

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

DATE : 26.2.1990

PRESENT

HON'BLE SHRI S. P. MUKERJI, VICE CHAIRMAN

&

HON'BLE SHRI N. DHARMADAN, JUDICIAL MEMBER

O. A. 254/89

1. Jose Chirayath L.

2. Haridas and

3. A. D. Thomas

Applicants

Vs.

1. Union of India represented by
Secretary to Government
Ministry of Communications,
New Delhi

2. The Director General of Post Offices,
New Delhi

3. Post Master General, Trivandrum

4. Senior Supdt., R.M.S. Ernakulam
Division, Cochin-11 and

5. The Sub Division Officer, R.M.S.
Ernakulam Division, Trichur

Respondents

M/s. M. C. Cherian,
Saramma Cherian and
Alexander Joseph

Counsel for the
applicants

Mr. K. Karthikeya Panicker, ACGSC

Counsel for the
respondents

JUDGMENT

HON'BLE SHRI N. DHARMADAN, JUDICIAL MEMBER

When this case was taken up for hearing counsels appearing on both sides agreed that this Tribunal has already considered the matter involved in this case in O.A. 126/89 and they submitted that this case also can be disposed of with same directions which we have issued in the above case.

2. Hence, we follow the above judgment and dispose of the case with the same directions because the facts are identical. Accordingly, we direct the first respondent to consider the matter afresh in the light of the observation contained in the judgment in O.A. 126/89, a copy of the judgment is attached herewith for easy reference, and evolve a scheme which protects also the interest of the casual labourers like the applicant who do not stand to benefit by the Annexure-III order, within a period of three months from the date of receipt of this order and also grant its benefits to the applicants without delay. This application is disposed of with the above directions.

3. There will be no order as to costs.

(N. Dharmadan) *ab*
Judicial Member

(S. P. Mukerji) | |
Vice Chairman

knn

Central Administrative Tribunal
Ernakulam Bench

Date of decision: 18.1.90

Present

Hon'ble Shri N.V. Krishnan, Administrative Member

And

Hon'ble Shri N. Dharamadan, Judicial Member

Original Application No.126/89

1. P. Janu
2. M.N. Usha
3. VG Vikraman
4. K.B. Balan
5. KB Shaji
6. K.P. Vasu Pillai
7. Komalam
8. P.B. Raveendran
9. K. Saseendran
10. M.K. Ramachandran

Applicants

Vs.

1. Union of India, rep. by
Secretary to Govt., of
Ministry of Communications,
New Delhi.
2. Director General of Post Offices,
New Delhi.
3. Post Master General, Trivandrum.
4. Senior Superintendent,
RMS, E.K. Division, Cochin-11.
5. Head Record Officer,
RMS, EK Division, Ernakulam.

Respondents

M/s MC Cherian, Saramma Cherian and : Counsel for
TA Rajan Applicants

Mr. K. Karthikeya Panicker, ACGSC : Counsel for
Respondents.

O R D E R

Shri N.V. Krishnan, Administrative Member

The applicants are casual labourers in the Postal

Department awaiting regular absorption as Grade 'D'

employees in pursuance of the policy of the Respondent-2 (Union of India) to gradually absorb all casual labourers as directed by the Supreme Court in various cases. Their case is that their absorption to the cadre of Group 'D' is practically blocked by the scheme now evolved in the letter No. 17-141/88-EDC-Trg. dated 6.6.88 (Annexure-III) of the Director General of Post Offices (Respondent-2). Hence, they have filed this application.

2. Their grievance arises in the following circumstances:

2.1 It is an admitted fact that according to the Recruitment Rules, Group 'D' posts may be filled up from the following categories, the higher category getting a preference over the lower category:-

- (a) Non-test category
- (b) ED Employees
- (c) Casual Labourers
- (d) Part time casual Labourers

2.2 The Annexure-III letter itself states the problem which the instructions contained therein were meant to solve. The problem so stated is as follows:-

"Since the number of vacancies of Group 'D' is limited and the number of ED employees eligible for recruitment as Group 'D' is comparatively large, the casual labourers and part time casual labourers hardly get any chance of their being absorbed as Group 'D'. Thus majority of casual labourers with long service are left out without any prospect of their being absorbed in Group 'D' cadre."

