

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

D. A. No. 192 of 1991
T. A. No.

DATE OF DECISION 23-1-1992

PK Vasu

Applicant (s)

Mr MR Rajendran Nair

Advocate for the Applicant (s)

Versus

Union of India & 3 others

Respondent (s)

Mr AA Abul Hassan, ACGSC

Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. NV KRISHNAN, ADMINISTRATIVE MEMBER

&

The Hon'ble Mr. AV HARIDASAN, 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

(Mr AV Haridasan, Judicial Member)

This is the fourth round of litigation between the applicant and the respondents. The facts necessary for the disposal of this application can be briefly stated as follows.

2. The applicant who is an Ex-serviceman was sponsored by the Employment Exchange for the post of Pump Operator under the second respondent, After an interview on 10.12.1981, was directed to attend the office on 24.12.1981 by order dated 19.12.1981 at Annexure- VI. He was put in-charge of the two Pump Houses at the P&T staff quarters, Alleppey. While he was discharging his duties as Pump Operator, he submitted a representation to the

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third respondent on 22.11.1982 requesting for payment of weekly off and other benefits. While the above representation did not evince any response, finding that some other persons similarly situated like him, for instance Mr George (Trivandrum) and Mr Joseph (Kozhikode) were regularised in service, he submitted another representation on 27.6.1984 requesting that he may also be regularised in service. While this representation was pending, the applicant's services were orally terminated by the Junior Engineer (Electrical) on 17.7.1984. He challenged the termination of his services by filing O.P.No. 6258/84 before the Hon'ble High Court of Kerala. The O.P. was disposed of by the Hon'ble High Court declaring that the applicant should be treated as in service. It was observed that the services of the applicant could be validly terminated only after the respondents issued a valid order of termination of his services in conformity with the provisions of Chapter V-A of the I.D. Act or after a disciplinary proceedings. Though the respondents after the applicant had filed a Contempt Petition, paid his dues he was not reinstated in service. Thereupon the applicant filed OA-173/87 challenging the termination of his services. This application was allowed by this Tribunal by order dated 2.5.1989 directing the respondents to treat as continuing in service. Anyway, the decision whether the applicant should be reinstated as Pump Operator or whether his services should again be terminated in accordance with the provisions of law was left for the decision of the respondents. Pursuant to this order, the respondents issued a notice to the applicant stating that his

services would stand terminated w.e.f. 21.8.1989 and directing him to report at the office on 21.8.1989 to receive the notice of termination along with notice pay, retrenchment compensation and wages for the period from 27.6.1986 to 21.8.1989. When he appeared, he was served with the order at Annexure-XII to the effect that his services stood terminated w.e.f. the afternoon of 21.8.1989. He was also given a cheque of Rs.38,503/-.

The applicant made a representation on the same day requesting that as he was an Ex-serviceman qualified to be appointed as a Pump Operator in a regular manner, his services ^{might} be regularised. But as the respondents took the stands that his services ~~would~~ stood terminated, the applicant filed OA-569/89 before this Tribunal challenging the order of termination.

The above application was allowed by/ ^{the} order dated 18.6.1990 at Annexure-XIV setting aside the order of termination and should be deemed to have declaring that the applicant ^{continued} in service despite the illegal order of termination. Pursuant to the above order, by order dated 30.7.1990 at Annexure-XV the applicant was reinstated in service. Thereafter the applicant continues to be in service. The present grievance of the applicant is that while persons similarly situated like him have been regularised in service, he remains a casual labourer without regularisation. His case is that though he was paid wages as the daily rated casual labourer, he is entitled to get regularisation in the post of Pump Operator in the scale of Rs.260-360 (pre-revised) with effect from the date of initial appointment

namely 24.12.1981 with all consequential benefits. Therefore the applicant has filed this application under Section 19 of the Administrative Tribunals Act for a declaration that he is a regular Pump Operator and for a direction to the respondents to regularise his services as Pump Operator w.e.f. 24.12.1981 and to fix his salary with attendant benefits. He has also prayed that on such regularisation, his pay should be fixed on the basis of the Government of India orders on fixation of pay of re-employed Ex-servicemen.

