

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NO. 125/2005

FRIDAY THIS THE 3rd DAY OF NOVEMBER 2006

C O R A M

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER**

M.K.Venugopalan, Driver
Civil Construction wing
All India Radio & TV
Kakkanad, Kochi

Applicant

By Advocate Mr. K R B Kaimal

Vs.

- 1 Union of India represented by the Secretary to Government of India
Ministry of Information & Broadcasting
New Delhi.
- 2 The Prasar Bharati
(Broadcasting Corporation of India
represented by its Chairman &
Managing Director
New Delhi.
- 3 The Superintending Engineer (Civil)
Civil Construction Wing
All India Radio,
Chennai.
- 4 The Station Engineer
All India Radio
Thiruvananthapuram
- 5 The Executive Engineer
Civil Construction Wing
All India Radio & T.V.
Kakkanad, Kochi-37

Respondents

By Advocate Mr. TPM Ibrahim Khan, SCGSC

ORDER

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

The applicant is a Driver in the Civil Construction Wing of the All India Radio at Kochi. He commenced service as a Casual Labourer under the 5th respondent on 21.9.1984. When his services were terminated on 10.9.1987 he filed O.A.K-246/1988 before this Tribunal which was disposed of by order dated 30.6.1989 directing the respondents to consider the case of the applicant for appointment in any of the Group-D or Group-C post which was vacant or which falls vacant subject to eligibility of the applicant. Pursuant to the above direction, he was appointed as a Peon in Group-D on 8.9.1989 in the Civil Construction Wing. Even though he was holding the post of Group-D he was posted to work as Motor Driver (Group-C post) from 16.10.1990 and was later appointed as a Group-C Driver in the Workcharged establishment under the respondents w.e.f. 30.7.1991.

2 When he did not get further promotion as Driver Grade-II he filed O.A. 236/2000 seeking a direction to promote him w.e.f. 16.12.1999 on completion of 9 years of service. The said OA was dismissed with the observation that he had not completed 9 years of service as his service has to be reckoned from 30.11.1991. Thereupon the applicant filed OP No. 10630/2000 before the High

Court of Kerala challenging the order of the Tribunal which was disposed of upholding the finding of the Tribunal with the observation that in case the applicant is not granted Grade promotion after 9 years of service it is for him to approach the appropriate authority. Now it is the contention of the applicant that he has completed the required 9 years of service and hence he is eligible for grade promotion w.e.f. 30.11.2000 but his representation to grant him such promotion was rejected. The applicant had filed again O.A. 746/2004 and the said OA was also disposed of directing the second respondent to consider his representation. Now he has been informed by the competent authority that grade promotion scheme is not applicable to Motor Drivers of the Workcharged establishment. According to the applicant the rejection is arbitrary as workcharged Drivers also belong to Regular establishment and drivers of workcharged establishments are also eligible for Grade promotion by subjecting them to trade test. He has produced Annexure A-11 which is one such order relating to one Shri Subranmanian.

3 The respondents have filed a reply statement submitting that the applicant's claim for promotion as Driver Grade-II along with regular employees is illegal as such promotion can be only from among eligible Staff Car Drivers (Ordinary Grade) in Group-C. The post of Work Charged Motor Driver is a Group-D post and the applicant is a Work Charged Motor Lorry Driver and the rules relating to regular Motor Drivers are not applicable to them. They have

referred to Annexure A-2 produced by the applicant himself to show that no member of the work charged staff shall be transferred to the regular establishment or vice versa except with the prior approval of the Government of India. However, for promotion to the Driver Grade-II post they have denied that any workcharged Driver ever figured in the seniority list of Driver (Ordinary Grade) Group-C post maintained by the All India Radio. However, they admitted that one workcharged Driver was erroneously considered along with regular drivers at Chennai and the same was reviewed and corrected as borne out by Annexure R-2 order.

4 A rejoinder has been filed by the applicant contending that the post of Motor Driver under the Civil Construction wing of the All India Radio is a Group-C post as the scale of this post is the same i.e. Rs. 950-1500 as the pay of the Driver (Ordinary Grade) as mentioned in column 3 and 4 of Annexure A-3 Recruitment Rules. Hence it would amount to misrepresentation by the respondents that the applicant is a Group-D Driver. He has also drawn attention to Para 3.5.17 of Section 5 of the A.I.R Manual to prove that Workcharged staff are comparable to regular Government servants.

5 The respondents have filed an additional reply statement relying on the observation of the Pay and Accounts Officer of All India Radio, Chennai during audit to the effect that all the posts charged to works come under Group-D only. They have also

enclosed a copy of the relevant portion of the CPWD Manual Vol. III at Annexure R-3 and stated that generally all posts in Workcharged department in CPWD have not been classified into Group-C or Group-D.

