

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

O. A. No. 29 of 1991

DATE OF DECISION 17.12.1992

P.D.Antony & Another Applicant (s)

Mr. M.C.Cherian Advocate for the Applicant (s)

Versus

Union of India represented by Respondent (s)
Secretary, Ministry of Communication,
New Delhi & 31 others.

Mr. V.V.Sidharthan (R.1 to 3) Advocate for the Respondent (s)
Mr.A.K.Chinnan) (R. 7,8,10,21,28 & 32)

CORAM :

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

The Hon'ble Mr. N.Dharmadan, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *No*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. To be circulated to all Benches of the Tribunal? *No*

JUDGEMENT

MR. N.DHARMADAN, JUDICIAL MEMBER.

Applicants are claiming seniority over respondents 4 to 32. They are aggrieved by Annexure-VI seniority list of EDAs, RMS, Ernakulam Division published by the 2nd respondent in December 1989 and Annexure-VIII order of the Head Record Officer, RMS, EK Division, Cochin rejecting the representation filed for fixing correct seniority over their juniors.

2. The facts are as follows: By Annexures-I & II dated 15.2.83 applicants were provisionally selected for appointment to the post of ED Stamp Vendor, ED Mailman respectively. Pursuant to the same they ~~had~~ reported for duty before the 3rd respondent on 3.3.83. Without issuing

a further formal order of appointment they were allowed to work in the respective posts. However, formal orders of appointment, Annexures-III & IV, were issued on 9.10.86 and 10.10.86 respectively. The respondents 4, 5 & 6 are employees working as ED Mailmen in HRO/Cochin and respondents 7 to 32 are working as EDMM, ED Stamp Vendors and ED Chowkidars in the Sub-Record Offices at Kunnamkulam, Trichur, Irinjalakuda, Alwaye, Perumbavoor and Moovattupuzha. All the ED employees working under HRO/Cochin and SROs come under the Ernakulam Division in one seniority unit headed by the 2nd respondent. Thus, the applicants and respondents 4 to 32 are employees coming under the same recruitment and seniority unit. Respondents 4 to 32 were also appointed following the same procedure after the appointment of the applicants and this is clear from Annexure-V notice issued by the 3rd respondent in connection with the recruitment. The next promotion post available for EDAs is as regular Group 'D' servant and this is effected solely on the basis of seniority. Even though the applicants had been working from 3.3.83 they were shown in the seniority list as having entered the service with effect from 9.10.86 and 10.10.86 respectively. At the same time respondents 4 to 32, who entered the service as EDAs only at a later stage, were shown as entered the service with effect from their actual date of entry. When this irregularity was pointed out by the applicants they were informed that proper rectification will be effected considering their seniority. But their seniority was not protected. In the seniority list, Annexure-VI, respondents 4 to 32 have been shown at serial Nos. 30 to 58 whereas the applicants have been shown at serial Nos. 59 and 60, junior to respondents 4 to 32. Almost all the EDAs appointed prior to 1983 have been absorbed as regular Group 'D' servants and only very few EDAs are remaining for regular absorption.

The first applicant filed a written representation, Annexure-VII, for fixing his seniority correctly in Annexure-VI. Similar representation was filed by the second applicant also. The 3rd respondent rejected ^{It} the same. One of the orders is produced as Annexure-VIII. States that the applicant's appointment was delayed due to stay order issued by the High Court. Applicants produced copy of the judgment in O.P.No.1666 of 1983 (Annexure-IX) to show that there was no stay by the High Court and that the case was disposed of at the admission stage itself. Since the respondents 1 to 3 refused to count the services of the applicants from 3.3.83 onwards and correct the seniority list Annexure-VI on that basis, the applicants have filed this application under Section 19 of the Administrative Tribunals Act, 1985 to quash Annexures-VI and VIII and for a direction to the respondents 1 to 3 to confer seniority and attendant benefits to them as EDAs with effect from the date of their joining namely 3.3.83.

