

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No.
XXXXXX

270 1990

DATE OF DECISION 10.9.1991

S.Sudheer Kumar _____ Applicant (s)

Mr. G.Sasidharan Chempazhanthiyil Advocate for the Applicant (s)

Versus

Sr. Supdt. of Post Offices (North) Respondent (s)
Trivandrum & 5 others

1. Mr. V.Krishnakumar (for R1-4) Advocate for the Respondent (s)
2. Mr. KRB Kaimal (for R.5)

CORAM:

The Hon'ble Mr. S.P.Mukerji - Vice Chairman

and

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? *no*
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. To be circulated to all Benches of the Tribunal? *no*

JUDGEMENT

(Mr.A.V.Haridasan, Judicial Member)

In this application under Section 19 of the Administrative Tribunals Act, the applicant has prayed that the appointment of the 5th respondent as Test Category Cleaner in MMS, Trivandrum by the impugned order at Annexure-III/ may be declared void, that the termination of his services on appointment of the 6th respondent may be declared illegal, that the appointment of the 6th respondent may be cancelled and that the first respondent may be directed to reinstate the applicant in service. The case of the applicant can be briefly stated as follows.

2. The applicant who has passed the SSLC Examination and is holder of a driving licence has been working in MMS, Trivandrum on a casual basis in a clear vacancy of a Cleaner from 1988 continuously. He made a representation on 30.1.1990 to the first respondent and another representation on 12.2.1990 to the second respondent to regularise him in service as a cleaner, as he had put in more than $1\frac{1}{2}$ years of continuous service as cleaner on a casual basis. While so, the first respondent appointed the 5th respondent who was working as EDMC, Venkode of the Trivandrum Postal Division as a cleaner in the MMS by the impugned order at Annexure-III. As the Mail Motor Service is a separate recruitment unit under the Manager, MMS, Ernakulam, the appointment of the 5th respondent who was working as EDMC in the Postal wing giving preference to him is illegal and unjustified. As the post of Cleaner in the MMS is in the Test Category Group 'D' which is of a semi-skilled nature requiring mechanical skill and proficiency in cleaning engine parts, the 5th respondent could not have been given any preference in the matter of appointment to that post. The Appointing Authority of Group 'D' post in MMS is the Manager, MMS, Ernakulam, the first respondent had no authority to appoint the 5th respondent as Cleaner in the MMS unit. Therefore, he made a representation on 25.2.1990 to the Chief Post Master General for a reconsideration of the question and for regularising

him in service in the remaining vacancy in the MMS, Trivandrum. While this representation was pending, the first respondent appointed the 6th respondent on compassionate ground in the remaining post of Cleaner, MMS by order dated 4.4.1990 terminating the uninterrupted and continuous service of the applicant lasting for about two years on 5.4.1990 by the impugned order at Annexure-VIII. As the Supreme Court has in Writ Petition No.373/86 in Daily rated Casual Labourers employed under P&T Department through Bharathiya Dak Tar Mazdoor Mech. Vs. Union of India and others, directed the 4th respondent to prepare a scheme for absorbing the casual labourers who have been continuously working for more than one year, the applicant who has worked as a casual Cleaner for about two years is entitled to be regularly absorbed. Therefore, the applicant prays that the appointment of the respondents 5 and 6 may be declared invalid, and that the respondents may be directed to reinstate him in service and to consider his case for regularisation. It has been averred that the termination of his service after continuous service for two years without complying the provisions of Section 25 F of the Industrial Disputes Act is illegal and unjustified.

3. The second respondent has in the reply statement contended that the applicant is only a substitute and not a casual labourer, that the applicant not being engaged as casual labourer through Employment Exchange

his representation could not be considered, that, as per the instructions regarding recruitment to the post of Group 'D' officials ED Agents of the Postal Division have preference even over casual labourers, that as the MMS has been merged with the Postal division from the year 1981 onwards, the case of the applicant that the MMS is a separate recruitment unit is not factually correct, that for Group 'D' posts in the Postal division office including MMS, the Divisional Superintendent is the Appointing Authority as per schedule-I Part-VII of the P&T Manual Vol .III, that the selection and appointment of the 5th respondent is perfectly in order, that as the 6th respondent was appointed on compassionate grounds the applicant cannot challenge his appointment, and that as the applicant was only a substitute, he is not entitled to any relief claimed in the application.

