

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O. A. No. 150/90

T.A. No. 199

DATE OF DECISION 30.4.1991

K.R.Arunachalam \_\_\_\_\_ Applicant (s)

M/s.Ashok M.Cherian & C.A.Joy \_\_\_\_\_ Advocate for the Applicant (s)

Versus

The Chief Engineer,Construction,Southern Railway, (s)  
Madras and 21 others

Smt.Sumathi Dandapani for R1 to 4 \_\_\_\_\_ 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 6.2.90 the applicant who has been working as Motor Vehicle Driver in the office of the Executive Engineer,Construction Division, Southern Railway, Trivandrum, has prayed that his name should be included in the seniority list of Motor Vehicle Drivers of Trivandrum Division at Annexure A-3 and placed above those who entered service as Motor Vehicle Drivers subsequent to the date when he was appointed as such on an adhoc basis and continued without break. He has also claimed pay fixation and other monetary benefits at par with his juniors. The brief facts of the case are as follows.

2. The applicant was engaged as a casual labourer in the Construction Unit of Madurai Division in 1953 and was later absorbed as regular Gangman in Open line in 1958. He was confirmed as such on 5.2.1968 and later posted as Lorry Attendant with effect from 18.4.73 in the Construction Branch. Since he was having a Heavy Vehicle Driving Certificate, he was posted

by the Executive Engineer, Construction Division as Lorry Driver from 1.9.75 to 18.9.75 on an adhoc basis. Again he was posted as Jeep Driver on an adhoc basis from 5.5.76 to 30.9.76. After that he was again promoted in 1978. According to the applicant he passed the trade-test in April 1975 and according to the certificate given by the Executive Engineer dated 14.4.1975(Annexure A-1) he was selected as a Lorry Driver and was waiting for posting. From 1978 he has been working continuously as Motor Vehicle Driver on an adhoc basis . When Trivandrum Division was formed, he opted to come over to that Division and continued to work as Lorry Driver in the Construction Unit of that Division. His grievance is that in the seniority list of Motor Vehicle Drivers of Trivandrum Division published in August 1988 at Annexure A-3 his name was missing, though the names of respondents 5 to 22 who are junior to him, have been included. His representation dated 19.9.88 at Annexure A-4 remain unresponded. His further representations dated 27.10.89 at Annexure A-5 and another dated 31.10.89 at Annexure A-6 failed to evoke any redress. According to him, he has a right to be absorbed as a Lorry Driver by virtue of his continuous officiation as Lorry Driver from 1978 onwards and count his adhoc service for seniority in the cadre of Drivers, besides regularisation, pay etc.

3. In the counter affidavit while generally accepting the aforesaid facts, the respondents have stated that after 2.10.1979, when the Trivandrum Division was formed, applications were called from serving Class IV employees including adhoc Motor Vehicle Drivers for regular absorption, as at Ext.R1. However the applicant did not send any application while some of his co-workers who are cited as respondents in the O.A. applied for regular posting. As the applicant did not volunteer for the post of Driver in the Open line, he was not considered. Similarly applications were again called for absorption as Motor Vehicle Drivers in the Open line during 1984 and 1988. But again the applicant did not submit his application while his co-workers who are now cited as respondents applied and were absorbed as regular Motor Vehicle Drivers. Since the applicant was continuing as Driver on an adhoc basis in the Construction Organisation, his name was not included in the list of regular Drivers in the Open line. The respondents have denied

receipt of representations at Annexures A-4 and A-6. They have clarified that Construction Unit is a separate organisation distinct from the Open line and adhoc arrangements in the Construction Unit is not relevant for absorption or seniority in the Open line. Merely passing a trade-test or suitability test does not confer on the applicant any right for the post of Motor Vehicle Driver.

