

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O. A. No. 52/90

T. A. No.

199

DATE OF DECISION 28.6.91

P. Maniyan Applicant (s)

Mr. K. Krishnan Kutty Menon Advocate for the Applicant (s)

Versus

The Joint Registrar, Respondent (s)

Central Administrative Tribunal,  
Principal Bench & another.

Mr. N.N. Sugunapalan, Advocate for the Respondent (s)  
SCGSC.

CORAM :

The Hon'ble Mr. NV 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? *Yes*
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

Applicant is a former Peon of this Tribunal. His services were terminated as per Annexure-B order dated 15.1.90 after issuing Anx-A notice dated 20.12.1989. In this application filed under section 19 of the Administrative Tribunals Act 1985, he is challenging both the orders at Annexure A and B. He also seeks for a declaration that he is entitled to continue in the post of Peon in the Central Administrative Tribunal, Ernakulam Bench, Kochi.

2. Undisputed facts of the case are as follows: The applicant was initially appointed as 'ad hoc' Peon in this Tribunal with effect from 1.8.88 (he joined on 16.8.88) at the stage of its formation, after relaxing the upper age limit considering the urgent requirements and his prior service in other establishments.

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He was given an annual increment on completion of one year of service. On 22.11.88 he was interviewed for filling up the post of Junior Library Assistant/ Daftary/Jamadar in this Tribunal. His name was also recommended for regularisation. Apprehending termination of service from 31.3.89 he filed a representation dated 21.3.89, Annexure-C. Thereafter, he served with Annexure-A notice, stating that 'his services shall stand terminated with effect from the date of the expiry of a period of one month from the date on which this notice is served on him'. It was followed by Annexure-B order of termination dated 15.1.90. The applicant filed the present application on 17.1.90. When it comesup for admission we observed that it is premature and it was adjourned to enable the applicant to move the appropriate forum. The learned counsel for the applicant stated on 12.2.90 that the applicant submitted a representation dated 19.1.90. Therefore, by order dated 16.4.90 we admitted the application. The respondents filed a detailed reply statement.

3. The learned counsel for the applicant Shri K. Krishnan Kutty Menon raised two points at the time of arguments.

- (i) His first contention is that appointment of the applicant was made after relaxing the upper age limit fixed for the post and he was considered for promotion to the next higher post. Hence, the applicant is entitled to be regularised in service.
- (ii) The termination is discriminatory and violative of provisions of the Articles 14 and 16 of the Constitution for, two other similarly situated persons were given regularisation.

4. Having heard the arguments and after perusing the records, we are not very much impressed by the first contention raised by the learned counsel for the applicant. It is true that the applicant had been appointed after relaxing the upper age limit prescribed for the post of Peon. The applicant's date of birth being 4.3.51, he was over aged by about 12 years and it was relaxed in view of the urgent necessity of the service of an experienced Peon at the time of formation of the Ernakulam Bench of the Tribunal. There was no time for Regular Selection and appointment to this post. Hence, as a stop gap arrangement in the exigency of service <sup>appointment b</sup> was made at the beginning stage. The applicant also would be aware that subsequent regular selection may take place because it was made clear in the appointment order that the 'ad hoc appointment will not confer upon the incumbent any right/claim for regular appointment in the said post. The ad hoc service shall not be counted for seniority in the said cadre or for determining eligibility for promotion to the next post.'

5. It was further clarified in the appointment order,

'the appointment is purely on ad hoc basis for a period of 6 months from the date he joins duty or till a regular incumbent is appointed, whichever is earlier'.

The applicant joined service after accepting these conditions. The appointment was extended further with the same terms and conditions.

6. When regular selection took place the applicant did not either apply for the post or make any request for being considered in the regular selection presumably due to his belief that his case would not be considered in view of the fact that he is overaged. This failure on his part to stake his claim for regularisation and appointment at the material time appears to be fatal and detrimental to his present claim. Had he pressed for a consideration of his right to be selected at the time of regular selection to the post either by submitting application or otherwise projecting his ad hoc service and experience in the post, the refusal by the respondents would have given him a good cause of action, for this Tribunal is consistently taking the view that a provisional or ad hoc appointee is entitled to be considered for the regular selection to the post, which <sup>he</sup> was holding at the time of regular selection in a temporary or provisional manner, giving some weightage or consideration for the experience he had gained on account of his past service in the same post.

