

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 38 of 2007

Tuesday, this the 8th day of July, 2008

C O R A M :

**HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER
HON'BLE DR. K S SUGATHAN, ADMINISTRATIVE MEMBER**

P. Sureshan,
S/o. Bhaskaran Nair,
Panniamkuzhiyil,
Koodathal Bazar,
Kozhikode
Applicant.

(By Advocate Mr. M.P. Krishnan Nair)

v e r s u s

1. Chief Postmaster General,
Kerala Circle, Thiruvananthapuram.
2. Senior Superintendent of Post Offices,
Calicut Division, Calicut : 673 003
3. Senior Postmaster,
Calicut HPO, Calicut : 673 001
4. Union of India, represented by
Secretary, Ministry of Communications,
Department of Posts, New Delhi. ...

Respondents.

(By Advocate Mr. A.D. Raveendra Prasad)

The Original Application having been heard on 1.7.08, this Tribunal
on
...8.7.08 delivered the following :

ORDER

HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

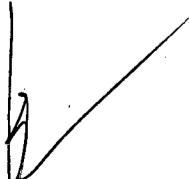
The applicant, Shri P. Sureshan, was initially engaged as Driver in the
Head Post Office at Calicut on 17-08-2003. Sometimes in October, 2006, the Sr.
Postmaster had issued a general certificate certifying that the applicant has been

working as "Mazdoor Driver, Mail Motor Service on daily wage basis", vide Annexure A-3. Respondent No. 2 had issued letter dated 19-09-2006 to fill up 2 vacant posts of Driver, MMS, departmental quota (1 UR and 1 OBC), vide Annexure A-4. In that communication, there is a mention that Age limit is not applicable. As per the averment made by the applicant vide para 4D of the O.A. he had applied for the same as he has been serving in the department since 2003 and fulfills the requisite conditions. According to the applicant, no action was taken in respect of his application in pursuance of issue of Annexure A-4 notification or for that matter, in respect of Annexure A-4. The applicant later on came to know about issue of Annexure A-5 notification, which is undated and without any number etc., notifying 3 vacancies (OBC 2 and Unreserved 1) and the last date for application was 20-11-2006. This was issued without cancelling the earlier notification. Thus Annexure A-5 is one of the orders against which the applicant has come up in this O.A.

2. While the above is one of the grievances of the applicant, the other one is that the respondents have adopted an illegal method to give on contract conveyance of Mail on regular basis between Calicut RMS and Post Offices in Calicut City and suburbs. Annexure A-11 to A-15 are such tender notices in this regard and these too have been challenged in this O.A.

3. The grounds on which challenge has been made are as under:-

(a) Applicant having been appointed as a Driver who fulfills the requisite qualifications, experience etc., and who has been appointed against a regular post, should have been considered for



regularization whereas the respondents have treated the applicant only as a daily wager.

(b) No action was taken ^{on} to the application filed by the applicant in response to Annexure A-4 notification, though the applicant has fulfilled all the conditions for regular appointment.

(c) There has been no complaint against the applicant whatsoever which is evident from Annexure A-3 certificate and the muster roll would reflect that the applicant has been continuously working since August, 2003 and this fact has not been taken into account by the respondents.

(d) With malafide intention, annexure A-4 notification had been shelved and Annexure A-5, without any authenticity with a prescription of age limit of 21-28 years has been issued, and the same disqualifies the applicant as he would be over aged he being 39 years of age.

(e) Attempt to engage private contractors, an entirely new system, would adversely affect the respondent apart from the fact that it would promote unemployment, nepotism and corruption. Thus Annexure A-11 to A-15 are liable to be quashed being arbitrary, malafide in nature, discriminatory in character, unjust, unfair, unreasonable and unsustainable and in violation of Art. 14 and 16 of the Constitution.

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4. Thus on the above grounds, the applicant has prayed for quashing of Annexure A-5, A-11 to A-15 orders and for a direction to the respondents to act on Annexure A-4 notification, which does not prescribe any age limit and in pursuance of which the applicant has applied for regular appointment and thus regularize his services. As a residual prayer, the applicant has prayed for such other orders as may be deemed fit and proper by this Tribunal in the facts and circumstances of the case.

