

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No.
T. A. No.

351/90

~~199~~

DATE OF DECISION 27.3.1991

V.K.Damodaran Applicant (s)

M/s.M.R.Rajendran Nair,P.V.Asha Advocate for the Applicant (s)

Versus

The Defence Pension Disbursing Officer, Respondent (s)
Kottayam-1 and 2 others

Mr.V.Ajith Narayanan,ACGSC 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? *Yes*
2. To be referred to the Reporter or not? *Yes*
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

(Hon'ble Shri S.P.Mukerji,Vice Chairman)

In this application dated 2nd May, 1990 filed under Section 19 of the Administrative Tribunals Act, the applicant who has been working as a casual part-time Sweeper in the office of the Defence Pension Disbursing Officer, Kottayam under the Deputy Controller of Defence Accounts of the Government of India , has challenged the telegraphic message from the 2nd respondent(Annexure-1) rejecting his representation and directing that his services be discontinued. By the interim orders passed by the Tribunal on 3.5.1990 and 22.6.1990 the termination of the applicant's services was stayed. The brief facts of the case are as follows.

2. The applicant is a member of the Scheduled Caste community and has been working as a part-time Sweeper in the office of the D.P.D.O, Kottayam with effect from 5.1.1980 on daily wages. He also worked on

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a full-time basis between 11.11.87 and 31.10.88 and his part-time employment continued from 1.11.88 onwards. After expiry of every 89 days artificial breaks in his service were shown by not marking his presence in the Attendance Register. According to the applicant he has been requesting for full-time appointment as a Sweeper since 1981. According to him the second respondent on 3.10.85 recommended his appointment as a full-time Sweeper. However by the order dated 15.12.88(Annexure-II) his services as part-time Sweeper were terminated against which the applicant moved this Tribunal in OA 618/88. The Tribunal by its order dated 29.1.1990 (Annexure-IV) while dismissing the application directed the applicant to submit a representation for relaxation of the upper age limit and ^{also} directed that the applicant should be continued in service till the disposal of the representation. Pursuant to that order the applicant submitted a representation on 16.2.1990 adverting the Ministry of Home Affairs circular of 13.10.83 for regularisation of casual employees recruited on or before 21.3.79 even though they had crossed the upper age limit. He prayed that even though he was recruited after 21.3.1979 on 1.1.80 since the Recruitment Rules provided for relaxation of age limit and he belonged to a Scheduled Caste community, age relaxation may be given to him on compassionate grounds and he should be regularised in a Group D post. Instead of giving him any relief, the 2nd respondent sent the impugned telegraphic message rejecting his representation and directing to terminate his services in accordance with the judgment of the Central Administrative Tribunal. The applicant has argued that being a Scheduled Caste employee with more than 10 years of service he should have been given the benefit of relaxation of upper age limit by the relaxation provision in the Recruitment Rules. He has also challenged the impugned order as being non-speaking and without consideration of the various decisions of the Supreme Court. The communication dated 30.4.88 at Annexure-III refers to termination of services of those casual labourers whose names were not sponsored by the Employment Exchange except in cases where the recruitment was prior to 7.5.85. Under these circumstances he should have been allowed to be continued at least as a casual labourer. He has also indicated that the first respondent in

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1985 had recommended his regularisation as Group D. He has referred to the decision of the Supreme Court as reported in (1990) 1 SCC 361, in which educational qualifications prescribed in the Recruitment Rules were directed to be relaxed for regularisation of daily rated workers who have been engaged for a considerable length of time on the ground that experience would make up the short-fall in educational qualification. The decision of the Supreme Court reported in 1990(2) SLR 43 in the Karnataka case directing regularisation of casual and daily rated employees who have completed 10 years of service on the basis of seniority-cum-suitability has also been invoked by the applicant.

