

CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH

O.A.No.216/93

Wednesday, this the 12th day of January, 1994.

**SHRI N DHARMADAN, MEMBER(J)
SHRI S KASIPANDIAN, MEMBER(A)**

Boban K Thomas,
Cleaner, Mail Motor Service,
Kochi-682 016.

- Applicant

By Advocate Shri Thomas John

Vs.

1. Union of India represented by
Secretary, Ministry of Communications,
New Delhi.
 2. The Post Master General,
Central Region, Kochi.
 3. The Manager,
Mail Motor Service,
Kochi-682 016.
 4. PS Dominic, Driver,
MMS, Ernakulam, Kochi.
 5. Cleatus Pinheiro,
Driver, MMS,
Ernakulam, Kochi.
- Respondents

By Advocate Shri K Karthikeya Panicker, ACGSC for R.1-3.
By Advocate Shri MK Damodaran for R.4 & 5.

O R D E R

N DHARMADAN, MEMBER(J)

This application was originally filed for a declaration that the applicant is entitled to be considered for appointment as Driver as a departmental candidate and also for a direction to the respondents to consider him in one of the post earmarked for departmental candidate. Subsequently, when respondents 4&5 were appointed as per Annexure-A4 order as regular Drivers, the applicant amended the OA incorporating additional grounds and prayers for quashing that order.

2. According to the applicant, he commenced his service as Mazdoor Cleaner in the Mail Motor Service under the third respondent in 1989. As per Annexure-A6 order, the Assistant Director(Recruitment) appointed him in the post of Cleaner in MMS, Ernakulam Division with effect from 6.3.1989. But that order was not implemented till 29.5.1990, on which date the Manager, MMS appointed the applicant as Cleaner in MMS in the scale of Rs.750-940. While working in that post, Annexure-A2

notification was issued inviting applications for appointment of regular Drivers in MMS with the following qualifications:

"Applications from the eligible, both departmental and outside candidates are invited by the undersigned for the posts of Time Scale Drivers in MMS Ernakulam to reach him on or before 25.1.93.

QUALIFICATIONS REQUIRED

I. Departmental Candidates

- 1) Three years service in Group 'D'
- 2) Possessing valid Heavy Motor Vehicle driving licence."

3. The applicant also applied for the post. His case is that even though he satisfied all the conditions in notification and under orders at Annexures-A1 and A6, he was continuing as a casual mazdoor cleaner from 20.3.1989, he was not selected. It is illegal. The department has taken the view that the applicant has not satisfied the required service in Group 'D' for making him eligible for the selection. It is under these circumstances that the applicant originally approached this Tribunal.

4. While admitting the application on 4.2.1993, we directed the respondents to consider applicant also for the selection to the post of Driver provisionally and subject to the outcome of the application. Accordingly, the applicant was also considered in the regular selection. Later the result was announced and respondents 4&5 were appointed.

5. Applicant amended the original application and contended that selection of respondents 4&5 is illegal. They were respondents 4&5 in an earlier OA-422/91, filed by one Shri MA Balan, contending that they were not qualified for the regular selection. That case was heard and allowed, as per Annexure-A7 judgement with the following observations/directions:

"In the conspectus of facts and circumstances, we allow the application in part, set aside the impugned order at Annexure-A9 dated 7.3.1991 appointing the respondents 4&5 as Drivers in the Mail Motor Service, Ernakulam and direct the respondents 1 & 2 to appoint the applicant as Driver in the Mail Motor Service, Ernakulam unit on a regular basis with effect from the date on which the respondents 4&5 were appointed. Action on the above lines should be completed within a period of one month from the date of communication of a copy of this order"

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6. That judgement was implemented on 18.1.1993 by appointing the applicant therein as Driver. On the very next day Annexure-A2 notification was issued presumably, according to the applicant, to select and appoint them as Drivers even though this Tribunal declared them not qualified for the selection challenged by Shri Balan, applicant in that case. According to the applicant, the declaration that respondents 4&5 were not qualified in OA-422/91 vitiates their service for the period covered by that case and it cannot be taken into consideration in the present selection for making them eligible for selection.

