

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No.
~~XXXXXX~~

229/ 1990

DATE OF DECISION

10.12.1990

S.Gopinathan Nair and another Applicant (s)

Mr. K.P Satheesan

Advocate for the Applicant (s)

Versus

The Deputy General Manager, Respondent (s)
Telecom District, Bharatiya Mansion Building,
Trivandrum-4 and 2 others

Mr.K.Prabhakaran, ACGSC

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 20.3.1990 filed by two applicants who, according to them, have been working as casual mazdoors in different units of Trivandrum Telecom District during 1979-80 have prayed that the impugned orders at Annexure A-3 and A-4 rejecting their representation for re-engagement on the ground of their previous employment, should be set aside and the first respondent directed to reconsider the applicants' representation for being inducted as regular casual mazdoors. Their further prayer is that the first respondent be directed to get an impartial interview conducted in accordance with the prescribed procedure for considering their case. According to the applicants

2

they have been working as casual mazdoors in different units of Trivandrum Telecom District vide work orders dated 2.4.1979, 20.8.1979 and 1.8.1980. The respondents issued a notice dated 26th September 1988 inviting requests upto 15.10.1988, ^{for employment} _h from casual mazdoors who were so engaged before 1985 for a few days and left the job without any notice. The notice also indicated the appointment of a committee consisting of Divisional Engineer (Admn.), Divisional Engineer, Telecom and Sub Divisional Officer Phones (North) to verify all the representations so received. The applicants' contention is that the notice was not properly publicised and when they accidentally ^{al} came to know of it from some permanent workers of the department, they applied to the 1st respondent, who refused to accept the applications as the last date had expired. The two applicants along with 42 others similarly refused, moved this Tribunal in O.A 39/89. The Tribunal in its order dated 3.2.1989 directed that the applicants may apply and the committee should consider the applications. Accordingly the two applicants along with 42 others filed fresh ^{Tions} applicants. The respondents, however, did not take any action for more than nine months and took a vindictive attitude against the applicants for having approached the Tribunal. When nothing came out of their applications, the two applicants moved the Tribunal again in O.A 482/89 and the Tribunal passed the order dated

28.8.1989 (Annexure A2(2)) with the directions to the respondents to dispose of representations of the two applicants within a period of four months with liberty to the applicants to approach the Tribunal again if they felt aggrieved by the outcome of their representations.

It was on the ^{verge} of expiry of the time limit of four months that the respondents asked the applicants to appear for interview on 30.12.89, got their signature on a blank paper and thereafter passed the impugned orders at Annexure A-3 and A-4, rejecting their requests for engagement as approved mazdoors on the basis of their claim of having previous experience as mazdoor on the ground that "the rules do not permit for the same".

The applicants' contention is that the rejection orders are non-speaking orders, that nothing was mentioned about the interview and the committee before which they were present had no power to decide anything ^{other} than their competency to be re-engaged. Their further plea is that similar action was taken only against the 44 persons who had approached the Tribunal and that the rejection was due to the irritation caused by them in approaching the Tribunal. The applicants have also argued that the documentary evidence of their previous engagement like the muster roll and bills of acquittance should have been available with the respondents and they cannot lay the

^{of previous experience}
onus of proof on the applicants. The preservation time
for muster rolls and bills is ~~for~~ a minimum period of five
years in accordance with Appendix 3, supplementary to
Appendix 5 and 2 of the Post and Telegraph Financial
Handbook, Vol. I & V. They have thus challenged the
report of the Committee which examined their cases
as malafide. The respondents have stated that in order
to decide upon the claims of a large number of casual
mazdoors who were claiming reengagement on the basis
of their previous experience, a Committee had been
appointed to examine the merits of each case. The
Committee was not for selection. Since the 44 applicants
including the two applicants before us did not produce
supporting evidence to prove their claims of previous
engagement, the applicants could not be re-engaged.
They have specifically stated that none of the two
applicants had worked as casual mazdoors in Trivandrum
Telecom District and no work orders as mentioned in the
Original Application had been issued by the respondents
for engaging the applicants as casual mazdoors. The
respondents have denied the allegation of malafides
alleged by the applicants. They have also denied the
allegation of getting their signatures on a blank paper
by saying that the statements given by the applicants
before the Committee were recorded and their signatures
obtained after reading out the statements to them.

2

It has been stated that the applicants were called to appear before the Committee on 30.12.1989 along with all original certificates in support of their claim of previous engagement and other certificates about date of birth, educational qualification etc. A copy of the notice has been annexed at Annexure R-2. The Committee sat from 10 a.m to 5 p.m and not upto 9 p.m as alleged by the applicants. The report was submitted by the Committee on the basis of the personal hearing and evidence produced by the applicants. They were not called for interview for selection. None of the applicants produced any documentary evidence relating to their previous engagement as casual mazdoor or gave any satisfactory information regarding the previous experience. They were, therefore, not found eligible for consideration. The respondents, however, conceded that in accordance with the Financial Handbook the periodicity for preservation of muster roll is five years and three years in the case of imprest recoupment bills.

3. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. In accordance with the notice dated 26 September 1988 the cases of casual labourer who had been engaged prior to 1985 for a few days and then left the job and no mazdoor cards had been issued by the

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department, applications were invited upto 15th October 1988. The notice reads as follows:-

" Requests are received from various persons, who had been working in this Department as casual labourers prior to 1985 for a few days and then left the job without any reasons or notice for re-engaging them as casual mazdoors. None of these persons are having mazdoor cards issued by the Department, or selection cards.

