

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No.
T. A. No.

125

199 1

DATE OF DECISION

4/12/91

S. Viswanathan and 2 others Applicant (s)

Mr. G. P. Mohanachandran Advocate for the Applicant (s)

Versus

Chief Postmaster General, Respondent (s)
Kerala Circle, Trivandrum and two others

Mr. A. A. Abul Hassan, ACGSC Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. N. V. KRISHNAN, ADMINISTRATIVE MEMBER

The Hon'ble Mr. N. DHARMADAN, JUDICIAL 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

MR. N. DHARMADAN, JUDICIAL MEMBER

The applicants are casual mazdoors working under the first respondent. The main prayers in this application filed under section 19 of the Administrative Tribunals' Act are as follows:

"A) Direct the Respondents to regularise the Applicants as Group-D employees in the existing vacancies in the office of the 1st respondent.

B) To grant them all the service benefits including bonus for the years 1989 and 1990 and till such time they are so regularised, given the applicants their service benefits such as leave, medical reimbursement, that are being given to other group-D employees."

2. According to the applicant they commenced their service under the first respondent on 23.3.1988 (applicants

1 & 2) and 28.4.1988(third applicant) respectively. They have been recruited through employment exchange. The applicants 1 & 2 are aged 29 years and 31 years respectively and have passed Pre Degree Course. The third applicant is aged 32 years and ⁶ have passed SSLC. All the applicants are continuously working under the first respondent ever since their original appointment. They have put in more than two years continuous service as casual mazdoor. They are being paid wages at the rate of Rs. 40/- per day. They are also given HRA and CCA with weekly off as in the case of group-D employee except productivity linked bonus. According to the applicant they are fully qualified in every respect for getting regular appointment as Group-D employment in the Postal Department under the scheme framed by the Department. They also submitted that there are sufficient number of vacancies including backlog vacancies reserved for SC and ST candidates of group-D employees in the office of the Chief Post Master General, Kerala Circle Trivandrum. Since the respondents refused to regularise the applicants as group-D employees and ⁶ initiated steps for ⁶ who came from other units ⁶ regularising their juniors/overlooking the claim of the applicants, they have filed this application.

3. The respondents have filed counter affidavit and additional counter affidavit denying all the averments and allegations in ⁶ to the the application. They have produced Annexure R-1(A) amendments/ Recruitment Rules issued by the second respondent as per notification dated 24.2.89. According to the same, recruitment

to the cadre of group-D should be made amongst the non-test category officials, Extra departmental agents and casual labourers (full-time and part-time) and EDDAS of other units.

~~xxxxxxxxxxxxxx~~ Since there were no Extra Departmental Agents, the recruitment has to be ^{found} from non-test category group-D officials and casual mazdoors (full-time and part-time). There are four non-test category group-D official in the office of the first respondent and the first preference, according to the respondent, is to be given to them. They further submitted that the recruitment from casual labours according to their seniority can be considered only if no qualified person is available in the non test category. They have produced Annexure R-1(B) letter of the Director General dated 12.4.91 dealing with the claim of grant of temporary status and regularisation to casual mazdoors. Annexure R-1(C) is the letter pertaining to grant of productivity linked bonus for the year 1989-90. The seniority position of the applicants among casual mazdoors is given by the respondents in the reply statement as follows:

Name of casual labourer	Date of their joining in the Department
1. Shri N. S. Beenukumar	23.5.83
2. Shri A. Jalaludeen	6.4.84
3. Shri T. Vidyadharan	8.5.85
4. Shri T. Sasidharan	9.5.85
5. Shri G. Unnikrishnan Nair	10.5.85
6. Shri P. Anukumar (2nd applicant)	23.3.88
7. Shri S. Viswanathan (1st applicant)	23.3.88
8. G. K. Chandran (3rd applicant)	28.4.88"

