

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.241/11

Tuesday this the 7th day of February 2012

C O R A M :

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER

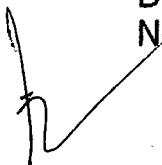
1. K.Nallakoya, S/o.Sidhik A,
Working as Casual Labourer
(Temporary Status), Coir Fibre Factory,
Union Territory of Lakshadweep Administration,
Andrott P.O., Andrott Island, Lakshadweep – 682 551.
Residing at Kodyammada House,
Andrott Island – 682 551.
2. K.C.Shaikoya, S/o.Kidave P.P.,
Working as Casual Labourer
(Temporary Status), Coir Fibre Factory,
Union Territory of Lakshadweep Administration,
Andrott P.O., Andrott Island, Lakshadweep – 682 551.
Residing at Kannichetta House,
Andrott Island – 682 551.
3. P.N.Sayed Buhari, S/o.Sideeque A,
Working as Casual Labourer
(Temporary Status), Coir Fibre Factory,
Union Territory of Lakshadweep Administration,
Andrott P.O., Andrott Island, Lakshadweep – 682 551.
Residing at Puthiyanalakam House,
Andrott Island – 682 551.
4. T.Hamzakoya, S/o.K.C.Kidave,
Working as Casual Labourer
(Temporary Status), Coir Fibre Factory,
Union Territory of Lakshadweep Administration,
Andrott P.O., Andrott Island, Lakshadweep – 682 551.
Residing at Thachery House,
Andrott Island – 682 551.

...Applicants

(By Advocate Mr.N.Unnikrishnan)

V e r s u s

1. Union of India,
rep. by the Secretary to the Government of India,
Ministry of Personnel and Public Grievances,
Department of Personnel and Training,
New Delhi – 110 001.



2. The Administrator,
Union Territory of Lakshadweep,
Kavaratti Island – 682 555.
3. The Director of Industries,
Union Territory of Lakshadweep Administration,
Kavaratti Island – 682 555.
4. The Secretary (Industries),
Union Territory of Lakshadweep,
Kavaratti Island – 682 555.
5. The Supervisor,
Cair Fibre Factory,
Union Territory of Lakshadweep,
Andrott Island – 682 551.
6. Shri.K.Kasimi Koya,
Helper, Fibre Factory,
Andrott Island – 682 551.
7. Shri.P.V.P.K.Nallakoya,
Helper, Fibre Factory,
Agatti Island – 682 553.
8. Shri.K.Hamzakoya,
Helper, Fibre Factory,
Agatti Island – 682 553.
9. Shri.P.P.P.Kasmi,
Helper, Fibre Factory,
Andrott Island – 682 551.
10. Shri.T.P.Mohammed,
Helper, Fibre Factory,
Kalpeni Island – 682 557.
11. Shri.U.Hassan Ummerthakada,
Fibre Factory, Kalpeni Island – 682 557.
12. Shri.P.P.Nallakoya,
Helper, Fibre Factory,
Agatti Island – 682 553.
13. Shri.P.M.C.Pookunhi,
Helper, Fibre Factory,
Kadamath Island – 682 556.

...Respondents

(By Advocates Mr.S.Jamal,ACGSC [R1] &
Mr.S.Radhakrishnan [R2-4])

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This application having been heard on 7th February 2012 this Tribunal on the same day delivered the following :-

ORDER

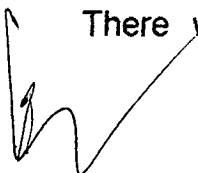
HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER

The four applicants in this O.A joined the services of the respondents as Casual Labourers and were afforded temporary status w.e.f. 01-09-1993. Initially they had not possessed the qualification of IV Standard which is the prescribed minimum qualification for appointment as Helper, but during 2000 – 2004, they have qualified in the fourth Standard, as had been certified by the respective school, vide Annexure A-1 to A-4.