2.3 To provide relief to the casual labourers facing

the problem mentioned in the previous para the following directions are given in Annexure-III:-

"It has been decided that casual labourers whether full time or part-time, who are willing to be appointed to ED vacancies may be given preference in the matter of recruitment to ED posts provided they fulfil all the conditions and have put in a minimum service of 1 year. For this purpose a service of 240 days in a year may be reckoned as one year's service. It should be ensured that nominations are called for from Employment Exchange to fill up the vacancies of casual labourers so that ultimately the casual labourers who are considered for ED vacancies have initially been sponsored by Employment Exchange."

2.4 These orders by themselves would not have created any hardship. The ^{real} hardship arises from two other factors which have to be taken into account.

The first is a direction issued by Respondent-3 (Postmaster General, Trivandrum) on 8.2.89 (Annexure-IV) in the context of the absorption of casual labourers as ED Agents. It states that those above the age of 30 years or 35 years belonging respectively to other communities or SC/ST, will not be eligible for appointment as ED agents. As the applicants are already overaged according to this stipulation they cannot opt to become ED Agents in the first instance.

The second obstacle in their way is that according to their application, while there is no

age limit for the direct absorpition of casual labourers to a regular Group 'D' post, ED employees cannot be promoted to regular Group 'D' posts if they are more than 35 years of age, which age has already been crossed by the applicants.

2.5 The applicants are unable to avail themselves of the concession to be appointed as ED employees because they are overaged. Therefore, they cannot hope to become ED employees first and then be absorbed as Group 'D' employees later. Even if it is assumed that the age limit is relaxed for appointment as ED employees, they will be disqualified to be appointed as Group 'D' employees, as there is an age bar in that regard also.

2.6 Even these disadvantages would not have mattered very much if they could still be employed directly as a Group 'D' employee in accordance with the Recruitment Rules. It is because of the fact that even this opportunity is blocked by the operation of Annexure-III order that the applicants have a legitimate grievance.

2.7 That opportunity is effectively blocked because -

(i) In accordance with the Recruitment Rules, the ED employees are given a preference over the casual labourers for absorption as Group 'D' employees;

(ii) By the special provision now made by para 4 of the Annexure-III order, ^{non-overaged} ~~casual labourers~~ can also become ED employees;

(iii) Therefore, a very large number of junior casual labourers will get absorbed as ED employees who will then swell the already large group of ED employees;

(iv) All of them will get a preferential right to be absorbed to Group 'D' posts over the applicants who are ^{overaged} ~~casual~~ casual labourers.

2.7 It is in this context that the applicants have prayed for the following reliefs:-

(i) Issue a direction that the applicants are entitled to be absorbed as regular Group 'D' employees under the Respondents, in preference to all others, after the absorption of all the eligible existing ED employees under the 5th respondent, as at present, even without being taken as ED employees prior to that.

(emphasis ours)

(ii) issue a direction to the respondents that no fresh ED employees shall be taken in such a way as to get any preferential claim for absorption as regular Group D employees, in preference to the applicants.

(iii) issue a direction that the non exercise of option given to casual labourers, as per Annexures III and IV, will not in any way curtail or stand in the way of the Applicants, in their right to get absorbed as regular Group D employees, and

(iv) declare that Annexures III and IV are illegal and inoperative in so far as ^{they} / curtail the right of the Applicants to get absorbed as regular Group D employees under the respondents, in preference to the fresh ED employees to be appointed under the 5th respondent, in addition to the presently existing 68 ED employees under the 5th respondent.

The point made is that unless the numbers of the ED employees who exist at present are frozen at that level for the purpose of promotion to Group D posts, the casual labourers will not get a chance to be appointed at all, because there will be a steady influx of ED employees from an additional source ie, casual labourers,

all of whom will enjoy preferential right over the applicants.

3. The Respondents have submitted in their reply that the allegations have no basis and the applicants are not entitled to any relief. It is only out of sheer compassion that the casual labourers have also been permitted to be absorbed to ED posts, in addition to being made eligible for direct employment to Group D posts. All eligible casual labourers can apply to be appointed to the ED posts. If some casual labourers are not eligible, as they do not satisfy some basic qualifications which are pre-requisite for eligibility, the orders at Annexure-III and IV cannot be blamed or challenged. It is also contended that, as at present, there are no vacancies in the Group D cadre and there are only 54 ED posts vacant which will be filled up on the basis of the Annexure-I and Annexure-IV orders, among other things.

