

CENTRAL ADMINISTRATIVE TRIBUNAL: MUMBAI BENCH: MUMBAI

ORIGINAL APPLICATION NUMBER 1064 OF 1994

FRIDAY, THIS THE 9TH DAY OF JULY, 1999.

Shri Justice S.Venkataraman, .. Vice-Chairman.

Shri S.K.Ghosal, .. Member(A).

Sunil Umakant Joshi,  
(Working as Casual Driver  
in the O/O A.E.Coaxial Maint.  
Dhule)

Res: Add: House No.8,  
Lane No.2, Subhash Nagar,  
Old Dhule, Dhule-424001.

.. Applicant.

(By Advocate Shri H.J.Joshi)

v.

1. Union of India  
through: The Chief General Manager,  
Maharashtra Telecom Circle,  
G.P.O.Building,  
Bombay-400 001.

2. The C.G.M.(Maintenance)  
Western Telecom Region  
Telephone House  
Veer Savarkar Road,  
Prabhadevi, Bombay-400.

3.The Telecom Dist. Engineer,  
Mundada Market, Parole Road,  
Dhule 424 001. .. Respondents.

(By Standing Counsel Shri S.S.Karkera)

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O R D E R

Shri S.K.Ghosal, Member(A):-

The applicant who has been working as a casual Driver

*Ad*

under the control of the 2nd respondent feels aggrieved by the conditions stipulated for applications to be made for the post of Motor Driver in the unit under the 3rd respondent as incorporated in the Notification dated 8-9-1994 (Annexure-Al). His main grievance is that though he has been working as a causal Driver with effect from 1-9-1985 under the control of the 2nd respondent, he has been denied the application form for the post of Motor Driver notified under Annexure-Al, on the ground that as stipulated under Annexure-Al, for outsider candidates, under which category the applicant comes, only those who have been working as casual Drivers in the department since before 1-4-1985 or those who are casual mazdoors in the department with temporary status and doing the job of drivers, alone are eligible for applying for the said post.

2. The applicant has pointed out that under the statutorily prescribed Recruitment Rules for the concerned post of Motor Driver it is stipulated that in the context of direct recruitment relaxation in upper age limit is admissible to the extent of service rendered by a casual Driver. It has been further contended on behalf of the applicant that even otherwise in terms of the communication dated 17-12-1993 he was eligible for the grant of temporary status as a casual Driver treating him as a casual labourer who has admittedly been recruited on or before 22-6-1988 and who has not been absent for the last more than 365 days counting from the date of issue of that communication dated 17-12-1993. The applicant has, therefore, contended that either way he is eligible to apply for the post of Motor Driver as notified under Annexure-Al.

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3. The respondents have not filed any reply so far. However, when the matter was finally heard on 8-7-1999, Sri S.S.Karkera, learned counsel,<sup>has</sup> appeared for the respondents and admitted that the applicant has been working as a casual Driver in the department and has not been absent for a period of 365 days and has completed 240 days in the department. However, <sup>has</sup> produced a copy of the instructions dated 10-9-1991, which inter alia, states as follows:-

"The matter has been considered in detail and it has been decided that:-

- 1) 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).
- 2) 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.
- 3) The 50% departmental quota of vacancies will continue to be filled up from amongst the eligible cadres. The 50% quota of the posts meant for Departmental officials is filled by recruitment from the line staff and Group 'D'.
- 4) The Certificate of experience of driving heavy vehicle may not be insisted upon both in respect of the casual driver/casual labour and the department officials eligible for recruitment against the 50% Department quota of vacancies. The officials may be tested for driving skill by the selection committee prescribed in the Recruitment Rules.



5) 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.

The Recruitment Rules notified under this office letter No.50-8/83-NCG dated 1-11-1983 may be considered as relaxed to the extent of above provisions.'

4. We are not convinced after going through the document mentioned above, from which we have reproduced the extract, that through the mechanism of an administrative policy the provisions of the statutorily prescribed Rules granting rights to the casual Drivers as being eligible not only for applying for the post of Motor Driver, but also for relaxation in upper age limit for that purpose, can be taken away. It is well settled that the administrative policy, to the extent it does not abridge or curtail the rights granted under the statutorily prescribed Recruitment Rules, can supplement the provisions of such Recruitment Rules. It, therefore, would have been perfectly in order if the categories of employees for whom the instructions dated 10-9-1991, cited above, have been issued, were made eligible as a special ~~clause~~ <sup>42 class</sup> ~~or clauses~~ <sup>42 classes</sup>, in relaxation of the provisions of the statutorily prescribed Recruitment Rules, without at the same time affecting adversely the rights of those who are otherwise eligible under those Rules for making application and for being considered for that post of the Motor Driver.

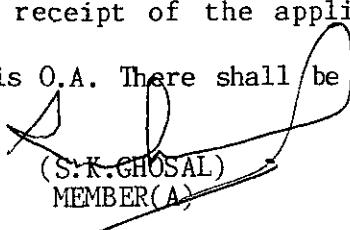
5. Since the respondents have relied primarily on the said instructions dated 10-9-1991 for shutting out the applicant from making an application for the post of Motor Driver, let alone for being considered for the appointment, against the 50% direct recruitment quota clearly in contravention of the provi-

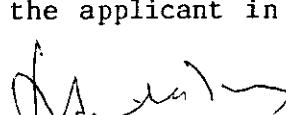
sions of the Recruitment Rules and in the process taking away his right for consideration as incorporated therein, the action of the respondents cannot be sustained.

6. As regards the other allegation made by the applicant that the respondents should have granted him the temporary status as a casual worker in terms of the communication dated 17-12-1993 referred to above, we do not consider it necessary to examine that allegation in any depth. It is so because the reliefs sought by the applicant in the present O.A. do not include any such prayer.

7. For the detailed reasons discussed above, we allow the O.A. quashing the Notification dated 8-9-1994 at Annexure-Al to the extent that a casual Driver like the applicant is declared as ineligible for applying for the post of Motor Driver against 50% quota meant for outsider candidates. We further direct the respondents that even at this distance of time <sup>if</sup> an application that the applicant may wish to make for the post of Motor Driver or any other post with similar eligibility criteria which ~~is or becomes vacant in future,~~ is vacant <sup>if</sup> under the control of the respondents in this O.A.

~~any application~~ is made within a period of one month from the date of receipt of a copy of this order, such an application on receipt shall be considered by the respondents and the applicant should be considered for appointment against such a post. The above directions as they ~~are~~ <sup>are</sup> the respondents shall be carried out within a period of 3 months from the date of receipt of the application to be made by the applicant in this O.A. There shall be no order as to costs.

  
(S.K.GHOSAL)  
MEMBER(A)

  
(S.VENKATARAMAN)  
VICE-CHAIRMAN.