4. The 5th respondent also has filed a statement opposing the claim in the application and contending that the case of the applicant that MMS is a separate recruitment unit is not factually correct.

5. In the rejoinder filed by the applicant, he has refuted the averment in the reply statement filed by the second respondent that he was a substitute and not a casual labourer and has asserted that the production of the records maintained in the office would clearly show that the applicant was engaged only as a casual labourer and not as a substitute.

He has also averred that, as there was no ED Agent in MMS unit, the question of appointing a substitute do not arise.

6. We have heard the arguments of the counsel on either side and have also carefully gone through the documents produced.

7. The important question that has to be considered in this case is whether the appointment of the 5th respondent giving preference is in accordance with the Recruitment Rules. Annexure-IV is a copy of the DG, P&T's letter No.45/24/88 SPB-1 dated 17.5.1989.

It reads as follows:

"Sir,

I am directed to say that references have been received seeking clarification as to which class of workers should be treated as full time or part time casual labourers.

2. It is hereby clarified that all daily wages working in post offices or in the MMS offices or in Administrative officers or PSDs/MMS under different designations (mazdoor, Casual Labourer, outsider) are to be treated as Casual labourers. Those casual labourers who are engaged for a period of less than 8 hours a day should be described as part time casual labourers. All other designations should be discontinued.

3. Substitutes engaged against absentees should not be designated as casual labourers. For purposes of recruitment to Group D posts, substitutes should be considered only when casual labourers are not available. That is substitutes will rank last in priority, but will be above outsiders. In other words, the following priority should be observed.

Ar

- i. HTG Group D officials.
- ii. EDAs of the same division
- iii. Casual labourers (full time or part time)

For purpose of computation of eligible service, half of the service rendered as part time casual labourer should be taken into account. That is, if a part time casual labourer has served for 480 days in a period of 2 years he will be treated, for the purpose of recruitment, to have completed one year as of service as full time casual labourer).

- iv. EDAs of other divisions in the same region.
- v. Substitutes (not working in metropolitan cities.)
- vi. Direct recruits through employment exchange.

Note:-Substitutes working in Metropolitan cities will however, rank above No. (iv) in the list.

4. Please acknowledge receipt immediately."

If the applicant is a casual labourer as claimed by him, his position in regard to preference for recruitment to Group 'D' post would be below the EDAs of the same division. If he is not a casual labourer, then his order of preference would be below the casual labourers and EDAs of other divisions as per the terms of Annexure-IV letter. The applicant has averred in the application and in the rejoinder that, he was not a substitute and was engaged as a casual labourer and has asserted that the records in the office of the MMS, Trivandrum will establish his case. The respondents 1 to 4 did not produce any such records. It has also not been stated by the respondents, as whose substitute

the applicant was engaged. Therefore, we have to accept the case of the applicant that he was engaged as a casual labourer. The second respondent has in the applicant's reply statement contended that the representation could not be considered as he was not engaged through the Employment Exchange. It is averred in the application that the applicant had registered his name in the Employment Exchange and he has also given the registration number. Whether through Employment Exchange or not, the fact remains that the applicant was engaged as a casual labourer and has worked for about two years as casual cleaner. In terms of the judgement of the Supreme Court, copy of which is available at Annexure-VI, as, a casual labourer who has been in continuous service for more than a year, the applicant is entitled to be considered for regularisation in terms of the scheme, if any, drafted for absorption of casual labourers. The averment that the applicant was working in a post of cleaner on daily wages is not disputed. It is an such post that was filled by the appointment of the 5th respondent, and that the second post also has been filled by appointment of the 6th respondent. The 6th respondent was appointed on compassionate ground. Therefore, the applicant cannot challenge this appointment. Regarding the appointment of the 5th respondent the case of the applicant is that, he being an ED Agent prior to his appointment as cleaner in the MMS, M.

