

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 320/89
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~~199~~

DATE OF DECISION 26.4.1991

P. Rajalekshmi

Applicant (s)

Mr. G. Sasidharan Chempazhan-
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Advocate for the Applicant (s)

Versus

Sr. Postmaster, Trivandrum
& 4 others

Respondent (s)

Mr. V.V. Sidharthan, ACGSC

Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. N.V. Krishnan, Administrative Member

The Hon'ble Mr. N. Dharmadan, 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

N.V. Krishnan, AM

The applicant, who is about 45 years, is working in the contingency paid post of as a part time casual employee and engaged as a Waterman under the 1st respondent. She works 4 hours a day and is paid daily wages on proportional basis, which is paid once a month.

2. The applicant has about 22 years of service, she having been appointed as above by the Annexure-I order dated 28.4.67. The applicant represented for absorption but was informed by the impugned Annexure-III letter of the 1st respondent, that part time casual labourers like her are eligible for absorption in Group D category, only after ED Agents and full time casual labourers.

3. A Group D post of Sweeper fell vacant in April 1989 under the Senior Post Master, G.P.O, Trivandrum, the 1st respondent. The Superintendent of Post Offices, North Division, Trivandrum, respondent-2, thereupon issued the impugned notice dated 3.5.89 (Annexure-V), calling for applications from eligible ED Agents to fill up a non-test category Group D post of Departmental Sweeper in the Trivandrum G.P.O.

4. The applicant claims that the 1st respondent himself is the appointing authority and he alone should fill up this vacancy by calling for applications from eligible candidates working within the G.P.O, Trivandrum. He therefore impugns ^u ~~the~~ Annexure-V notice.

5. Admittedly, the post of Sweeper in the subordinate offices belong to the non test category, as seen from Ann. R1 dated 9.6.66. Posts of this category in the subordinate offices were to be filled up 100 per cent by direct recruitment, for which Primary School standard was only a desirable qualification, as can be seen from the Schedule to the Recruitment Rules exhibited at Ann.R3. This schedule was amended by the notification dated 24.2.89 (Ann.R2) by which the Indian Posts & Telegraphs (Group D Posts) Recruitment Rules, 1970 has been amended. This amendment has been exhibited by the applicant also as Annexure-XI. As a result, the 100 per cent direct recruitment has been replaced by the following provision:

"By means of an interview from amongst the categories specified and in the order indicated below. Recruitment from the next category is to be made only when no qualified person is available in the higher category.

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- i) Extra Departmental agents of the Recruiting Division or Unit in which vacancies are announced.

ii) Casual labourers (Full time & Part time) of the Recruiting Division or Unit.

iii) Extra Departmental agents of neighbouring Division or Unit.

Explanation: For Postal Division, the neighbouring division, will be the Railway Mail Service Division and vice-versa."

6. The applicant is aggrieved by the Ann.XI amendment to the recruitment rules on which the impugned Ann.V notice is based. For, this amendment gives casual labourers like her, only a second priority after all ED Agents. Further it is submitted that such a provision is totally against the directions of the Supreme Court to the Department in the Daily Rated Labourers case/ to prepare a Scheme on a rational basis, for absorbing, as far as possible, the casual labourers who have been continuously working for more than one year in the Post & Telegraph Department.

7. The applicant has one more grievance. Director General (Posts) has issued a clarification regarding recruitment to Group D posts. He has indicated therein/ (Ann.IX) that the following priority should be observed.

- " i) NTC Group D officials.
- ii) EDAs of the same division.
- iii) Casual Labourers (Full time or Part time). For purposes 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."

The applicant contends that this priority is at variance with the provisions of the amended Recruitment Rules at

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/ [Ann.X, since reported as (1987) 5 ATC 228.]

Annexure-XI, in as much as while the Recruitment Rules give ED Agents of the Recruiting Division or Unit in which vacancies are announced higher priority over the casual labourers in the Recruiting Division or Unit, this clarification gives ED Agents of the same Division such priority, even if the vacancy is a Unit vacancy.

8. In the circumstances, the applicant has impugned the Ann.III, V, IX and XI orders/notification and claims the following reliefs:

(1) To give direction to respondents 1 to 3 to take immediate steps to regularise the service of the applicant and to post her in a Group D post in accordance with Annexure-II, if necessary by creating new posts.

