

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 372/91
~~XXXXXX~~

x199x

DATE OF DECISION 08.7.1992

Mr M Anil Kumar

Applicant (x)

Mr CP Ravikumar

Advocate for the Applicant (x)

Versus

Union of India (Secretary,
Ministry of Telecommunications)
& 2 others. Respondent (s)

Mr George Joseph, ACGSC

Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. SP Mukerji - Vice Chairman

&
The Hon'ble Mr. AV Haridasan - 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? *no*
3. Whether their Lordships wish to see the fair copy of the Judgement? *u*
4. To be circulated to all Benches of the Tribunal? *u*

JUDGEMENT

(Hon'ble Shri AV Haridasan, JM)

The applicant, Shri M. Anil Kumar, who has been engaged as casual mazdoor under the 3rd respondent, has prayed in this application for a direction to the 2nd and 3rd respondents to provide employment to him by including his name in the list of casual mazdoors. The facts given in the application can be briefly stated as follows.

2. The applicant has worked as a casual mazdoor from April, 1985 to March, 1989 in the Calicut RMS office. He had registered his name with the Employment Exchange

in June, 1982. But his name was not included in the panel of casual mazdoors in the RMS, Calicut. He, therefore, made a representation on 7.3.1990 to the Superintendent of RMS, Calicut, requesting that his name may also be included in the panel of casual mazdoors. The request made in this representation was rejected by the Superintendent of RMS by order dated 6.7.1990 (Annexure III) on the ground that as the applicant was not sponsored by the Employment Exchange nor was he employed prior to 7.5.1985, his name could not be included in the panel of casual labourers in view of the instructions contained in the OM No.49014/18/84-Estt(C) dated 7.5.1985 of the Ministry of Personnel & Training, Administrative Reforms and Public Grievances & Pension (Department of Personnel & Training). The applicant made another representation to the 2nd respondent on 4.1.1991 (Annexure IV). But there was no response to this representation. It is in these circumstances that the applicant has filed this application under Section 19 of the Administrative Tribunals Act. It has been averred in the application that since the applicant has been engaged as a casual mazdoor from April, 1985 to March, 1989 to deny him the benefit of enlistment in the list of casual mazdoors on the ground that there is a ban in the instructions contained in OM issued by the Department of Personnel & Training is unjustified.

3. The respondents resist the application. In the statement filed by them, though they have admitted that the applicant was engaged as a substitute from 16.11.1985

to 5.1.1986 and on a casual basis from 7.1.1986 to 16.6.89 intermittently in different spells, they contend that in view of the ban contained in the OM No.49014/18/84-Estt(C) dated 7.5.1985 it is not possible to include the applicant's name in the list of casual mazdoors. It is contended that the engagement of the applicant from 7.1.1986 to 16.6.1989 was made inadvertent to the ban contained in the OM dated 7.5.85. Therefore, the respondents contend that the applicant is not entitled to be included in the list of casual mazdoors or for re-engagement.

4. The applicant has, in a rejoinder filed by him contended that the ban contained in the OM dated 7.5.85 has been modified and further guidelines were issued on 7.6.88 and that in the Government order No.49014/4/90-Estt(C) dated 8.4.1991 it has been stipulated that casual workers recruited before 7.6.1988 who were in service as on the date of issue of the said guidelines may be considered for regular appointment in Group D posts even if they were recruited otherwise than through Employment Exchange. The applicant contends that though on 8.4.91 the applicant was not in service as casual labourer, since he had been continuously working as ~~casual~~ casual labourer from April, 1985 to March, 1989 though with intermittent breaks, the benefit of the relaxation should have been extended to him and the respondents should have on the basis of the above OM enlisted him in the roll of casual mazdoors and considered his case for regularisation. Referring to this contention in the rejoinder, the respondents

have filed an additional reply statement in which it is contended that if at all the benefit of the relaxation is to be extended to the applicant as an act of grace and even if he is empanelled as a casual mazdoor, there would be no chance for giving him employment as adequate number of casual labourers have already been empanelled in the RMS.