2. Seniority list as on 31-12-1995 of the temporary status employees was initially prepared in October, 1998 vide Annexure A-6, wherein the names of the applicants figured at serial Nos.3,12,15 and 20. However, as at that time the applicants did not possess the qualifications of IV standard, their qualification as possessed by them at the relevant point of time alone was reflected in the said seniority list.

3. The respondents had appointed as many as 8 temporary status casual labourers, to the post of Helper, vide Annexure A-7. Likewise, one more temporary status casual labourer was appointed vide Annexure A-8 order dated 18-10-2007 and in quick succession, vide order dated 23-01-2008, 7 more individuals were appointed on regular basis as Helper. As many of the persons so appointed were junior to the applicants, the applicants had penned a representation dated 07-06-2008 to the respondents requesting them to consider their case for such appointment.

There was no response to the said communication. Meanwhile the



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seniority list of temporary status casual labourers had been prepared as on 18-11-2009 in which the names of the applicants figured in vide Serial Nos.2, 5, 7 and 9. And, this time the qualifications of IV Standard had been duly reflected.

4. One more temporary status employee similarly situated as the applicants herein, approached the Tribunal in OA No.460 of 2009 in which some of the party respondents in the instant OA were impleaded as party respondents therein as well. This Tribunal had allowed the OA vide order dated 14-06-2010 in OA No.460 of 2009. Similarly, OA No.733 of 2009 was also filed by yet another temporary status casual labourer similarly situated as the applicants herein and the same too had been allowed, vide Annexure A-13 order dated 3rd September, 2010.

5. The applicants have thus, come up with this OA seeking the following reliefs :-

1. Call for the records leading to the denial of appointment by absorption as Helper to the applicants and to Annexures A-7 to A-9.

2. To declare that applicants are entitled to be appointed by absorption as Helper before any of their juniors including, contesting respondents and also for all consequential benefits arising therefrom.

3. To declare and order that Annexure A-7 and A-9 are unsustainable in the eyes of law in so far as it relates to respondents No.6 to 13, and therefore, to quash the same.

4. To issue appropriate order or direction to the respondents to issue necessary order appointing the applicants the appellants by absorption to the post of Helper (Group-D) from the date on which their immediate junior have absorbed with all consequential benefits within a reasonable time.



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5. To grant such other reliefs as this Hon'ble Tribunal may deem fit, just and necessary.

and

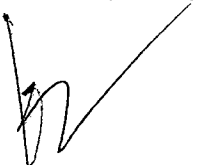
6. To grant the cost of this Original Application.

6. Respondents have contested the O.A. According to them, the appointment of the private respondents had been issued based on the seniority list prevalent at the relevant point of time (as on 31-10-1998) in which the qualifications of the applicants were reflected as less than the minimum qualifications meant for the post of Helper. Para 4 of the reply refers. The applicants came to acquire the requisite qualifications after the year 2000 and thereafter, in the revised seniority list published in March, 2009, their names have been reflected with their qualifications obtained by them. Thus, their cases would be considered for the future appointment.

7. The applicants have filed their rejoinder in which they had reiterated the contentions as in the OA.

8. There had been no reply from the private respondents who had been issued with the notice by the Tribunal. As such, they have to be set ex parte.

9. Counsel for the applicants submitted that the respondents ought to have updated the seniority list just before considering the appointment by way of absorption of the temporary status casual labourers and then only they should have prepared the panel for appointment. They had,



without updating the same, made selection to the post of Helper, vide Annexure A-7 to A-9. Thus, though the applicants are admittedly senior and though at the material point of time the applicants had possessed the minimum qualifications, their names were omitted. There had been no response to the representation immediately filed by them vide Annexure A-10. The two decisions of the Tribunal would go in support of the case of the applicants as the applicants are similarly situated as those in the other two O.As.

10. Counsel for the respondents submitted that the seniority list of 31-10-1998 was the basis for ascertaining the eligibility of temporary status employees for absorption as Helpers. As in the said list the applicants' qualifications were found to be less than the minimum, they had been left out.