(2) To give direction to the respondents 1 to 3 to reserve non-test category Group D post including the one now vacant in GPO Trivandrum for casual labourers of the respective recruiting units and to make appointment to such posts from among eligible casual labourers.

(3) To declare that appointment of E.D. Agents in non-test category posts like Chowkidars, Sweepers and water-carriers on the basis of literacy test is irregular.

(4) To direct the respondents 1 to 3 to receive the application of the applicant and post her in the non test category post now vacant in GPO, Trivandrum and quash Annexure-III order and Annexure-V notification.

(5) To allow the applicant all consequential benefits with effect from the date when her juniors ^{of the application} mentioned in para 7 item 4/ were regularised and put her above them in seniority.

(6) To award the cost of these proceedings in favour of the applicant.

(7) To quash Annexure-IX as unreasonable and discriminatory and opposed to Annexure-II and contrary to the Supreme Court direction in Annexure-X to the extent it places the casual labourers below EDAs in priority for recruitment to Group D posts.

(8) To quash Annexure-XI as inconsistent with the spirit of Annexure-X.

9. The respondents have filed a reply resisting the prayers made by the applicant. They contend that the 1st respondent, the Senior Post Master, Trivandrum G.P.O., is, no doubt, the appointing authority. But, he can appoint only people after they are selected by the Senior Supdt. of Post Offices. The selection of candidates in all Units in the Postal and RMS Division will be made by the Divisional officers concerned. In this connection the respondents have cited Annexure-R4 letter dated 7.7.53 of the DG, P&T to contend that recruitment is on a divisional basis.

10. It is also contended that, by the amendment made in the Recruitment Rules by Annexure-R2 notification dated 24.2.89, ED Agents of the Recruiting Division or Unit in which the vacancies are announced, have a priority over casual employees. It is for this reason that in the impugned Annexure-V notice, applications are called from only eligible ED Agents of the Division for filling up the posts of Departmental Sweeper.

11. The respondents also contend that the priorities indicated are not violative of the decisions of the Supreme Court in the Daily Rated Casual Labours case. In the Argument note submitted by the counsel for the respondents it is stated as follows in this connection:

(g- sec)
 "In the judgement dated 20.11.89, the Hon'ble Supreme Court of India it has observed that as per existing Recruitment Rules, extra departmental agents are to be given preference in the matter of absorption as Group D and Postmen. The Scheme known as Casual Labourers (grant of temporary status) scheme of the department of

Telecom was presented to the Hon'ble Supreme Court. The Court agreed that the scheme was quite comprehensive. At that time it was submitted on behalf of this department that a separate scheme for the postal employees would be prepared. After perusing the scheme of the ~~Raxx~~ Telecom Department, the Court held that the casual labourers of the Postal Department, should also be accorded similar treatment."

It is contended that the provisions made in the Rules are in accordance with this assurance given to the Supreme Court.

12. We have heard the learned counsel and considered the rival contentions submitted before us. We have also perused the records of the case.

13. Admittedly, the post of Sweeper belongs to the non-test category as evidence by Ann.R1 produced by the Department. In other words, this is a category where a regular written test may not be held for selection. The recruitment rules before they were amended by the Ann.R2 notification, merely stated that the post will be filled up by direct recruitment. What procedure should be followed for such recruitment is not indicated in the Ann.R3, which is the relevant Schedule to the Rules before amendment. After such amendment, it is clarified that the recruitment from the various categories will be made by means of an interview from amongst the categories specified therein. The interview is quite different from an examination. It is mainly for the purpose of finding the suitability and more particularly, to find out whether the person has any physical disability such as blindness, deafness, etc. disqualifying him for the job.

14. It is in this view, that we find that the Department

is wholly mistaken in relying on the Ann.R4 circular dated 7.7.53 of the DG P&T. That circular refers to a decision taken that examination for recruitment of all Class IV officials in all arms of the Department will be conducted by the Divisional Officers on a divisional basis. An examination ^{of} ~~in~~ this nature is required only for test category posts, which are quite different from the non test category post of Sweeper. Therefore, the Ann.R4, in so far as it directs that recruitment should be on a divisional basis, will have no application to non test category posts. This is all the more true, because, since then, rules under Article 309 of the Constitution of India have been framed (Ann.R2 and R3). It is clear from the amended Ann.R2 rules that the recruitment would be from the categories of ED Agents or casual labourers of the recruitment division or unit in which the vacancies are announced. Thus, it is clear that, if the vacancy arises in an independent unit, the unit itself will be the recruitment unit; for other vacancies, the division would be the area of recruitment. It is admitted that the 1st respondent is the competent appointing authority, he being the Senior Post Master of the Trivandrum G.P.O. That being the case, we have no difficulty in concluding that the Trivandrum GPO is an independent unit of recruitment, ^{non test} in respect of, Group D posts and hence, the recruitment has to be done at the unit level from persons in that unit eligible for consideration, whether they are ED Agents or casual labourers.