3. The respondents have stated that the impugned telegram dated 26.4.90 followed by post-copy dated 30.4.90 giving notice of termination of services of the applicant as part-time Sweeper was sent based on CGDA's telex of 25.4.90. The notice was served on the applicant at his residential address. They have conceded that the applicant had been working as part-time Sweeper at Kottayam from 5.1.1980 and had also worked as a full-time worker between 11.11.87 and 31.10.88. He did not work continuously for more than 90 days at a time. They have stated that even though he was called for interview he could not be considered for regular appointment to Group D cadre as he was not eligible for such appointment in accordance with the existing orders. He was over-aged even at the time of his initial appointment in 1980 by more than one year and eight months. Because of his being over-aged and part-time status, his request for regularisation could not be considered. They have also referred to the Government of India's order dated 21.3.1979 in accordance with which relaxation of age limit in respect of casual labourers is not permissible. Since he could not be regularised his services were terminated and he was informed accordingly. They have clarified that services of other casual labourers who could not be regularised because of age and other criteria have been terminated. According to them a casual employee can be regularised in Group D cadre only if he was within the age limit at the time of initial recruitment

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as a casual labourer. The Application No. OAK 618/88 filed by the applicant was dismissed by the Tribunal on 29.1.90 with the direction that he should make a representation for relaxation of the upper age limit. Accordingly his representation dated 16.2.90 was forwarded to the CGDA and since the O.M. of 10.10.79 is applicable only to casual labourer engaged on or before 20.3.79 and since the applicant was engaged only on 5.1.80, his representation was considered and rejected. The order of the competent authority terminating the applicant's services has been produced by the respondents at Annexure-R, which according to them is a speaking order. As there was no provision for relaxation of the age limit, there was no other alternative for the competent authority. He had no powers to relax the age limit. They have argued that the judgment of the Supreme Court cited by the applicant (1990) 1 SCC 361 is not applicable to the applicant as that ruling relates to relaxation of educational qualification in view of the experience gained by casual employees and does not refer to the age criterion. In the rejoinder the applicant has referred to the circular of the Department of Personnel dated 7.6.88 (Annexure-VI) in accordance with which relaxation of the guidelines is possible under clause XI with the prior concurrence of the Ministry of Finance and Department of Personnel. He has also referred to the direction of the Tribunal in another case in O.A. 597/89 in which the respondents were directed to consider the case of the applicant for relaxation of upper age limit under clause XI of the aforesaid circular.

4. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. The only ground on which the applicant's representation for regularisation has been rejected is that he was over-aged even at the time of his initial employment as a part-time Sweeper on 5.1.80 and there is no provision in the orders for relaxation of the upper age limit for regularisation of casual employees in Group D posts. For regularisation of casual employees provision for age relaxation was made in the following terms:-

Department of Personnel O.M. no. 49014/7/83 Sd/- C of 13.10.83

"It has been brought to the notice of this Department that in certain cases, casual employees, though recruited through Employment Exchange, had already crossed the upper age limit prescribed for appointment to Group-D posts, with the result, that the facility for regularisation cannot be made available to them.

In view of the fact that the casual employees belong to the economically weaker section of the society and with a view to avoid undue hardship to them, it has been decided that such of the casual employees as were recruited to various Ministries, Departments and their attached and subordinate offices before 21.3.1979 may be considered for regularisation in Group-D even though they may have crossed the age limit prescribed for the post provided they are otherwise eligible for regularisation."

The respondents have rejected the claim of the applicant for age relaxation on the technical ground that he was recruited ^{not} before 21st March, 1979. It will be useful to briefly recount the various orders issued by the Ministry of Home Affairs/Department of Personnel from time to time about regularisation of casual workers.

(a) In the Ministry of Home Affairs Memo No.6/52/60 Estt.A dated 16.2.61 the Government accepted the Pay Commission's recommendation that the long experience of the casual workers should be utilised and it was decided that casual workers initially recruited through the Employment Exchange with long experience should be preferred for appointment in regular establishment. Those who were not registered with the Employment Exchange were directed to get themselves registered and await their turn on the basis of their seniority in the Employment Exchange.

(b) In the Ministry of Home Affairs O.M No.16/10/66-Estt D dated 2nd December, 1966, the term 'long experience' referred to in the O.M. of 16.2.61 above, was explained to mean 2 years of continuous service and it was directed that Class IV posts in the direct recruitment quota should be filled up by casual workers registered with the Employment Exchange.

