

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 550/92 199

DATE OF DECISION 8-4-1993

P.S.Pushpa Applicant (s)

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

Versus

Collector of Central Excise, Kochi & 21 others. Respondent (s)

Mr. George C.P.Tharakan (R1&2) Advocate for the Respondent (s)
CORAM: Mr. M.Girijavallabhan (R7, 8, 11, 12, 13, 14, 15 & 22)
Mr. K.Sasikumar (R16, 17, 18 to 20)
Mr. K.Ramakumar (R4 to 6)

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

The Hon'ble Mr. R.Rangarajan, Administrative Member

1. Whether Reporters of local papers may be allowed to see the Judgement? *Y*
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

R.Rangarajan, AM

The applicant, a member of the Scheduled Caste Community, having been aggrieved by the selection and appointment of Respondents 3-22 as Sepoys in Central Excise as per order at Annexure-I without going through the normal procedure of calling for applications from the Employment Exchange, has filed this OA under section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

- " i) Quash Annexure-I
- ii) Direct the respondents 1 to 2 to fill up the vacancies of Sepoys after observing the procedure of recruitment in accordance with law, considering the applicant also for such appointment.
- iii) Grant such other reliefs as may be prayed for and the Tribunal may deem fit to grant.
- iv) Grant the cost of this Original Application."

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2. The applicant, an aspirant for a Group D post in Central Govt. departments, submits that he has registered himself in the Employment Exchange, Ernakulam with the Reg. No. 13/87 and is fully qualified for the post of Sepoy in Group D category in the scale of Rs 775-1025 in the Excise Department under the first respondent. While waiting for a suitable chance for getting employment in some organisation including the one under the 1st respondent, he had learnt that the first respondent had made appointment to the category of sepoys from Part-time Safaiwallahs/ Departmental Canteen Employees of Excise Department without being sponsored by the Employment Exchange. He also submits that no notification was issued calling for applicants by Public Advertisement and that the appointees have entered service by illegal means. He further states that the appointment of the Respondents 3-22 made under Annexure-I is clearly violative of the Fundamental Rights of the applicant under Article 14 & 16 of the Constitution and hence prays for setting aside the appointments made as per Annexure-I order.

3. The respondents 1 and 2 in their reply statement filed on 25.5.92 have stated that the regularisation of all eligible casual labourers are being done as per the decisions of Hon'ble Supreme Court and other Benches of C.A.T. A list of 145 candidates for selection to the post of Sepoys of Central Excise has been sent by Director of Employment Services, Trivandrum, as per their office requisition dated 6.6.91. However, Ministry of Finance, Department of Revenue in their letter dated 15.4.91 (Annexure-R1) had instructed the Excise Department to regularise all casual/contingent workers recruited before 7.6.88 and in service on the date of issue of the Ann.R1 by the collectorate relaxing the conditions of upper age

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limit and Employment Exchange procedure. These instructions were issued by the Finance Ministry in pursuance of the instruction issued by the Department of Personnel & Training in their memorandum dated 8.4.91. The said memorandum dated 8.4.91 can be seen as an enclosure to Annexure-R1. The Central Board of Excise and Customs had also approved the said direct recruitment from casual labourers under their letter dated 14.8.91 at Annexure-R3. The respondents 1 & 2 further state that in view of the above Board's instructions, candidates (Scheduled Castes & General category candidates) forwarded by the Employment Exchange except Ex-servicemen have been returned to the Director, Employment Services vide their letter dated 28.10.91 as there were sufficient SC/ST candidates as well as general category among the casual workers who had given application. They further state that 6 ex-servicemen candidates have been appointed as Sepoys in their office order date No. 13/92 dated 20.1.92. The above recruitment without inviting applications by public advertisement has been done as per the instructions of the Board to regularise all casual service workers employed in the Collectorate who fulfil the conditions laid down as above by the Board. He further submits that as per recruitment rules for sepoys, 25% of the vacancies in which the grade of sepoys/ are to be filled by Direct recruitment, are reserved for promotion of Farashes, Chowkidars and Sweepers on condition that they are below 45 years of age and possess elementary literacy and also possess necessary physical standards. Against this quota, 40 casual workers/ part-time sweepers/canteen employees who were appointed prior to 7.6.88 and fulfil the educational, age and physical standards norms were considered for appointment



as Sepoys. Out of this 40 called for selection, 2 failed in the literacy test and 12 candidates ~~xxxxxxxxxxxxxxxxxx~~ had failed in the physical endurance test. Thus the respondents 1 & 2 state that there is no irregularity in the appointment of the candidates in the Annexure-I order and pray for the dismissal of the OA.

4. Respondents 4 to 6 have also submitted counter affidavits. In this affidavit they have averred that the applicant's name was not even sponsored by the Employment Exchange and in view of the pronouncements of the various courts/Tribunals the appointment made is in order and hence no injury has been caused to the applicant.

5. Respondents 7, 8, 11 to 15 and 22 have stated that they are entitled to be appointed based on the instructions issued by the Board on the basis of the judgement of the Hon'ble Supreme Court. The respondents 7, 8, 14, 15 & 22 were working as bearers in the Central Excise Departmental Canteen and the others were causal employees. Their appointments in the casual capacity were made through sponsorship from Employment Exchange. There is no irregularity in their appointment as they fulfil all conditions required for absorption as Sepoys in Group D service.

