

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH
.....

DATE OF DECISION : 31.1.90

PRESENT

HON'BLE SHRI S.P. MUKERJI, VICE CHAIRMAN

AND

HON'BLE SHRI A.V. HARIDASAN, JUDICIAL MEMBER

ORIGINAL APPLICATION NO.1/89

K.V. GIRIJAN ... Applicant

Vs.

1. The Telecom District Manager,
Ernakulam, Cochin-16.

2. The Divisional Engineer (Admn.)
Office of the Telcom District
Manager, Ernakulam.

... Respondents.

M/s M.R.Rajendran Nair,
P.V.Asha and
K.S.Ajayaghosh

... Counsel for Applicant

Mr. P.Santhalingam, ACGSC

... Counsel for Respondents

O R D E R

(Shri S.P.Mukerji, Vice Chairman)

In this application dated 15th December, 1988 filed under section 19 of the Administrative Tribunals Act, the applicant who has been working as a casual driver under the Telcom District Manager at Cochin, has prayed that non-inclusion of his name in the Select Lists of 1987 and 1988 for regular appointment as driver should be declared to be illegal and the respondents directed to consider the applicant for inclusion in the Select Lists of 1987 and 1988 with all consequential benefits. The brief facts of the

case are as follows.

2. Having been engaged as daily-rated mazdoor in April 1973 under the Telcom District Manager, ^{applicant} ~~the~~ ^{was} absorbed in regular Group 'D' cadre on 8.6.79 and later appointed as Lineman on 24.3.81. He was eligible for promotion to the Class-III grade of Driver. However, the Department used to engage casual Drivers and when Group 'D' officials like Linemen with required qualifications were appointed as casual Drivers they used to be given an additional remuneration of Rs.2/- per day. The applicant possesses a heavy duty ^{Driving} ~~licence~~ ^{licence} for goods and passengers. The respondents held an interview and driving test on 2.5.86 for selection of casual Drivers from departmental officials for which the applicant also applied and after test was included in the panel vide Ann.3 dated 21.5.86. Of the three casual workers included in the panel the applicant was placed at the bottom in the order of preference. This panel was cancelled subsequently by the respondents on 7.7.87 (Exbt. R-1.A). When he did not receive any posting order he represented and was told that he will be considered for appointment as casual Driver in his ^{as} turn ~~and~~ ^{and} when there are vacancies. On 15th December 1986 applications were invited for filling up 5 general and 3 reserved vacancies of regular Drivers. The

applicant also applied for the same and after interview and test the respondents issued a panel of 4 names on 29.10.87 (Ann. XI) in which the applicant was not included. The applicant's grievance is that as against 5 ^{general} vacancies notified the respondents issued a panel of 4 names purposefully to exclude him from the panel. Since he was not included in the Select List nor was he relieved for appointment as casual Driver, he filed an application before the Tribunal in O.A.336/87 which was dismissed on the statement made by the respondents that he had been relieved on 19.1.88 to join the post of casual Driver. Again on 20.5.88 the respondents issued another notice (Ann.XIII) inviting applications for selection of casual Drivers. They issued another notice (Ann.XIV) on 1.6.88 to fill up 5 general and 3 reserved vacancies including vacancies of 1987 on a regular basis. The applicant again applied and appeared in the test and interview but again in the panel of 3 names (Ann.XVI) he was not included, even though, according to him, one Shri Madhavan Nair, who, during the test, hit the vehicle against the gate of District Manager's office and the watchman on duty made a log entry to that effect in the log book, was selected. The applicant alleges that he has been a victim to hostile discrimination by the

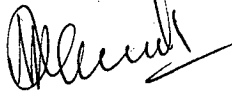
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respondents because of his active involvement in trade union activities and that is why even on his selection for casual Driver's post he was not relieved and inspite of vacancies remained unfilled in 1987 and 1988, shorter panels were prepared to exclude him and appointed persons who should have been failed in the test. He has also alleged that those who were not included in the panel were being engaged as casual Drivers to his exclusion. The respondents have denied any hostile discrimination or selection of candidates who did not know driving well.

3. We have heard the arguments of the learned Counsel for both the parties and gone through the documents carefully. We are not happy about the manner in which shorter panels were prepared when there were available vacancies for regular appointment. The fact that the applicant was selected for employment as casual Driver and the respondents continued to appoint casual Drivers shows that there were available vacancies and eligible candidates. Though we do not propose to go into the merits of the selection made by the Selection Committee in 1987 and 1988, we, nevertheless, direct the respondents to re-convene the meeting of the Selection Committee for re-assessing the applicant and other eligible candidates who had applied in 1987 and 1988 and to fill up the vacancies which remained

unfilled during these years. In view of the allegations made in the application, we direct that the members of the Selection Committee should, as far as possible, not be those who sat on the Committee in 1987 and 1988. The application is disposed of on the above lines.

There will be no order as to costs.