(c) In MHA's O.M No.14/1/68-Estt.C dated 12.2.69, 2 years of continuous service referred to in the O.M of 2.12.66 was explained to mean 240 days of service per year including broken period of service.

(d) In MHA's O.M No.16-5/68 Estt.D dated 5.7.68 part-time casual workers were also brought within the benefits of regularisation provided they had been appointed through the Employment Exchange and had experience of 4 years. For purposes of age the actual service rendered as part-time was to be deducted from their age at the time of consideration for

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regularisation.

- (e) In the Department of Personnel's O.M. dated 20th March, 1979 it was directed that daily wage worker with at least 240 days of service during each of the two preceding years should be regularised in Group D posts and the period spent by them as daily wage worker is to be debited from actual age on the date of regular appointment. He should possess the minimum educational qualifications prescribed for the post.
- (f) In the O.M No.49014/4/77-Estt.(c) dated 10.10.79 the benefit of regularisation to casual employees who were engaged till 20th March, 1979 even otherwise than ^{through} Employment Exchange were covered.
- (g) By the O.M No.49014/7/83-Estt.(c) dated 13.10.83 the benefit was further extended to the casual employees who were recruited before 21.3.79 otherwise through Employment Exchange and even though they had crossed the age limit prescribed for the post.
- (h) By further O.M No.49014/18/84-Estt.(c) dated 7th May, 1985 it was decided as one time measure that casual workers recruited before 7th May, 1985 may be considered for regular appointment to Group 'D' posts even though they were recruited otherwise than through Employment Exchange provided they are eligible for regular appointment in all other respects.
- (i) Finally in the O.M No.49014/2/86-Estt.(C) dated 7.6.1988, a copy of which has been annexed at Annexure-VI by the applicant in this case, the engagement of casual workers was regulated in accordance with certain guidelines and about regularisation of casual workers clause x therein reads as follows:-

"x) The regularisation of the services of the casual workers will continue to be governed by the instructions issued by this Department in this regard. While considering such regularisation, a casual worker may be given relaxation in the upper age limit only if at the time of initial recruitment as a casual worker, he had not crossed the upper age limit for the relevant post."

However, clause xi of the same O.M. indicated as follows:-

" xi) If a Department wants to make any departure from the above guidelines, it should obtain the prior concurrence of the Ministry of Finance and the Department of Personnel and Training"

5. The historical narration of the developing policy about regularisation of casual workers as evidenced from the instructions issued from time to time shows that the insistence of casual workers being engaged only through the Employment Exchange and the upper age limit for regularisation was being relaxed from time to time. The latest instructions also contemplated relaxation of the upper age limit only with the prior concurrence of the Ministry of Finance and Department of Personnel and Training. The Supreme Court in the case cited by the applicant in (1990)1 SCC 361 also directed the relaxation of minimum educational qualifications prescribed for different posts in favour of daily rated workers who had been engaged for sufficiently long period to have practical experience to make up for the short-fall in their educational qualifications. In the Dharward Distt. P.W.D.Literate Daily Wage Employees Association & Ors. etc. v.State of Karnataka & another etc,1990(1)SCALE 288 the Supreme Court keeping the benefits mandated by Part IV of the Constitution and the resources constraints of the State and the obligations of the State to act with a sense of fairness^{and} anxiety to meet the demands of the human requirements directed that 18,600 casual and daily rated employees who had completed 10 years of service by 31.12.89 should be regularised with effect from 1.1.90 on the basis of seniority-cum-suitability."There shall be no examination but physical infirmity shall mainly be the test of suitability". Other employees would also be entitled to absorption on the basis of completing 10 years of service and shall be absorbed/regularised in a phased manner on the same principle on or before 31st December,1990.

