

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Dated Wednesday the Twenty Eighth day of June one thousand nine hundred and eighty nine.

PRESENT

Hon'ble Shri S.P Mukerji, Vice-Chairman

&

Hon'ble Shri G.Sreedharan Nair, Judicial Member

ORIGINAL APPLICATION NO.603/86

- 1) K.G Mohanan Nair
- 2) W.Sidni(Suresh Kumar)
- 3) M.K Meerakutty
- 4) P.R Ramachandran Nair
- 5) T.E.Mani
- 6) A.P.Elias

- Applicants

Vs

1. Union of India represented by the Secretary to Government, Ministry of Communications, Trivandrum.
2. The General Manager, Telecommunications, Kerala Circle, Trivandrum.
3. The Divisional Engineer, Telegraphs, Thoudupuzha.
4. The Sub Divisional Officer, Telegraphs Muvattupuzha.

5. Mr K.M Gopi, Kadambanattu House, Kidangoor

- Respondents

M/s M.R Rajendran Nair, Mary Isabella S.D
P.V Asha &
K.S Ajayagosh

- Counsel for the applicants

Mr P.A.Mohamed, ACGSC

Counsel for the respondents(R1 to 4)

ORDER

Shri S.P Mukerji, Vice-Chairman

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In this application dated 11.8.86 Shri K.G.Mohana

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Nair and five others who have been working as Casual Mazdoors under the Divisional Engineer, Telegraphs under the General Manager, Telecommunications, Kerala Circle have prayed that the cancellation of the select list of 1983 for Group D published on 27.3.85 as also the appointment of those not included in that list should be declared as null and void and that the applicants be declared to be entitled to get appointments as Group D regular mazdoors on the basis of their ranking in that select list. The brief facts of the case are as follows:-

2. While the applicants were working as Casual Mazdoors the respondents on 7.2.84 invited applications for appointment in the regular Group D vacancies of 1983. The age-limits prescribed was 18 and 25 years as on 1.7.83. It was also indicated that for mazdoors age-relaxation would be admissible to the extent of their total service as mazdoor or part-time employees. Casual Mazdoors who had 240 or more day's service in any year would be allowed age-relaxation for one year. On the basis of interview/written test and age-relaxation, applicant Nos.1,2,3,4 and 6 were selected by virtue of the benefit of age-relaxation in accordance with D.G, P&T's letter dated 11.11.83(Ext.R1). In accordance with this letter read with the O.M of the Department of Personnel and Administrative Reforms dated 13th October, 1983, a daily wage worker recruited before 21.3.79 gets the age-relaxation by the period spent by him as daily wage worker. Applicant No.5 was selected against the Scheduled Tribe quota. The Divisional Engineer, Telegraphs by his

memo(copy at Annexure-3) intimated the applicants that they had been appointed as Group D subject to medical fitness and assessing of suitability for employment. They were asked also to submit certificate forms duly filled in. The select list was published on 27.3.85 including the names of the applicants(copy at Annexure-4). It appears that one Shri Gangadharan, another mazdoor who was not selected represented on 6.4.85 pointing out some grave irregularity in the selection made by the D.P.C which had met on 27.3.85. The General Manager on the basis that the benefit of age-relaxation was not available to the in question recruitment/ cancelled the selection and a fresh D.P.C for the same 1983 vacancies met on 23.12.85 in which the applicants were not included. The applicants protested and the Employees Union submitted a representation to the General Manager. In reply to the representation from the Union, the General Manager indicated that "there was no necessity to consider over-aged candidates as there were sufficient eligible candidates otherwise" available.

3. According to the applicants once their names were included in the select list, they could not have been deleted without affording them an opportunity of explanation. They have cited a Supreme Court ruling also in this connection. The applicants have also alleged that in order to favour certain candidates they were given appointment even before they were medically examined or their antecedents were verified. They have argued that as Casual Mazdoors they were entitled to age-relaxation and the question of their sufficient number of being not considered for age-relaxation because/candidates within age-limits were available, does not arise. According to the respondents, the General Manager was convinced that age-relaxation was not necessary as there were sufficient number of eligible candidates without age-relaxation. They have also explained that the candidates selected by the fresh D.P.C were given appointment provisionally for a

period of two months subject to medical and other certificates.

