CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH

O.A.No.262/92

Tuesday, this the 20th day of December, 1994.

CORAM:

HON'BLE MR JUSTICE CHETTUR SANKARAN NAIR, VICE CHAIRMAN

HON'BLE MR PV VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

NR Premkumar,
S/o SA Rajappan,
Illikkapadannayil House,
Thekkumbhagom,
Tripunithura. - Applicant

By Advocate Mr MR Rajendran Nair

Vs.

1. The General Manager,
Telecommunications,
Ernakulam.

2. The Sub Divisional Officer,
Telegraphs, Aluva.

3. Union of India represented by
Secretary to Government,
Ministry of Communications,
New Delhi. - Respondents

Advocate Shri S Parameswaran, Amicus Curiae.

(Common Order in OA No.1402/93 and connected cases)

O R D E R

CHETTUR SANKARAN NAIR (J), VICE CHAIRMAN

Applicants, erstwhile Casual Labourers in the Telecom Department, seek regularisation of their service. Some of them complain that persons with lesser length of service than them have been regularised, or redeployed, overlooking their claims.

2. The Telecom Department had been engaging casual employees for a good length of time. A decision is said to have been taken to dispense with that practice. Yet, casual employees continued to

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be engaged under different circumstances, and for different reasons. Senior counsel for respondents submits that casual employees will not be engaged hereafter as there will be no work for them. According to him, as at present there are about 6,000 casual employees in the queue waiting for absorption or work. In answer, applicants would submit that casual employees are still being engaged under different guises, and at times in a surreptitious manner. They submit further that directions issued earlier in OA 1027/91 and other cases by a Bench of this Tribunal laying down guidelines and evolving a scheme for engaging casual labourers, have not mitigated their problem, or eliminated unwholesome practices.

3. The main grievance brought into sharp focus by applicants is that there is arbitrariness in engaging casual labourers. They submit that no principle is followed in this matter. Counsel for applicants pray that a scheme may be framed by us.

4. We do not think that it is for us to frame schemes. The decision of the Supreme Court in J & K Public Service Commission vs. Dr Narinder Mohan & others etc, AIR 1994 SC 1808, persuades us to this view. A power in the nature of the power conferred under Article 142 of the Constitution can be exercised by the Supreme Court and the Supreme Court alone. Framing of a scheme by the Apex Court in exercise of that power cannot be precedent for a Court or Tribunal to resort to a like exercise. The Apex Court exercises an exclusive power in these realms, and the rule of precedent cannot operate where there is no jurisdiction.

5. It is another matter to issue anciliary or consequential directions related to the issue before the Tribunal for achieving the ends of justice, or enforcing the mandate of law. That is all that can be done and needs be done in these applications.

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6. The circumstances of the case warrant issuance of directions to enforce the mandates of Articles 14 and 16, and to interdict arbitrariness in the matter of engaging casual labourers. The course which we propose to adopt finds affirmation and support in Delhi Development Horticulture Employees' Union vs. Delhi Administration, AIR 1992 SC 789. In a similar situation, the Supreme Court observed:

> "..it is not possible to accede to the request of petitioners that respondents be directed to regularise them. The most that can be done for them is to direct respondent Delhi Administration to keep them on panel...give them a preference in employment whenever there occurs a vacancy.."
>
> (Emphasis supplied)

7. To ensure such preference and eschew arbitrary preference, we direct respondent department:

i. To maintain a panel of casual employees from which employees will be chosen for engagement;

ii. such panels will be drawn up on Sub Divisional basis, and those who had been engaged in the past as casual employees will be included in the panels;

iii. principles upon which ranking will be made in the panel will be decided upon by respondent department in an equitable and lawful manner;

iv. Sub Divisional Officers or the officers higher to them will notify the proposal to draw up panels by news paper publications by publishing notice in one issue each of 'Mathrubhumi', 'Malayala Manorama', 'Deshabhimani' and 'Kerala Kaumudi', so that those who claim empanelment will have notice of the proposal;

v. those desirous of empanelment should approach the Sub Divisional Officers under whom they had worked with proof of eligibility for inclusion in the panels, within reasonable time to be fixed by respondents, which shall in no event be less than 30 days from the date of publication of notice. Those who do not make claims as aforesaid cannot claim empanelment later; and

vi. the Sub Divisional Officers shall prepare panels showing names of casual employees in the order of preference, and shall cause those to be published on the notice boards of all the offices in the Sub Division. Copies will also be forwarded to the Employment Exchanges in whose jurisdiction the Sub Divisional Officer functions. Learned Government Pleader for the State, whom we have heard on notice, undertakes that such lists will be displayed on the notice boards of the Employment Exchanges.

8. We do not think it necessary to issue any other direction. If applicants or others similarly situated have any individual grievances regarding preferential treatment to others, or hostile treatment against themselves, it will be for them to raise their individual grievances before the appropriate forum. When a fact adjudication is called for, that can be made only on the basis of evidence. General or conditional directions cannot govern cases to be decided on facts.

9. We direct respondent department to draw up panels in the manner indicated in paragraph 7 of this order within four months of the last date for preferring claims pursuant to publication of notice in the four Dailies. Whenever there is need to engage casual employees in any Sub Division, such engagement will be made only

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from the panels, and in the order of priority reflected therein.

10. Applications are accordingly disposed of. Parties will suffer their costs.

Dated the 20th December, 1994.

PV VENKATAKRISHNAN
ADMINISTRATIVE MEMBER

CHETTUR SANKARAN NAIR (J)
VICE CHAIRMAN

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