4. In the rejoinder the applicant has conceded that he worked as Heavy Vehicle Driver after the formation of Trivandrum Division in the Construction Wing. He has not denied circulation of Ext.R1 by which applications were called from Class IV officers for appointment as Motor Vehicle Driver in the Open line wing of the Trivandrum Division, but argues that he did not come across such a notification and "he might have missed to see the notification". His plea is that having passed the trade-test in 1975, he need not have applied again. His argument is that Open line wing being also under the Southern Railway, his name should have been included in the seniority list of Motor Vehicle Driver of Trivandrum Division.

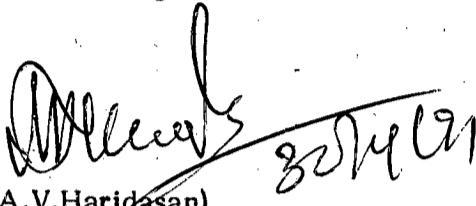
5. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. It is not denied by the applicant that he has always been working as Motor Vehicle Driver on an adhoc basis. He has also not denied the existence of the circular dated 22.11.88 at Ext.R1 inviting applications for regular absorption as Motor Vehicle Driver. He concedes that he might have missed the circular and not applied for the post. As an adhoc Motor Vehicle Driver he cannot claim a place in the seniority list at Annexure A-3 which is a list of Motor Vehicle Drivers who are included in the cadre of such Drivers of Trivandrum Division. Even if Construction and Open line wings are taken to be parts of the Trivandrum Division the applicant as an adhoc Motor Vehicle Driver cannot be included in the seniority list so long as he is not regularised as a Motor Vehicle Driver. His having passed the trade-test in 1975 entitled him to adhoc promotion as Motor Vehicle Driver/Jeep Driver thereafter, but for regular absorption he had to apply and compete with others. However, it will be unfair to keep the applicant as an adhoc Driver even though he possesses the required qualifications and have been discharging the duties of a Driver continuously

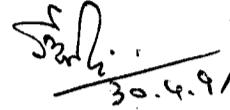
for the last 13 years. In K.C.Rajeevan and 15 others vs. State of Kerala and 2 others, (1991)1 SCC 31, the Supreme Court had occasion to deal with the cases of regularisation of adhoc employees who have been working in the posts for a number of years and possessed the required qualifications. Referring to the Preamble of the Constitution promising socio-economic justice, the fundamental rights conferring certain justiciable socio-economic rights and the Directive Principles of the Constitution, the Supreme Court held that "these three together constitute the core and conscience of the Constitution". The Supreme Court observed that "once the appointments continued for long, the services had to be regularised if the incumbent possessed the requisite qualifications....". According to them, "such an approach alone would be consistent with the constitutional philosophy adverted to earlier". The Supreme Court referred to its earlier decision in P.K.Narayani v. State of Kerala, 1984 SCC (L&S)640, in which the petitioners therein and all other similarly placed employees were allowed to appear at the next examination of the Public Service Commission without any age bar. It also referred to another decision of the Supreme Court in Dr.A.K.Jain v. Union of India , 1988 SCC (L&S)222 in which adhoc Assistant Medical Officers who were initially appointed for six months but were continued for periods ranging upto four years, were directed to be regularised in consultation with the U.P.S.C on the evaluation of their work. In the Rajeevan's case, the Supreme Court directed the respondents to regularise the services of the petitioner under certain conditions, provided they possessed the requisite qualifications for the post.

6. In the instant case before us, the applicant has been working on an adhoc basis as a Driver for thirteen continuous years. It cannot be reasonably presumed that he knowingly did not apply for regular appointment to the post of Motor Vehicle Driver in the <sup>Open</sup> line. The fact that he has been discharging the duties of a Motor Vehicle Driver satisfactorily in the Construction Wing shows that he possesses the requisite skill and qualifications of a Motor Vehicle Driver.