11. Arguments were heard and documents perused. The fact of the applicants being senior in the list of temporary status casual labourers is not in dispute. Nor is there any dispute about the qualifications obtained by the applicants in 2000. The applicants had been vigilant in making representation to the respondents as early as in June, 2008 with a few months of their coming to know about their supersession. There had been no response to the same. Similarly situated individuals who approached the Tribunal could succeed in their claim as could be seen from Annexure

A-12 and A-13.



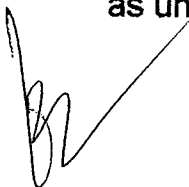
12. Para 4 to 9 of the order vide Annexure A-13 order dated 3rd September, 2010 in OA No.733 of 2009 reads as under :-

"4. The official respondents 2 to 4 contested the O.A. It was stated on their behalf that as per the seniority list dated 31.10.1998 maintained by the department upto 17.11.2009, the applicant stands at serial No. 18. But he did not have the required educational qualification of a pass in the IV standard. Hence his juniors having the required educational qualification and experience as per Recruitment Rules were appointed to the post of Helpers. Now the seniority list has been revised considering the educational qualification and experience subsequently acquired by the casual labourers and is published vide F.No.19/6/2000-Ind dated 22.02.2010 wherein the applicant stands at Serial No. 8. Though the applicant is senior as per the seniority list, he was not having the required educational qualifications as per the Recruitment Rules at the time of finalisation of the seniority list dated 31.10.1998. The casual labourers are not promoted to the post of Helper as averred by the applicant but the casual labourers with temporary status are directly absorbed to the post of Helper as per the Recruitment Rules. The department has been revising the seniority list of casual labourers periodically. The seniority list dated 22.02.2010 will be considered for future appointment of temporary status casual labourers as per the Recruitment Rules on the post of Helper. In the light of the facts and circumstances above, the O.A. is bereft of any merit and deserves to be dismissed.

5. In the rejoinder to the reply of the respondents, the applicant submits that the reply statement does not disclose any material to deprive the superior claim of the applicant over the contesting respondents for absorption as Helper.

6. Arguments were heard and documents perused.

7. The relevant part of Recruitment Rules pertaining to Helper (Fiber Factory) / Helper 'DCP' (Cair) Unit is reproduced as under :

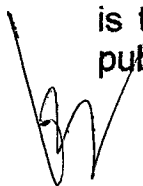


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8	Educational and other qualifications prescribed for direct recruits	1. A pass in IV th standard. 2. Minimum of 5 (five) years experience as a worker in Coir Fibre Factories under Department of Industries.
9	Whether age and educational qualifications prescribed for direct recruits will apply in the case of promotees.	Not Applicable.
10	Period of probation	2 (two) years.
11	Method of recruitment whether by direct recruitment or by promotion or by deputation / transfer and percentage of vacancies to be filled by various methods.	By absorption of daily rated workers/ workers having temporary status in the Coir Fibre Factories as per instructions/ orders issued by the Government of India from time to time failing which by direct recruitment.

As per the recruitment rules, a daily rated worker having temporary status in the Coir Fibre Factories and have a pass in IV standard can be absorbed as Helper. When the seniority list was finalised on 31.10.1998, the applicant was not having the educational qualification of IV standard pass. However, he acquired the educational qualification stipulated for absorption as helper in the Recruitment Rules in the year 2000. The contesting juniors were promoted in the year 2008 on the basis of the seniority list of on 31.10.1998. When the juniors were absorbed as Helper, the applicant was having the required educational qualification for absorption as Helper.

8. The fact that the applicant is senior to the respondents No. 5 to 8 who have been absorbed as Helpers in the year 2008, is not disputed. At the time of absorption of his juniors, the applicant was having the necessary educational qualification is also not disputed. The short question to be decided in this case is whether the applicant should be educationally qualified at the time of finalisation of the seniority list or at the time of absorption of his juniors as Helpers. There is a long gap of ten years between finalisation of the seniority list on 31.10.1998 and absorption of juniors of the applicant as Helper as per order dated 31.10.2008. During this gap, the applicant had acquired the necessary educational qualification and was eligible for absorption as Helper alongwith his juniors. The Recruitment Rules do not provide that the educational qualification for absorption of Helper should have been acquired before the date of finalisation of seniority list. A plain reading of the Recruitment Rules would mean that anyone who is qualified at the time of absorption as per the Recruitment Rules can be considered for absorption as Helper. In the normal course, seniority list is to be published every year. Had the seniority list been published every year, the applicant would have been in the



