

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No. 526/89
~~KAXXKX~~

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DATE OF DECISION 3.5.1991

V Raju and another Applicant (s)

Mr MK Damodaran Advocate for the Applicant (s)

Versus

The Sub Divisional Officer, Respondent (s)
Telephones, Alleppey & others

Mr K Prabhakaran, ACGSC Advocate for the Respondent (s)

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? ✓
2. To be referred to the Reporter or not? ✓
3. Whether their Lordships wish to see the fair copy of the Judgement? ✓
4. To be circulated to all Benches of the Tribunal? ✓

JUDGEMENT

Mr NV Krishnan, A.M

The two applicants are casual mazdoors in the Office of the Sub Divisional Officer (Phones) at Alleppey. They commenced their service from 10.6.81. Respondents 4 and 5 also similarly commenced services in the same Sub Division as casual mazdoors on 13.8.81 and 10.6.81 respectively. The Annexure-I seniority list as on 3.10.83 shows the fifth respondent to be junior to the first applicant while the fourth applicant is junior to both applicants. The Annexure-II seniority list on 1.4.89 shows both Respondents 4 and 5 to be juniors to the applicants. The grievance of the applicants is that despite this, Respondents 4 & 5 who were deputed to work with Respondent-2, namely, Divisional Officer

(Telegraph Traffic), Ernakulam, have been absorbed against regular Group D non-test Category vacancies in the CTO Cochin vide the impugned Annexure-IV order dated 22.8.89. The applicants contend that, in view of their higher seniority, their claims for such absorption before Respondents 4 & 5 should not have been over-looked and Respondents 4 & 5 should not have been absorbed in the Group D post by the second respondent. Hence, they have prayed to quash the Annexure IV impugned order in so far as it concerns the promotion of Respondents 4 & 5 and they also seek a further directions to Respondents to absorb and post them against Group D posts in Non-test Category at CTO, Cochin.

2 The Respondents 1 & 2 (i.e., Department) alone have filed a reply denying that any relief is due to the applicants. Their submissions are as follows.

2.1 It is submitted that the jurisdiction of Ernakulam Telegraph Traffic Division extends to Alleppey, Ernakulam, Trichur, Idukki and part of Pathanamthitta Revenue District and Union Territory of Lakshadweep. Various telegraph offices attached to this division are situated within different secondary switching areas. Alleppey and Kayamkulam Telegraph Offices are within Alleppey Secondary Switching area which is under the charge of Telecom District Engineer, Alleppey assisted by Sub Divisional Officer, Phones, Alleppey, Sub Divisional Officer (Telegraphs) Mavelikara, Sub Divisional Officer (Telegraphs) Kayamkulam, Assistant

Engineer (Trunks and Carrier) Alleppey and Assistant Engineer (Auto) Alleppey, etc. The above officers are appointing authorities for the mazdoors in their respective sub division and the seniority list published by them pertains to the mazdoor working under the respective sub divisions. There are similar officers under the Ernakulam and Trichur secondary switching areas. The Sub Divisional Officers and Assistant Engineers in-Charge of an office are appointing authorities for the mazdoors for the mazdoors employed by them and and they are shown in a seniority list applicable to that unit. A combined seniority list of the mazdoors employed by more than a dozen appointing authorities in the jurisdiction of the Ernakulam Telegraph Traffic Division is not prepared.

2.2 Regarding the appointment of Respondents 3 & 4 to the CTO Cochin to Group D posts, it is submitted that there are instructions of the Department for absorbing casual mazdoors as Class IV employees in Central Telegraph Offices/Department Telegraph Offices. The earlier orders were issued on 26.8.81 which made it clear that if casual mazdoors are not available in Telegraph Traffic Division, the volunteers may be called for in the order of preference etc. The order of preference has been amended subsequently in 1984 vide Annexure R1 and the following order of preference for recruitment has now been laid down.

" The case has been re-examined and it has been decided that in future the casual mazdoors may be considered for absorption as Class IV in CTOs/ DTOs in the following order of preference:-

- a) Casual mazdoors in Telegraph Traffic Divisions.
- b) Casual mazdoors of Engineering phones Division or Telegraph Engineering Division available at the station/Distt. in which CTO/DTO is located for which recruitment is to be made.
- c) If casual mazdoors of category (a) and (b) are not available, casual mazdoors in Engg phones Division in which the Telegraph Traffic Division is situated.
- d) If no volunteers are available from (a) (b) and (c), the casual mazdoors of other Telegraph Engineering Divisions within the telegraph Traffic Divisions."

