

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No.
XXXXX No.

127/91

199

DATE OF DECISION 26.9.91

K.Madhavan Nair

Applicant (s)

Mr.M.G.K.Menon

Advocate for the Applicant (s)

Versus

Union of India represented by the

Chairman, Telecom Commission, Respondent (s)

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)

The applicant who has been a re-employed ex-serviceman working as a Driver in the Telecom Department on a casual basis with effect from 4.2.84 was selected by the Departmental Selection Committee ~~on 24.11.88~~ and was appointed as a regular Driver vide the order dated 24.11.88 at Annexure-A3. One of the candidates who was not selected challenged the selection of the applicant and others in O.A 1/89 which was allowed by this Tribunal in its judgment dated 31.1.90 to which one of us was a party and the respondents were directed to consider all the eligible candidates who had applied and "fill up the vacancies which remained unfilled". The Tribunal did not go into the merits of the selection nor did it set aside the selection. The respondents in order to implement the judgment, instead of considering eligible candidates who were not selected for the unfilled vacancies, proposed to terminate the services of the selected candidates like the applicant before us also and subjected them to further reassessment. This has been challenged by the applicant on the ground that he was not a party in O.A 1/89 and that the judgment of the Tribunal

in that case did not visualise setting aside their selection and appointment.

2. 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 ^{proposed to be} was 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.

3. 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 21.1.90 to which one of us was a party in O.A 1/89 is quoted below:-

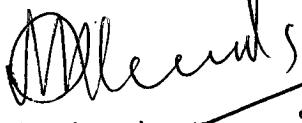
"3. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. We are not happy about the manner in which shorter panels were prepared when there were available vacancies for regular appointment. The fact that the applicant was selected for employment 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."

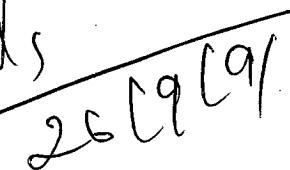
From the above it is clear that it was never the intention of the Tribunal to go into the merits of the selection made by the Selection Committee in 1987 and 1988 and ^{not} to disturb those like the applicant before us who had already been selected. The intention of the Tribunal was clear. Firstly it 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

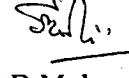


purposefully to exclude him from the panel". Further on in the same judgment it comes out that the respondents " issued another notice (Ann. XIV) on 1.6.88 to fill up 5 general and 3 reserved vacancies including vacancies of 1987 on a regular basis. The applicant again applied and appeared in the test and interview but again in the panel of 3 names (Ann.XVI) he was not included". 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 ^{and} 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, ^{This was to be done} 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} and sought review of the same so far as non-availability of unfilled vacancies is concerned.

4. 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 on the basis of the order at Annexure A1 as if the impugned notice had not been passed. There will be no order as to costs.


(A.V.Haridasan)
Judicial Member


26/9/91


(S.P.Mukerji)
Vice Chairman