

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.251/2001.

Thursday this the 2nd day of January 2003.

CORAM:

HON'BLE MR.G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER
HON'BLE MR.K.V.SACHIDANANDAN, JUDICIAL MEMBER

P.L.Jose II,
Driver, Office of the Sub Divisional Engineer,
(Telecom) Kodungalloor. Applicant

(By Advocate Shri Sasidharan Chempazhanthiyil)

Vs.

1. Sub Divisional Engineer,
Telecom, Bharat Sanchar Nigam Ltd.,
Kodungalloor.
2. General Manager, Telecom,
Bharat Sanchar Nigam Ltd., Thrissur.
3. Chief General Manager,
Telecom circle, Bharat Sanchar Nigam Ltd.,
Thiruvananthapuram.
- 4.. Union of India represented by
its Secretary,
Ministry of Communications,
New Delhi.
5. Bharat Sanchar Nigam Ltd., rep.by
its Chairman, New Delhi. Respondents
(By Advocate Shri C.Rajendran, SCGSC)
The application having been heard on 2nd January
2003, the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR.G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

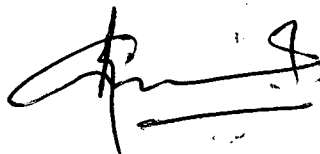
The applicant filed this O.A. seeking the following
reliefs:

1. Declare that the applicant is entitled to be paid the salary of Driver as appropriate to the scale of pay of Drivers and direct the respondents to regulate his salary accordingly with effect from the date of issue of Annexure A6, with consequential benefits.
2. Direct the 2nd respondent to consider the applicant against a departmental post of Drivers for regularisation.
3. Direct the 2nd respondent to make recruitment to the departmental quota of vacancies of Drivers for making selection and appointment against the direct recruitment quota.



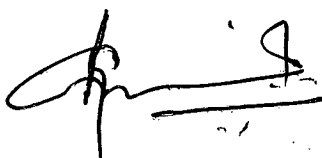
4. Any other further relief or order as this Hon'ble Tribunal may deem fit and proper to meet the ends of justice.
5. Award the cost of these proceedings."

2. According to the averment of the applicant in the O.A. he was recruited as Casual Mazdoor in 1986 and while working so, he was engaged as a Casual Driver from 1.11.1990. He was made as a regular mazdoor (Group D) on 1.4.1995 and was selected to work as a Driver from 1998 onwards. He filed O.A.1032/91 seeking consideration for regular appointment as a Driver which was disposed of by this Tribunal by A-1 order dated 30.3.1993. He claimed that even though there was a direction to the respondents to consider him for appointment as a Driver in the next arising vacancy no such consideration had been extended to him when vacancy arose in 1994 and 1995. By A-2 order No.E-7/DET-CRN/57 dated 21.9.1998 the applicant was deputed to work as a Casual Driver under the control of the first respondent. By A-4 order No.E-7/DET-CRN/85 dated 20.10.1998 issued by the Divisional Engineer, Telecom, Kodungaloor, the deputation was extended for a further period of 30 days w.e.f.22.10.1998. By A-6 communication No.STA/217-2/107 dated 26.10.1998 he was selected for empanelment to work as Driver by the 2nd respondent. By A-7 order No.STA/217-2/95/112 dated 6.11.1998, he was allotted to the Sub Division under the first respondent by the 2nd respondent and since then he had been working as Driver under the 1st respondent continuously and without interruption. He was running a Tata Sumo vehicle No.KL8-L7934. His grievance was that he had not been paid the salary appropriate to the post of Driver but was granted a sum of Rs.4/- as honorarium in addition to his pay as a Group 'D', which payment had also not been paid to him for a number of months. He submitted that he had sent a number of



representations. A-8 was one of the said representation sent to the 3rd respondent and filed before the 1st respondent on 25.5.2000. No action had been taken on his representations by the respondents. He referred to A9 communication of the Director General dated 10.9.1991 and the Department of Personnel and Training letter dated 16.7.1990 respectively and submitted that he had not been considered to be regularised as per the said letters. The respondents notified 4 posts of Drivers for outsider/open recruitment in the year 2000. But they did not initiate any action to fill up the 4 posts representing 50% of departmental quota. Relying on A-9, it was submitted that it was necessary that the departmental posts were also filled up first and if sufficient number of qualified departmental candidates were not available, the said vacancies could be carried over to the outsider quota and hence, only after conducting departmental selection, outsider recruitment should be made. The respondents without initiating action for filling up departmental vacancies notified and conducted a written test in January, 2001 for outsider quota, which was illegal. The applicant claimed that he was entitled to be considered for one of the 4 posts of Drivers earmarked for departmental candidates and alleged that if the respondents would go ahead to the outsider direct recruitment without making recruitment to the departmental quota, anomalies in seniority would be created and therefore, the applicant filed this O.A. seeking the above reliefs.

