

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 205/91
XXXXXX

199

DATE OF DECISION 21.1.92

A Sankara Narayanan

Applicant (s)

Mr KL Narasimhan

Advocate for the Applicant (s)

Versus
Union of India rep. by its
Secretary, Ministry of Respondent (s)
Communication, Deptt. of Posts
Dak Bhavan, Sansad Marg, New Delhi
and others.

Mr K Prabhakaran, ACGSC
Mr OV Radhakrishnan

Advocate for the Respondent (s) 1-4
Advocate for Respondent 5-7

CORAM:

The Hon'ble Mr. NV Krishnan, Administrative Member

and

The Hon'ble Mr. AV 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? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. To be circulated to all Benches of the Tribunal?

JUDGEMENT

Sh NV Krishnan, A.M

The applicant is aggrieved by the intimation given to him in the Annexure- I letter dated 9.4.90 of the Respondent-2 that there are no vacant Group D post in the Speed Post Centre on which he could be regularised and that even if there are vacancies they are to be filled up by promoting ED Agents who get preference over casual mazdoors.

2 The brief facts given ⁱⁿ rise to this grievance are as follows.

2.1 Admittedly, the applicant has been working continuously as a casual labourer from 1979, he having been engaged for the first time in the Head Record Office, Trivandrum. Occasionally, he had also performed the duties of Group D officials in that office.

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The Speed Post Centre was opened at Trivandrum on 26.2.88. The applicant was then shifted to that establishment to work as casual labourer.

2.2 The applicant states that the only reason why he was not regularised earlier against a Group D post was that he had not been sponsored by the Employment Exchange before he was first engaged as a casual labourer. However, even this hurdle does not now block his way because admittedly, by the Memorandum dated 7.5.85 of the Ministry of Personnel (Annexure AIV) it has been directed therein that casual labourers recruited before the issue of that Memorandum should, as a one time measure, be considered for regular appointment to Group- D posts if there are otherwise suitable, even if they had not been sponsored by the Employment Exchange at the time of their initial engagement as casual labourer. Thus, admittedly, the applicant became eligible for consideration to a Group D post from 7.5.85.

2.3 The applicant also states that a Memorandum dt. 17.5.89 of the Director General (Posts) that casual labourers are to be given preference in the matter of recruitment to Group D posts over the ED Agents of other Divisions in the same region. A copy of this memorandum has been exhibited by the Respondents 1 & 2 as Exbt.R2.

2.4 In spite of these concessions given for the regularisation of casual labourers, the respondents have given preference to ED Agents in the matter of recruitment

to Group D posts even though these ED Agents have joined service on much later dates and are junior to the applicant. The applicant represented in the matter to Respondent-3 and on 1.11.89 and it has been disposed of by the impugned order.

2.5 In this circumstance, the applicant claims the following reliefs.

- "(i) To direct the II, III and IV respondents to regularise the service of the applicant against vacancy in group D post, which arose after the issue of the circular dated 31.7.85.
- (ii) To declare that refusal to grant the relief, as per Annexure I is bad in law ultravires of the instruction and Government order."

2.6 During the pendency of this application, MP 785 of 1991 was filed by 3 petitioners seeking permission to be impleaded as Additional Respondents in this case. That MP was allowed and those petitioners are now Respondents 5, 6 and 7.

3 Respondents 1-4, namely, the Department, for short, and Respondents 5, 6 and 7 have filed separate replies denying that the applicant is entitled to any relief.

4 In the first reply filed by the Department it was stated that the applicant is entitled only to the benefit of regularisation in accordance with the scheme communicated in the letter dated 12.4.91 (Annexure R1) of the Director General (Posts) which

envises the granting of temporary status to casual labourers subject to certain conditions. It was further stated that in accordance with the instructions dated 17.5.89 of the Director General(Posts) (Annexure R2), the casual labourers - full time or part-time - will be entitled to be considered for Group D posts only after the claims of non-test category Group D officials and ED Agents of the same Division have been first considered. In other words, the Recruitment Rules envisage a scheme of priorities and the casual labourers have been assigned the third priority immediately after the first priority category of non-test category Group D officials followed by the second priority category of ED Agents of the same Division. Hence, the applicant cannot claim for preference over Respondents 5, 6 and 7 even though the latter may have been appointed as ED Agents much after the applicant was engaged as casual labourer.

5 When a question arose as to whether these instructions were not applicable only from 17.5.89 it was contended by the Department that this has always been so and they sought time to produce the Recruitment Rules which have bearing on this subject.