3. Learned counsel, Shri M.C.Cherian, appearing on behalf of the applicants submitted that the applicants were appointed as EDAs after regular selection and they were permitted to join duty on 3.3.83 without formal orders which were issued only in 1986. The administrative delay in issuing proper orders could not defeat the legal right of the applicants in fixing the seniority from the actual date of their joining service particularly when the applicants were not at fault. It will only be fit and proper to grant the service benefits, at least the seniority, on the basis of their joining service in March 1983. While fixing the seniority of EDAs including the applicants, the administration should have considered the fact that the appointment of the applicants were delayed due to

administrative lapses and not due to any default on the part of the applicants. Even if the applicants were regularly appointed in 1986 they should have been given the seniority from 1983 based on their regular selection.

4. Respondents 1 to 3 and other respondents have filed the reply and additional reply denying the claim of seniority of the applicants over the respondents 4 to 32. Applicants filed a rejoinder answering the statements in the reply and additional reply. Respondents 1 to 3 also filed an affidavit producing Annexures-R1 to R4. The applicants filed a statement answering the contents of the affidavit.

5. The crux of the issue involved in this case is whether the applicants have been regularly selected for the post of EDAs and whether they have worked in the vacant ED posts with effect from 3.3.83.

6. Having heard the counsel in part we felt that the claim of the applicants, that they worked from 3.3.83 as EDAs can be established by a perusal of the records in the office of the respondents 2 and 3. Accordingly, we passed an order on 25.8.92 directing them to produce the charge report and any supporting material regarding the employment of the applicants including Attendance Register, if any, of the ED Stamp Vendors and ED Mailmen kept in the Cochin Sorting Air for the years 1983 to 1986. We also directed the applicants to produce any documents in their possession concerning their service between 1983 to 1986 in support of their claim for continuous service as ED Agents from March 1983 onwards.

7. Pursuant to the said direction, ^{an} affidavit dated 22nd September 1992 was filed by respondents 1 to 3. In that affidavit they have stated that the applicants were engaged on casual arrangements in the existing vacant post of ED Mailmen. The vacancies could not be filled up on a regular

basis due to the pendency of legal proceedings as well as stay order from the High Court in OP 7333/83 and similar original petitions filed by ED substitutes. Annexures-R1 and R1(a) are the orders passed in CMPs filed in OP 7333/83. This case was later transferred to this Tribunal, ~~no~~ renumbered as TAK 28/87 and disposed of as per Annexure-R2 judgment. They have also produced Annexure-R3, a statement prepared by the learned counsel for the respondents on the basis of the bills issued in connection with their work. Annexures-R4(a) and R5(a) are the documents produced to show that the applicants were regularly absorbed with effect from 9.10.86 and 10.10.86 respectively.

8. The statements in the affidavit have been denied by the applicants in their reply to the same. They have stated that the Attendance Register is the proper document which they have not produced. They accepted that the applicants ~~had~~ joined for work on 3.3.83 and worked continuously. They have further stated that Annexures-X and XI are employment cards indicating that they have registered with the Employment Exchange with effect from 28.3.66 and 3.8.67 respectively. It is only after waiting for about 17 years that they were called for selection to the post of EDAs under the respondents 1 to 3 and selected for the post as per Annexures-I & II. The services of the applicants were utilised by the respondents 2 & 3 as per the directions of the arrangement Clerk concerned. However, they are not sure as to how the works of the applicants were accounted and salary was arranged and under what head the same was included. ~~But~~ they have worked on all days continuously. They have also stated that respondents have not produced any document to show that prior to 3.3.83 there was stay from the High Court preventing them ~~in~~ appointing the applicants pursuant to Annexures-I & II. The applicants should not be made to suffer on account of administrative lapses on the part of respondents 2 & 3. The applicants will become overaged ~~for~~ for getting regularisation and

absorption as regular Class-IV employees if they are ~~to be~~ to be treated as juniors to respondents 4 to 32 and it would be a gross injustice if the seniority of the applicants is not ~~given~~ from 3.3.83.