seniority list for consideration for absorption as Helper in the year 2008. As there was no revision of seniority list during the long gap of ten years, the official respondents should have revised the seniority list in the year 2008 before absorbing casual labourers with temporary status as Helper. It is quite clear that the respondents are going by the seniority of the casual labourers with necessary qualification for absorption as Helper. The applicant is senior to the contesting respondents and was eligible educationally too ever since the year 2000. This aspect has been ignored by them resulting in hostile discrimination. The representation of the applicant is still pending with the respondents. They have not cared to redress the legitimate grievance of the applicant. In O.A. No. 460 of 2009, **K. Moosa vs. Union of India & 18 Others**, decided on 14th June, 2010, which is identical to the present O.A., this Tribunal held as under :

"8 In this view of the matter, I declare that the applicant possesses the educational qualification of IV standard w.e.f the date of passing the examination held in the academic year 1998-99 and hence he is entitled to be appointed to the post of Helper in preference to his juniors who are appointed thereafter. Accordingly, I direct the official respondents 1 to 6 to consider the applicant for promotion to the post of Helper from the date on which his immediate junior was promoted after the date of the applicant passing the IV standard examination with all consequential benefits. This shall be done within two months from the date of receipt of a copy of this order. "

9. In the light of the above, we are of the view that it is enough if the applicant is educationally qualified at the time of absorption, as helper and, therefore, the O.A. deserves to be allowed. Accordingly, it is ordered as under :

The Official respondents 1 to 4 are directed to consider the applicant for absorption to the post of Helper from the date on which his immediate junior was absorbed with all consequential benefits within a period of two months from the date of receipt of a copy of this order. No order as to costs."

13. The above case fully covers the case of the applicants herein as well. The admitted fact being that the applicants are seniors in the grade of Temporary Status Casual Labourers and they having possessed at the material point of time the requisite qualifications for absorption as Helpers,



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failure to consider the same on the ground that the seniority list prepared a decade ago did not reflect their qualifications cannot be a justification in their non consideration.

14. In **Bal Kishan v. Delhi Admn., 1989 Supp (2) SCC 351** the Apex Court has held as under :-

9. In service, there could be only one norm for confirmation or promotion of persons belonging to the same cadre. No junior shall be confirmed or promoted without considering the case of his senior. Any deviation from this principle will have demoralising effect in service apart from being contrary to Article 16(1) of the Constitution.

15. The decisions cited by the applicants vide Annexure A-12 and A-13 of a Coordinate Bench/Division Bench, as laid down in the case of **Sub-Inspector Rooplal v. Lt. Governor, (2000) 1 SCC 644**, the decision of Division Bench has to be followed, unless for valid reasons if a different view is to be held, the matter is referred to a Larger Bench. This Bench fully endorses the decision of the Division Bench and Coordinate Bench referred to above.

16. In view of the above, the OA is allowed. It is declared that the applicants are entitled to be considered for absorption as Helper on the basis of their seniority and as such, their case shall be considered and on their having been found suitable for the same, due orders of absorption be passed. Their seniority shall be above the juniors i.e. the private respondents. In case of non availability of adequate number of posts of Helpers to accommodate those juniors who were absorbed prior to the applicants, it is for the respondents to adjust such juniors by creating



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supernumerary posts in case the respondents have decided not to revert them. Should the respondents decide to revert such individuals, the same shall be by following the principles of natural justice by putting them to notice and obtaining objections, if any.

17. This order shall be complied with, within a period of four months from the date of receipt of certified copy of this order.

18. No costs.

(Dated this the 7th day of February 2012)



Dr.K.B.S.RAJAN
JUDICIAL MEMBER

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