

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. 294/97

MONDAY THIS THE 13TH DAY OF OCTOBER, 1997.

C O R A M:

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

HON'BLE MR. S.K. GHOSAL, ADMINISTRATIVE MEMBER

A.K. Pradeep Kumar
Kuniyil House,
Pandakkal P.O.
Mahe.

..Applicant

By Advocate Mr. K.S. Bahuleyan

Vs.

1. The Superintendent of Post Offices,
Badagara Division,
Badagara.

2. The Postmaster General,
Northern Region,
Calicut.

3. V.K. Madhavan, Driver,
Office of the Superintendent of Post Offices,
Badagara Division,
Badagara.

..Respondents

By Advocate Mr. James Kurian, ACGSC

The application having been heard on 27.8.97, the Tribunal on 9.10.97 delivered the following:

O'R D E R

HON'BLE MR. S.K. GHOSAL, ADMINISTRATIVE MEMBER

The applicant in this case, who is a casual Driver in the Postal Department, has challenged the communication at A5 from the first respondent explaining why the applicant was considered as age-barred even after providing for age-relaxation in consideration of his service, inter alia, for the purpose of appointment as a regular Driver against the post of a Driver at Badagara Postal Division recently



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sanctioned by the Department. He has also impugned the order of appointment by transfer of the third respondent to the same post at A8.

2. The admitted facts relating to the service of the applicant in this case are that the applicant has worked from 6.10.83 to 29.2.88 for a period of four years, four months and 26 days, that he has worked from 19.7.88 to 30.12.88 in all those months intervening in the year 1988, but for an actual number of 92 days, excluding the breaks in-between and excluding the weekly off days and that he has worked similarly from 2.1.89 to 26.4.89 in all those intervening months in the year 1989 but for an actual number of 76 days, excluding breaks and weekly off days. It has similarly been admitted that the applicant has also worked from 6.10.95 to 23.1.96 in all the intervening months and that he has worked again in the months of March, May and July in the year 1996. During this latter period, there were some breaks in-between including a few half days of casual work amounting totally to 48 days of actual work. The applicant during all these spells, has admittedly worked as a casual driver in the Department i.e. the Department of Postal Services. It is also admitted that the applicant is eligible under R2 for relaxation of age by the period of his service rendered as a casual driver in terms of the policy of the Department.

3. According to the applicant, based on the above facts and principles, the actual number of days he worked should be treated as follows for the purpose of calculating the period by which he could be granted age relaxation:

"(A) In page 3 of Annexure A5 order it is admitted that the casual driver service of the applicant in Vadakara Division is 190 days. It also says that in

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Tellicherry Division it is 4 years 6 months and 14 days and thus the total casual service of the applicant is 5 years and 24 days. Thus, it is clear that for 190 days of casual service only 6 months and 10 days been taken into account.

As far as casual labour is concerned, 240 day's work is to be counted as one year's service. In the case of an office observing five days week, 206 days work is to treated as one year's service. As such, 190 days service in Badakara Postal Division will come to $190/206$ years (0.92233 years), i.e. 11.06796 months, i.e. 11 months and 2 days. If the 11 months 2 days are taken into account instead of 6 months and 10 days, the difference is 4 months and 22 days. The excess age is only one month and 10 days according to Annexure A5 memo. Thus, it would be clear that the applicant is within the prescribed age limit. The applicant is entitled to selection and appointment as Driver in Badakara Division.

(B) If the period of continuous service in Badakara Division from 18.7.1988 to 27.4.1989 is taken as such it will come to 9 months and 9 days for which only 6 months and 10 days have been taken into account. In that case, the difference is 2 months and 29 days, the excess age calculated is only one month and 10 days. Then also the applicant will be within the age limit."

The applicant has therefore challenged the decision of the Departmental Promotion Committee (DPC) which has gone by the formula that 30 days of actual working alone should be treated as equivalent to a month for the purpose of granting age relaxation He has contended as follows in this score:-



"(C) In calculating the period of casual service in Tellicherry Division also the Committee has taken into account 30 days casual service as one month and the 51 days' casual service during 6.10.95 to 31.3.96 and 17.5.96 to 28.7.96 has been counted only as service for one month and 21 days instead of two months and 29 days. According to the casual labourers (Grant of Temporary Status and Regularisation) Scheme for the purpose of increments, 240 days of service (206 days in establishments observing five days week) is taken into account as one year's service. Thus, it would be clear that the calculation of casual service taking 30 days as one month and dividing the actual working days by 30 would be illegal and arbitrary. The computation of casual service of the applicant is erroneous. The applicant is within the age limit and as such is entitled to be appointed as Driver in Badakara Postal Division. The finding of the Committee is *prima facie* wrong. It is liable to be quashed. The commutation of the length of service of the applicant is also not in conformity with the instructions in Annexure A7.

