

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO: 869/2000

DATE OF DECISION: 29/5/2001

Shri Dilipkumar Ramaswamy Devendra Applicant

Shri S.S.Karkera

-----Advocate for
Applicant.

Versus

Union of India & 2 Ors.

-----Respondents.

Shri V.S.Masurkar

-----Respondents.

Coram:

Hon'ble Smt. Shanta Shastri, Member (A).

1. To be referred to the Reporter or not? /y
2. Whether it needs to be circulated to
other Benches of the Tribunal?

3. Library. v

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(SHANTA SHASTRY)
MEMBER(A)

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO: 869/2000
DATED THE 29th DAY OF May 2001

CORAM: HON'BLE SMT.SHANTA SHASTRY, MEMBER(A)

Shri Dilipkumar Ramaswamy Devendra,
C/o.Ramaswamy Veerapan,
Room No.45, Anna Nagar Zopadpati,
Dr.A.B.Road, Worli,
Mumbai - 400 025.

... Applicant

By Advocate Shri S.S.Karkera

V/s.

1. The Union of India,
Through Chief Post Master General,
Maharashtra Circle, G.P.O.,
Mumbai - 400 001.

2. The Post Master General,
Mumbai Region, G.P.O.,
Mumbai - 400 001.

3. The Sr.Suptd. of Post Offices,
Thane (Central) Division,
Thane - 400 601.

... Respondents.

By Advocate Shri V.S.Masurkar

(O R D E R)

Per Smt.Shanta Shastry, Member(A)

The applicant has sought several reliefs vide para-8 of
OA.

- i) To grant him temporary status and regularisation to
the post of Jeep Driver as per the scheme dated 5/6/91
with all consequential benefits.
- ii) To publish the results of the selection of Jeep Driver
conducted by the respondents.
- iii) To pay all the backwages from 22/11/99 till date of
reinstatement in service.

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- iv) To hold the termination order of respondents as illegal, arbitrary and bad in law.

2. The applicant was engaged as casual driver with effect from 26/9/96 and he worked as Jeep Driver under respondent No.3. Though he was engaged as casual labourer, the payments were given to him on monthly basis. According to applicant he was engaged against a regular vacancy of Driver in view of the transfer of Ram Shakal Nishad from Thane to Varanasi. He continuously worked in the department for more than 240 days in each year and he became entitled for regularisation. In the course of performance of his duties while returning from Vashi to Headquarter Panvel, the vehicle met with an accident. A Tanker lorry was rushing towards the vehicle which the applicant was driving, on the wrong side. In order to save the departmental vehicle as well as officer he cleverly drove the vehicle off the road and avoided/escaped from hitting the lorry and in the process he hit the post and damage was caused to the vehicle. A Police complaint was lodged at the Nerul Police Station. The Superintendent of Post Office who was in the vehicle gave a letter dated 20/11/99 to the Inspector of Police of Nerul Police Station certifying the benefits and good service and performance of the applicant in saving the life of Superintendent of Post Offices, Navi Mumbai Division. In view of the damage caused to the departmental vehicle, the applicant was told orally by Respondent No.3 not to attend duty. Thereafter, the respondents called for the names of Candidates from the Employment Exchange

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Thane in the year 1998 to fill up the vacant post of Jeep Driver. The Employment Exchange sponsored the name of applicant alongwith some others. The applicant was asked to submit the necessary documents vide letter dated 5/2/99 of the respondents. The applicant was further asked to appear for an examination/test on 2/7/99. Applicant appeared in the test as well as in the interview. According to the applicant he stood first in the merit list for appointment to the post of Jeep Driver. However, the results were not published.

3. The applicant submits that recruitment rules for the post of Driver were framed on 1/11/83. The respondents issued a letter dated 28/7/92 to give priority to casual labourers already working and their regularisation. The applicant is aggrieved that in spite of fulfilling all the eligibility criteria, he has not been considered for regularisation.

4. The respondents submit that the applicant was engaged as Daily rated Jeep Driver w.e.f. 26/6/96 as a stop gap arrangement till a regular arrangements were made. The respondents admit that they did send a requisition for the post of Driver to the Asst. Pradesh Seva Yojana Adhikari, Thane on 23/4/97. A list of 17 candidates was received from the Employment Exchange. All the candidates were called to submit their biodata. In the first list, the applicant's name was not sponsored. When the selection process was held by DPC on 28/8/97, only one candidate appeared therefore fresh nominations were called for. A second requisition was sent to the Employment Echange. A list of 18 candidates

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will be for

was received from the Employment Exchange. 16 eligible candidates were called for test on 2/7/99. In the prescribed test, the applicant who belongs to Scheduled category was on the top of the merit list. However, the first point in the roster was for unreserved candidate. Since a doubt arose, the DPC could not finalise the selection and a reference was made to C.O. to enlighten on the issue.

