

# IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

O. A. No. 402 1992.

DATE OF DECISION 4.2.93

A. Ayyappan Applicant (s)

Mr. O.V. Radhakrishnan Advocate for the Applicant (s)

Versus

Manager, Mail Motor Service, Respondent (s)  
Ernakulam, Kochi-16 and others

Mr. V. Ajith Narayanan, ACGSC Advocate for the Respondent (s) R 1-4  
Mr. M.R. Rajendran Nair for R-5

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? Y
2. To be referred to the Reporter or not? W
3. Whether their Lordships wish to see the fair copy of the Judgement? W
4. To be circulated to all Benches of the Tribunal? W

## JUDGEMENT

MR. N. DHARMADAN JUDICIAL MEMBER

The applicant is a <sup>hand</sup> throwout from the Mail Motor Service (for short MMS) now working as an E.D. Packer at Trichur. His grievance is against the refusal of the respondents to re-engage him in the MMS having regard to the past service rendered by him from 1.11.78 to 26.11.82.

2. According to the applicant, he served as a casual mazdoor, cleaner, in the MMS, Trichur from 1.11.78 to 26.11.82. He was working continuously without any break. Since there was no vacancy, the applicant was not engaged in the MMS after 26.11.82. The respondents by Annexure A-1 order dated 30.11.82, xxxxxx offered a provisional appointment to him as E.D. Packer in the Trichur Engineering College Post Office w.e.f. 27.11.82. Since there was no other means for his

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livelihood, he accepted the same and he is continuing in that post. When a vacancy of group-D post arose in the MMS Trichur, the applicant submitted his request for consideration. The said request was rejected as per Annexure A-2 order dated 26.2.85. According to the applicant in the light of Annexure A-3 O.M. dated 7.5.88 the reason for rejection of the request for considering the case of the applicant for group-D post does not survive because the Department has taken a decision that persons who are in service as casual mazdoors can be considered for Group-D post notwithstanding the fact that such person was not sponsored by the Employment Exchange. In the light of this order, he further submitted Annexure A-4 representation for getting re-engagement and regularisation in the MMS. Since the same was not considered, he filed O.A. 520/88 for a direction to the respondents. That case was heard and disposed of directing the applicant to file an application which will be considered by the respondents and disposed of in accordance with law. He filed a fresh representation dated 19.12.89, Annexure A-4. That representation was considered as per the direction of the Tribunal and disposed of by Annexure A-5 order dated 22.3.90. The applicant filed Annexure A-6 review before the CPMG, Kerala Circle requesting that Annexure A-5 should be reviewed taking into consideration his prior service in the MMS. He again submitted Annexure A-7 before the CPMG for the same purpose. Annexure A-8 is the reminder. These representations are remaining unanswered. Under these circumstances, he filed this application under section 19 of the Administrative Tribunals' Act with the following reliefs:

- "1) to direct the respondents 1 & 2 to re-engage the applicant as Casual Mazdoor in Mail Motor Service Trichur/Ernakulam immediately and to give him engagement in preference to other persons with less casual service than him;

- ii) to direct the respondents to regularise the services of the applicant as casual mazdoor according to the scheme of absorption evolved by the Department
- iii) to direct the respondents not to engage outsiders in exclusion of the applicant as casual mazdoor
- iv) to grant such other reliefs which this Tribunal may deem fit just and proper in the circumstances of the case."

3. The main contention of the learned counsel for the applicant is that the applicant is a throwout hand from the MMS and his case for re-engagement was not considered by the appropriate authority for no fault of him. He has pointed out specific cases of casual mazdoors who were engaged as E.D. Agents but were also later absorbed in regular posts in the MMS, Trichur. The cases referred to in para (iv) of the application is as follows:

<u>Name</u>	<u>Date</u>
A. Narayanankutty, ED Packer, Poothole	1.7.91 8.10.91 to 16.10.91 2.7.91 19.10.91 to 23.10.91 3.7.91 31.10.91 11.7.91 to 20.7.91 30.7.91 31.7.91
Hamza, EDMC, Poothole	8.8.91 to 12.8.91 25.8.91 to 27.8.91 6.10.91
K.P. Vincent	14.9.91 1.12.91 15.9.91 7.12.91 24.9.91 23.12.91 to 29.12.91 28.9.91
K.A. Sathy, EDLB Peon Trichur HPO	6.11.91, 7.11.91, 16.11.91 " 17.11-91, 23.11.91, 30.11.91

4. Respondents filed a reply and submitted that the applicant is now working as E.D. Packer and he is not eligible to be considered for re-engagement with the MMS. They further submitted that MMS Unit at Ernakulam and Trichur are separate and independent. The applicant not having worked at Ernakulam Unit of the MMS, xx is not eligible to be considered for appointment there.


5. Having heard counsel on both sides and after careful consideration of the documents produced in the case, we are of the view that applicant's review petition Annexure A-6 and further representation Annexure A-7 are required to be examined in detail by the CPMG in accordance with law. While considering the same, he may take into consideration the specific cases pointed out by the applicant and consider whether the applicant is also a person similarly situated for getting reliefs as claimed by him. Since the matter is already seized of by the CPMG, we are not expressing any final opinion on the contentions raised by the parties.

6. In this view of the matter, we are satisfied that this application can be disposed of with appropriate direction to the respondents. Accordingly we direct the third respondent to dispose of the review petition Annexure A-6 and A-7 in accordance with law as indicated above.

7. The learned counsel for the applicant submitted that this Tribunal has already passed an interim order on 8.7.92 directing the respondents to re-engage the applicant in casual service provisionally if work is available and if any of his juniors have been so employed and he has been accordingly engaged by the respondents for few days. We make it clear that if the applicant is prepared to take leave from the post of E.D. Packer and work on casual basis in the MMS Unit, Trichur, the interim order passed on 8.7.92 will continue till the implementation of the direction given to CPMG in para 6 above.

8. Accordingly, the application is disposed of on the above lines.

9. There shall be no order as to costs.

  
(N. DHARMADAN)  
JUDICIAL MEMBER

4.2.93

  
(S.P. MUKERJI)  
VICE CHAIRMAN

4.2.93