(D) Even if there is an excess age of one month and 10 days as found by the Committee not admitted, there is provision of relaxation of age limit. As far as the applicant who has served the Department admittedly for more than 5 years during the period extending between 6.10.93 and 28.7.96 it is only reasonable and inevitable to relax the age by one month and 10 days and give appointment to the applicant. The computation of casual service in a most unreasonable manner with the



intention of refusing the legitimate claim of poor casual Driver for absorption/appointment in the Department will not be fair on the part of the Government, which is to act as a model employer. The applicant is entitled to appointment on the basis of the length of his casual service."

4. The respondents on the other hand have relied on the specific provisions of the recruitment rules at R1 called Posts & Telegraphs Department (Motor, Jeep and Lorry Drivers) Recruitment Rules, 1975, which prescribe the upper age limit for the post of Driver as 28. They have further depended on the clarification of the Department regarding treatment of paid weekly offs as a facility to casual labourers for the purpose of computation of 240 days or 206 days, as the case may be, i.e. depending on whether it is 6 working days or 5 working days in a week, in the specific context of regularisation of the service of casual employee at R3. That R3 is the letter conveying the decision of the department issued after consultation with the Department of Personnel & Training of the Government of India, which declares that a paid weekly off is not to be taken into account for the purpose of computation of 240 or 206 days in a year while considering grant of temporary status to a casual worker as a Group 'D' employee and his subsequent regularisation.

We observe that the DPC has adopted this principle of computation without explaining why or how it became applicable for the purpose of computation of the period by which the prescribed age limit should be relaxed in respect of a casual driver who is admittedly not a Group 'D' employee.



We further observe that in terms of the policy of the Department, the applicant, who belongs to OBC (other backward classes) category, has admittedly been given relaxation in the age limit by three years by the same DPC. Besides, we find that the DPC has counted only the actual number of days that the applicant has worked as a casual Driver, except for the unbroken period from 6.10.83 to 29.2.88, where the entire period has been reckoned in terms of whole months and years. The DPC following the above method has concluded that the total service rendered by the applicant adds upto 5 years and 24 days of service as a casual Driver. The minutes of the DPC in this behalf held on 14.2.97 are at R6. Calculated on this basis, the DPC has finally concluded that even if the applicant was given three years of relaxation as a member of OBC and even if his service as a casual Driver was treated as 5 years 24 days as on 1.7.97, his effective age will be 28 years, one month and 10 days for the purpose of regularisation. The DPC has, therefore, considered the applicant as overaged, i.e. beyond the prescribed age limit of 28 years, for the purpose of a regular appointment to the sanctioned post of a Driver.

5. The respondents for the same reasons have supported these calculations made by the DPC and have stated that the decision of the DPC holding the applicant as age-barred is fully justified and therefore there is no scope for judicial intervention with the impugned order which has been issued, after duly considering the case of the applicant and, only when he was found age-barred, after considering the case of the third respondent in terms of the policy and the Recruitment Rules pertaining to the appointment of a Driver in the Department on the regular basis against a sanctioned



post.

6. We have carefully considered the pleadings in this case and the arguments advanced by the learned counsel on either side.

7. To start with we observe the absence of any enabling provision under the special policy of the Department for regularisation of a casual Driver by appointing him to a regular post, which is at R2, to the effect that for the purpose of calculating permissible period for relaxation in age, the period of actual days of work of 206 days in a year. (the Department observing 5 working days in a week) should be treated as one full calendar year or proportionately so. It is difficult for us to be persuaded in this situation and to agree with the main contention of the applicant that the formula for treatment of actual service for the purpose of calculation of relaxation in age, for which a casual Driver is eligible, should be deemed to be, that for every 206 days of actual work as a casual Driver he should be treated as having served for a period equivalent to one full year and further that we should extend the same "deeming" logic to cover any particular number of days of actual work as a proportion of a full year, based on the same ratio of 206 days to a full calendar year. The applicant has not produced any material which would advance his case in that direction. He has, on the other hand, relied on the analogy of treating 206 days work in a year where 5 working days in a week prevails, for a casual worker for the purpose of granting such a worker temporary status as a Group 'D' employee under the Government of India Scheme he has quoted above. However, neither the logic nor the basic purpose there is similar to the present case and further it is admitted by the parties



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that a Driver is a Group 'C', and not a Group 'D' post.