4. We have perused the records and heard the counsel on both sides. We are of the view that the respondents do not seem to have appreciated the hardships suffered

overaged
by the applicants.

5. We, however, see considerable force in the grievance made out by the applicants. In this connection we would like to refer to the problem which according to Annexure-III letter dated 6.6.88 existed vide the portion extracted in para 2.2 above. The following propositions have been made therein:-

- i) Number of Group D vacancies is limited.
- ii) Recruitment rules give ED employees a preference over casual labourers
- iii) There are larger numbers of eligible ED employees than casual labourers.
- iv) Therefore, casual labourers (and part-time casual labourers who also sail in the same boat) hardly get any chance of being absorbed as Group D employees.

Thus the problem was to find a solution to item (iv) above.

6. Undoubtedly, the Annexure-III order has helped to ameliorate the hardships of a large number of casual labourers. But, unintentionally, it has dealt a severe blow to the applicants and dashed for ever their hopes

of being absorbed as Group D employees. It is in this respect that we are of the view that the solution arrived at in para 4 of Annexure-III has aggravated the problem of those casual labourers like the employees, who are overaged. For, this provision will result in inducting a further complement of ED employees, all of whom will take their places over the applicants in the order of preference mentioned in the Recruitment Rules. It is in this context that the prayers in the application, that the number of ED employees to whom the preference is given be frozen at the level reached when the Annexure-III order was issued become relevant.

7. We are, therefore, of the view that, unintentionally, the Annexure-III order has the effect of bringing to a grinding halt the process of direct absorption to Group D posts of casual labourers who cannot take advantage of the provisions of para 4 of that order. However, as at present, we are not persuaded to strike down either the Annexure-III or the Annexure-IV orders, for, we are of the view that some protection can be given to persons like the applicants also while extending benefits, as has been done in para 4

of Annexure III to the younger lot of casual labourers.

8 The applicants have already made one suggestion.

As no non-test category persons are said to exist, what has been suggested by them is that to begin with, only those ED employees who were in position as on the date of issue of Annexure III order be given the preference over the casual labourers and part time casual labourers for appointment to Group D posts. If all of them are so absorbed, the next lot of vacancies of Group D posts should be made available for regularisation of casual labourers and part-time casual labourers who were waiting for absorption as on the date of issue of that order.

9 It was also suggested during arguments that the Recruitment Rules could, alternately, be amended to provide for a reservation of a certain per-centage of Group D posts to be filled up by casual labourers/ part-time casual labourers not eligible to be appointed as ED Agents, instead of giving preference to ED employees for all posts.

10 We are of the view that some such alternative has to be considered and the interests of overaged casual labourers/ part-time casual labourers like the present applicants cannot altogether be ignored. Therefore,

: 11 :


though we are not inclined to grant, at present, any of the prayers made in this application, we direct the first and second respondents to consider the matter afresh in the light of the observations above and evolve a scheme which protects also the interests of casual labourers like the applicants, who do not stand to benefit by the Annexure-III order, within a period of three months from the date of receipt of this order and grant its benefits to the applicants without delay.

11. The application is dismissed with the above directions and there will be no order as to costs.

sd/-
(N. Dharmadan)
Judicial Member
18.1.90

sd/-
(N.V. Krishnan)
Administrative Member
18.1.90



TRUE COPY
Dated 29-1-90

Deputy Registrar

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2. Hence, we follow the above judgment and dispose of the case with the same directions because the facts are identical. Accordingly, we direct the first respondent to consider the matter afresh in the light of the observation contained in the judgment in O.A. 126/89, a copy of the judgment is attached herewith for easy reference, and evolve a scheme which protects also the interest of the casual labourers like the applicant who do not stand to benefit by the Annexure-III order, within a period of three months from the date of receipt of this order and also grant its benefits to the applicants without delay. This application is disposed of with the above directions.

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(N. Dharmadan)
Judicial Member

26.2.90.


(S. P. Mukerji)
Vice Chairman

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