5. We have heard the arguments of the counsel on either side and have also carefully perused the pleadings and documents on record. Though the applicant has averred in the application that he has been in continuous casual service from April, 1985 to March, 1989, he has not been successful in establishing by any evidence that he has been in service prior to 7.5.1985. The Annexure 3 certificate issued by the Head Record Officer, RMS, Calicut on 1.6.1988 shows that the applicant has been working as a temporary mazdoor in short leave vacancies in the RMS office for three years. Three years ^{period} prior to 1.6.1988 will take us to only ~~only~~ 1.6.1985. According to the directions contained in the OM No.49014/18/84-Estt(C) dated 7.5.1985 of the Department of Personnel & Training, the recruitment of casual labourers otherwise than through Employment Exchange has been completely banned. The learned counsel for the respondents on the basis of the above OM argued that the applicant who had not been in casual service prior to 7.5.1985 and who has not been sponsored by the Employment Exchange has absolutely no right to claim either

re-engagement or regularisation. Though there is a ban on engagement of casual labourers from 7.5.85 otherwise than through Employment Exchange, admittedly the applicant has been engaged for a considerably long period from 1.6.1986 to 16.6.1989. Having engaged the applicant as casual Mazdoor for about 3 years in different spells against the directions contained in the OM, it is not open for the respondents now to contend that as the engagement was against the ban contained in the OM, the applicant would not be entitled to any further engagement or for regularisation. Further, the Department of Personnel & Training has been issuing instructions on the very same subject subsequent to the OM dated 7.5.85. They have relaxed the requirement of sponsorship through Employment Exchange in the case of casual mazdoors who had been engaged prior to 7.6.1988 by OM No.49014/2/86-Estt(C) dated 7.6.1988. In the OM of the Department of Personnel & Training No.49014/4/90-Estt(C) dated 8.4.1991, it is stated as follows:-

"Reports have now been received from various Ministries/Departments for allowing relaxation in the conditions of upper age limit and sponsorship through employment exchange for regularisation of such casual employees against Group D posts, who were recruited prior to 7.6.1988 i.e. date of issue of guidelines. The matter has been considered and keeping in view the fact that the casual employees belong to the economically weaker sections of the society and termination of their services will cause undue hardship to them, it has been decided, as a one time measure in consultation with the Director General, Employment & Training, Ministry of Labour that casual workers recruited before 7.6.88 and who are in service on the date of issue of these instructions, may be considered for regular appointment to Group D posts, in terms of the general instructions, even if they were recruited otherwise than through

employment exchange and had crossed the upper age limit prescribed for the post, provided they are otherwise eligible for regular appointment in all other respects."

This shows that though in the OM dated 7.5.85 there was a ban, casual labourers were being engaged even thereafter without being sponsored by the Employment Exchange and that the Government had decided to regularise them in service provided they were in service on the date of issue of the OM dated 8.4.1991. The fact that the applicant was not in casual employment on the date of issue of the OM dated 8.4.1991 is something beyond the control of the applicant. The respondents who engaged him after 7.5.85 against the ban contained in the OM and continued to engage him till 1989 have refused to re-engage him thereafter for which the applicant is not responsible. Further, the stand taken by the respondents that just because the applicant was engaged without being sponsored by the Employment Exchange as a casual labourer after 7.5.1985 he is not entitled to re-engagement or regularisation cannot be upheld in view of the fact that the Government itself had relaxed the condition of sponsorship by Employment Exchange for casual engagement even after 7.5.1985. The respondents have a further case that even if the benefit is extended to him and if he is empanelled as a casual mazdoor, there would not be sufficient work to engage him. The applicant has averred that there is plenty of work. However, by directing the inclusion of the applicant in the list of casual mazdoors and to give him work in

accordance with his turn, no additional burden or obligation is cast on the Government. Therefore, we are of the view that the applicant in this case is entitled to be included in the list of casual mazdoors and to be given casual work in accordance with his seniority as a casual mazdoor.

6. In the result, the application is allowed and the respondents are directed to include the name of the applicant at an appropriate place in the list of casual mazdoors of RMS, Calicut, on the basis of length of casual service put in by him and to give him engagement in accordance with his turn.

7. There is no order as to costs.


(AV HARIDASAN)
JUDICIAL MEMBER


(SP MUKERJI)
VICE CHAIRMAN

08.7.1992.

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