

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 516 of 1990
T. A. No.

DATE OF DECISION 15-11-1991

VP Sadanandan & 3 others Applicant (s)

M/s TA Rajan &
KK Mohammed Ravuf Advocate for the Applicant (s)

Versus

Union of India Respondent (s)

CORAM: Mr George Joseph, ACGSC Advocate for the Respondent (s) 1 to 4
M/s MR Rajendran Nair & Advocates for respondents
PV Asha 5 to 8

The Hon'ble Mr. SP Mukerji, Vice Chairman
&

The Hon'ble Mr. AV Haridasan, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? *✓*
2. To be referred to the Reporter or not? *ms*
3. Whether their Lordships wish to see the fair copy of the Judgement? *ms*
4. To be circulated to all Benches of the Tribunal? *no*

JUDGEMENT

(Mr AV Haridasan, Judicial Member)

The applicants 1 to 4 were initially engaged as Casual Mazdoors in the Telecommunication Department by the second respondent in the year 1983. While they were continuing in service as Casual Mazdoors under the second respondent, in the year 1989, they were deputed and posted as Mazdoor Telegraphman in Telegraph Wing under the third respondent from October 1989 onwards. The applicants have been continuously working as Mazdoor Telegraphman under the third respondent. Each of them had worked for more than 240 days continuously as Mazdoor Telegraphman. While the applicants were working

as Mazdoor Telegraphman under the third respondent, by order dated 14.3.1990, temporary status was conferred on them w.e.f. 1.10.1989. The applicants are at Sl.No.65, 61, 43 and 25 respectively in the order dated 14.3.1990(Annexure-A3) by which temporary status was granted to Casual Mazdoors under the Temporary Status and Regularisation Scheme. The grievance of the applicants is that the respondents 3&4 have taken steps to transfer the applicants to Telephone Wing and to post respondents 5 to 8 in their place in the Telegraph Wing as Mazdoor Telegraphman. According to the applicants, before they were deputed to work as Mazdoor Telegraphman under the third respondent, willingness was called for from volunteering Casual Mazdoors of the Engineering Wing and as respondents 5 to 8 did not volunteer and as the applicants had been selected and deputed on the basis of their willingness, they have a preferential right to continue as Mazdoor Telegraphman and for absorption to the post of Telegraphman on a regular basis and the respondents 5 to 8 who had never worked there despite their higher seniority as Casual Mazdoors in the Engineering Wing have no right to be transferred and posted in their place. Though no order transferring the applicants to the Engineering Wing and posting the respondents 5 to 8 has been produced, the applicants pray that the respondents 1 to 4 may be restrained from transferring them out to the Telegraph Wing and appointing respondents 5 to 8 in their place. They have filed this application under Section 19 of the Administrative Tribunals Act praying for the following reliefs:

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- "(a) set aside the proceedings of the respondents 1 to 4th retransfer the applicants to Telephone Wing and to appoint the respondents 5 to 8 as Telegraphmen in the place of the applicants.
- (b) declare that the orders, if any, posting the respondents 5 to 8 as Telegraphmen in the place of the applicants is arbitrary and illegal, and
- (c) direct the respondents 1 to 4 to allow the applicants to continue as Telegraphmen in the Telegraph Wing and to regularise their service."

2. As the applicants had prayed for an interim relief to stay the appointment of the respondents 5 to 8 to the Telegraph Wing of the Telecommunication Department and to direct the respondents to allow the applicants to continue in their present post till the disposal of the application, on 13.7.1990, an interim order was issued directing the respondents 1 to 4 to continue the applicants in the Telegraph Wing if there is work available in that Division for providing to them in no way prejudicing the rights of the respondents 5 to 8 for getting regular appointment, if they are otherwise eligible, subject to the result of this application.

3. The third respondent has on behalf of the respondents 1 to 4 filed a reply statement. The averment in the application that the applicants 1 to 4 were deputed to work as Telegraphmen w.e.f. 4.10.1989, 3.10.1989 and 24.10.1989 respectively is admitted. But the case of the applicants that they were so deputed after calling volunteers and on their expressing their willingness is denied. According to the respondents, the applicants were deputed to work in the Telegraph Wing only, on adhoc temporary measure and that by such deputation, they do not get any preferential right to continue in Telegraph

Wing or to be regularised in service as Telegraphmen in preference to their seniors in the Engineering Wing. It is further contended that respondents 5 to 8 have been duly selected for regular appointment to the post of Telegraphmen in Group 'D' considering their seniority as Casual Mazdoors. The respondents have made it clear that as the respondents 5 to 8 have put in much more number of days of casual work than the applicants, they were entitled to be considered for regular absorption before the applicants are so considered. Respondents 5 to 8 were regularly selected for appointment as Telegraphmen and two of them namely, respondents 5 and 6 have already been appointed. The averment in the application that the respondents 3 & 4 have given undue consideration for respondents 5 to 8 in the matter of posting as Telegraphmen has been denied by the third respondent and it has been contended that the respondents 5 to 8 are not personally known to him. The respondents 1 to 4 therefore contend that as the respondents 5 to 8 were regularly selected to the post of Telegraphmen on the basis of their length of service as Casual Mazdoors in the Engineering Wing, the applicants who were deputed to work as Mazdoor Telegraphmen purely on adhoc temporary basis have absolutely no valid right to assail the posting of respondents 5 to 8 and to pray for continuation as Mazdoor Telegraphmen.