9. The claim of the applicants for seniority from 3.3.83 was stoutly opposed by all the respondents. Annexure-R3 is the order relied on by them. It shows that the first applicant was not regular in doing his duties and respondents 1 to 3 though admitted that they were provisionally selected for ED posts but stated that they could be appointed only in October 1986 due to some legal proceedings pending in the High Court. But they were allowed to work as Mazdoors and ED substitutes and the period during which they worked as Mazdoors and ED substitutes is not taken into account as service rendered by them for seniority. It is a fact that the applicants were selected following the due procedure for selection and the respondents 2 & 3 decided to appoint them in the ED posts in 83. There were existing vacancies at the relevant time. In fact they have admitted that the applicants were also allowed to join in March 1983 but in view of the pendency of some legal proceedings and stay orders issued by the High Court no formal orders were issued. It is true that some cases were pending in the High Court in connection with the appointment of EDAs. The learned counsel, Shri Chinnan, appearing on behalf of contesting respondents relied on Bhaskaran vs. Sub-Divisional Officer, 1982 KLT 613 and Umayammal vs. State of Kerala, 1982 KLT 829 (Full Bench) and submitted that observations in these judgments have the effect of stay of appointment of substitutes and casual EDAs in the place of existing provisional hands. However, no

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specific orders were brought to our notice preventing respondents 2 & 3 from posting the applicants in the existing vacancies in which they were allowed to join for doing casual work.

10. As a matter of fact the applicants have represented the matter before the 3rd respondent and they have also filed written representations. Annexure-VII is the copy of the representation submitted by the first applicant. Similar representation was filed by the second applicant as well. In their representations they have stated that they joined duty on 3.3.83 as EDAs in the Cochin Sorting Air and they are working continuously from the date of joining. The copy of the order of SRO is also produced as Annexure-I along with the representation. This is rejected by the impugned order Annexure-VIII in which there is no denial of the fact that they ~~had~~ joined duty on 3.3.83 and worked continuously thereafter. The claim is rejected stating "as the appointment was delayed on account of the stay order issued by the Hon'ble High Court, the EDA cannot claim the period prior to actual date of appointment as service and count that period for seniority. The delay was not due to any administrative lapses." Even though the representation was rejected the reason given for denying the seniority does not appear to be satisfactory and acceptable particularly when no order of the High Court was brought to our notice specifically preventing the appointment of the applicants.

11. The applicants also ~~stated~~ in para 7 of the O.A. that the applicants have been actually working as EDAs with effect from 3.3.83 onwards without any break. The mere fact that the authorities concerned have failed to issue necessary orders of appointment in time will ~~not~~ 4

stand in the way of the applicants getting seniority on the basis of the accrued rights due to the fact that they had worked from 3.3.83. This is not specifically denied by the respondents 1 to 3 in their reply. However, having regard to the facts and circumstances of the case we have to presume that the applicants were allowed to work in the existing vacancies of ED posts from 3.3.83. Respondents 4 to 32 joined the ED posts after joining of the applicants.

12. The learned counsel for the contesting respondents, Shri Chinnan, strongly contended that the application is barred by limitation. The applicants were aware of their latches and negligence. They should have objected to the regular appointment orders issued in 1986 and opposed at the appropriate forum claiming seniority from an earlier date. The 1st representation, Annexure-VII, filed by them is dated 20.4.90. Even in that representation they have stated that in the last departmental examination for promotion to the cadre of Mailmen the applicants were not permitted to appear on the plea that they are junior\$ in the cadre in the light of the order of HRO, EK Division, dated 9.10.86. So much so the applicants were fully aware of the fact that they are junior\$ to the contesting respondents and they were prevented from appearing in the departmental examination for promotion to the regular posts. Nevertheless they failed to take\$ up the matter before the appropriate forum.