6. Respondents 9, 16, 17, 18, 20 & 21 have submitted that they were working as Part-time sweepers in Central Excise Department. All of them have registered themselves with different Employment Exchanges with live registration at the time of regularisation as Sepoys. They have averred that their appointment in terms of OM of the Department of Personnel & Training dated 7.6.88 and 8.4.91 is in order as these instructions were issued by the Ministry

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in pursuance of the judgement of the Hon'ble Supreme Court in a writ petition filed by Surinder Singh & others Vs. Union of India. They have enclosed this memorandum at Annexure R9(1) and R9(2). The Memorandum dated 8.4.91 is in consultation with the Director General of Employment Training, Ministry of Labour. In view of the dispensation of the procedure of getting sponsorship from Employment Exchange and regularisation of existing casual labour employees recruited prior to 7.6.88 is in order.

7. The applicant has not filed any rejoinder.

8. We have heard the learned counsels of all the parties and also perused the various documents produced before us. The main argument by the applicant against the recruitment of Respondents 3-22 as Sepoys in Central Excise is that they are not sponsored by the Employment Exchange, nor any notification was issued calling for applications for filling up the post. This in the opinion of the applicant is in contravention of the Employment Exchange (Compulsory notification of vacancies) Act. This contention is not tenable. The Department of Personnel & Training has issued O.M. as far back as 7.6.88 for regularisation of the casual labourers against the regular posts. These instructions at Annexure-R9(1) is in pursuance of the judgement of the Hon'ble Supreme Court delivered on 17.1.86 in the writ petition filed by Shri Surinder Singh & others Vs. Union of India. This office memorandum was followed ~~up~~ by the Department of Personnel & Training by relaxing the conditions of upper age limit and sponsorship through employment exchange for regularising the services of the casual labourers who were recruited prior to 7.6.88 in Group D posts. The relevant portion of this memorandum dated 8.4.91 is extracted



below:

"Requests have now been received from various Ministries/Departments for allowing relaxation in the conditions of upper age limit and sponsorship through employment exchange for regularisation of such casual employees against Group D posts, who were recruited prior to 7.6.88, i.e. date of issue of guidelines. The matter has been considered and keeping in view the fact that the casual employees belong to the economically weaker section of the society and termination of their services will cause undue hardship to them, it has been decided, as a one time measure, in consultation with the Director General Employment and Training, Ministry of Labour, that casual workers recruited before 7.6.88 and who are in service on the date of issue of these instructions, may be considered for regular appointments to Group D posts, in terms of the general instructions, even if they were recruited otherwise than through employment exchange and had crossed the proper age limit prescribed for the post, provided they are otherwise eligible for regular appointment in all other respects."

9. The Board of Central Excise & Customs have further advised their field units to follow these instructions vide their letter dated 30.4.91 at Annexure-R1 and 14.8.91 at Annexure-RIII. The respondents 3-22 were thus eligible to be considered for selection and appointment in Group D post as Sepoys even though they were not sponsored by the Employment Exchange or over aged. As per averment of the Respondents 1 & 2 they did call for applications from the Employment Exchange but returned the list of candidates belonging to Scheduled Caste and general category in view of the dispensation given by their Ministry as discussed above. However, they retained the list of Ex-servicemen sponsored by the Employment Exchange to fill up the Ex-servicemen quota. Thus it can be well inferred that the Central Excise Collectorate at Kochi did take action as per the extant procedure of calling for applicants from Employment Exchange but returned the same to regularise the serving casual labourers in their department as per the instructions issued by the Board of Central Excise. The Central Excise Collectorate at Kochi filled the Ex-servicemen quota as per extant rules.



10. The learned counsel for applicant argued that the Employment Exchanges (Compulsory Notification of Vacancies) Act has been violated. As the dispensation has been given by the Department of Personnel to dispense with the sponsorship through Employment Exchange for regularisation of the casual labourers employed prior to 7.6.88 in consultation with the Director-General, Employment and Training, Ministry of Labour, we do not agree to the view that the above said Act has been violated. He has not pointed out any specific provision of this Act having been violated so as to enable us to focus our attention to the same and take decision thereof. His argument as indicated above is general and we see no substance in the same.

11. Lastly, the learned counsel for the applicant has submitted that the casual labourers are in lower grade of pay than the grade of Sepoys who are in the grade of Rs 775-1025. Hence regularising the casual labourers against higher grade vacancy is not correct. There are more than one grade in Group D category. The casual labourers though employed in the lowest grade are eligible to be regularised and they have to be posted against the vacancies available in the Department if no suitable post in the lower grade is available. In other Central Government Departments also similar situation exists. As the casual labourers in this case are only appointed in Group D category against available vacancies to fulfil the instructions of the Ministry, we see no irregularity in this aspect also.

12. In the conspectus of facts and circumstances of the case we are fully satisfied that there is no irregularity in the selection and appointment of Respondents 3 to 22.

13. Hence we see no merit in the OA and it is only liable to be dismissed. Accordingly, we dismiss this O.A.

14. There will be no order as to costs.


(R. Rangarajan)
Administrative Member


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(N. Dharmadan)
Judicial Member