4. We have heard the learned counsel for both the parties and have carefully gone through the documents produced. The

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learned counsel for the applicant submitted that in OA-657/90, where one Mr CP Abdul Hameed, a Casual Mazdoor in the Engineering Wing who was deputed to work as Mazdoor Telegraphman in the Traffic Wing of Malappuram Telecommunication Sub Division was not considered for regular absorption as Telegraphman on the ground that there were other persons who are senior to him as Casual Mazdoors in Engineering Wing, ^{Bench of the} ~~this/Tribunal~~ had directed the Department to consider Mr CP Abdul Hameed, the applicant in that case also along with other seniors for appointment to the post of Telegraphmen. That the same principle is to be applied in this case also and that the applicants are entitled to the similar relief. In OA-657/90 the fact that the applicant therein was deputed to work as Mazdoor Telegraphman after calling for his willingness, was not disputed by the respondents. Further, what was challenged in OA-657/90 was the non-consideration of the applicant therein for selection to the Group 'D' post of Telegraphman. The facts of this case, cannot be said to be identical with the facts of OA-657/90. The averment of the applicants that they were deputed as Mazdoor Telegraphmen after obtaining their willingness and after calling for volunteers from among the Casual Mazdoors of the Engineering Wing is denied by the respondents 1 to 4. Further, what is challenged in this application is the proceedings of the respondents 1 to 4 transferring the applicants from out of the Telegraph Wing and appointing respondents 5 to 8 in their places. The applicants have not

produced the copy of the proceedings. They have not even called upon the respondents 1 to 4 to produce a copy of the proceedings. Further, the selection and appointment of the respondents 5 to 8 as Mazdoor Telegraphmen have not been specifically challenged in this application. Though the applicants have contended that they have better educational qualification than respondents 5 to 8 ^{as} while they are Matriculates, the respondents 5 to 8 have not passed Matriculation Examination and that by reason of their continuous officiation as Mazdoor Telegraphmen from October, 1989 onwards they have a preferential right for continuance there and for absorption, the applicants have not stated that the respondents 1 to 4 have selected the respondents 5 to 8 for appointment to the post of Telegraphmen in regular service of the department in Group 'D'. The respondents 5 to 8 have filed MP-518/90 praying that the interim order dated 29.6.1990 may be vacated and that the respondents 1 to 4 may be directed to give them posting as Telegraphmen. In this M.P., they have alleged that the applicants are guilty of suppression of material facts that the respondents 5 to 8 were regularly selected for appointment as Telegraphmen and that the respondents 5 to 8 are seniors to the applicants in the seniority list of casual mazdoors on whom temporary status was granted. It was after the M.P. was filed by the respondents 5 to 8 that the interim order dated 29.6.1990 staying the transfer of the applicants from Telegraph Wing to Telephone Wing was modified directing that the respondents 1 to 4 to continue the applicants in the Telegraph Wing if there is work available in that Division for

providing to them in noway prejudicing the right of the respondents 5 to 8 for getting regular appointment, if they are otherwise eligible, subject to the outcome of this application.

That the respondents 5 to 8 are senior~~s~~ as Casual Mazdoor in the Engineering Wing having more length of service than the applicants and that they have been regularly selected for appointment to Group 'D' post of Telegraphmen has not been denied by the applicants. The applicants who have been deputed to work as Mazdoor Telegraphmen purely on an adhoc temporary measures, have no right to continue there if the vacancies of Telegraphmen are regularly filled and the purpose of the deputation ceases to exist. Merely because the applicants were deputed to work as Mazdoor Telegraphmen for some time purely on adhoc temporary measure, they cannot claim regularisation in service bypassing their seniors in the list of Casual

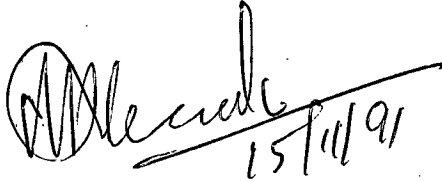
Mazdoors. According to respondents 1 to 4, the procedure for filling up the vacancies ⁱⁿ Group 'D' posts of Telegraphmen is by absorption of the Casual Mazdoors on the basis of their seniority-cum-suitability. This has not been challenged by the applicants.

The relief claimed in OA-657/90 and the relief claimed in this application are totally different. Therefore, the argument of the learned counsel for the applicant that on the basis of the decision in OA-657/90, the applicants are entitled to the relief claimed in this application has only to be rejected.

The applicants who were deputed to work as Telegraphmen purely on adhoc and temporary measure will have to go back as Casual

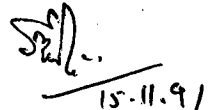
Mazdoor in the Engineering Wing when the requirement of such deputation ceased to exist by reason of regular filling up the post of Telegraphmen. They will have to wait for absorption into Group 'D' post according to their turn on the basis of their seniority-cum-eligibility and suitability. Therefore the applicants are not entitled to the relief claimed in this application.

5. In the result, the application is dismissed without any order as to costs.



15/11/91

(AV HARIDASAN)
JUDICIAL MEMBER



15.11.91

(SP MUKERJI)
VICE CHAIRMAN

15-11-1991

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