

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No. 18
~~F. A. No.~~

1990

DATE OF DECISION 6.11.90

K. O. Abraham Applicant (s)

Mr. M R Rajendran Nair Advocate for the Applicant (s)

Versus

UOI rep. by Secretary, M/o Respondent (s)
Communications, New Delhi & 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? *Yes*
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

SHRI N. DHARMADAN, JUDICIAL MEMBER

The applicant in this case is aggrieved by the refusal of Respondents 3 & 4 to give him work as casual mazdoor. Hence he filed this application under section 19 of the Administrative Tribunals Act of 1985 with the following reliefs:

- "(i) To declare that the denial of work to the applicant accounting to removal from service/ retrenchment is illegal and to declare that the applicant shall be deemed to have continued in service and he is entitled to consequential benefits including backwages;
- (ii) To direct the respondents to give work and wages to the applicant as casual mazdoor and to regularise him in his due turn with effect from the date of regularisation of his juniors.
- (iii) To direct the respondents to consider and pass appropriate orders on his representation requesting transfer to Changanacherry sub division.

(iv) Grant such other reliefs as may be prayed for and the Tribunal may deem fit to grant and

(v) Grant the cost of this Original Application."

2. The contention of the applicant is that he commenced service as casual mazdoor under Respondent No.4 in the year 1971 on the basis of selection by the Sub Divisional Officer (Telegraphs), Kottayam. Subsequently, he was also selected as an approved mazdoor and transferred to the Kanjirappally Sub Division. He was engaged by the respondents for doing casual work whenever work was available. He has produced Annexure-III, Annexure-III A and Annexure-III B in support of his contention that he had worked till 16.5.1989 with intermittent intervals. Under these circumstances, the applicant claims that he is entitled to regularisation and to be engaged for future work because the respondents have given regularisation to his juniors and they are being engaged by the respondents even now.

3. The respondents in the counter affidavit denied all the averments in the application and produced Annexure R-1(a) to show that the applicant's services were terminated along with similar casual mazdoors w.e.f. 26.3.1979. According to the respondents his name was struck off from the rolls. Therefore, the applicant is not entitled to regularisation and work as claimed by him. The respondents also denied that his juniors were regularised as stated in the application.

4. Having heard the arguments of the learned counsel on both sides and after perusal of the documents it is seen from Annexure-III that the case of the respondents that the applicant's service was terminated w.e.f. 26.3.79 as indicated in Annexure R-1(a) is not true and cannot be accepted. As per the certificate issued by the Kanjirappally Sub Division, Annexure-III, the applicant had been engaged

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for work even after 26.3.79. The applicant was unable to go for work for some time from the year 1982 because of his illness and fracture of his upper arm. But later when he became alright he started attending for the work from 1987. In the light of the evidence available in this case, the case of the applicant is more probable and correct. Therefore, the contention of the respondents that the applicant's services had been terminated and he has no right to regularisation cannot be accepted. As indicated above from the certificates produced in this case we can only come to the conclusion that the applicant's services have been utilized by the respondents till 16.5.79 with intermittant breaks. Accordingly the applicant is entitled to get work if work is available under the respondents.

5. Though the respondents denied the case of the applicant that his juniors were regularised and they are even now given work by the fourth respondent, the respondents have not produced the list of casual mazdoors or any other register to satisfy us that the case of the applicant is false. Under these circumstances, we are of the view that this application can be disposed of in the interest of justice with a direction to the second respondent to engage the applicant also by including his name in the live list of casual mazdoors and give him work as and when work is available either in Changanacherry or in Kanjirappally Sub Division. We issue such a direction in the interest of justice. We make it clear that the applicant is free to submit a representation for getting regularisation in the service after producing necessary documents and certificates along with the application for getting the relief. If such a representation is filed by the applicant within a month from today, the second respondent


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will consider the same and pass appropriate orders in accordance with law as expeditiously as possible.

6. The application is therefore dispose of with the above directions. There will be no order as to costs.


(N. Dharmadan)
Judicial Member

6/11/90


(N. V. Krishnan)
Administrative Member

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