5. The respondents further submit that the Maruti Van which the applicant was driving on 19/11/99 met with an accident near Panvel at 5.30 p.m. and extensive damage was caused to the vehicle. The Senior Manager, Mail Motor Service, Worli, Mumbai vide his letter dated 27/11/99 has given an opinion that the damage indicated cause of accident because of rash and negligent driving since most of the damage was found to be on the left side of the vehicle. It was clear that the Driver had lost control at the material moment. The police authority at Nerul Police Station were contacted but due to late hours, the complaint was lodged the next day. In view of this according to the respondents, the applicant is not entitled to any reliefs. In regard to the regularisation of the applicant, it is stated that the grant of temporary status to Casual Labourers was applicable to only those casual labourers who were in employment as on 29/11/89, according to the letter of 12/4/19 of the Ministry of Communications. Therefore the question of grant of temporary status to the applicant does not arise as he was engaged only in 1996. The respondents have further stated that the applicant does not fulfil the eligibility conditions for recruitment to the post of Driver/Jeep, Lorry and Staff Car. He has not submitted four years experience certificate as required

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in the office notification dated 1/11/83. The applicant has preferred an application dated 8/5/2000 to the respondents office asking to offer him any other casual work. The same was forwarded to the higher authorities vide letter dated 24/7/2000. The reply is still awaited. The respondents also state that since the applicant was never appointed, there is no question of considering him for regularisation. The applicant is also over aged.

6. The learned counsel for the applicant submits that applicant belongs to Scheduled Caste, age relaxation is available upto 40 years and experience is not to be insisted upon ~~on those~~ in the case of those who are already in service as per a letter dated 28/7/92 from the Assistant Director General, Government of India, Ministry of Communication, Department of Posts. It says in para-1 that amongst 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 1/4/85, 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.

7. After hearing both the parties, I find that two things are still pending with the respondents, namely the selection process which was carried out on 2/7/99 has not been finalised. It is not denied by the respondents that the applicant stood first on merit list amongst the Scheduled Caste category and a reference has been made about the roster point to higher

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authorities. Further, the applicant has given representations dated 8/5/2000, 28/7/2000 and 30/10/2000 regarding this regularisation. In view of the letter dated 28/7/92⁴ cited by the applicant's counsel and in view of the fact that there is no dispute about the number of days of service put in by the applicant, in my considered view the applicant should have been considered for regularisation as per rules. It is not acceptable that the applicant was engaged after the cut off date of 29/11/89 and therefore he has not been considered for grant of temporary status. The learned counsel has relied upon a judgement in the case of S.K.Indiramohan and Ors V/s. Union of India in OA 1075/93 by the Madras Bench of this Tribunal wherein the OA was allowed and the respondents were directed to consider the applicant for grant of temporary status.

8. In my view the scheme for grant of temporary status is a continuous scheme and not a one time affair and therefore no cut off date can be there when the respondents themselves kept engaging casual labour inspite of ban on recruitment of casual labour. As regards age relaxation and certificate of experience, the learned counsel for the applicant has already explained and the relaxation no doubt is available. In view of this the applicant deserves to be considered for grant of temporary status and regularisation in turn as per rules. If the applicant did not fulfil the conditions, he ~~should~~ not have been called at all to appear for the interview and the test. Having been called and he being on the top of the list, the respondents should have considered him for appointment to the post of Driver. Ends of

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Justice will be met if a direction is given to the respondents to finalise the selection already held within a period of two months. Further, the applicant be taken back as Driver until the post is filled on a regular basis. In the mean time he may be considered for grant of temporary status and regularisation. ^{O.A. is disposed off accordingly. h} No costs.

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(SHANTA SHASTRY)
MEMBER(A)

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(18) Date: 15/02/2002 (C.P.No. 11/02)

~~In order to C.P. No. 11/02,~~
The Respondents submit that
the Order of the Tribunal
dated 29/05/2001 in O.A. No.
869/2000 has been complied
with.

Contempt Petition No. 11/02
is, therefore, dismissed. Notice
discharged and contempt
proceedings are dropped.

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(Smt. Shanta Shastri) (B. Disshit)
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