13. It is true that there is some delay in prosecuting the matter by the applicants. But having regard to the fact that they are persons working in the lower category having no facility for proper advise, it would only cause injustice if we reject the application accepting the plea of limitation at this belated stage, during the final hearing. Had the respondents raised this issue either at the admission stage or at an earlier stage we could have taken a different approach. In the instant case the facts remain that the applicants had worked in the year 1983 under the

3rd respondent and they got the job after having been in the queue before the Employment Exchange after registration for about 17 years. No fault can be attributed on the part of the applicants for denying them the due seniority. But of course, if seniority is given strictly from the date of joining actually over respondents 4 to 32 it may have some adverse effect on their prospects as well. Nevertheless the applicants are entitled to reliefs in the interest of justice.

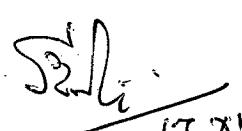
14. The failure of the respondents 1 to 3 to produce either the charge report or the attendance register or any supporting other material to substantiate their contention that the applicants had not regularly worked from 3.3.83 persuades us to presume that the case of the applicants deserves acceptance and give credit for the same in fixing the seniority.

15. In the light of the foregoing discussions we are of the view that this application can be partly allowed directing the respondents 1 to 3 to grant notional seniority to the applicants from 3.3.83 treating them as continuing in the post of EDA from that date.

16. The application is accordingly allowed to the extent indicated above.

17. There will be no order as to costs.


(N.DHARMADAN)
JUDICIAL MEMBER


(S.P.MUKERJI)
VICE CHAIRMAN
17. XII. 92

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

R.A.No.22/93 in

O. A. No. 29/91 109

DATE OF DECISION 25-2-93

T.S.Mohandas & 6 others Applicant (s)

Mr.A.K.Chinnan Advocate for the Applicant (s)

Versus

Mr.P.D.Antony, EDSV, HRO, Ennakulam Division & 26 others. Respondent (s)

Advocate for the Respondent (s)

CORAM :

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

The Hon'ble Mr. N.Dharmadan, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? Y
2. To be referred to the Reporter or not? AO
3. Whether their Lordships wish to see the fair copy of the Judgement? AO
4. To be circulated to all Benches of the Tribunal? AO

JUDGEMENT

MR. N.DHARMADAN, JUDICIAL MEMBER

Respondents 7, 8, 9, 10, 21, 28 & 32 in the original application are the petitioners in the R.A. According to them there are errors apparent on the face of the records warranting review and rehearing of this case.

2. We have gone through the judgment in OA 29/91 and the R.A. We are satisfied that this RA can be disposed of on circulation. Accordingly, we are not posting this RA before the Bench for hearing.

3. The original applicants have claimed seniority over respondents 4 to 32 on the ground that they were working from 3.3.83, even before the respondents 4 to 32 entered service. The fact that they were working from 3.3.83 was admitted but it was contended that the appointment was delayed due to the stay order from the High Court. Since no specific order staying the operation of the appointment of the applicants we did not accept the contention. We allowed the OA with the following observations:-

"14. The failure of the respondents 1 to 3 to produce either the charge report or the attendance register or any supporting other material to substantiate their contention that the applicants had not regularly worked from 3.3.83 persuades us to presume that the case of the applicants deserves acceptance and give credit for the same in fixing the seniority.

15. In the light of the foregoing discussions we are of the view that this application can be partly allowed directing the respondents 1 to 3 to grant notional seniority to the applicants from 3.3.83 treating them as continuing in the post of EDA from that date."

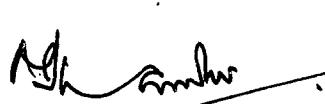
The review applicants have submitted that the decision of the Supreme Court in Union of India & others vs. Prof. S.K.Sharma, AIR 1992 SC 1188 and ^{High Court in} / Bhaskaran vs. Sub-Divisional Officer, 1982 KLT 613, Umayammal vs. State of Kerala, 1982 KLT 829 (FB) and Director of Postal Services vs. K.R.B.Kaimal, 1984 KLT 151 (FB) were not considered at the time when the judgment was pronounced. Hence there are errors apparent on the face of the record in the judgment warranting interference.