6 I have heard learned counsel Shri Madhusoodhanan for the applicant and Shri Rajeev for the respondents. During the arguments an order dated 28.6.2006 issued by the respondents granting the first financial up-gradation under ACP Scheme in the pay scale of Rs. 3200-85-4900 with effect from 30.7.2003 to the applicant was produced. The learned counsel for the applicant while accepting the issue of the order contended that the applicant was agitating for his regular promotion as Driver Grade-II whereas what has now been granted is financial upgradation after 12 years of regular service.

7 Two questions that arise for consideration are (i) whether the applicant who is a Motor Lorry Driver in the Workcharged Establishment in the Civil Construction Wing of All India Radio, is eligible for regular promotion in accordance with Annexure A-3 Recruitment Rules and (ii) Whether such promotion can be granted on the basis of completion of regular service in the feeder category.

8 The Provisions of column 11 and 12 of the Recruitment Rules are extracted below:

<i>Method of Recrt. Whether by direct recrt. Or by promotion or by deputation/Transfer, and %of the vacancy to be filled by various methods.</i>	<i>In case of Recrt. By Promotion / Deputation/Transfer, grades from which Promotion /Deputation/ Transfer to be made.</i>
11	12
100% by promotion	<p>Driver with 9 years of regular service in the basic grade and</p> <p>2.. Further subject to pass the practical test based on the following:-</p> <p>(i) Must be able to read English Numerals and figures</p> <p>(ii) Must have thorough knowledge of Traffic Regulations</p> <p>(iii) Must be able to locate faults and rectify minor running repairs</p> <p>(iv) Must be able to change wheels and correctly inflate tyres.</p>

9 As is seen, it is issued in supersession of the All India Group-C post Recruitment Rules 1964 in so far as it relates to the post of Motor Drivers. The contention of the respondents is that these rules are applicable to the regular appointment and not the workcharged establishment. For this contention they rely on Annexure R-3 which is a copy of the relevant portion of CPWD Manual Vol.III and the memorandum dated 29th January, 1993 at Annexure A-2 produced by the applicant.

10 Para 3.5.17 of Section 5 of the AIR Manual reads as follows:

3.5.17-Workcharged establishment:

Broadly speaking workcharged establishment means that establishment whose pay, allowances etc. are directly chargeable to "Works". Workcharged staff is employed on the actual execution of a specific work, sub-works of a specific work etc. The cost of workcharged establishment is invariably shown as a separate sub-head of the estimate for a work. In

other respects, the workcharged staff is quite comparable to the regular Govt. servants. The workcharged establishment exists in CCW field office only. For the recruitment, pay scale and other rules CPWD Manual Vol.III is applicable to them."

11 Relevant portion of CPWD Manual Vol.III as given at Annexure R-3 are as under:

1.01 Definition of "Workcharged Establishment"

"Broadly speaking workcharged establishment means that establishment whose pay, allowances, etc. are directly chargeable to "Works". Workcharged staff is employed on the actual execution of a specific work, sub works of a specific work, etc. The cost of workcharged establishment should invariably be shown as a separate sub head of the estimate for a work. In other respects the workcharged staff is quite comparable to the regular categories."

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1.04: Classification, Character and Status of Workcharged Post

The posts in the workcharged establishment of CPWD have not been classified into Group-C or Group-D. For purposes of allowances, etc. or for medical examination etc. the posts, the maximum of whose scale of pay does not exceed Rs. 290 are treated as equivalent to Group-D and others as equivalent to Group-C

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The F.Rs and S.Rs are also applicable to the workcharged staff. Ministry of Law have opined that workcharged employees in the CPWD are Civil Servants in terms of Article 311 of the Constitution.

12 Annexure A-2 is a memorandum dated 29.1.1993 issued by the Civil Construction Wing of All India Radio to clarify the doubts

raised by various offices with reference to transfer of workcharged staff to regular establishment.

Memorandum

Subject: Transfer of work charged staff to regular establishment or Vice – Versa.

Number of references are being made to the CCW Headquarters by SES/EES with reference to transfer of work charged staff to regular establishment.

In this connection attention of all the Superintending Engineers is invited to the provisions of Government of India Ministry of I&B OM NO. G-28011/2/75-CW-II-B(D) dt. 20.11.1975 and AIR Manual para 3.5.17 read in conjunction with CPWD Manual Vol.III para 1.01 and 1.04.

The paras when read together mean that the workcharged staff is quite comparable to the regular categories. The P.Rs and S.Rs are also applicable to the workcharged staff and are civil servants in terms of Article 311 of the Constitution (as opined by Min. of Law), excepting that their salary is chargeable to the works.

Further as per para 11.04 of the CPWD Manual Vol. III "No member of the workcharged staff shall be transferred to the regular establishment or Vice-versa except with the prior approval of the Government of India or on promotion in accordance with the provisions of the Recruitment Rules." The copies of relevant Govt. Of India orders and paras of CPWD Manual Vol.III are enclosed as ready reference.