6 Accordingly, the Department subsequently produced Annexure R3 to R7. The Indian Posts & Telegraphs (Class IV Posts) Recruitment Rules 1970 were notified on 20.10.70 (Annexure R3). The first ~~part~~ ^{part} of the Schedule

relates to recruitment to the post ~~of~~ Circle and
Administrative Officers and the second ~~post~~ with
recruitment to Subordinate Officers. We are concerned
with the second ~~post~~ provisions for recruitment to
four categories of Group D posts are contained in this
~~post~~. Out of these, recruitment to the post at item (i)
~~alone~~ ~~above~~ is by holding a test. For ~~the~~ posts under the
remaining three items no test is to be held. Hence,
they are called non test category Group D posts.

The first ~~category of posts~~ includes, Peons, Telegraph
Man, LD Peons, Mail Peons, Packers, Porters, Runners,
Gang Peon, Orderly, Gateman, Attendant-cum-Khansama.

In regard to these posts the note below the Schedule
states as follows.

1. The syllabus of the test and the minimum pass marks for recruitment to posts at 1 in subordinate offices shall be as laid down by the DG, P&T from time to time, before commencement of the examination.
2. Extra departmental Staff may be considered against the vacancies for direct recruitment in subordinate offices subject to such conditions and in such manner as may be decided by the DG P&T from time to time.
3. Casual Labourers and part-time casual labourers may be considered against the vacancies for direct recruitment subject to the such conditions laid down by the DG, P&T from time to time."

7. In pursuance of this authority, it is contended that in the Director General of P&T (now, Director General (Posts)) had issued instructions on 4.8.70 stipulating that casual labourers will, in the matter of recruitment, be placed after non-test category of Class IV Staff and ED Agents. Though the circular

has not been produced, this conclusion follows from Annexure R5 letter dated 12.10.82 which explains the priority assigned to these categories in terms of that circular. This provision has now been incorporated in the recruitment rules by the Indian Posts & Telegraphs Group D posts Recruitment (Amendment) Rules 1989 (Annexure R6).

8 The learned counsel for the Department therefore contended that, right from the beginning, casual labourers were given only a priority below the non-test Group D officials and ED Agents for recruitment to the Group D posts. The applicant, who is only a casual labourer, cannot claim appointment to Group D posts in preference to Respondent 5-7 who are ED Agents of the same Division.

9 We have heard the learned counsel of all the parties. We have also perused the records.

10 The only question is whether the contention that right from the beginning the casual labourers as a group can be considered for regularisation to Group D posts only after the prior claims of the non-test category of Group D officials and ED Agents have been exhausted is valid in law. ~~XXXXXXXXXXXX~~ From what has been mentioned above, it is clear that such is the case and the Department has established this by producing the copies of the relevant rules and orders.

11 In the present case, no prior claim of any non-test category official has to be considered. The

only persons who can claim preferential appointment, are Respondents 5 to 7 who are ED Agents. No doubt, the Respondents 5 to 7 have been appointed as ED Agents only by the order dated 16.2.82 (Exbt.R5(A)) which is much later than the date on which the applicant commenced service by being engaging as casual labourer from 1979. However, the Exbt. R3 Recruitment Rules of 1970 make it clear that in respect of appointing ED Staff or casual labourers by direct recruitment, instructions may be issued by the Director, P&T stipulating the manner in which and condition subject to which they may be appointed. Such instructions were issued on 4.8.70 as is clear from Exbt. R5. Even since then, casual labourers as a category have been placed below the ED Agents of the same division for recruitment. It is also provided as early as in 1979 (Exbt.R4) that recruitment to the next category is to be made only if there is no qualified personnel available in the higher category or categories. Thus, if qualified ED Agents are available, they will get preference in appointment over the applicant who is only a casual labourer.

12 Another objection of the learned counsel for the applicant was that even if the applicant had to be considered for appointment by assigning him a lower priority, he should have been permitted to appear in the test for this purpose. We see no merit in this submission because if sufficient number of persons are

are available
as ED Agents, to fill up vacancies, it would be a waste of every one's time to call casual labourers also for the test when it is evident, at the threshold, *it stands* that none of them ~~stand~~ a chance of being appointed.

13 In the circumstances, we do not find any merit in this application and it is dismissed.

AV Haridasan *21.1.92* *NV Krishnan*
21.1.92

(AV Haridasan) (NV Krishnan)
Judicial Member Administrative Member

21-1-92