applicant cannot be denied on the grounds raised by the respondents in the extracts re-produced above. For, as pointed above, the seniority list produced by them negatives practically every one of their averments.

11 I, therefore, fully agree with the directions issued by my learned brother.


(NV Krishnan)
Administrative Member
16-10-1991