8. The basic question therefore that we have to address ourselves to, is how exactly the period of service of the applicant as a casual driver should be calculated for the purpose of granting him relaxation in age which he is eligible for in terms of the decision at item No. 2 in the letter No. 37-29/88SPBI dated 28.7.92 of the Director General, Department of Posts, New Delhi which is at R2. The exact provision regulating this particular matter appearing therein is re-produced below:

"The casul driver/casual labourers engaged as drivers may be given age relaxation to the extent of the service rendered by them as casual drivers" (emphasis supplied by us).*

9. We find that there is no other provision relating thereto and that the provision quoted above specifically extends a special benefit for the casual Drivers for appointment to a regular post of a Driver in the Department. Following the well known principle, we are also of the considered view that this special and beneficial dispensation for the casual drivers will have to be given broadest and most liberal interpretation, unless there are specific rules or instructions to the contrary. The defence of the respondents on the other hand is that as per R3 which is a communication from the head of the Department, the paid weekly off days is a facility available to casual employees and it cannot be taken as duty/service of a casual labourer for computation of 240/206 days in a whole calender year for the purpose of regularisation of service of the casual employees.

10. It may be desirable to quote the exact provisions in R3 on this matter in this context. We quote:

"The matter has been examined in consultation with the Department of Personnel and Trg. and it has been



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decided that since paid weekly off is a facility available to casual employees after six days of continuous work, this cannot be taken as duty/service of a casual employee for computation of 240 days or 206 days for the purpose of regularisation of service of the casual employees" (emphasis supplied) *

According to the respondents, the above provisions of R3 will have to be applied while computing the service of a casual driver for the purpose of calculating the period by which relaxation in age can be granted to him.

11. We find ourself unable to agree with the above contention advanced on behalf of the respondents. The reason is that R3 has been issued for the specific purpose of calculating whether a particular casual worker has actually put in 240 days or 206 days as the case may be, in a calendar year which comprises 365 days, when after working for six days (or 5 days) he has enjoyed paid weekly offs. It stands to reason that if a casual worker is to be granted temporary status in the first instance on completion of 240 days or 206 days of work in a calendar year, the Sundays, or Saturdays and Sundays, as the case may be, as weekly offs but paid for, cannot again be counted for the purpose of arriving at the total of 240 or 206 days in that same calender year. However, the basic purpose of R3 was to regulate the calculations of the minimum eligibility period i.e. 240 or 206 days in a year, i.e. a full calender year, in respect of a casual worker. The context there is very different from the context in which the calculations may have to be made of a period of time for the purpose of granting relaxation in age in respect of a casual driver.

12. The only provision regulating the calculation of the period by which relaxation in age can be granted to a casual driver in that context is contained in Annexure R2 which we



have quoted verbatim. It is only legitimate in our considered view to interpret that provision liberally for the reasons already mentioned by us. We therefore decide that for this specific purpose, it will be necessary to include the weekly off days, particularly when age-relaxation is to be considered for a casual driver, if he has been appointed in the preceding week and upto the working day preceding the weekly offs, i.e. Friday in this case, and has again been engaged as a casual driver on the following Monday. This should be done irrespective of whether such a casual driver was paid for such weekly offs or not. We are convinced that when engagement of a casual driver actually takes place in the above manner, the intervening weekly off days cannot be excluded from the period of total service rendered by him, because such a casual driver would have had no option to seek employment elsewhere during such intervening weekly off days even when he was not paid for them. He had to be available for engagement as a casual driver by the Department even during these so-called weekly off days.

13. In the rejoinder filed by the applicant, a set of calculations have been furnished which indicate that the applicant was engaged as a casual driver on 40 Fridays which were followed by Saturdays and Sundays, the latter numbering 81 days i.e. 40 Saturdays and 41 Sundays put together. On this basis, the relaxation in age by the period of 5 years and 24 days as calculated by the Departmental Promotion Committee should be increased by another 81 days i.e. two months and 21 days, according to the applicant. However, it is not on record as to how many of these Fridays on which the applicant was engaged as a casual driver were followed by his engagement on the next Mondays. On the other hand,



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from the data furnished in the para 4 of the reply statement furnished by the respondents, it is clear that there were at least such 24 Mondays of engagement of the applicant as a casual driver following the Fridays on which the applicant was engaged as a casual driver. This would mean that the Saturdays and Sundays comprised in those 24 spells, would number 24×2 , i.e. 48. Adding these extra 48 days to 5 years, 24 days as calculated by the DPC, it would result for the applicant being eligible for relaxation in age by 5 years, 2 months and 12 days. Another period of 3 years has to be added for the purpose of relaxation in age for the applicant on the ground that he belongs to Other Backward Classes (OBC) (to which he is eligible) and which the DPC has provided. Thus, the total age relaxation which is permissible in the case of the applicant would become 8 years, 2 months and 12 days. In that case, the deemed age of the applicant after allowing the above relaxation would be below 28 years which is the maximum age limit for appointment as regular Driver.

