

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. 395/92

Tuesday, the sixteenth day of November, 1993.

MR. N. DHARMADAN MEMBER (JUDICIAL)

MR. P. V. VENKATAKRISHNAN MEMBER (ADMINISTRATIVE)

P.J. Francis Xavier
Driver, Telecom Civil Division
Ernakulam

Applicant

By Mr. P. Santhosh Kumar

vs.

1. Union of India represented by the
Secretary, Ministry of Communications
New Delhi

2. The General Manager, Telecommunications
Ernakulam

3. The Executive Engineer,
Telecom Civil Division,
Ernakulam

Respondents

By Mr. George C.P. Tharakan, SC & C

ORDER

N. DHARMADAN

This is the third application filed by the applicant for a proper consideration of his appointment as Driver with due seniority.

2. The applicant was initially recruited as casual mazdoor through the Employment Exchange and allowed to work as casual driver under the respondents. When a notification was issued for regularisation as casual mazdoors who were working for a period from 28.2.85, the applicant also submitted his request; but his claim for regularisation was not considered. He filed OAKK.170/87 for declaration that he is eligible to be considered for regularisation as driver having regard to his prior service. That application was allowed as per Annexure-A judgment. The operative portion of the judgment is extracted below:

"The respondents have no case that the work of the applicant is unsatisfactory and he cannot be continued in service. So on the basis of the facts and circumstances of this case, the petitioner is entitled to be considered for

regular appointment to the post of driver or in whichever category available with the second respondent to accommodate him on a regular basis. Accordingly, we dispose of the application with a direction to the respondents that the petitioner may be allowed to continue to work in the present post till his case is considered for appointment to a regular post in accordance with the office instructions applicable to the post taking into consideration the long period of service the petitioner has put in under the respondents."

3. Thereafter, the examination was conducted in which the applicant was also allowed to participate. When the respondents delayed the declaration of the result, applicant filed second O.A. 14/90 which was disposed of as per Annexure-D judgment. It was disposed of with the following directions:

- "i) The respondents shall publish the list of selected candidates as evidenced by Annexure R-(1) forthwith.
- ii) The respondents shall also appoint the applicant as per Annexure R-1 proceedings, after publishing the same, as driver in the existing vacancy if any or the next arising vacancy in his turn."

4. When the result was declared, the applicant was found successful and he was appointed as driver on a regular vacancy w.e.f. 17.8.90. Applicant relied on Annexure-E and submitted that there were 4 vacancies in the outside quota and the applicant could have been appointed against one of the outside vacancies at least w.e.f. 16.10.87. Annexure-F proceedings issued by the Divisional Engineer(Administration) shows that one post of outstation quota which existed as on 16.10.87 has been filled up by shifting Mr. K. Ramachandran Nair. Four other appointments were made by selecting persons from departmental quota. According to the applicant, a reading of Annexure-E and F together will indicate that out of the 4 vacancies in the outsiders quota, one has been filled up and there were 3 other vacancies existing as on 16.10.87. Had the

respondents considered the applicant as a person qualified as on that date, the applicant could have been appointed without any difficulty against one of the vacancies of outside quota. Similarly, because the respondents have taken the view that the applicant is not qualified and eligible to be appointed against outside quota, delay occurred making room for others to occupy the legitimate vacancy which could have been filled up by appointing the applicant.

5. Applicant filed Annexure-H and Annexure-I representations for getting appointment in 1986 against outside quota which existed at the time of the notification in the year 1986. The Annexure-I representation was disposed of by Annexure-J impugned order which reads as follows:

"With reference to your representation dated 30.7.91 on the above mentioned subject, it is intimated by the G.M.T. Ernakulam that in the verdict dated 13.7.90 the Hon'ble CAT had clearly directed that the department to appoint the applicant Shri Francis Xavier as Driver in the existing vacancy, if any, or in the next arising vacancy in your turn. Nothing is mentioned otherwise regarding other benefits, as claimed in your representation."

6. The limited contention raised by the applicant in this case is that the applicant was denied the benefit of appointment as driver w.e.f. 16.10.87 on account of the unreasonable attitude taken by the respondents. According to him, this is clear from the observations in the two judgments of this Tribunal in Annexure A- and Annexure-B.

7. Respondents opposed the claim of the applicant on two grounds:

- (i) many of the seniors of the applicant amongst casual mazdoors who were waiting for regularisation as group-D have already been appointed in 1987;
- (ii) the applicant did not satisfy the eligibility conditions as per the Recruitment Rules for regularisation/absorption as driver.

