

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O. A. No. 126/91  
~~XXX XXX~~

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DATE OF DECISION 26.9.91

P.V. Joseph Applicant (s)

Mr M.G.K.Menon Advocate for the Applicant (s)

Versus

Union of India represented  
by the Chairman, Respondent (s)

Telecom Commission,  
Sanchar Bhavan, New Delhi-110 001 and 2 others

Mr.N.N.Sugunapalan, SCGSC Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. S.P.MUKERJI, VICE CHAIRMAN

The Hon'ble Mr. A.V.HARIDASAN, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. To be circulated to all Benches of the Tribunal?

JUDGEMENT

(Hon'ble Shri S.P.Mukerji, Vice Chairman)

In this application dated 22.1.91 filed under Section 19 of the Administrative Tribunals Act the applicant who has been working as a Driver in the office of the Divisional Engineer, Co-axial Project, Cochin under the General Manager, Telecommunications, Ernakulam has challenged the impugned order dated 4.1.91 at Annexure A4 giving him one month's notice of termination of his services as Driver. He has also prayed that the respondents be directed to uphold the regularisation of his service on the basis of the order dated 4.2.89 at Annexure A3. The brief facts of the case are as follows.

2. The applicant is an ex-serviceman and was temporarily re-employed in a Group D post in Telecom Deptt. with effect from 8.9.83 vide the order dated 3.5.1989 at Annexure A1. He was working as a casual motor Driver from 30.8.86. According to

the applicant a test was held for departmental candidates for the post of Driver in 1988. The applicant qualified and was appointed as a Driver on <sup>a</sup>regular basis on 4.2.89 vide Annexure A3. It appears that another Driver who had not been selected had moved the Tribunal in O.A 1/89 challenging the selection and on the basis of the judgment rendered by the Tribunal the impugned order dated 4.1.91 giving him one month's notice of termination was issued. The applicant's grievance is that he was not impleaded as a party in O.A 1/89 and that in the judgment, ~~of~~ the Tribunal did not direct that the applicant's services should be terminated. The select list also was not cancelled. The respondents therein were asked to fill up the vacancies which remained unfilled during 1987-88 and they <sup>Tribunal</sup> did not go into the merits of the selection. It is the respondents who misinterpreted the judgment and issued the impugned notice of termination.

3. In the counter affidavit the respondents have stated that in implementation of the judgment of the Tribunal in O.A 1/89 and in order to facilitate the respondents to reassess the merits of all eligible candidates, the entire selection was <sup>proposed to be</sup> redone and termination notice was issued to the already selected candidates 'in good faith'. They have stated that after appointment of five drivers there was no vacancy which was kept unfilled during 1987-88.

4. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. The relevant part of the judgment dated 31.1.90 to which one of us was a party in O.A 1/89 is quoted below:-

" 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

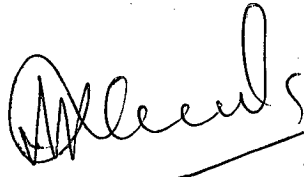
there were available vacancies for regular appointment. The fact that the applicant was selected for employment as casual Driver and the respondents continued to appoint casual Drivers shows that there were available vacancies and eligible candidates. Though we do not propose to go into the merits of the selection made by the Selection Committee in 1987 and 1988, we, nevertheless, direct the respondents to reconvene 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."

From the above it is clear that it was never the intention of the Tribunal to go into the merits of the selection made by the Selection Committee in 1987 and 1988 and ~~not~~ <sup>to</sup> disturb those like the applicant before us who had already been selected. The intention of the Tribunal was clear. Firstly it came out that a shorter panel had been prepared. It was earlier stated in the judgment that "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". Further on in the same judgment it comes out that the respondents "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....".

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Thus there is no doubt at all that all the vacancies which were notified on the two occasions had not been filled up. On that premise, without touching those who had already been included in the shorter panels but had not been impleaded in that application, the Tribunal directed that the unfilled vacancies should be filled up by considering the applicant therein and other eligible candidates who had applied during 1987 and 1988, for filling up not all the vacancies but the unfilled vacancies of those years. By proposing to terminate the service of the applicant before us who had already been selected, the respondents have transgressed the limits of action directed in the judgment of this Tribunal in O.A 1/89. Even otherwise, such termination without setting aside the selection and without a show-cause notice, is illegal and against the principles of natural justice. If the respondents found anything wrong in the judgment, they should have gone up in appeal or sought review of the same so far as non-availability of unfilled vacancies is concerned.

5. In the facts and circumstances we allow the application, set aside the impugned notice dated 4.1.91 at Annexure A4 and direct that the applicant should be continued as Driver as if the impugned notice had not been passed. There will be no order as to costs.

  
(A.V. Haridasan)  
Judicial Member

  
(S.P. Mukerji)  
Vice Chairman