14. In fact, we find that for the unbroken period from 6.10.83 to 25.2.88, the DPC has followed a similar logic and have treated the entire broken period in terms of full months and years without excluding the weekly off days. Presumably that is because the applicant had to be available for engagement during the entire unbroken period from 6.10.83 to 28.2.88. Though the respondents have tried, rather weakly in our opinion, to explain away that method of calculation for the unbroken period, first as a specially magnanimous dispensation, and then as a dispensation which became unavoidable in the absence of detailed records, we do not find any merit in either of these two contentions. On the contrary, in particular, we have found that the



respondents in this case have been very meticulous in maintaining record in great detail, including the few occasions when the applicant worked for half a day.

15. We therefore, observe that there is no reason as to why a similar logic as applied for the unbroken period could not be applied in the case of the same applicant for the other spells of his engagement as a casual driver when there was no effective break between the previous week and the following week, but for the inevitable weekly offs in-between. In this situation, the dispensation which we have directed above, in our opinion, is fully justified and it should have been adopted by the DPC while considering the case of the applicant. Any other interpretation of the provisions of R2, in our considered view, will not be permissible.

This is particularly so when we further consider that the basic purpose of the special policy of the Department is to regularise the services of the casual drivers and that more specifically the stated purpose for the sanction of the six new posts of drivers, *inter alia* was to ensure that the casual drivers in the office of the first respondent i.e. the Superintendent of Post Offices, Badagara Division, Badagara were given this special benefit. In particular, the sanction of those six new posts were granted with the evident intention to regulate the absorption of the casual drivers who have been working in the Department for a considerable length of time. These objectivess are clearly and explicitly stated and are available on record. When such is the case, the most appropriate and harmonious construction of the various provisions should be the one which must subserve this specific and overriding objective, namely the absorption of



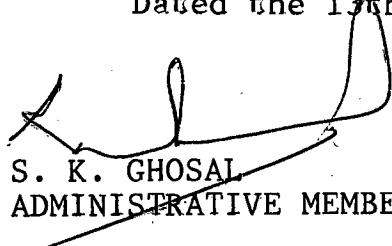
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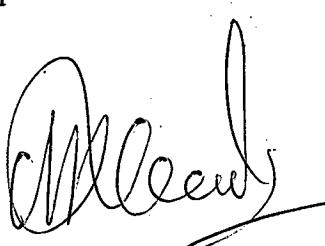
the casual drivers in the regular posts in the Department, subject only to certain conditions stipulated in the Statutory Recruitment Rules, announced by the Department and after granting them the relaxations and special concessions for the said purpose, not specifically barred by those Recruitment Rules.

16. In the result, we grant the reliefs sought by the applicant, namely that he should be declared as entitled to be appointed as a regular driver in the Badagara Postal Division against the sanctioned post. We set aside the impugned order appointing the third respondent on transfer dated 20.2.97 issued by the Senior Postmaster, Calicut at A8. We direct further that the applicant should be appointed to the said regular and newly sanctioned post of the driver for the Badagara Division, Badagara in the place of the third respondent by the Departmental respondents within three months from the date of receipt of the order, if he is not otherwise unsuitable for such appointment.

There is no order as to costs.

Dated the 13th October, 1997.


S. K. GHOSAL
ADMINISTRATIVE MEMBER


A. V. HARIDASAN
VICE CHAIRMAN

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LIST OF ANNEXURES

1. Annexure A5: True copy of the order No.CAT/8/96 dated 17.2.1997 of the first Respondent.
2. Annexure A7: True copy of the letter No.45/37/91-SPB-I dated 16.8.1991 of the Director General, Department of Posts.
3. Annexure A8: True copy of the Memo No.B.805 dated 20.2.97 of Senior Post Master, Calicut-673 001.
4. Annexure R1: True copy of the Notification 50-8/91 NCG dated 1.11.1983 stipulating the maximum age limit of the candidate for recruitment as driver.
5. Annexure R2: True copy of the letter No.Rectt/14-1/90-Rlg dated at Trivandrum, 33 the 7.8.1992.
6. Annexure R3: True copy of the letter No.45-26/92-SPB-I dated 24.1.1994.
7. Annexure R6: True copy of the proceedings of Departmental Promotion Committee held on 14.2.1997 for selection of candidate to the cadre of driver.