

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 147/1991
~~T. A. No.~~
~~XXXXXX~~

199

DATE OF DECISION 26.9.91

K.Balachandran and another Applicant (s)

M/s.N.Haridas & M.N.T.Panicker Advocate for the Applicant (s)

Versus

General Manager, Telecom,
~~Telecom District, Ernakulam and 2 others~~ Respondent (s)

Mr.K.Prabhakaran, ACGSC 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 23.1.1991 the two applicants who have been working as Drivers under the General Manager, Telecommunications, Ernakulam have challenged the termination notices dated 4.1.91 at Annexures B and C as also the communication dated 21st January 1991 inviting them to appear for test and interview for reassessment for selection for the post of Driver against vacancies of 1987 and 1988. The brief facts of the case are as follows.

2. The applicants have been working as casual Drivers for three years and were selected against departmental quota vacancies for the year 1988 and posted as regular Drivers vide the order dated 24.11.88 at Annex.A While so, they were served with the impugned notices of one month at Annexures B and C ostensibly in implementation of the order of this Tribunal dated 31.1.90 in O.A. 1/89. Their grievance is that they were not a party in that case and the respondents misinterpreted the judgment of the Tribunal which did not quash their selection and appointment.

2. In the counter affidavit the respondents have stated that the services of the applicants had to be terminated because all the candidates had to be reassessed in implementation of the orders of this Tribunal in O.A 1/89. They have, however, indicated that on reassessment by the new Departmental Selection Committee which met on 25.1.91 both the applicants have been selected and continuing as such.

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

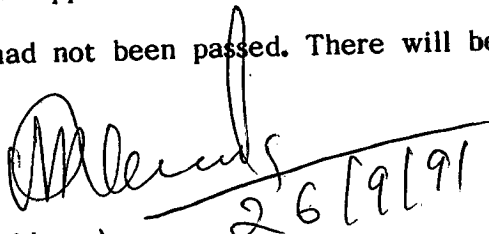
"3. We have heard the arguments of the learned Counsel for both the parties and gone through the documents carefully. We are not happy about the manner in which shorter panels were prepared when there were available vacancies for regular appointment. The fact that the applicant was selected for employment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

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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, 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 applicants before^{and filled up some vacancies} ~~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.

4. In the facts and circumstances we allow the application, set aside the impugned notice dated 4.1.91 at Annexures B & C and direct that the applicants should be continued as Drivers 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

n.j.j