preference given to him for appointment in an entirely different recruitment unit is against the rules. It is stoutly contended on behalf of the respondents that the MMS is not a separate recruitment unit and that is under the Trivandrum Postal Division after ~~other~~ reorganisation of the MMS ~~in~~ in 1981. The question whether MMS is a separate recruitment unit and EO Agents of the Postal division are entitled to be given preference for appointment to the Group 'D' post in MMS was considered in OA 196/89 and OA 867/90 and in the judgement dated 11.2.1991 to which both of us were parties, it was held that the MMS is an independent recruitment unit, and that recruitment to Group D posts in MMS unit should be made in accordance with the Recruitment Rules applicable to that post without any preferential treatment to the EO Agents of the Postal division. In reaching that conclusion reference was made in the order to the clarification given on 16.2.1988 by the Post Master General, Kerala in documents marked as Exbt.A.4 in OA 196/89. Clarification given under the above document reads as follows:

"Sub:- Regorganisation of MMS -Staff matters.

Ref:- Your letter No. MMS/Decentralisation /102 dated 28.1.1982.

...

1. Whether the vacancies of any cadre in a year occurring through out the four MMS units as well as in Postal Dns. having jeeps, will be counted as a whole for the purpose of calculating 80% reservation quota to the Deptl. candidates especially in Drivers cadres, or each individual recruit unit will work out their vacancies separately.

Since Trivandrum Trichur and Calicut would be independent recruiting units, vacancies for each unit are to be worked out independently and separately and divided between departmental and outside quota Departmental candidates of one

will not be eligible for selection in another unit.

3. In the case of staff of MMS, the officials working in lower grades in MMS Ernakulam alone can appear for the test etc, for appointment against deptl. quota of vacancies of drivers arising in the postal divisions, all such eligible officials in the whole division and not the eligible officials actually working in MMS units only there, will be allowed to take the test etc.

5 a) It is presumed that each recruiting unit viz, SDI or SP or Manager, MMS will have a individual gradation list for the staff working in MMS under them.

Each MMS unit will be a separate recruiting unit and as such only those working in a particular MMS unit will be eligible for competing against deptl. quota in the cadre of drivers, etc. in that unit.

Each individual MMS unit should maintain its own gradation list as well as special rosters.

(emphasis added)

Referring to the above clarification it has been observed:

"From the above quotation it is crystal clear that each MMS unit decentralised to Trivandrum, Trichur and Calicut would still be independent recruiting units and will have nothing to do with the Postal Division to which they are attached. Each individual MMS unit would maintain its own gradation lists. It may be noted that from 1.10.81 the composite MMS unit under the Manager at Ernakulam was decentralised and placed under the administrative control of the Senior Supdt. of Post Offices of respective Postal Division but were not 'merged' or 'amalgamated' with the Postal Division. This conclusion is further buttressed by the direction of the DDG dated 26.8.87 at Ext.R-4(b) in the first case and Ext.A-5 in the second case.

The relevant part of the DDG's letter of 26.8.87 is quoted below:-

" The General Secretary of All India RMS and MMS Employees Union Class III under Item 4(c) of the Charger of Demands has requested

for absorption of casual workers in MMS and further brought to the notice of this office that there are hundreds of drivers, mechanics, cleaners working in various MMS units in the country for several years on daily wages and desired that they should be absorbed to kindly take immediate action to fill these vacant posts of MMS except Carpenter under your control, if not already done, and absorbed the casual workers, if any working in the unit against the post lying vacant arising out of promotion, retirement, death, resignation, dismissal/ removal or deputation provided those daily wages workers have come through Employment Exchange and duly selected by the Recruitment Board of the respective cadre and also after observing pre-appointment formalities and result intimated within two months time."