7. The applicant's appointment, at the time of formation of the Tribunal was only a stop gap arrangement. It was made in the exigency of service as purely as ad hoc appointment. It was further made clear to the applicant that he would not be getting

any right to stake his claim for regularisation and he should yield place to the regular incumbent when such an appointment is made. He does not get legal rights to get regularisation simply because he was allowed to continue beyond the term or he was given increments in the normal course or his age was relaxed at the initial stage as in this case in the exigency of his service. It does not even count for seniority unless it is followed by regular service under certain circumstances. The Supreme Court has on more than one occasion considered the right of an ad hoc appointee and held that his termination would not attract Article 311. See State of Nagaland Vs. G. Vasantha, AIR 1970 SC 537., Vidya Sagar Vs. Sudesh Kumari, AIR 1975 SC 2292, Ashok Gulati and others Vs. B.S. Jain and others AIR 1987 SC 424. Agarwal Vs. State of MP AIR 1990 SC 1311. In Amer Singh Vs. State of Punjab (Pb & Hry.), 1983(3) SLR 264, the Punjab & Haryana High Court held as follows:

"...in the gamut of service law an ad hoc employee virtually stands at the lowest rung. As against the permanent, quasi permanent, and temporary employee, the ad hoc one appears at the lowest level implying that he had been engaged casually or for a stop gap arrangement for a short duration of fleeting purpose."

So the rights of the applicant is very much limited. Having regard to the factual and legal position, we see no merit in the first contention of the applicant and it is liable to be ignored.

8. As regards the second contention of the applicant that the termination is discriminative and violative of Arts 14 and 16, the learned counsel for the applicant strongly relied on two specific instances. According to him Smt. P.A. Geetha, Safaiwala, and Shri P. Unnikrishnan, Staff Car Driver, who were appointed as ad hoc hands, were regularised after granting relaxation of upper age limit. and these two cases are identical in nature. The applicant is entitled to get the same treatment and he should have been regularised in the vacancy existed in the Tribunal. The action of the respondents in having resorted to fresh selection of Peons in November, 1990 without regularising the services of the applicant is discriminatory and violative of Articles 14 & 16 of the constitution.

9. This contention is answered by the respondents in their reply statement by stating that the cases of Smt. P.A. Geetha and P. Unnikrishnan are not analogous or similar to that of the applicant. They are basically different and can be distinguished. They were not working as Peons. Shri P. Unnikrishnan was appointed on ad hoc basis as a Staff Car Driver on 3.11.1986 and his services were regularised with the concurrence of the Hon'ble Chairman on 1.1.88. Age relaxation was neither necessitated nor granted to Shri P. Unnikrishnan, Staff Car Driver, while regularising his services in the Tribunal.

Smt. P.A. Geetha, Safaiwala was first appointed on a casual basis from 20.3.87, because attempts to make a regular recruitment through the Employment Exchange failed. She was then appointed on ad hoc basis on 1.1.88 and her services were regularised with the approval of the Hon'ble Chairman on 1.4.88, after granting the age relaxation of 5 years 9 months and 8 days. This was resorted to due to the special circumstances of the particular case particularly due to failure to get a proper candidate from the Employment Exchange. Normally the appointees to the post of Safaiwala belong to the category of persons from SC community, in respect of whom upper age limit is relaxable by 5 years under normal rules. Though Smt. Geetha does not belong to SC category, keeping in view of the nature of the duties attached to the post and the permissibility of relaxation of upper age limit to a person normally appointed to that post, the competent authority thought it fit to grant regularisation to P.A. Geetha considering the recommendation in this behalf. Her case is distinguishable since she is not working as a Peon. No age relaxation was granted to any Peon in this Tribunal for the purpose of regularisation and appointment as Peon. The age relaxation required for the applicant was to the extent of 12 years, which is beyond the normal and reasonable limit of age relaxation permissible for direct recruits belonging to the categories of SC/ST. This reasoning appears to be reasonable. Since no rule is brought to our notice about <sup>the extent of</sup> permissible

age relaxation in deserving non-reserved categories, we are not in a position to accept the argument of the learned counsel even if we accept that Safaiwala and Peons are doing similar duties and should be treated alike. In this view of the matter the cases of Smt. P.A. Geetha, Safaiwala and P. Unnikrishnan are distinguishable. The applicant's second ground based no violation of Articles 14 & 16 cannot be upheld on the facts and circumstances of this case.

10. In the result all the points raised by the learned counsel for the applicant are only to be rejected. Hence, the application fails and it is liable to be dismissed. Accordingly, in the facts and circumstances of the case, we dismiss the case as lacking in merit but without any order as to costs.

Dharmadan

(N Dharmadan) 28-6-91  
Judicial Member

Dev 28/6/91

(NV Krishnan)  
Administrative Member