5. Respondents have contested the O.A. They have contended that though it is claimed by the applicant that he was appointed as driver on monthly salary, he was only engaged on daily wages on need basis and his engagement was purely a temporary arrangement. He was not selected or appointed by adopting any selection procedure. He was paid wages on hourly rates for the actual days on which he was engaged. i.e. no wage was paid for the non-working days. Respondents have denied receipt of any application from the applicant in response to Annexure A-4 notification. It is their further contention that in any event, since the vacancy belongs to departmental quota and the applicant cannot be termed as a departmental employee, as he was engaged only as a Mazdoor driver on daily wage basis, and not a G.D.S. or any other Group D, he is not eligible to be considered for the post. As regards the allegation about the Annexure A-5 notification not being dated etc., respondents have stated that the said notification was accompanied by a covering letter, which bears the letter No. and date along with the details of the issuing authority, vide Annexure R-5. It has been contended that the applicant being an outsider, does not have any legitimate right to get himself absorbed as Driver only

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because he was engaged to look after the duties of the vacant post of Driver from 17-08-2003 on daily wages. Outsiders, who were of the age range of 21-28 years as on 01-07-2006 were only eligible for applying to the post in response to Annexure A-5 and the applicant is over-aged and hence was not eligible. It has also been stated in the counter that in response to Annexure A-5 notification, 72 applications were received, of which 54 were called for by the DPC and 50 had turned up. Of them 25 candidates were found eligible for consideration for the signal and driving tests.

6. Respondents in their counter have also relied upon the decision of the Apex Court in the case of State of Karnataka vs Umadevi, (2006) 4 SCC 1, wherein it has been held that merely because a temporary employee or a Casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength if such continuance of the original appointment was not made by a due process of selection as envisaged by the relevant rules. In a similar case where the applicant had not even applied for the post had filed OA 643/2006 this Tribunal has dismissed the OA on that score alone as per order dated 01-02-2007.

7. In their affidavit dated 24-05-2007, filed on 28-05-2007, the respondents have further stated that out of 5 posts of Drivers in Mail Motor Service, Calicut, three posts are vacant. The work in the vacant posts was being managed by engaging outside Drivers (including the applicant) on payment of wages on hourly rates purely on temporary basis as stop-gap arrangements. The department has selected three individuals out of those who had been

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interviewed/who were subjected to the signal and driving tests and in view of the direction of this Tribunal by an interim order that any appointment made is subject to outcome of this case, these selected individuals were not offered any appointment.

8. The applicant has filed the rejoinder in which he had reiterated his contentions as contained in the OA and stated that he is not an outsider.

9. Meanwhile, the P.M.G. ordered that till fitness certificates in respect of the MMS vehicles at Calicut were issued, none of such Mail Motor Service Vehicles shall be operated. Quotations for operating private vehicles were called for and from among those received, contract was awarded to one of them. The condemnation Committee met on 11-03-2008 and had recommended condemnation of the vehicles of MMS, Calicut. As such the regular drivers at Calicut Division were redeployed to other divisions and daily wage drivers like the applicant were asked not to attend the office as they could not further be engaged. Copy of the Minutes of the Condemnation Committee and order of PMG posting regular drivers to other divisions were also filed by the respondents.

10. During the pendency of the OA, at one stage the Respondents were asked to ascertain whether the services of the applicant could be utilized in any other place. To the same, a communication dated 22-05-2008 was filed by the counsel for the respondents that the applicant not being a regularly appointed individual and that he all along having been working only as a daily wage driver, his services could not be utilized for any other place.

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11. Applicant on his part submitted English version certain news items earlier filed by him vide Annexure A-16 and a further communication dated 09-03-2008 submitted by the applicant to the respondents.

12. Counsel for the applicant argued that Annexure A-4 having been issued, in response to which the applicant has applied as stated in the OA, and there being no cancellation of the said Annexure A-4 it is not known as to how yet another notification Annexure A-5 came to be issued, which was not duly authenticated with date or number by the respondents. The applicant having worked for nearly five years, his services cannot be simply ignored by the respondents. The need for privatization has also not been explained satisfactorily. The condemnation was made to frustrate the legitimate aspiration ⁼⁼⁼⁼ of the applicant for regularization. It has been submitted by the counsel for the applicant that the applicant deserves to be engaged in any available post.