(A.V. HARIDASAN)
JUDICIAL MEMBER



(S.P. MUKERJI) 31.1.90
VICE CHAIRMAN

31-1-91

CCP-14/91 in
OA-1/89

SPM & AVH

Mr MR Rajendran Nair for petitioner
None for respondents

Issue notice to the alleged contemner to appear in person or through authorised representative and to file a statement as to why order ^{of this Tribunal} has not so far been implemented and why proceedings under Contempt of Court Act should not be initiated against him, returnable on 19.2.91.

31-1-91

SPM & AVH

Mr MR Rajendran Nair for petitioner
Mr George Joseph, ACGSC for respondents

Heard the learned counsel on either side on the CCP. We are not at all satisfied by the statement filed by the respondents about implementation of our judgement dated 31.1.1990 in OA-1/89. Accordingly, we direct respondent No.2 Shri KA Viswanathan Nair, Assistant General Manager, Administration, O/o the General Manager, Telecom, Ernakulam, Cochi-31 to appear before us in person on 4.3.91 to show cause why action under ^{the} Contempt of Courts Act should not be initiated against him.

Call on 4.3.91.

19-2-91

SPM & ND

Mr Sivan Pillai for petitioner(proxy)
Mr George Joseph for respondents

Shri KA Viswanathan Nair, Assistant General Manager, Administration appeared before us today and indicated expressing his apologies for delay in the implementation of our judgement ^{stating} that the delay was due to the fact that some clarification was being sought from the higher authorities. He indicated that a meeting of the Selection Committee has been held and the applicant also has been included in the panel but because of lack of vacancies from 1987 and 1988 onwards he could not be appointed.

Sufficient number of copies of CCP not filed

BCP copies filed on 6.2.91

Order issued on 7.2.91

PSH

19-2-91
(14)

Mr BCP 29/2

10.8.88

29/2

Reply statement by Respondent on 19.2.91

29/2

He is directed to file a statement giving the factual position and appear before us again on 8.3.91 when Shri MR Rajendran Nair, the learned counsel for the petitioner also is directed to be present.

Shri
4-3-91

8-3-91
(18)

SPM & ND

Mr Paul Varghese for petitioner(proxy)
Mr George Joseph for respondents

A statement has been filed by respondent-2 with a copy to the learned counsel for the petitioner. List for further direction on the CCP along with the case files of OAs-126 and 129 of 1991 on 14.3.91. Shri KA Viswanathan Nair, Assistant General Manager need not appear before us on that day as he will be represented by Shri George Joseph, the learned counsel on his behalf.

Shri
8-3-91

14--3-91
(23)

SPM & AVH

Ms PV Asha for petitioner
Mr George Joseph for respondents

MP-275/91 for the review of our order dated 19.2.91 is not pressed. Hence it is dismissed.

At the request of the learned counsel for the petitioner list for further direction on 20.3.91

Shri
14-3-91

20-3-91
(3)

SPM & AVH

Mr MR Rajendran Nair for petitioner
Mr Krishnamurthy for respondents(proxy)

Heard the learned counsel for the parties. We direct Shri KA Viswanathan Nair, Assistant General Manager should appear before us again on 1.4.91 to explain why the petitioner cannot be appointed on a regular basis against one of the available vacancies.

List for further directions on 1.4.91 along with the case files in OA-126 and 127 of 1991.

Shri
20-3-91

By order
dt. 18/3, on 126 & 127/91
order passed before C.J.
on 2/4/91

1-4-91
(24)

-3-

SPM & AVH

CCP-14/91 in
OA-1/89

Mr MR Rajendran Nair for petitioner
Mr Krishnamurthy for respondents(proxy)

Mr KA Viswanathan Nair, Assistant General Manager, Administration, the alleged contemner appeared before us and explained that as there were only 3 vacancies, 2 reserved for Scheduled Caste and one for Scheduled Tribe there is difficulty in regularly appointing the petitioner as there is no vacant post which could be filled by a general candidate. He admitted that in the selection conducted pursuant to the order of the original application, the petitioner came up as No.4 in the ^{merit} ~~good~~ list and that Mr Devassy ^{who was No.5} has already been appointed on a regular basis in one of the 5 vacancies which were not reserved. Since Mr Devassy was lower down in the merit list than the applicant, in view of his position, the applicant should have been appointed to one of the posts before appointing Mr Devassy. Now as it is admitted that there are 3 regular vacancies though reserved for SC and ST, without disturbing Mr Devassy who has already been appointed, the applicant can be accommodated in one of the 3 vacancies till such time as SC or ST candidates become available and the moment such candidates become available, the post of the applicant can be adjusted by creating a supernumerary post or by accommodating ^{him} in any of the additional posts which are expected to be sanctioned without much delay. Shri Viswanathan Nair agreed that orders appointing the applicant regularly to a post of Driver w.e.f. the date on which Mr Devassy was appointed ^{will be issued} within a period of 15 days from today.

In view of the undertaking ^{given} by Shri Viswanathan Nair, we find no reason to proceed with this CCP. Hence the matter is closed. Notice is ~~dis~~charged.

Amul *Sil*
1-4-91