

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 248
T. A. No.

199 90

DATE OF DECISION 11.4.91

D. Chandran _____ Applicant (s)

Mr. M R Rajendran Nair _____ Advocate for the Applicant (s)

Versus

Union of India represented by Respondent (s)
Its Secretary Govt., Ministry of
Communications, New Delhi and others

Mr. N. N. Sugunapalan, SCGSC Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. N. V. KRISHNAN, ADMINISTRATIVE MEMBER

The Hon'ble Mr. N. DHARMADAN, 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

MR. N. DHARMADAN, JUDICIAL MEMBER

The applicant is aggrieved by Annexure-I order issued by the Divisional Engineer (Admn), Telecom District, Trivandrum rejecting his request for selection as a regular driver. It reads as follows:

"With reference to your representation dated 17.3.90 you are informed that you have not been selected for the post of Driver by the DPC against the vacancies notified for the recruitment of Drivers (outside quota) 1986.

As regards the 1988 recruitment, the age limit specified for outside quota was 28 years as on 1.7.1988. Your date of birth being 3.6.1960, you are overaged for consideration. Though your case has been referred to the Department of Telecom for age relaxation, this was not agreed to in your case. Hence you were not called for the test held on 15.3.90 for the recruitment of Driver against 1988 outside quota notified."

2. According to the applicant he commenced his service as casual mazdoor in January, 1984 under the Assistant Engineer, office of the District Manager (Telephones), Trivandrum. He continued in that post and on 31.3.89, ~~he~~ has completed a period of 1851 days. He submitted that he is qualified for the post of driver and that he satisfies all the requirement for the same. In 1986 his case was considered for regular appointment but he could only be placed in the second position in the selection list. Shri Karthikeyan Nair, who is not a party in this case, has been assigned at rank No. 1. But he was overaged and he cannot be appointed without relaxation of the upper age limit. Normally, the applicant, being the next man fully qualified, ought to have been selected and appointed. But the respondent did not do the same. The District Manager Telecom, Trivandrum recommended the selection of Shri Karthikeyan Nair in relaxation of the recruitment rules as per Annexure R-3 which was accepted by Annexure-A.

"I am directed to refer to your letter No. ST/1/1/VI/47 dated 1.1.87 on the subject mentioned above and to convey the approval of Telecom. Board ~~effor~~ relaxation of age limit as laid down in Recruitment Rules for Shri M. Karthikeyan Nair daily wages driver of your circle in order to enable you to consider his case for regularisation as Driver."

3. Subsequently when the applicant knew about the appointment of Shri Nair after giving relaxation of the recruitment rules, he requested to grant him similar relaxation of the rules and appoint him as a regular driver because he was overaged in the next selection. This has been considered and rejected by the impugned order in which it has been specifically stated that the date of birth of the applicant being 3.6.60, he is overaged for consideration as on 1.7.88. This order is illegal and discriminatory. It is also violative of Article 14 and 16 of the Constitution of India.

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4. The applicant filed this application with a specific contention that if the respondents have considered his case in the 1986 selection when he got second rank in the selection, he should have been appointed in a regular post in preference to Shri Karthikeyan Nair because he was the next person to be selected and appointed in the post. But the respondents have not chosen to select the applicant even though he was fully qualified in the selection. There was no selection in 1987 and 1988.⁵ In 1988 selection the applicant's case was turned down on the ground of overage. The applicant has been deprived of his chance of regular appointment because of the delay and default of the respondents. The applicant happened to be overaged in 1988 and he was not considered for the regular selection as driver.

5. In this connection it is pertinent to read Annexure R-5 recommendation given by the Telecom District Manager, Trivandrum for getting age relaxation for the applicant:

"This is to bring your kind attention a case of recruitment of casual mazdoors for the post of Driver in this Department. Shri D. Chandran is a casual mazdoor. As he was having valid driving licence, he was engaged as casual driver as per the departmental instructions. We have carried out recruitment for regular drivers in the year 1986 and at that time, Shri Chandran was an eligible candidate. However, during the test, he got the 2nd rank. As there was only one vacancy, he could not be absorbed as regular driver at that time."

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I feel that this is a genuine case where we should give some relaxation in the age limit for recruitment as regular driver. My proposal is that the number of days he has worked as casual driver may be taken for relaxation of age for recruitment of driver. This is an analogy with the provisions that for Group 'D' recruitment, we give relaxation for the number of days a person has worked as casual mazdoor. I request you to kindly take up this matter and issue approval for giving age relaxation to Shri Chandran and considering him eligible for recruitment as regular driver in this Department."

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6. From these observations it can be seen that the applicant is also a person who deserves to be considered even in 1986 itself as an efficient driver. In this view of the matter, we are of the opinion that the applicant has been denied the opportunity of being selected as driver for no fault of him. The applicant is now working as a driver but he is debarred from getting selection as a regular driver on the ground that he is overaged and the statements in Annexure R-2 letter. Having regard to the facts and circumstances of this case we are of the view that the letter Annexure R-2 cannot stand in the way of the applicant in getting selection and appointment as a regular driver because he was fully qualified for getting selected in 1986. But the respondents wanted to appoint Shri Karthikeyan Nair overlooking the claims of the applicant. In 1987 there was no selection. If the respondents conducted selection in 1987 the applicant would have been qualified. But when they held selection in 1988 the applicant became overaged and ^{he was 41} deprived of getting selection.

7. We are also satisfied that there is discriminatory treatment so far as the applicant is concerned. If the respondents are prepared to appoint Shri Karthikeyan Nair in 1986 in spite of the fact that he is overaged after relaxation of qualification the applicant now entitled to the same treatment. When the respondents found that the applicant is overaged in 1988 selection by less than one month. The failure of the respondents to give the same treatment to the applicant which they had given to Sri Karthikeyan Nair persuades us to interfere in the matter and issue an order as prayed for in para 1(c) of the application which reads as follows:

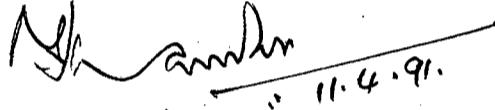
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"Direct the respondent to grant the applicant pay in the scale as applicable to drivers with effect from the date on which he was working as casual driver with future increments."

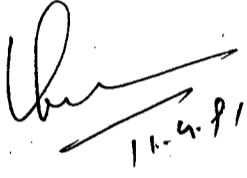
8. Taking into consideration the facts and circumstances in this case we are satisfied that justice will be met in this case if we direct respondents 2 & 3 to regularise the applicant, in view of his selection in 1986 as a regular driver in Group 'C' post, in the next arising vacancy as if he has been ^{selected for} appointed as a regular driver in the 1988 selection notwithstanding the R2 letter. 4

9. In the result this application is allowed. There will be no order as to costs.


(N. DHARMADAN)

JUDICIAL MEMBER

11.4.91


(N. V. KRISHNAN)

ADMINISTRATIVE MEMBER

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