

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 268/90
~~XXX~~ No.

199

DATE OF DECISION 4.4.1991

K.P.Aravindakshan _____ Applicant (s)

M/s.K.Rama Kumar & _____ Advocate for the Applicant (s)
V.R.Ramachandran Nair

Versus

Union of India represented by the _____ Respondent (s)
Secretary, Department of Posts and
Telecommunications, New Delhi and 3 others

Mr.T.P.M.Ibrahim Khan, ACGSC _____ Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. S.P.MUKERJI, VICE CHAIRMAN

The Hon'ble Mr. A.V.HARIDASAN, 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

(Hon'ble Shri S.P.Mukerji, Vice Chairman)

In this application dated 1.4.1990 the applicant who has been working as an Extra Departmental Delivery Agent (EDDA) Mulannur Branch Post Office on a provisional basis has prayed that the 4th respondent i.e., the Employment Officer, Shoranur be directed to sponsor his name for being considered for regular appointment to that post and also to direct respondents 1 to 3 to consider the applicant for regular appointment and allow him to continue in service. The brief facts of the case are as follows.

2. The applicant was working as a substitute intermittently in the Mulannur Branch Post Office between 17.3.84 and 31.12.1985. Later he was appointed on a provisional basis between 20.3.1986 and 3.8.86 and again from 29.10.86 to 25.4.88. When the regular incumbent left the post on 18.12.89 and it was known that he committed suicide, the applicant was

provisionally reappointed as EDDA from 19.12.89 to maintain delivery service and has been working in that capacity since then. By our interim orders dated 4.4.90 and 17.4.90 he has been allowed to continue in the post. When the respondents initiated action to fill up the post held by the applicant on a regular basis, the Town Employment Officer, Shoranur sent a list of 8 candidates in which the name of the applicant did not find a place. The applicant's contention is that he has studied upto S.S.L.C, is registered with the Employment Exchange since 1979, is below the age of 30 years, is a native of the locality where the Mulannur Post Office is situated, that he owns a house very near the Post Office and is thus eligible for regular appointment for the post of EDDA, Mulannur Sub Post Office. He is aggrieved by the fact that his name has not been sponsored by the 4th respondent and since he is working on a provisional basis, he has a priority right to be considered for regular appointment. Not sponsoring his name by the 4th respondent is violative of Articles 14, 16 and 21 of the Constitution. His further contention is that having completed more than 240 days of service, he is entitled to the benefits of Sections 25F and 25H of the Industrial Disputes Act. The respondents have stated that the provisional appointment of the applicant from 20.3.1986 as EDDA, Mulannur was terminated on 3.8.86. They have conceded that the applicant again worked in the same post from 29.10.1986 to 25.4.1988 and that the applicant has been working as EDDA, Mulannur Branch Post Office again on a provisional basis from 19.12.89. They have argued that in accordance with the DG,P&T's letter of 4.9.82 appointment of Extra Departmental Agents are to be made through the Employment Exchange and since the applicant's name was not sponsored by the Employment Exchange, the applicant cannot be considered for regular appointment and that past experience does not carry any weightage for selection to ED post. They have also cited the DG,P&T's letter dated 30.1.81 and the corrigendum dated 29.3.81 in accordance with which preference is to be given to the candidates who have got educational qualification of S.S.L.C for selection to the post of EDDA. According to them, since the applicant had only studied upto S.S.L.C and not passed S.S.L.C he apparently did not qualify for the post. They have stated further in the additional reply that the applicant has

been continuing in the post from 4.4.90 on the strength of the interim order till the case is finally disposed of and the services of the applicant in the post from 19.12.89 to 4.4.90 comes to only 107 days and as such the provisions of the Industrial Disputes Act cannot be invoked. He cannot be given the benefit of counting his service rendered on the basis of the interim order of the Tribunal for the purposes of the benefits of the Industrial Disputes Act.

3. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. We may ~~also~~ note that the argument of the respondents that since the applicant worked only for 107 days between 19.12.89 and 4.4.90 the benefits of the Industrial Disputes Act are not available to him, cannot be accepted by their own showing. The respondents have conceded that the provisional appointment of the applicant continued from 20.3.86 to 3.8.86 and thereafter the applicant again worked in the same post of EDDA, Mulannur from 29.10.86 to 25.4.88. He was again reinducted with effect from 19.12.89 and continued to hold the post on his own steam till 4.4.90. Thereafter he continued on the basis of the interim order of the Tribunal. Thus the applicant's continuous service for more than 240 days between 29.10.86 and 25.4.88 at least cannot be denied. On that basis alone he would be entitled to the benefits of the Industrial Disputes Act and the termination ^{of his service} from 26.4.88 itself becomes illegal. In any case, the break in his continuous service from 25.4.88 to 19.12.89 brought about by the respondents themselves cannot disentitle the applicant from the benefits of Chapter VA of the Industrial Disputes Act which he had earned by virtue of his continuous service from 29.10.86 to 25.4.88. Accordingly the applicant would be entitled at least as a retrenched industrial worker to preferential treatment for being considered for regular appointment to the post of EDDA, Mulannur. In the Cawnpore Tannery Ltd vs. S. Guha and others, AIR 1967 SC 667, the Supreme Court held that the principle of giving priority to retrenched worker if the employer has occasion to employ another hand was being recognised even before the introduction of Section

25H of the Industrial Disputes Act. The principle was regarded as of general application on the ground that it was based on considerations of fairplay and justice.