4. We have heard the arguments of the learned Counsel for both the sides and gone through the documents carefully. The main point to be decided in this case is whether the applicants are entitled to age-relaxation prescribed by the Government for regular appointment in Group D post even when sufficient number of eligible candidates within the prescribed age-limit were available. In this connection the respondents have produced the D.G, P&T's letter of 11.11.83(Ext.R1) by which the Department of Personnel and Administrative Reforms O.M of 13th October, 1983 has been made applicable to the casual workers of P&T Department. Para 1 of this O.M of 13th October, 1983 reads as follows:-

" OFFICE MEMORANDUM

Subject:- Regularisation of Casual employees in Group 'D' posts.

The undersigned is directed to say that as per the instructions issued by this Department from time to time Casual employees recruited before 21.3.79 in various Ministries/Departments and attached and Subordinate offices of the Government of India may be regularised in Group 'D' posts subject to the following conditions:-

(i) A daily wage worker should have put in atleast 240 days of service as such(including broken periods of service) during each of the two preceding years(4 years in the case of part-time casual workers) on the date of appointment against a regular Group 'D' post.

(ii) A daily wage worker should be eligible in respect of maximum age limit on the date of appointment to regular post. For this purpose the period spent by him as daily wage worker is deducted from his actual age.

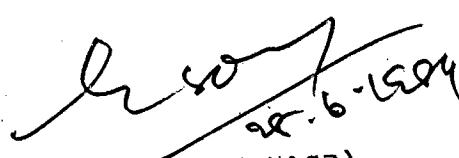
(iii) A daily wage worker should possess the minimum educational qualifications prescribed for the post. "

A bare reading of this para indicates that in case of casual workers, the O.M gives the eligibility criterion of age and does not lay down any age-relaxation. It simply states that a casual worker will be eligible in respect of maximum age-limit on the date of appointment to regular post and for that purpose the period spent by him as daily wage worker is to be deducted from his actual age. The above para also states that this eligibility criterion had been prescribed in earlier instructions. The D.G,P&T's letter dated 11.11.83(Ext.R1) refers to the earlier instructions of the Department of Personnel & Administrative Reforms dated 10th October, 1979 and 21.3.79. Thus it is clear that the eligibility criterion for casual workers to the effect that their age is to be reduced by the periods spent by them as daily wage worker was available to them from 1979. There was, therefore, nothing wrong for the D.P.C which met on 27.3.85 to consider the applicants as eligible. The argument taken by the General Manager that since sufficient number of eligible candidates were available without age-relaxation, there was no need to give age-relaxation to the applicants is not at all tenable. The General Manager was not/give at his discretion any age-relaxation, but was obliged to consider the applicants for regular appointment in Group D posts (age-wise) because they were admittedly eligible/for being considered by virtue of the O.M's of 1979 and 1983. The respondents themselves have stated that regularisation is done on the basis of seniority and since the applicants were senior to those who were within the prescribed age-limits, the applicants should not have been ignored for regularisation.

5. Further the respondents having accepted the select list prepared by the D.P.C of 27.3.85 and issued offers of appointment to the candidates, could not cancel the select list without giving them an opportunity to defend their rights. The Supreme Court in S.Govindaraju vs. K.S.R.T.C and another, A.T.R 1986(2) S.C 362 observed as follows:-

" Once a candidate is selected and his name is included in the select list for appointment in accordance with the Regulations he gets a right to be considered for appointment as and when vacancy arises. On the removal of his name from the select list serious consequences entail as he forfeits his right to employment in future. In such a situation even though the Regulations do not stipulate for affording any opportunity to the employee, the principles of natural justice would be attracted and the employee would be entitled to an opportunity of explanation, though no elaborate enquiry would be necessary. Giving an opportunity of explanation would meet the bare minimal requirement of natural justice."

6. In the facts and circumstances, we allow the application and set aside the order of the General Manager in so far as it cancels the select list of 27.3.85 pertaining to the applicants and direct that the applicants are entitled to get appointments as Group 'D' regular mazdoors on the basis of their ranking in the 1983 select list subject to their satisfying the criteria of medical fitness and suitability for appointment. The respondents are directed to consider the applicants for appointment on the above lines and issue orders within a period of three months from the date of communication of this order. In the circumstances there will be no order as to costs.


G. SREEDHARAN NAIR
JUDICIAL MEMBER


(S.P. MUKERJI)
VICE CHAIRMAN

28.06.1989