7. In the facts and circumstances we allow this application to the extent of directing the respondents to consider the applicant for the next <sup>yacancy</sup> of Motor Vehicle Driver either in the <sup>Open</sup> line or in the Construction Wing

and appoint him as such if he satisfies the requisite qualifications without raising the question of age bar. Till such time as he is regularly absorbed or regularised, his services should be continued as before. Since the question of seniority in the cadre of regular Motor Vehicle Drivers will arise only after he is absorbed, he will be at liberty to raise the question of seniority at that stage. There will be no order as to costs.

  
(A.V. Haridasan)  
Judicial Member

  
(S.P. Mukerji)  
Vice Chairman

n.j.j

24-9-92  
(15)

CCP-125/92 in OA-150/90

Mr P Sivan Pillai  
Mrs Sumathi Dandapani

The learned counsel for the respondents is directed to file a reply to the CCP within 10 days with a copy to the petitioner.

List for further direction on 21.10.92

Per  
20

(AVH)

Sd/  
(SPM)

24-9-92

21.10.92.

SPM & AVH

Mr. Sivan Pillai for applicant

Smt. Sumathi Dandapani for respondents

The learned counsel for the respondents seeks further time for filing the reply statement. She may do so within 2 weeks with a copy to the learned counsel for the petitioner, who may file rejoinder within a week thereafter. List for further direction on 11.11.92.

Per  
20

(AV HARIDASAN)  
Judicial Member

Sd/  
(SP MUKERJI)  
Vice-Chairman

21.10.92

11.11.92

23

Mr. P G Sivam  
Mrs. Dorothy J. Dandapani

The learned Counsel for the petitioner seeks some time to file a reply to the statements filed by the learned Counsel for the respondents.

List for further directions

on 27.11.92

Mr  
Statement filed  
by Pet. S.R.2  
on 11.11.92  
83

AVH  
11/11

Sd/  
SPM  
11/11

27-11-92  
(26)

-2-

Mr Sivan Pillai  
Mrs Dandapani

The learned counsel for the respondents is directed to file an affidavit of respondent-1 indicating whether there is vacancy available against which the applicant is working at present can be regularised.

List for further direction on the CP(C) on 11.12.92

✓ (AVH)

✓ (SPM)

27-11-92

11-12-92  
(15)

Mr Sivan Pillai  
Mrs Preethy

The learned counsel for the petitioner wishes to file a reply to the additional statement filed by the second respondent. He may do so within 3 days with a copy to the respondents.

List for further direction on 18.12.92

✓ (AVH)

✓ (SPM)

11-12-92

15.1.93  
14

Mr. TCG Swamy  
Mrs. Preethy

We have heard the learned counsel for both the parties. Even though the respondents have in their statement dated 4.12.92 indicated that the applicant is employed against workcharged post, from the statement at Annexure-E submitted by the applicant which is a reply dated 20.12.92 it is clear that the applicant is working on an adhoc basis against a Construction Reserve Post. Respondents seek some time to cure discrepancy in the statement filed by the respondents.

✓ Accordingly list for further directions on 20.1.93. The respondents to clarify whether the applicant can be absorbed in a regular vacancy.

✓ AVH

15.1.93

✓ SPM

Adj on 15/1/93  
by Notice

Additional  
Statement by  
R-1 filed on  
10/12/92

Reply to the Addl.  
Statement by  
R-1  
filed on 30/12/92

✓ Ph

(20) Mr P Sivan Pillai  
Mrs Sumathi Dandapani

Heard the learned counsel of both the parties.

The learned counsel for the petitioner states that since the applicant has been absorbed with effect from 1.4.88 <sup>on basis</sup> ~~regularly~~ as a Driver, subject to his liberty to claim the benefits of seniority and consequential absorption, he has no further grievance to be redressed so far as the CP(C) is concerned. Accordingly, the CP(C) is closed and notice discharged.



(AV Haridasan)  
Judicial Member



(SP Mukerji)  
Vice Chairman

20.1.93

g/o  
AVH  
2/1/93  
MKM  
order issued  
and file closed  
O/