3. The respondents filed a reply statement resisting the claim of the applicant. It was submitted that as per the existing rules, the applicant when worked for short term Driver

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duty, was eligible for Rs.4/- per day as honorarium in addition to his normal pay and allowances. The post of Driver was a Group 'C' post and a Group 'D' when engaged for this work on his own volition was paid Rs.4/- as honorarium as per standing instructions. It was submitted that during 94-95, there was no recruitment for Drivers. During 1997, recruitment for Drivers was carried out for the vacancies of Departmental quota and outsider quota. Even though the applicant had applied for both departmental quota and outsider quota, his departmental quota application was rejected as he was not having 3 years regular service in the department and the outsider quota application was rejected as the application was belated. During 2000 again recruitment of Drivers against 4 outsider vacancies were carried out as a onetime measure after giving wide publicity through News Papers, Radio and Employment news. Altogether 292 applications were received and Shri P.L.Jose-II--the applicant was also a candidate. However, his application was rejected as he was not having 1 year Heavy Driving experience which was an eligibility condition for recruitment. 160 applicants were called for written test, out of which, 25 were called for practical test, 23 for interview and finally selected 4 candidates. One of the selected candidates was a casual Driver in the department. Out of the persons who were selected as Casual Drivers as per A-6, the applicant was positioned as second. It was submitted that the Honorarium of Rs.4/- per day was sanctioned on his request, recommended by the concerned controlling officer. The applicant was not eligible for the salary of Driver. They admitted that no recruitment was done for departmental quota of Driver vacancies.



The representation said to have been sent to the 3rd respondent was not traceable in the office of the respondents, but A8 in the O.A. would be taken as the formal representation and steps would be taken to have the same disposed of.

4. The applicant filed a rejoinder and the respondents filed additional reply statement.

5. Heard the learned counsel for the parties. Learned counsel for the applicant took us through the factual aspects as contained in the O.A. and submitted that the applicant had two grievances. One was that even though he was continuously working from 1998 as Driver, he was not being paid Driver's salary and was being paid Rs.4/- per day as honorarium which was also not being paid regularly. He cited the order of this Tribunal dated 22.6.98 in O.A.1225/97 and submitted that the applicant in this O.A. was similarly situated like the applicant in O.A.1225/97 and was entitled for the regular pay and allowances of the post of Driver from the day he has started to work as Driver. He also submitted that this Order of the Tribunal was taken up by the department before the Hon'ble High Court of Kerala in O.P.22428/98 and the Hon'ble High Court dismissed the O.P. He further submitted that the 2nd grievance of the applicant was that the respondents without conducting departmental selection for the post of Driver against the 50% earmarked quota for departmental candidates, conducted selection from outsiders and that the department was also making a move to effect Rule 38 transfer against the departmental quota vacancies. It was submitted that in the light of the averments of the respondents in the reply statement where they had agreed to consider his

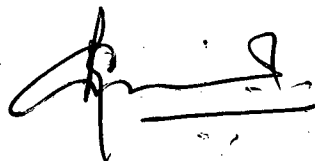


representation as regards his claim for the scale of pay of Drivers he may be permitted to submit a supplemental representation to A8 representation so that the department could consider the same also and consider the claim of the applicant keeping in view of the order of this Tribunal in O.A.1225/97 as confirmed by the Hon'ble High Court of Kerala. Further, now, that in the further reply statement it was stated that the departmental vacancies were not going to be filled up by ordering the Rule 38 transfer and that Rule 38 transfer would be counted against Direct Recruitment and that therefore, he would be satisfied if a direction was given to the respondents to conduct departmental selection within a specified time, as decided by this Tribunal.

6. Learned counsel for the respondents took us through the reply statement and reiterated the points made therein.

7. We have given careful consideration to the submissions made by the learned counsel for the parties and the rival pleadings and also perused the documents brought on record.

8. The applicant is basically seeking redressal of two grievances. One that even though he had been working continuously as Driver under the 1st respondent, he was not being paid the pay scale of the Driver and (2) without conducting the departmental quota selection for filling up of the post of Driver, the Direct recruitment vacancies had been filled up. We find that the respondents had not denied the factual aspects

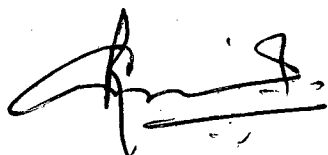
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either of these. They averred in the reply statement that they would consider the representation of the applicant and dispose of the same. As regards the departmental selection it had been submitted by them that they had not conducted the said selection.