From the above it is evident that even after decentralisation of the MMS units were distinct from the Postal Division and the vacancies of Drivers, Cleaners, etc. were said to be filled up by the casual workers in the MMS units and not by the EDAs of the Postal Divisions. If the MMS units were part of the Postal Division, in accordance with the Recruitment Rules of the Postal Divisions, the casual workers could not have been directed to be absorbed against the vacancies of Drivers, Cleaners, etc. without first absorbing the 'Non-test Category' and the Extra Departmental Agents. The respondents-department in the counter affidavit in the first case have stated that the instructions at Annexure-II regarding priority to be given to Extra Departmental Agents over casual labourers are applicable to the vacancies of Postmen and not to the posts in the MMS units which are qualitatively different and require technical qualification. They have also stated that the instructions at Annexure-II, III and IV are not addressed to the MMS units but to the Post Masters, to show that they are not applicable to the MMS units. However, in the counter affidavit

in the second application the learned counsel for the Senior Superintendent of Post Offices has challenged the instructions of the PMG at Ext A-4 merely on the ground that the PMG has not been impleaded as a respondent. It ill behoves the Senior Superintendent of Post Offices who is the only respondent in the second application not to file any counter affidavit but to get a statement of the learned counsel filed in which the clarification given by the PMG, an officer far superior to the Sr. Superintendent of Post Offices is disowned the technical ground that he has not been made a party. Reading both the cases together the stand of the department can be said to be more validly reflected in the counter affidavit filed by the departmental officer in the first application on 30th January 1990 in which the department has clearly stated that the Recruitment Rules applicable to Postmen are not applicable to the post of Cleaner in the MMS units."

After discussing the various instructions on the subject in the operative portion of the judgement, ~~referred~~ ~~expressed~~

~~expressed~~. It was directed as follows:

" In the facts and circumstances we dismiss the first application OA 196/89 and allow the second application, i.e., OA 867/90 in part setting aside the impugned order dated 23.10.89 at Ext.A6 being ambivalent, demi-official and passed during the pendency of the first application and direct the respondents 1 to 4 therein to fill up the post of Cleaner in the MMS unit in accordance with the Recruitment Rules applicable to that post but without any preferential treatment to the Extra Departmental Agents of the Postal Division. This will be without prejudice to the right of the applicant in the second case to get regularised against the post of Cleaner in accordance with any scheme of regularisation of casual employees and in accordance with law."

On a careful scrutiny of the pleadings and documents produced in this case we find no reason to disagree in the view taken in the order referred above. It has been rightly held that MMS is an independent recruitment unit, and that in filling the vacancies of Cleaners the ED Agents of the Postal wing are not entitled to any preferential right. In this case the 5th respondent has been given preference for the appointment to the post of Cleaner. The 5th respondent being an ED Agent of the Postal wing before his appointment to the post of cleaner in the MMS, he could not have been given any preference in the matter of appointment to the post of cleaner in the MMS and the applicant who has been working in the MMS as a cleaner on a casual basis for more ~~than~~ about two years was entitled to be considered for regularisation.

8. The learned counsel for the 5th respondent submitted that the 5th respondent was selected to a Group 'D' post and was posted in the MMS unit, and that in case his appointment to the MMS unit is to be struck down, direction may be given to accommodate him in a Group 'D' post in the Postal wing. We are of the view that this relief the 5th respondent is entitled to.

9. The applicant has been working as a Casual Labourer on daily wages ever since 1988 in the MMS unit as a cleaner. The learned Central Govt. Standing

counsel argued that, as the applicant's engagement was not as being sponsored by the Employment Exchange he has no right to claim regularisation. Since the applicant has been engaged from 1988 onwards and has been allowed to work continuously for about two years as a casual labourer, we are of the view that the stand taken by the respondents that because he was not sponsored by the Employment Exchange he has no right to claim regularisation has no merit.

The Supreme Court in judgement in Daily rated Casual Labourers under the P&T Department Vs. Union of India and Others, Writ Petition No.373/86 did not make any distinction between casual labourers employed through Employment Exchange and those casual labourers not sponsored by the Employment Exchange. If a casual labourer has been allowed to continue for more than a year in terms of the judgement of the Supreme Court in the case referred above the casual labourer is entitled to be considered for regularisation in accordance with the scheme drafted by the department in that behalf.