13. Counsel for the respondents submitted that condemnation of vehicles had been under contemplation for quite some time and as such contention that condemnation was to frustrate the legitimate aspiration of the applicant is not correct. He has further submitted that the applicant has no indefeasible right either to claim continuance as daily wage driver, nor could he claim regularization. He had not applied for the post, nor he could be treated as departmental candidate. As regards privatization, it being a policy matter, the applicant cannot be permitted to challenge the same nor could the Tribunal be in a position to adjudicate upon the same. Thus, the applicant is liable to be rejected, argued the counsel for the respondents.

14. Arguments were heard and documents perused. The question is whether any of the vested rights of the applicant had been hampered by issue of Annexure A-5 notification and Annexure A-11 to A-15 tenders and whether on the basis of Annexure A-4 the applicant's case for regular appointment should be considered.

15. The applicant had been working as Driver but though he had claimed that he was appointed as such and paid monthly salary, there has been no formal appointment order that has been produced by the applicant and that the evidence of receipt of 'salary' produced appears only to be cash vouchers, which are normally given for payment from contingent provisions. Thus, it cannot be said that the applicant was appointed as driver on monthly salary. He was only engaged as a daily wage driver. This is evident even from Annexure A-3 certificate, issued by one of the officers of the respondent organization. Even if it be assumed that the engagement of the applicant is by a due process of selection as per the provisions of any rule or administrative instructions, all that the applicant is entitled to is that he cannot be substituted by another daily wage driver. Decision of the Apex Court in the case of State of Haryana vs Piara Singh (1992) 4 SCC 118 and para 25 to 27 of the decision in Umadevi (supra) refer. In so far as the issue of Annexure A-11 to A-15, there is no vested right with the applicant to question the same, nor could the Tribunal be in a position to adjudicate upon the same, as the matter of carrying out the functions through private parties is one of policy decision. The Apex Court in the case of BALCO Employees' Union (Regd.) v. Union of India, (2002) 2 SCC 333, held as under:-

42. While considering the validity of the industrial policy of the State of Madhya Pradesh relating to the agreements entered into for supply of sal

seeds for extracting oil in M.P. Oil Extraction v. State of M.P. the Court held as follows:

"41. After giving our careful consideration to the facts and circumstances of the case and to the submissions made by the learned counsel for the parties, it appears to us that the Industrial Policy of 1979 which was subsequently revised from time to time cannot be held to be arbitrary and based on no reason whatsoever but founded on mere *ipse dixit* of the State Government of M.P. The executive authority of the State must be held to be within its competence to frame a policy for the administration of the State. Unless the policy framed is absolutely capricious and, not being informed by any reason whatsoever, can be clearly held to be arbitrary and founded on mere *ipse dixit* of the executive functionaries thereby offending Article 14 of the Constitution or such policy offends other constitutional provisions or comes into conflict with any statutory provision, the Court cannot and should not outstep its limit and tinker with the policy decision of the executive functionary of the State. This Court, in no uncertain terms, has sounded a note of caution by indicating that policy decision is in the domain of the executive authority of the State and the Court should not embark on the unchartered ocean of public policy and should not question the efficacy or otherwise of such policy so long the same does not offend any provision of the statute or the Constitution of India. The supremacy of each of the three organs of the State i.e. legislature, executive and judiciary in their respective fields of operation needs to be emphasised. The power of judicial review of the executive and legislative action must be kept within the bounds of constitutional scheme so that there may not be any occasion to entertain misgivings about the role of judiciary in out-stepping its limit by unwarranted judicial activism being very often talked of in these days. The democratic set-up to which the polity is so deeply committed cannot function properly unless each of the three organs appreciate the need for mutual respect and supremacy in their respective fields." (emphasis added)

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46. It is evident from the above that it is neither within the domain of the courts nor the scope of the judicial review to embark upon an enquiry as to whether a particular public policy is wise or whether better public policy can be evolved. Nor are our courts inclined to strike down a policy at the behest of a petitioner merely because it has been urged that a different policy would have been fairer or wiser or more scientific or more logical.