4. In the additional counter affidavit they have further stated that the casual mazdoors working in the other units cannot have any claim for posting in the office of the first respondent since they did not opt for working in the office of the first respondent. They have denied the allegation of the applicants that four persons out of the five persons at Sl. Nos. 1 to 5 in the seniority list were favoured by the first respondent for giving regularisation in preference to the applicants. According to the respondents, the four casual mazdoors have opted to work in the office of the first respondent permanently, therefore, they are entitled to be considered for group-D vacancy in the office of the first respondent. Regarding the averments pertaining to reservation of SC & ST candidates, the respondents have stated that reservation for SC & ST candidates in the service is only to be ensured according to special reservation Roster and no preference is available to a candidate just because he belongs to reserved community. The applicants are not therefore, entitled to any preference of account of the fact that they belong to reserved community.

5. The applicants ^{to} have filed rejoinder and submitted that casual mazdoors are recruited on unit/territorial basis. The applicants are recruited through Employment Exchange and posted in the Chief Post Master General's office which is a separate unit. The casual mazdoors who came on

transfer or deputation to the circle office cannot be absorbed permanently in the circle office. The respondents brought four casual mazdoors from other units. Sri M.S. Beenu Kumar is brother-in-law of the Senior P.A. of the Chief Postmaster General, he was working at Neyyattinagar and M/s. T. Vidhyadharan, T. Sasidharan and G. Unnikrishnan Nair were transferred in 1989 to Chief Post Master General's office. They cannot claim seniority over the applicants. The applicants' apprehension is that the respondents are favouring these four persons. Their seniors who are still working as casual mazdoors in RMS have filed O.A. 812/90. The applicants 2 & 3 have filed Annexure 6 and 7 representations before the first respondent, objecting to the assignments of the names of the applicants in the attendance below that of outsiders ^b register/above the applicants.

6. The respondents in the additional reply statement filed on 28th October, 1991 further stated that M/s. L. Asok Kumar, K. Krishna Singh and Smt. Kanaka Bai and K. Thankamma are non-test category group-D officials working in the office of the Chief Post Master General. But the applicants have a case that these non-test category group-D officials are not qualified for absorption.

7. At the time of hearing, learned counsel for the applicants submitted that identical question came up for consideration in this Tribunal in O.A. 812/90. Though the

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learned counsel for the respondents denied the statement of the applicant that the matter is covered by the judgment in O.A. 812/90, he was not in a position to distinguish the facts and satisfy us that the conclusion in the aforesaid judgment cannot be applied to this case.

8. We have gone through the documents and judgment. The only distinguishing factor which could be noted is based on the allegations of the applicants that four juniors of the applicants who are working in other units of the Postal Department have been provided in the units in which the applicants are working for consideration of regularisation. The applicants submitted that the first respondent cannot consider the regularisation of the four persons without considering their claim. The answer given by the respondents in the additional reply affidavit pertaining to the allegation of the applicants in this behalf is that four casual mazdoors in other units have opted to work in the office of the first respondent permanently and therefore they are entitled to be considered for group-D vacancy in the office of the first respondent. They also submitted that four qualified non-test group-D officials are also available for absorption as per the Rules.

9. According to ^{b)} Clause 12 of Annexure R-1 (B), a casual mazdoor working in other units is entitled to be considered for regularisation subject to availability of vacancies only after the non-test category Group-D officials available in the office. In the instant case, in the unit in which the

applicants are working considering their seniority they are entitled to be regularised before considering the claim of casual mazdoors working in other units if they are juniors to the applicants. The applicant's case is that the four casual mazdoors who were transferred to Chief Post Master General's office from other units cannot be considered for regularisation and absorption before considering their claim of regularisation. We accept this case of the applicant. Hence, the applicants are entitled to be considered for regularisation in preference to the aforesaid four persons. But if qualified non-test category group-D employees are available in the office of the Chief Post Master General as contended by the respondents the applicants cannot stake their claim for regularisation in preference to them under the existing Rules.