Regarding the four vacancies which existed on 16.10.87, the respondents submitted that out of the 4 vacancies, one has been filled up as per Annexure-H order issued in 1987. The

remaining 3 vacancies were carried forward for the next recruitment year and 5 persons were appointed in 1988 against the entire vacancies existed as on that date. Hence, the applicant has no case particularly when no vacancy against 1986 quota was remaining unfilled so as to enable respondents to give appointment to the applicant with reference to the year 1986.

8. The learned counsel for the respondents in the course of the argument submitted that the specific direction of this Tribunal in Annexure-A judgment was to appoint the applicant as driver in the existing vacancy if any or the next arising vacancy. This direction having been fully complied with, the applicant has no case and the original application is to be dismissed.

9. As indicated earlier, it is to be noted that the applicant is coming for the third time for getting appropriate appointment as driver considering his past service from 1985 onwards. If the respondents ^{had} taken a realistic approach and considered the claim of the applicant uninfluenced by any other consideration, the applicant would have been selected and appointed as driver on a regular basis in the year 1987 itself against the outside quota as indicated in Annexure-E. It is only because of the decision of the respondents that applicant is not qualified and eligible that the difficulties arose in the way of the applicant. The applicant was forced to clear all these difficulties by approaching this Tribunal twice on earlier occasions. In the first original application No. 170/87 we have discussed all these aspects and made clear observations regarding the eligibility and rights of the applicant to be appointed as driver. Even after that observation, the respondents did not discharge their part of the ^{obligation under the} judgment by making appointment in accordance with the rules. Hence, the applicant was again

forced to come before the Tribunal for the second time simply to know the result of the examination held by the respondents for regularisation of the applicant in terms of the direction of the Tribunal. That application was also allowed directing the respondents to appoint the applicant as driver in the existing vacancy or in the next arising vacancy. The object of giving the direction was to give the applicant proper place in accordance with rules if the applicant has already satisfied all the requirements for appointment as driver. ^{Reading of the} judgments in O.A.K. 170/87 and O.A. 14/90 together makes it very clear that the applicant is eligible to/appointed in one of the outside quota vacancies which existed at the time when the notification for regularisation was issued in 1987. Admittedly, 4 vacancies in the outside quota were existed as on 1987; only one of them ^{was} alone filled up by appointing one K. Ramachandran Nair. If the applicant was duly considered and appointed against one of the four vacancies which existed as on 15.10.87, no question of loss of seniority so far as the applicant concerned would have arisen and it would not have been necessary for the respondents to carry forward the vacancy for the next year on the ground that there was no qualified person available. The applicant was fully qualified in 1987 itself and he was also eligible for appointment as driver in terms of the observations contained in Annexure-A judgment. It is only because of the administrative lapse that he was compelled ~~xxxxx~~ to approach this Tribunal more than once for getting regularisation in accordance with rules.

10. Regarding the first contention of the applicant, we feel ~~xxxxx~~ that this is a vague statement which cannot be relied on for denying the legitimate right of the applicant for absorption as a regular driver.

Respondents should have clearly stated the facts and figures with the name of his seniors who were waiting for regularisation at the relevant time and thereby establish clearly that applicant was not entitled for regularisation w.e.f. 15.10.87. No such details with names and dates were furnished by them. Under these circumstances, we are not inclined to accept the statement of the respondent in the reply. We hold that the applicant lost his seniority only because of the administrative lapse which has been made clear in the earlier judgments obtained by the applicant referred to above.

11. The next submission made by the learned counsel for the respondents, that the direction in the O.A. 14/90 has been fully complied with and therefore the applicant has not case, also deserves to be rejected. When this Tribunal has declared the right of the applicant in OAK 170/87, the respondents ought to have complied with the direction without any further delay in the spirit in which the same was issued. Only because of the administrative delay, the applicant was forced to approach this Tribunal again by filing O.A. 14/90 for the limited purpose of knowing the result of the Examination conducted for regularisation of casual drivers. After hearing the parties, we issued specific direction in that case making it clear that the applicant is entitled to be appointed as driver in the existing vacancy which can only be related to the date of the notification i.e.e. as on 16.10.87.

12. In this view of the matter, we see no merit in the contentions raised by the learned counsel for the respondents; we reject them.

13. Accordingly, we allow the application, quash Annexure-J and declare that the applicant is entitled to be considered for appointment as driver on a regular basis with effect from 16.10.1987 against the outsider quota.

14. The application is allowed as above.

15. There shall be no order as to costs.

P. V. Venkatakrishnan
(P. V. VENKATAKRESHNAN)
MEMBER (ADMINISTRATIVE)

kmn

N. Dharmadan
16. 11. 93
(N. DHARMADAN)
MEMBER (JUDICIAL)