16. Thus, in so far as agitation against issue of Tender notices, vide Annexure A-11 to A-15 is concerned, the claim of the applicant for quashing the same on the ground that it adversely affects the continuance of the applicant in

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b/.....

the engagement as Driver in the Respondent's organization has to be rejected and we accordingly order so. Relief claimed at para 8(d) is thus rejected.

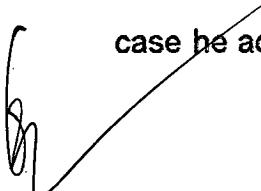
17. Coming to the issue of Annexure A-5, Annexure A-4, no doubt was issued without any age prescription. But it is to be seen whether the said Annexure A-4 is applicable to the case of the applicant. In the latest affidavit filed by the applicant, an order of 1997 was produced, vide Annexure A-20, which stipulates that 50 % of the vacancies meant for outsiders, may be filled up from among the casual labourers. If at all any right has accrued to the applicant, the same is only with reference to this communication and subject to fulfillment of the conditions attached thereto. The communication reads as under:-

"..... The matter has been considered in detail and it has been decided that,

Against the 50% quota of vacancies meant for outsiders, recruitment of drivers may be made only from amongst those drivers already appointed in the department on casual basis before 1-4-1985 failing which recruitment may be made from amongst the casual labourers of temporary status doing the job of drivers. Subject to fitness, the recruitment may be made in order of seniority based on the length of service as casual driver/casual labour (engaged as drivers).

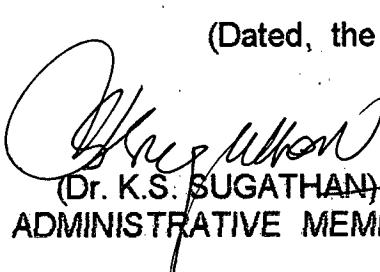
- 1) *The casual driver/casual labourers engaged as drivers may be given age relaxation to the extent of the service rendered by them as casual drivers*
- 2)
- 3)
- 4) *In case vacancies are left unfilled against 50% departmental quota, the balance number of vacancies may be transferred to Direct recruitment quota and under no circumstances should recruitment be made from the open market till casual drivers possessing the requisite licence are available for regular appointment, it is also reiterated that there should not at all be any further appointment of drivers on casual/daily rated basis. "*

18. If Annexure A-4 is for departmental candidates, the applicant being only casual labourer, cannot be eligible to apply to the same. Thus, relief claimed at para 8(c) is also rejected. And in so far as A-5 is concerned it is meant for outsiders and even if 5 years is granted as age relaxation, the applicant being 39 years, may not be fulfilling the age limit for an outsider. Thus, even A-5 does not apply to the applicant. In any event, the applicant having not applied in response to Annexure A-5 he was not considered. In fact, all these have become academic once it has been decided not to run any MMS vehicles of Calicut and when even regularly appointed drivers had been adjusted elsewhere. Thus, the applicant's claim for quashing of Annexure A-5 also cannot be legally permissible and Relief claimed at para 8(b) also is rejected. As regards relief claimed at para 8(d), i.e. to pass such other orders as may be deemed fit and proper in the facts and circumstances of the case, it has to be seen whether the experience gained by the applicant for over four years would be of any assistance in his further service in the respondents' organization. The decision of the Apex Court in the case of Piara Singh vs State of Haryana (supra) comes to the rescue of the applicant. If there be any necessity to recruit casual labourers for driver (or for that matter any other post), the applicant has a preference and he be offered the post in preference to others. However, this may be only for a limited period and cannot extend to eternity for, the department cannot keep a watch over the same for all times to come. Thus, if there be any need to engage casual labourer in the near future, upto 3 years within the jurisdiction of Respondent No. 2, subject to fulfillment of conditions if any (except age limitation), offer should first be made to the applicant first and in case he accepts the applicant be engaged as casual labourer.

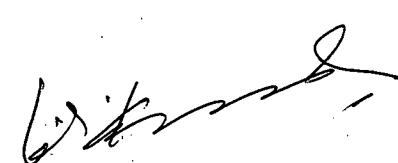


19. With the above directions, the OA is disposed of. No costs.

(Dated, the 8th July, 2008)



(Dr. K.S. SUGATHAN)
ADMINISTRATIVE MEMBER



(Dr. K B S RAJAN)
JUDICIAL MEMBER

cvr.