10. In the judgment in O.A. 812/90 the claims of the seniors of the four casual mazdoors ^bcame up for consideration and this Tribunal disposed of the same with the following observation and direction:

"Both, the Recruitment Rules as amended in 1989, as also para 7 of Department of Posts letter of 12.4.91 quoted in para 6 supra support the contention of these respondents. The learned counsel for these respondents however has no objection if the applicants are regularised in Group-D cadre in accordance with the scheme of regularisation promulgated by the Department of Posts' aforesaid letter of 12.4.91 which allows regularisation in accordance with the Recruitment Rules.

8. In the conspectus of facts and circumstances, we allow the application to the extent of directing the respondents to treat the applicants as full time casual workers for the purpose of grant of temporary status with all consequential benefits of bonus, etc. and regularisation in accordance with the scheme promulgated by their circular dated 12.4.91 as quoted above..."

11. I have gone through the above judgment. I am of the view that the observations in the judgment may not be relevant in this case because the main dispute in this case is the claim between the non-test category group-D employees and the applicants. The applicant submitted that the persons now working in the non-test category of group-D employees in the office of the Chief PMG are not fully qualified. If this is correct the applicants' claim for regularisation is to be considered in preference to the regularisation of four casual mazdoors specifically mentioned by the applicants in this application.

12. Accordingly, having considered the matter in detail we are of the view that this application can be disposed of with directions to the respondents. The first respondent should decide whether the existing non test category group-D officials working in his office are fully qualified for regularisation under the Rules. If they are not qualified as contended by the applicants, he shall consider the claims of the applicants for regularisation in preference to the four casual mazdoors who were transferred to Chief PMG's office from other units. With these directions, this application is disposed of. There will be no order as to costs.

N. Dharmadan
JUDICIAL MEMBER

4.12.91

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N.V.Krishnan, Administrative Member

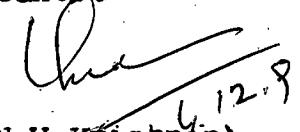
13. I agree with the judgement of my learned Brother. I would, however, like to add a few words of my own.

14. The main contention of the respondents is that for purpose of regularization to a Group D post in the first respondent's office, the seniority of the casual labourers working in that office will have to be determined on the basis of the total number of days of engagement as casual labourers and not on the basis of the date on which they were engaged in that office for the first time. On this basis, the first 5 persons in the list reproduced in para 3 of my learned Brother's judgement would undeniably be senior to the applicants even though they joined the first respondent's office after the applicants were engaged.

15. Normally, a submission of this nature would have been accepted because this is the normal practice for determining the seniority amongst casual labourers. However, in the present case, there is one important reason due to which it is necessary to hold otherwise.

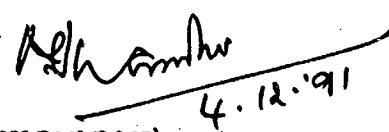
16. The Indian Posts and Telegraphs Group D Posts Recruitment (Amendment) Rules, 1989 (Ann.R1A) stipulates that in the case of Group D posts recruitment will be made from amongst the four categories specified therein and in the order they have been specified. The third category is casual labourers, full-time and part-time, of the recruiting Division or Unit. Thus, when their turn comes, Group D posts in the first respondent's office, which is admittedly a recruiting unit, will be filled only by casual labourers of that unit. This means that casual labourers in the unit will be considered on the basis of seniority in that unit. Though there is no written direction to

that effect, Unit seniority will be counted only from the date on which any casual labourer is engaged in that Unit irrespective of when he was first engaged elsewhere. Viewed in this light, the applicants, though engaged for the first time in the first respondent's office on different dates in March and April, 1988, will be senior to the other ~~4~~ persons mentioned in para 3 of my learned Brother's judgement, who joined this Unit after these dates even though they had commenced engagement as casual labourers 3 or 4 years earlier than the applicants.


4.12.91
(N.V. Krishnan)
Administrative Member

Oder of the Bench

The application is disposed of with the the directions in para 12 of the judgment.


4.12.91
(N. DHARMADAN)

JUDICIAL MEMBER


4.12.91
(N. V. KRISHNAN)

ADMINISTRATIVE MEMBER