It has been decided to appoint a Committee, consisting of Divl. Engineer (Admn.) , Divl. Engineer-Telecom. and Sub Divisional Officer Phones (North) , to verify all these representations and then recommend each and every case, depending on its merit to the Telecom District Manager for further decision.

Requests will be received upto 15th October 1988 for the consideration of the Committee. All requests in this regard must be addressed to the Divl. Engineer (Admn.) , Office of the T.D.M., Trivandrum-23. No such cases will be considered after the prescribed due date."

In its judgment dated 3rd February 1989 in O.A 39/89 (Annexure R5) the Tribunal directed that the applicants' cases also should be considered even though they did not submit any applications in response to the notice in time. The applicants submitted their applications, but when nothing came out of it the two applicants had come up again to the Tribunal in O.A 472/89 decided on 28.8.1989 (Annexure A2) directing the respondents to dispose of their representations within four months. It was only in December 1989 when four months were going to expire that the applicants were called to appear before a Committee on 30.12.89. A typical call ^{nokku} has been copied by the respondents ^{as} at Annexure R2. The Committee ^{^h} according to their proceedings appended with Annexures A3 and A4 which examined the cases of the applicants consisted of DOE (Admn), DOE (Telecom) and DE (Comm1)

and gave their finding as follows:-

" The written statements given by the applicants are recorded. The work order Nos. given by the applicants and the names of the mustering officials under whom the applicant worked have no relevancy. The applicants have not approached the Department with their claim till the date on which O.A filed in the Honourable Central Administrative Tribunal. Their long absences were not valued with genuine reasons. Even though in the statements they have mentioned that they have approached the officers for further engagement, there is no evidence produced to prove their claim. On corroboration it is found that they are not having any idea about exact location of the office and its premises. From the written statements given by the applicants it is seen that the applicants were not known each other even though they have been working under same mustering official and same work order. This shows that their claim of working in the work order quoted by them is not genuine. None of the claimant has produced documentary evidence for their engagement in the Department even though the system of issuing certificate was in vogue at that time. The preservation time for MRs and IB Bills are normally three years and are not available for verification now. In the personal hearing, these applicants have informed that the I/B particulars are given by the mustering officials under whom they have worked. But the I/Bs are of JTOs and no I/B Numbers are available for the mustering officials. All of them have intimated in their statement that they have not been recruited as Casual Mazdoor by the Department but engaged as Casual mazdoor through somebody.

The claim that they have worked in the Department is not proved either by documentary evidence or in the personal hearing. Even if, the claim of engagement as Casual Mazdoor is proved, the long absence exceeding 6 months is to be condoned by the competent authority as per the conditions stipulated in Order No.269-27/ 87-STN-Vol.I ND dated 30.8.1989. None of these candidates have applied for such condonation, stating reasons for absence. This fact also leads to the conclusion that their claims is not genuine.

Now as per the order 270/6/84-STN ND dt. 30.3.85 endorsed by CGMT TV No. Recrt (T)/63-1/ Rlgs dated 10.4.85, recruitment or further engagement of Casual Mazdoors are totally banned.

In the above circumstances the request of the applicants for engagement as Mazdoors are hereby rejected."

4. The aforesaid finding suffers from a number of infirmities. Firstly the Committee which was appointed by the notice of 26th September 1988 was to consist of

at Annex. A-1

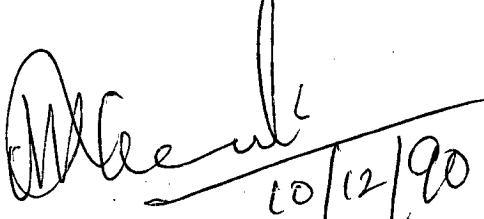
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DE (Admn.), DE (Telecom) and SDO Phones (North). The composition of the Committee which interviewed the applicants and rejected their claim did not include SDO Phones. Secondly the Committee threw the entire burden of proof of their previous engagement on the applicants and rejected their claim on the ground that they did not produce any (the Committee) documentary evidence. On the other hand they did not make any effort to call for the muster roll and I.B bills. Preservation period of muster rolls was wrongly indicated by them as 3 years instead of 5 years as accepted by the respondents. They have also rejected the claim on the ground that the 1985 order, recruitment or further engagement ^{by} ^{^&} ^{were} totally banned overlooking the fact that in spite of this ban it is the respondents who had issued (Annex A-1) the notice of 26th September 1988 to consider re-engaging ^{^&} as casual mazdoors those who had been engaged before 1985.

5. The applicants have also produced a copy of the order issued by the Divisional Engineer (Admn.) on 20.12.88 at Annexure A-7 wherein 234 casual mazdoors who had completed 7 years of service as on 31.3.87 were regularised through the DPC on 19.12.88. This means that the respondents had records in respect of these casual workers pertaining to 1980 and earlier on the basis of which they came to the conclusion that they had completed seven years of service on 31.3.87. To say in respect of the applicants before us that similar documents are not

available for the period 1979-80 would be unconvincing.

6. In the facts and circumstances we allow this application, set aside the impugned orders at Annexures A-3 and A-4 and direct the respondents to get the cases of the two applicants before us thoroughly examined by the Committee appointed vide the notification dated 26th September 1988 at Annexure A1. The muster roll and the work orders No.82 dated 2.4.1979, No.10 dated 20.8.1979 and No.73 dated 1.8.1980 and I.B No.20/80 should be traced and placed before the said Committee. The applicants' should be given a personal hearing by the Committee before the Committee gives its finding. A decision about re-engagement of the applicants' as casual mazdoors should be taken within a period of three months from the date of communication of this order. There will be no order as to costs.


(A.V. HARIDASAN)
JUDICIAL MEMBER


(S.P. MUKERJI)
VICE CHAIRMAN

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