9. We find from the order of this Tribunal in O.A.1225/97 that this Tribunal on the basis of the factual situation obtaining in that O.A. held as follows:

"We have heard learned counsel on either side. It is evident from A-2 order that from 24.1.91 onwards, the services of the applicant are being utilised entirely as Driver of Ashok Leyland Lorry KL I 1225. It is not as if on certain days while working as Peon he was put to drive a vehicle, paying him in addition to the pay of the post of Peon an honorarium of Rs.4/- per day. It is a case where the applicant had been regularly drafted to perform the duties of a Driver w.e.f.24.1.91 till date. It is not contended by the respondents that qualitatively or quantitatively, there is any difference in the work performed by a regular Driver and the applicant who is a regular mazdoor put to work a Driver. Therefore, the principle of equal pay for equal work comes into operation. Identical situation was considered by the Tribunal in a number of cases and it was held that when a person has been continuously put to work on a post, he should be paid the wages attached to that post despite the fact that he has not been appointed on that post by any order. In the case of Drivers under the respondents themselves, there has been similar instances. In O.A.92/94, such a decision was taken and it was followed in O.A.630/96. It was held that for the period for which a Group-D employee has performed the duties of the post of a Driver, pay equivalent to that of the post of Driver should be paid to him. We do not find any reason to take a different view in this case. Therefore, we dispose of the application with the following directions:

- a) Respondents shall pay to the applicant the difference between the pay and allowances of the post of Driver and what has already been paid to him as pay on the post of Group-D and the honorarium for the period of three years preceding the date of filing of the application, within a period of one month from the date of receipt of a copy of this order;
- b) Regarding the applicant's claim in A-9 representation for regularisation on the post of



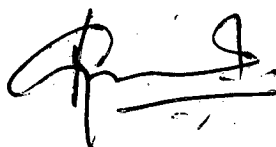
Driver, the respondents shall consider his case in accordance with rules and instructions on the subject, keeping in view the decision in the case of Madhusoodanan and Mohan Das if they were identically situated as the applicant and give the applicant an appropriate order within a period of two months from the date of receipt of a copy of this order No order as to costs".

10. Hon'ble High Court of Kerala in O.P.No.22428/1998 against the above order filed by the respondents held as follows:

It is submitted that subject to the order in the writ petition, the order was implemented. He was paid the pay difference for three years as directed and his representation for regularisation was dismissed. Remedy of the first respondent against the rejection of his representation lies elsewhere. Merely because difference in pay was paid as directed, the petitioners are not estopped from filing appeal. But in this case, it is evident that the applicant had required driving licence for driving both light and heavy motor vehicle and he was driving heavy vehicles from 1986 onwards. Annexure A2 issued clearly shows that he was transferred as a Regular Driver and he was continuing the driving of the vehicles. Wage Slip, Annexure A6 and A7 show that on all days he was paid honorarium of Rs.4/- which establish that his work as Driver was continuous. It is true that for regularisation under the cadre of Driver, one has to follow the procedures. He was once issued an offer Ext.P6. It is for him to pass test for regularisation. It is true that merely because he was working like a Regular Driver until he is appointed as Regular Driver, he cannot be treated as Regular Driver, he cannot be treated as Regular Driver, but he is entitled to same salary as regular Driver as he was asked to do the work as Driver for years together. On the basis of the facts of the case, it cannot be stated that direction of the Tribunal to pay same remuneration equal to the pay scale of Driver (from the date of Annexure A2 to the date of application) and direction to dispose of his representation are illegal or prima facie wrong warranting interference by this court under Article 227 of the Constitution. Findings of the Tribunal are not perverse and it is also not patently erroneous in law also.

Hence we dismiss the original petition."

10. Thus what is required to be verified in this O.A. is whether the applicant had been continuously working as Driver from 6.11.98 onwards when A-7 was issued and the applicant was posted under the first respondent. This is a factual aspect which has to be verified by the respondents. In this view of the

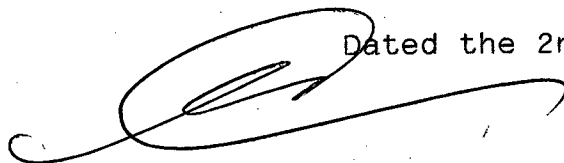


matter we find that the submissions made by the learned counsel for the applicant seeking permission for filing a supplemental representation to A8 is reasonable as the respondents had themselves agreed that they would consider A-8. Accordingly we direct the respondents to consider A8 along with the supplemental representation to be submitted by the applicant within a period of three weeks from today and if on consideration the respondents find that the applicant had been working continuously as Driver in any spell for a period of 30 days at a stretch, he shall be paid the pay scale of the post of Driver for the said stretch of thirty days. If the spells are less than 30 days, then the respondents are free to make payment @ Rs.4/- per day for every day that he has worked as Driver.

11. As there is no dispute that according to the Recruitment Rules, 50% of the vacancies are to be filled up by the departmental candidates and 50% of the vacancies are to be filled by Direct recruitment and the respondents admittedly had conducted selection for filling up of four vacancies by Direct Recruitment they ought to conduct selection for the 4 departmental vacancies also. This shall be done by the respondents within a period of three months from the date of receipt of a copy of this order.

12. In the result, the application is disposed of with the above directions leaving the parties to bear their respective costs.

Dated the 2nd January, 2003.



K.V. SACHIDANANDAN
JUDICIAL MEMBER



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER