

CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

O.A.No.338/97

MONDAY this, the 13th day of October, 1997.

CORAM:

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

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

K.K.sureshkumar,
"Krishnalayam",
Nadakkuthala P.O.
Badagara.

..Applicant

(By Advocate Mr.O.V.Radhakrishnan)

vs.

1. Postmaster General,
Northern Region, Calicut-673 011.
2. Superintendent of Post Offices,
Badagara Division, Badagara.
3. Senior Postmaster,
Calicut-673 001.
4. V.K.Madhavan,Driver,
office of the Superintendent of Post Offices,
Badagara Division, Badagara. ..Respondents

(By Advocate Mr.P.R.Ramachandra Menon(R1-3)

The Application having been heard on 27.8.97, the Tribunal
on 13.10.97 delivered the following:

O R D E R

HON'BLE SHRI S.K.GHOSAL, ADMINISTRATIVE MEMBER:

The services of the applicant, who had been working as a casual Driver in the office of the second respondent, i.e. Superintendent of Post Offices, Badagara Division, Badagara since 26.9.95 were terminated on 21.2.97 by the second respondent. His grievance is that though as a casual Driver he had put in 230 days of work in the year 1996 and some more days earlier in 1995 and was therefore eligible for the grant of temporary status and thereafter for regularisation, as a Driver by the second respondent, he has been replaced unjustly and illegally

by the 4th respondent, Shri V.K.Madhavan. Shri Madhavan has been appointed by the 3rd respondent, Senior Postmaster, Calicut on transfer, to the post of Driver sanctioned on a regular basis for Badagara Division under the order of the Government of India dated 19.8.96 at A-2. According to the applicant, he was eligible for the grant of temporary status and thereafter for regularisation in terms of the scheme circulated by the second respondent through his letter dated 2.5.91 at A-5 and as modified by the scheme dated 1.11.95 at A6 which made A5 applicable to casual workers appointed after 1.9.93.

2. The applicant has prayed for setting aside the impugned order appointing the 4th respondent dated 10.2.97 passed by the third respondent at A-4 on the ground that it is opposed to the scheme at A5 and A6 and also for a declaration that he is entitled first to the grant of temporary status and then to regularisation against the sanctioned post of a Driver at Badagara Division in terms of the scheme at A-5 and A-6.

3. On behalf of the official respondents, a reply statement has been filed contesting the claims of the applicant. It has been mentioned there that in the wake of the sanction for the post of a regular Driver for the Badagara Division, applications were indeed invited from the applicant as well as another person, who had been working as casual Drivers in the Department. However, in terms of the Recruitment Rules notified in exercise of the powers under Article 309 of the Constitution at R1 read with the special dispensation for casual drivers at R2, neither of these two casual Drivers, including the applicant in the



present case was found suitable by the Departmental Promotion Committee(D.P.C.) which had met for this purpose on 14.2.97. The proceedings of the DPC held on 14.2.97 have been annexed to the reply of the official respondents at R-3.

4. The respondents have admitted that in terms of the policy of the department communicated through the letter dated 28.7.92 of the Director General of the Department of Posts, New Delhi, i.e. R2, efforts are required to be made in the first instance to fill up 50% of the vacancies, meant for outsiders for recruitment of Drivers, from amongst Drivers who have already been appointed in the department as casual basis. The main contention of the respondents, however, is that though such efforts were made and the DPC carefully considered the case of the applicant also, he was not found eligible. That was for the reason that as on 1.7.97 the applicant's age was 32 years one month and one day and even after deducting the period of his service as a casual Driver, rendered in the department, he would still be above 21 years which is the upper age limit for the appointment of a Driver as per the recruitment rules.

5. Further, the respondents have stoutly denied that the scheme of grant of temporary status and regularisation is applicable to all the casual Drivers for the basic reason that Drivers do not come under Group 'D' employees to whom the said scheme applies. On the contrary the Drivers have been specifically classified as Group 'C' under the recruitment Rules at R-1.

6. The respondents have contended that the applicant and the other casual Driver, both having been found ineligible for appointment against the regular sanctioned post of the Driver for Badagara Division, the post was filled

up on transfer with another Driver of the department as permitted under the recruitment rules.

7. It has therefore upon urged on behalf of the respondents that the impugned order appointing 4th respondent at A-4 does not warrant any intervention by the Tribunal.

8. In the rejoinder filed on behalf of the applicant it has been contended that the recruitment rules for the appointment of Driver no longer hold the ground. It is for the reason that the department which was earlier called the Department of Posts and Telegraphs has since been split into two departments namely, one for Postal Services and the other one for Telecommunication services under Govt. of India, Deptt. of Telecommunication O.M.No.2-1/COT/IM/82 dated 25.3.1985(A8) and further that no specific recruitment rules for the post of Driver in the Postal Services Department per se, after the said split, have been properly and legally prescribed. It has been argued by the learned counsel for the applicant that considering this position of vaccum, it was patently illegal, and therefore untenable, on the part of the DPC to subject the case of the applicant to the terms of the earlier recruitment rules. That being the case, according to the learned counsel for the applicant, the upper age limit contemplated under the previous recruitment rules has no validity and has been wrongly applied in the present case and the applicant has been illegally and unjustly denied an opportunity of being regularly appointed to the sanctioned post of Driver of the Badagara Division.



9. We have carefully gone through the pleadings in this case and considered the arguments of the learned counsel on either side.

10. In our view the benefits of the scheme of grant of temporary status and regularisation of casual labourers at A-5 and A-6 are limited only to casual workers discharging the functions of Group D posts for the grant of temporary status and eventual regularisation as employees belonging to Group D. Evidently, the said scheme does not create any right for a casual worker for consideration for the grant of temporary status or regularisation for a post higher than Group D posts, even if such casual workers were discharging the functions of any such higher post. We have also noted that the post of Driver in the Department is a Group 'C' post. We therefore hold that the applicant is not entitled to the benefits of the scheme of grant of temporary status and regularisation as a Driver under the scheme at A-5 and A-6.

11. We also observe that it has not been denied by the respondents that the applicant has worked as a casual Driver. On the contrary, the respondents have specifically tried to accommodate the applicant. They have actually considered his case in the light of the special policy for regularisation of casual Drivers against the posts of Drivers in terms of that policy at R-2. The concession available under the said policy for relaxation of age limit to the extent of the period of service rendered by a casual Driver in the Department has also been extended to the applicant. It is not denied by applicant that even after such a concession was made available in this case, he would still have been considered as having crossed 28 years of age as on 1.7.97, which is the relevant date for considering the age limit for appointment to the regular post of a Driver including the one for the Badagara Division.

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12. In the light of these facts and the provisions of the Recruitment Rules for the Driver at R-1 and of the special policy for relaxation of certain criteria in the Recruitment rules for accommodating of the casual Drivers for the purpose of appointment to the post of Drivers at R-2, we are convinced that the consideration given by the DPC while taking up the case of the applicant has been adequate and perfectly legal. We cannot find any fault with the conclusion of the DPC that the applicant was not eligible for appointment as a Driver to the regular sanctioned post of Driver for Badagara Division.

13. We now consider the argument advanced by the learned counsel for the applicant that in the absence of fresh Recruitment rules for the Driver, legally prescribed after the erstwhile department of Posts and Telegraphs has been split into two distinct departments, namely, Postal Services and Telecommunication Services, any insistence on the age limit by the DPC as been done in the present case was illegal. We are not really impressed by this line of argument. Unless fresh Recruitment rules are prescribed for the category of posts like Driver, exclusively for the Postal Services Department, the essential features of the earlier recruitment rules which are not in conflict with the overall restructuring of the parent Department into two separate Departments, will have to be presumed to be operative. It has not been indicated to us that there is generated such a conflict in the present case. In the absence of any such evidence or convincing legal arguments, we are unable to accept the contention urged by the learned counsel for the applicant on this score. We are certainly of the view that the Recruitment rules for



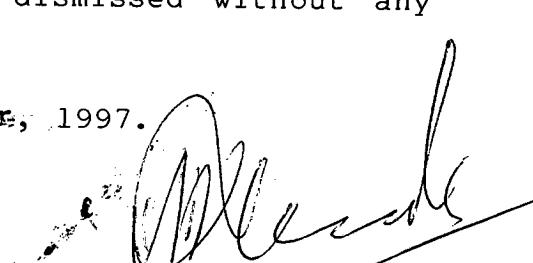
the Driver at R-1, in all their essential features, are operative and still hold the ground at the present moment or till they are replaced by fresh Rules.

14. We therefore, conclude that the DPC was quite right and legally competent in insisting on compliance with the age-limit prescribed under those recruitment rules as relaxed under the policy at R-2.

15. Since the applicant has been considered for appointment but found ineligible for appointment on the ground of he having crossed the upper age limit, he is not a person aggrieved by the impugned order. He has no locus standi to impugn the order not being eligible for appointment. Hence the application fails and the same is dismissed without any 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 A4: True copy of the Memo No.B 805 dated 20.2.97 of the 3rd respondent.
2. Annexure A5: True copy of the letter No.45-95/87-SPB-I dated 12.4.91 of the Director General of Posts, New Delhi.
3. Annexure A6: True copy of the Letter No.66-52/92-SPB.I dated 1.11.95 of the Director General of Posts, New Delhi.
4. Annexure A8: True copy of the Officer Memorandum No. 2-1/COT/IM/82 dated 25.3.1985 of the Government of India, Department of Telecommunications, New Delhi.
5. Annexure R1: True copy of the letter No.50-8/81 NCG dated 1.11.1983 issued by Ministry of Communications (P & T) Board.
6. Annexure R2: True copy of the letter No.37-29/88/SPB.I dated 28.7.1992 issued by the Director General, Department of Posts, New Delhi.
7. Annexure R3: True copy of the Minutes of the Departmental Promotion Committee, dated 14.2.97.

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