3. In the reply statement the respondents have contended that the applicant has no locus standi to approach this Tribunal as he is not a Government servant but only a Casual Mazdoor, that there is no post of Pump Operator under the respondents to regularise the applicant in service and that the applicant is not therefore entitled to the relief claimed. However, it has been stated in the reply statement that in accordance with the scheme for grant on temporary status and regularisation of service in the case of Casual Labourers of the Department, the applicants case also/being considered for grant of temporary status. ~~xxxxxxxxxxxx~~ *w*

4. We have heard the learned counsel for both the parties and have also carefully gone through the documents produced.

5. The contention of the respondents that the applicant has no locus standi to approach this Tribunal for getting relief, as he is not a regular employee under the Government

of India as he is only a daily rated casual mazdoor has no force, because it is well settled by now that casual labourers are also entitled to approach the Tribunal for redressal of their grievance. Further, between the applicant and the respondents, there had been two previous litigations before this Tribunal and the question of jurisdiction was not raised in these two cases. Since the previous applications of the applicant has been considered and disposed of granting relief, the respondents are not entitled to raise this contention in this application.

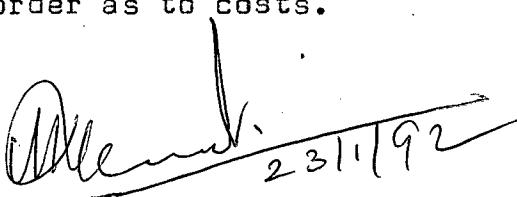
5. The case of the respondents that there is no post of Pump Operator also does not appear to be correct because he was interviewed for the post of Pump Operator and was engaged to discharge the functions of that post as a Casual Labourer at the first instance. In the judgement of this Tribunal in OA-569/89 it was held that the post of Pump Operator for which the applicant was engaged originally was even then in existence. Be that as it may, the claim of the applicant that he should be regularised in service as a Pump Operator from the date of his initial engagement namely, 24.12.1981 cannot be sustained. He was not appointed on adhoc basis to the post of Pump Operator but was engaged only as a Casual Mazdoor to discharge the duties attached to the post of Pump Operator. Therefore, he has no right to claim that he has been working on the post continuously and that therefore he should be regularised in

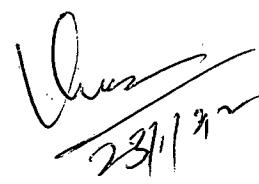
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service with effect from the date of initial engagement. However, in view of the fact that the respondents have in their reply statement indicated that the applicant's case for grant of temporary status in accordance with the scheme for grant of temporary status and regularisation is under process, We are of the view that the interest of justice will be met if the respondents are directed to grant the applicant temporary status in his due turn and to consider him for regularisation in service according to the availability of vacancy and ~~and~~ ~~xxx~~ his seniority.

6. In the result, the application is allowed in part and the respondents are directed to issue orders regarding grant of temporary status to the applicant within a period of two months from the date of communication of this order with attendant benefits and to consider his case for regularisation in service in his turn according to his seniority. There is no order as to costs.


(AV HARIDASAN)
JUDICIAL MEMBER


(NV KRISHNAN)
ADMVE. MEMBER

trs

23-1-1992

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH
RA-4/92 in
O. A. No. 192 of
T. A. No. 1991

DATE OF DECISION 2-6-1992

Mr PK Vasu Review Applicant (s)

Mr MR Rajendran Nair Advocate for the Applicant (s)

Versus

UOI, Secretary, Communications Respondent (s)
and 3 others

Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. NV KRISHNAN, ADMINISTRATIVE MEMBER

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The Hon'ble Mr. AV HARIDASAN, JUDICIAL MEMBER

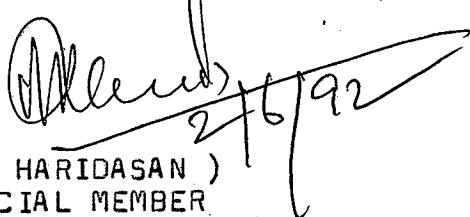
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2. To be referred to the Reporter or not ?
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JUDGEMENT

(Mr AV Haridasan, Judicial Member)

There is no error on the face of records nor is
there any other circumstance warranting a review of our order.

No aspect has been left out of consideration while disposing
of the original application as averred in the R.A. Therefore,
the R.A. is devoid of any merit. Hence the same is dismissed.


(AV HARIDASAN)
JUDICIAL MEMBER


(NV KRISHNAN)
ADMVE. MEMBER

2-6-1992

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