4. In para 9 of the judgment we have referred to all the decisions cited at the bar by Shri A.K.Chinnan in the course of the argument. Those decisions did not help him for they did not prevent the 2nd respondent from appointing the applicants in a regular manner as has been done in the case of others.

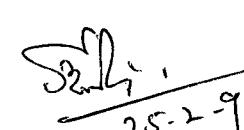
5. The 2nd respondent admitted that the applicants were working continuously from 3.3.83. This fact is clearly stated in Annexure-VIII order and it has been extracteed in the judgment. The contention that there was specific stay order which stood in the way of the applicant for getting regular appointment was not substantiated by production of satisfactory records in spite of time having been given to the respondents. Hence, under the circumstances, we were forced to allow the claim of the applicants.

6. Two other decisions cited by the review applicants as referred to above were also examined by us. On a careful reading of the cases we are satisfied that they are not applicable to the facts of this case. Hence, they cannot be relied on. Moreover these decisions cannot be pressed into service in a review application.

7. Having regard to the facts and circumstances of the case we are of the view that review applicants have not made out any ground for review of our judgment dated 17.12.92 in OA 29/91 and the RA is liable to be rejected. We do so. There will be no order as to costs.


(N.DHARMADAN)
JUDICIAL MEMBER

25. 2. 93


(S.P.MUKERJI)
VICE CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Placed below is a Review Petition filed by UDI Secretary,
Communication & others (Applicant/Respondents in
OA/TA No. 29/91) seeking a review of the order dated 17.12.92
passed by this Tribunal in the above noted case.

2. Unless ordered otherwise by the Bench concerned, a review petition shall be disposed of by circulation where the Bench may either reject petition or direct notice to be issued to the opposite party.

3. A Review petition is, therefore, submitted for orders of the Bench consisting of Hon'ble Shri S. P. Mukherji, C.J.
Hon'ble Shri N. Dhamadan, M.J.

which pronounced the Order sought to be reviewed.

R
15/3

PS to Hon'ble Member - T

PS to Hon'ble Member T-I

Madhukarose

15.3.93

S. O (J.D)

DR(T)

15/3/93

I think a review by the court may be necessary to verify the facts in the order. The court may take up the matter for hearing at a later date. I agree with the above. DR(T) 20/3/93

Hon'ble V.C.

I agree
Smti -
15/3

DR 22/3

DR(T) On verifying the records it is found that the contesting respondents has

OA 29/91 i.e. T. S. Mathandas and 6 others has filed RA 22/93
in OA 29/91 which has been registered on 25.2.93. 'A' part of the
said RA is printed below.

Post the notice for condonation of delay in RA 38/93 before the Board on
30.3.93 with notice to both the parties.

Manu
23/3/93

M.W.V RA 22/93
OA 29/91
23/3/93
Notice to be served on 29/3/93
so (i) 29/3/93
so (ii) 29/3/93

✓
M.W.V
Notice served
29/3/93

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Mr. V. V. Sidharthan by Poly Mathai
Mr. M. C. Cherian

M.P. for condonation of delay heard, allowed.

This Review Application has been filed by the original respondents 1 to 3 with a petition for condonation of delay.

When the matter came up for hearing, learned counsel for original applicant brought to our notice that R.A. 22/93 filed by the contesting respondent with similar grounds ^{was} considered and rejected by the Tribunal. Hence, having heard counsel on both sides, we are not impressed by any of the grounds raised in this case. Hence, we see no substance in the RA, which is only to be rejected. Accordingly, we dismiss the R.A.

N. Dharmajan
(N. DHARMAJAN)
J.M.

S. Mukerji
(S. P. MUKERJI)
V.C.

30.3.93

F.O.
PL
30/3
m/s/m
Order issued
file closed
28/4/93