15. That being so, the Ann.V notice issued by the second respondent is beyond his competence. Such a notice has to be issued only by the 1st respondent.

16. The next question is regarding regularisation of casual employees. The applicant has filed the Ann.II letter of the DG P&T dated 11.11.83 regarding regularisation of casual employees. It is clarified therein that the casual employees may be regularised in Group D posts, subject broadly to the following conditions, viz., that he should have put 240 days at his credit in each year of the past 4 years in the case of part time casual labourers and he should have the minimum educational qualification, and he should be within the age limit prescribed, for which purpose the period spent as daily wage worker has to be reduced from the actual age. Therefore, in accordance with these instructions, the applicant ought to be regularised in the available Group D post.

17. That takes us to what has been done to postal employees in pursuance of the directions of the Supreme Court. The Hon'ble Supreme Court had commended the scheme evolved by the Department of Telecom, which is produced at Ann.IV. The basic feature of that Scheme is the creation of 14,175 Group D posts of regular Mazdoors for regularisation. Such a creation is, perhaps, the ideal solution, as it gives full scope for regularising persons to this extent.

18. As against this, the scheme evolved for the postal employees seems to be half-hearted and it does not measure up to the expectation of the Supreme Court. It is stated that the casual employees have been given an opportunity to get regularised as ED agents to begin with. This itself is a half-hearted measure because, a basic

requirement of eligibility is that the candidate should satisfy the local residence qualification and should also have an independent source of income. While we reserve comment in this regard, we cannot help remarking that in the very nature of things, casual labourers cannot be expected to satisfy these conditions. As the scheme of the Department of Telecom was issued on 18.11.88 by the Ann.IV order, the scheme for the postal employees must, obviously, have been issued subsequently. Therefore, casual labourers, ^{even if} absorbed as ED agents, may have put in a service of around only 2 years. Hence, they will not get a chance to be appointed to a non-test Group D category post, because a large number of ED agents having much longer years of service than casual labourers enrolled as ED agents, will be available. Therefore, even in the category of ED agents, it is very unlikely that any one who was recruited from casual labour, will stand a chance in this competition. The other casual labourers who have not been enrolled as ED agents will thus not have a chance at all for recruitment to Group D posts, because the number of ED agents of various categories available in a division is very large while the number of Group D posts will be very limited. Thus, if the Annexure-R2 amendment is implemented, no casual labourer is ever likely to be absorbed to a non test category Group D post. In other words, the scheme for the absorption of casual labourers as evolved is totally inadequate.

19. In the view that we are taking in this case we do not feel called upon to make any pronouncement in this regard, for, the learned counsel for the applicant


submitted that if it is held that the respondent-1 is the authority to make recruitment of casual labourers like the applicant, she will be in the field for selection as there are no ED agents under the first respondent in this unit.

20. Therefore, after having carefully considered the rival contentions, we are of the view that the appointing and the recruiting authority for the post of Departmental Sweeper in the Trivandrum GPO is the 1st respondent only. We also hold that the Ann.R4 instruction is not applicable to non test category posts. We, therefore, quash the Ann.V notice issued by the second respondent and direct the 1st respondent to take necessary steps in accordance with law to fill up the post of Departmental Sweeper in the Trivandrum GPO, treating that GPO as the unit of recruitment for the purpose of the Ann.R2 recruitment rules.


21. We make it clear that, for the present, we do not make any pronouncement in regard to Ann.III, Ann. IX and Ann.XI which have also been impugned. However, we hold that the impugned Ann.IX instruction of the DG, Department of Posts dated 17.5.89 will not apply to the recruitment of non test category post of Sweeper in the present case.

22. A copy of this judgement be sent to the fifth respondent for his information. We do not wish to issue any further direction at this stage.

23. The application is disposed of with the above directions.


26.4.91

(N.Dharmadan)
Judicial Member


26/4/91

(N.V.Krishnan)
Administrative Member