2.3 There were 13 part-time mazdoor under the Ernakulam Telegraph Traffic Division as on 28.2.85 and they were being employed as full time casual mazdoors from 1.3.85. As further recruitment of casual mazdoors from the open market was banned wherever any vacancy of mazdoor occurred in any Telegraph Office, the Sub Division Officer at the Headquarters or Division Engineer concerned were requested to depute mazdoors to that office in accordance with the R-1 instructions. As the persons who were required to perform simultaneously, the duties of Sweeper, Scavanger, Farash, Waterman, Chowkidar etc., the deputation was after calling for volunteers and only those willing volunteers were deputed to the Telegraph Office.

2.4 It is in pursuance of this arrangement that

Respondents 4 & 5 came over to the Telegraph Traffic

Division initially in the CTO, Alleppey, when volunteers were called from the Alleppey Sub Division. This will be clear from Annexure V seniority list of casual mazdoors in the Telegraphic Traffic Division, Ernakulam as on 31.5.89 which indicates that persons from various units have been taken over in the Ernakulam Telegraph Traffic Division from various dates and attached in various CTO/ DTO. Their inter-se seniority is in accordance with the number of days they worked as on 31.5.89 including the period of service prior to their joining the Telegraph Traffic Division. The Respondents 4 & 5 are shown at Sl 2 and 5.

2.5 It is on the basis of this seniority list that they have now been promoted to Group D posts in their turn in CTO, Cochin.

3 The learned counsel for the applicant denies that any opportunity was given to the applicants to volunteer for work in the Telegraph Traffic Division. We, therefore, directed the counsel of respondents to produce the records, if any, to support this claim. The learned counsel for the respondents submitted that such records are not readily available.

4 We have heard the counsel and perused the records. The applicants are undoubtedly senior to the contesting Respondents 4 & 5 in the seniority list of SDO (Telephones), Alleppey. It is also contended that Respondents 4 & 5 are not borne on the seniority list of the 2nd respondent, so as to entitle them to promotion to Group D post. For,

the Annexure-II seniority list of casual mazdoors of Telephone Sub Division, Alleppey on ^{as} recent ^a date as on 1.4.89, shows the names of both the Respondent 4 & 5. Thus, they still continue to be on the roll of SDO, Alleppey and hence they could not have been preferred for the Group D posts.

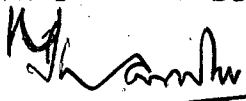
5 We have carefully considered these submissions. It is true that the Respondents have not been able to produce any records to show that volunteers were called by the Ernakulam Telegraph Traffic Division in response to which Respondents 4 & 5 volunteered to go. Nevertheless, nothing has been produced before us to show that the directions containing in the R.1 Circular that volunteers may be called has not been complied with. Further, the fact that volunteers were called is borne out by the Annexure R-5 seniority list which shows that persons have been drawn from various recruitment units. If the applicants wanted to be engaged by Respondent-2, they should have ^U ~~been~~ made a representation when Respondents 4 & 5 were initially sent to the CTO, Alleppey. This seems to corroborate the stand taken by the respondents that though an opportunity was given, the applicants did not volunteer ~~for~~ service under the 2nd respondent. Probably, this was due to the fact that the work to be done under Respondent-2 was not ~~be~~ to the liking of the applicants and further that ^{U there was no knowledge that} Group D vacancies would arise under Respondent-2 against which the casual labourers would be absorbed. The applicants have raised this issue


only now when the Respondents 4 & 5 having become regular casual mazdoors in the Ernakulam Telegraph Traffic Division got such promotion to Group D Posts.

6 We are of the view that the applicants could as well have volunteered to go to Ernakulam when such an offer was made in pursuance of the Annexure R1 circular. Not having done so, they cannot now claim that they should be absorbed to Group D posts in preference to Respondents 4 & 5. Merely because the names of Respondents 4 & 5 are still included in the Annexure II seniority list, it does not mean that they were promoted while they were in the recruitment unit of the first respondent. They were promoted because they had joined under Respondent-2 and had acquired seniority as shown in R-5.

7 Hence, we do not find any merit in this application and it is accordingly dismissed.

8 There will be no order as to costs.


(N Dharmadan) 3.5.91
Judicial Member


(NV Krishnan)
Administrative Member