6. It will be clear from the above that the spirit of the Constitution actuated the Hon'ble Supreme Court to give the aforesaid direction for regularisation of casual employees with 10 years of service in a phased manner irrespective of educational, age or being sponsored by the Employment Exchange. While dealing with a similar question of regularisation and job security of employees of the State , the Supreme Court in K.C.Rajeevan and 15 others v. State of Kerala and 2 others, (1991)1 SCC 31,observed as follows:-

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"There are certain other provisions which enjoin on the State certain duties, e.g. securing to all workers work, a living wage, just and humane conditions of work, a decent standard of life, participation in management, etc. which are aimed at improving the lot of the working classes. Thus the Preamble promises socio-economic goals and the Directive Principles fix the socio-economic goals which the State must strive to attain. These three together constitute the core and conscience of the Constitution.

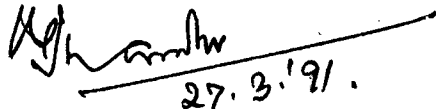
9. India is a developing country. It has a vast surplus labour market. Large scale unemployment offers a matching opportunity to the employer to exploit the needy. Under such market conditions the employer can dictate his terms of employment taking advantage of the absence of the bargaining power in the other. The unorganised job seeker is left with no option but to accept employment on take-it-or-leave-it terms offered by the employer. Such terms of employment offer no job security and the employee is left to the mercy of the employer. Employers have betrayed an increasing tendency to employ temporary hands even on regular and permanent jobs with a view to circumventing the protection offered to the working classes under the benevolent legislations enacted from time to time. One such device adopted is to get the work done through contract labour. It is in this backdrop that we must consider the request for regularisation in service."

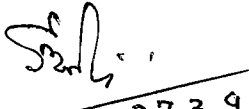
7. We have been at pains in enunciating the 'core and conscience' of the Constitution and the evolving policy of the Government through catena of rulings of the Supreme Court to underline the fact that casual workers like the applicant before us with 10 years of service behind them deserve regularisation even by relaxation of the prescribed age and educational qualifications. It was in that spirit that this Tribunal in its judgment dated 29.1.1990 (Annexure-IV) in OAK 618/88 directed the respondents to dispose of the applicant's representation to be filed by him and the Tribunal hoped "that the Respondents will consider his representation sympathetically keeping in view his status, the long period of service and the general trend of directions of the Supreme Court as referred to earlier". It was least expected that the respondents should dispose of such a representation by a non-speaking and peremptory order not only rejecting the representation for regularisation, but also simultaneously terminating his services by the order dated 30.4.90 at Annexure-R1 which reads as follows:-

"It has been intimated by C.D.A. Madras that your case for regularisation of service is not covered as per existing orders on the subject and accordingly your representation dt. 16.2.90 has been rejected by the competent authority after due consideration. I am, therefore, directed to inform you that your service as a part time sweeper in this office is hereby discontinued, forthwith as per CAT judgment."

It is all the more tragic that even before the aforesaid order was passed, the services of the applicant were terminated telegraphically by a message at Annexure-I dated 26.4.90. The former order at Annexure-R1 and much less the impugned telegraph at Annexure-I cannot bear any judicial scrutiny and are also against the principles of grace and kindness which are expected to permeate employment of men and women by the State. Further the authority at Madras, i.e., the 2nd respondent 'killed' the representation at his level when the guidelines issued by the Department of Personnel and Administrative Reforms at Annexure-VI admits of relaxation of upper age limit by reference to that Department and the Ministry of Finance. Since the Union of India is respondent No.3 in the case before us, we do not feel it necessary to protract the agony of the applicant by directing another round of representation to be submitted by the applicant to the Union of India for relaxation of the upper age limit. We are convinced that justice demands that the upper age limit in the case of the applicant has to be relaxed by judicial intervention.

8. In the facts and circumstances we allow this application to the extent of setting aside the impugned message at Annexure-I and directing respondent No.3 to consider the applicant for regular appointment in accordance with the Department of Personnel's O.M. of 7th June, 1988(Annexure-VI) to a Group D post and to continue him as a casual labourer till such time as he is regularised and not to terminate his services except in accordance with law. There will be no order as to costs.


(N. Dharmadan)
Judicial Member


(S.P. Mukerji)
Vice Chairman