4. As regards his not being sponsored by the Employment Exchange, this Tribunal has been taking the view that working EDDAs should also be considered for regular appointment to the post held by them even though they are not sponsored by the Employment Exchange. This ^{approach} applies with added force to this case inasmuch as the applicant himself is registered with the Employment Exchange since 1979 and is educationally and otherwise fully qualified for the post of EDDA, Mulannur Sub Post Office. From the counter affidavit it appears that the applicant's name was not sponsored by the Employment Exchange perhaps ^{because} the preferential qualification of S.S.L.C(Passed) was not possessed by him. It may be indicated the minimum educational qualification for the post of EDDA is 8th Passed and accordingly his not passing the S.S.L.C examination cannot be a valid ground for not sponsoring his name especially when the respondents themselves have been engaging him in that post intermittently from 17.3.84 onwards. The nodal Department of Personnel in the O.M No.49014/4/77-Estt.(c) dated 10.10.79 extended the benefit of regularisation to casual employees who were engaged till 20th March, 1979 even otherwise than through the Employment Exchange. By a further O.M No.49014/18/84-Estt. (c) dated 7th May, 1985 it was decided by the same department as one time measure that casual workers recruited before 7th May, 1985 may be considered for regular appointment to Group 'D' posts even though they were recruited otherwise than through Employment Exchange. In Smt.Durga Bhowmick and others vs. Union of India and others, (1989)11 ATC 255 the Calcutta Bench of the Tribunal held that even a substitute P&T Extra Departmental Agent working for not less than 240 days per year is entitled to permanent absorption in future vacancies.

4. In the Dharward Distt.P.W.D Literate Daily Wage Employees Association & Ors. etc. vs. State of Karnataka and another, etc, 1990(1) SCALE 288, a Three Judge Bench of the Supreme Court presided over

by the Hon'ble Chief Justice surveyed eleven judgments of the Supreme Court on the question of regularisation of casual workers and observed as follows:-

"12. We have referred to several precedents - all rendered within the current decade - to emphasise upon the feature that equal pay for equal work and providing security for service by regularising casual employment within a reasonable period have been unanimously accepted by this Court as a constitutional goal to our socialistic polity. Article 141 of the Constitution provides how the decisions of this Court are to be treated and we do not think there is any need to remind the instrumentalities of the State - be it of the Centre or the State, or the public sector - that the Constitution-makers wanted them to be bound by what this Court said by way of interpreting the law."(emphasis added)

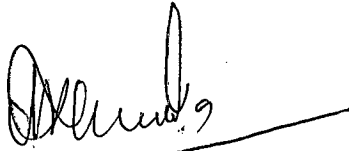
In K.C.Rajeevan and 15 others vs. State of Kerala and 2 others, (1991)1 SCC 31 the Supreme Court directed relaxation of ^{the} minimum educational qualifications prescribed for different posts in favour of daily rated workers who had been engaged for sufficiently long period to have practical experience to make up the short-fall in their educational qualifications. In the instant case even though the applicant fully qualifies ^{by} the educational qualification of 8th Standard fixed for EDDA, he falls short of the ^{preferential} educational qualification of S.S.L.C(Passed). That short-fall can be deemed to have been made up by virtue of the practical experience of EDDA's work which the applicant has accumulated since 1984.

5. In the conspectus of facts and circumstances of the case read with the various rulings of the Supreme Court we are convinced that the applicant is entitled to be considered for regular appointment to the post of EDDA, Mulannur in spite of his not being sponsored by the Employment Exchange and in spite of his not passing the S.S.L.C examination. He is educationally qualified to hold the post of EDDA and his past experience in the post and his entitlement to the benefits of Section 25H of the Industrial Disputes Act entitle ^{him} to preferential treatment for appointment to the aforesaid post of EDDA. Accordingly we allow the application with the direction to the respondents 1 to 3 to consider the applicant also for regular appointment with due regard to his past

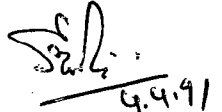
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experience and the benefits of Section 25H of the Industrial Disputes Act to which he is entitled . The applicant should be continued provisionally in his present post of EDDA, Mulannur till he is either replaced by a regularly appointed candidate or he himself is regularly appointed to the post. There will be no order as to costs.



(A.V. Haridasan)
Judicial Member



(S.P. Mukerji)
Vice Chairman

n.j.j