The Superintending Engineers are requested to circulate this memorandum to the Executive Engineers under their control so that the contents are percolated to the sub divisions as well

Sd/- A.K.ARora
Engineer Assistant to
Superintending Surveyor of Works.-II

To

All SEs(C) Madras etc.etc.

13 Para 3 of the memorandum states that paras in both the Manuals when read together mean that the Workcharged staff is quite comparable to the regular categories. The F.Rs and S.Rs are also applicable to the Workcharged staff and they are Civil servants in terms of Article 311 of the Constitution (as opined by Ministry of Law), excepting that their salary is chargeable to the works.

14 Further para 4 thereof has been relied upon by the respondents to mean that a member of the workcharged staff shall not be promoted in accordance with the Recruitment Rules whereas a careful reading of the same would show that what is meant is that no workcharged staff will be transferred except when they are promoted or without obtaining the prior approval of the Government of India. This order cannot be interpreted to mean that no workcharged staff should be considered for promotion in accordance with the provisions of the Recruitment Rules. On the other hand it clearly implies that they can be considered for promotion in accordance with the provisions of the Recruitment Rules. The reasoning of the respondents is absolutely untenable.

15 The Recruitment Rules in column 12 does not make any difference between a Driver working in workcharged establishment and in the regular establishment, it only prescribes 9 years experience in the basic grade and promotion is subject to the Driver passing a practical test and other conditions prescribed in the Rules.

Hence under the Rules there is no embargo for consideration of the Drivers with 9 years service in the workcharged establishment as in accordance with para 1.04 of CPWD Manual Vol. III extracted above, the workcharged Drivers are comparable to regular staff and FR/SR and Article 311 of the Constitution are also applicable to the work charged staff. It is further reinforced by the Annexure R-3 document enclosed by the respondents to the additional reply statement which provisions are applicable to the workcharged establishment under the All India Radio also in terms of para 3.517 of the AIR Manual.

16 In para 1.04 of the same it has been mentioned that workcharged establishment of CPWD has not been classified into Group-C and Group-D. Therefore the rival contentions of the respondents and the applicant with regard to the status of the applicant as Group-C or D is not required to be gone into. In any case it is clear from the Recruitment Rules that a Driver Grade-II to which the applicant is aspiring is a Group-C post and the feeder category need not necessarily belong to Group-C and there is no such indication in the Recruitment Rules.

17 Therefore a cumulative reading of all the orders produced by the applicant and the respondents clearly indicate that workcharged establishment is similar to the regular establishment. The cost of the workcharged establishment is shown as a separate head for budgetary purposes. But as far as the service conditions of the staff

are concerned they are comparable to regular employees. It is a fact that the workcharged staff is a permanent fixture in the CPWD and it is being continued. It cannot be the intention of the Government to deny them promotion throughout their entire career and keep them without being covered under the Recruitment Rules. The very fact that in the order dated 28.6.06, the applicant has been considered for the first financial upgradation under ACP Scheme also shows that the said scheme has been made applicable to these employees. In fact the ACP Scheme itself would become operational only if according to the normal rules, an employee is eligible for grant of promotion but has been stagnating without promotion due to certain exigencies of service.

18 In the light of the above discussions we are of the considered opinion that the employees of workcharged establishment like the applicant in the respondent department have to be considered for promotion in accordance with the regular Recruitment Rules. It should also be noted herein that the respondents while contesting the earlier OAs filed by the applicant had never taken this stand of non-applicability of RRs and had only stated that he had not yet completed 9 years of service thus leaving his eligibility to be considered for promotion not in doubt. It is for the first time that they have raised this contention. The respondents shall reconsider this stand and also review the cancellation of the promotion granted to a similarly placed person by Annexure R-2 order dated 11.2.2005

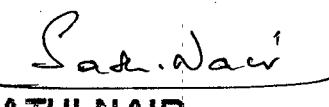
19 The second question is whether the applicant would become automatically eligible for promotion after completion of 9 years of service. The answer is in the negative. Since the Recruitment Rules clearly stipulates certain conditions including the passing of the test, before the applicant could become eligible for consideration for promotion on completion of 9 years of service, it is necessary to pass the trade test and also fulfill the other conditions like knowledge of traffic rules etc. and a duly constituted DPC under the RRs would have to evaluate his performance.

20 In the result, Annexure A-1 order is quashed and the respondents are directed to reconsider the claim of the applicant in accordance with the provisions of the Recruitment Rules at Annexure A-3 for the vacancies which arose after he became fully qualified according to the Rules and if he is qualified and subject to availability of vacancies promote him to the post of Driver Grade-II. This exercise of assessing the suitability of the applicant shall be completed by the respondents within a period of three months from the date of receipt of a copy of this order. The OA is allowed to the extent indicated above. No costs.

Dated 3 11 2006



GEORGE PARACKEN
JUDICIAL MEMBER



Sathi Nair
SATHI NAIR
VICE CHAIRMAN