7. The applicant has a further contention that if the appointment given to the applicant as per Annexure-A6 on compassionate ground was implemented in due time from the date the order, he would have been fully qualified and eligible for the post, considering the continuous period of service on that basis he had rendered three years service in Group 'D' as per Annexure-A2 notification. He also submitted that even otherwise he is qualified because his continuous casual service is to be reckoned from 20.3.1989.

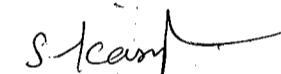
8. Admittedly, the applicant was working as a casual employee from 20.3.1989. Even though Annexure-A6 was not implemented by the respondents from the date of the order, it is stated by the respondents 1 to 3 in the reply that the applicant was working as casual employee. But according to the respondents, the duty performed by the applicant was 'neither full time nor continuous'. On the other hand, the applicant asserted that his duty was continuous and there were no breaks in service. In the light of the assertion of the applicant, it is the duty of the respondents to establish that there was no continuity in service. The respondents did not give records or other materials to show that the service was not continuous. They could have given sufficient details regarding breaks in service of the applicant. Since the respondents have not discharged their burden of proof and substantiated their case there is no continuous service, we have to accept the contention of the applicant and hold that he was continuously working from 20.3.1989. In this connection, it is also to be remembered that even though he was appointed as per Annexure-A6 order with effect from 6.3.1989, the implementation explanation for the delay. Had he been of the same was delayed for no fault of the applicant. There was no

given the facility to work in the post on the basis of Annexure-A6 order with effect from 6.3.1989 he would have gained experience and his eligibility would not have doubted on the facts and circumstanes of the case particularly when his appointment was given on compassionate ground due to the invalidation of his father while working in service as Driver. Respondents have no case that the applicant is lacking &qualification for appointment as Motor Vehicle Driver. He is fully qualified as he is holding Heavy Vehicle Motor Licence and has satisfied the educational qualifications under the notification. The only disqualification pointed out by the respondents to deny him even consideration is that he does not complete 3 years of service in Group'D'. As indicated above, applicant cannot be denied consideration on this ground in the light of the facts stated above. Under these circumstances, the contention of the respondents cannot be accepted. Since the applicant was considered, we need only issue furter directions in the interest of justice.

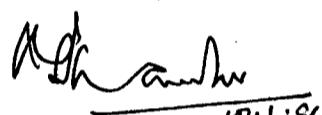
9. In the light of the interim order already passed, the applicant was considered for appointment as a Driver along with other candidates on a provisional basis. He was not selected even though considered on a provisional basis due to the above disqualification. If that disqualification is removed, he is eligible to be appointed in the Departmental quota for there was none in the Departmental quota to contest him. Respondents 4&5 are direct recruitees. Fifty percent of the post is available for departmental candidates and the applicant deserves to be appointed in that quota. The respondents have admitted in the reply that as per recruitment rule, 50% of the vacancies are to be filled by transfer and persons holding Group'C' & 'D' on the basis of their regular service in the eligible cadre. We have already held that the applicant has satisfied the condition for selection. In the view that we are taking in this case after considering Annexure-A6 coupled with Annexure-A1 and the fact that the applicant was working from 20.3.1989 as casual employee, applicants eligibility for consideration in the selection cannot be doubted. He has satisfied all the requirements of continuous service in Group'D' post for three years so as to make him eligible for consideration.

10. In the light of the above observation, the applicant is entitled to be appointed in the 50% vacancies earmarked for departmental quota for Group 'C' and 'D' under the recruitment rules as admitted by the respondents in the reply. Accordingly, we allow the application and quash Annexure-A4 order to the extent of 50% of the vacancies earmarked for departmental candidates. In the light of this order, one of the persons respondents 4&5 out of/who got second place in the selection should yield place for the applicant for only 50% of the vacancies is available for direct recruits. The respondents should pass orders in this behalf for appointing the applicant in the 50% vacancies in the manner as indicated above within a period of two months from the date of receipt of a copy of this order.

11. In the result, the application is allowed to the extent indicated above. No costs.



(S KASIPANDIAN)
MEMBER(A)


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(N DHARMADAN)
MEMBER(J)

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