10. The services of the applicant which continued for about two years, though with small intermittent gaps enable him to claim the benefits of the benevolent provisions of Chapter V.A of the Industrial Disputes Act. There is no dispute for the fact that the applicant has completed more than 240 days of service in one year in any of the two years for which he was engaged. Therefore, the abrupt termination of his services as casual cleaner with effect from 5.4.90 without giving him a month's notice or a month's

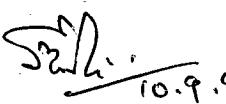
wages in lieu of notice, and retrenchment compensation as contemplated in Section 25-F of the Industrial Disputes Act is illegal and unsustainable.

11. In the result, in the light of the foregoing discussion the application is allowed in part. The appointment of the 5th respondent as Cleaner in the MMS unit is quashed and set aside as he being an ED Agent, Venkade of the Trivandrum Postal Division on being selected to the Group 'D' post on the basis of an examination dated 28.1.1990 should have been posted to any post in the postal wing of Trivandrum Division and not in the MMS unit which is a separate recruitment unit. The prayer of the applicant for setting aside the appointment of the 6th respondent is not granted. The termination of the services of the applicant who has been in service for about two years without complying with the provisions of Chapter-V.A of the Industrial Disputes Act, especially Section 25-F is declared to be illegal and unjustified. The respondents 1 to 4 are directed to reinstate the applicant as a casual cleaner in service forthwith with full back wages and also to consider him for appointment to a Group 'D' post on a regular basis in accordance with the scheme, if any, for the regularisation of the Casual Mazdoors in the department in his turn. If there is no such scheme at present the post of cleaner in the MMS unit

Trivandrum should be filled according to the Recruitment Rules, without giving any preference to EDAs of the Postal Division considering MMS as an independent recruitment unit, and the applicant should be considered for appointment to that post giving due preference available to a casual labourer. There is no order as to costs.


(A.V.HARIDASAN)
JUDICIAL MEMBER

10/9/91


(S.P.MUKERJI)
VICE CHAIRMAN

10.9.1991

C.C.P. 63/92

in O.A. 270/90.

31/7/92 on: Sandhans Chomphu and
Mr. A. Krishnamurthy B.Sc.
None for R.S.

The learned Counsel for the original
respondents appeared and sought two weeks
time to file a reply to the C.P. Let him do
so with a copy to the learned Counsel for
the petitioners.

List for further directions on 21.7.92

Sohi

R
AVH
31/7

8pm
31/7

21.7.92
(14)

None for the petitioners
Mr. V Krishna Kumar

The learned Counsel for the
respondents seeks 2 weeks time
to file a statement.

List the C.P for further
direction on 6-8-92

✓
(CPSHM)

✓
(AVH)

21-7-92

6-8-92
(6)

proxy Counsel for petitioners
Mr. Krishnamurthy
At the request of the learned
Counsel for the petitioner, List for
further directions on 14-8-92

Sohi

✓
(AVH)

✓
(SPM)

6-8-92

14.8.92 Mr. Sasidharan through VR Ramachandran Nair
Mr. Krishnakumar.

At the request of the learned counsel for
the petitioner, list for further directions on 19.8.92.

19.8.92

AVH *[Signature]* SPM

14.8.92

21.8.92 Mr. Biju rep. Sasidharan
Mr. Krishnakumar

Heard the learned counsel for both the
parties. The learned counsel for the original res-
pondents has produced the order at Annexure R.1
appointing the original applicant Shri Sudheer Kumar
as casual Cleaner in the Trivandrum MM S Unit. *xxxx*.
The learned counsel for the original respondents
indicated that the applicant will be considered for
Group 'D' post as per Recruitment Rules within a
month after the applicant joins as Casual Cleaner.
The learned counsel for the original applicant is
satisfied about the compliance of our judgment.
Accordingly the CCP is closed and the notice discharged.

[Signature]
(AV Haridasan)

J.M.

[Signature]
(SP Mukerji)

V.C.

21.8.92

P.O.
P
24/10
m/s
Order dt 21/8/92
closed
S. #