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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH
AT HYDERABAD

O.A.NO. 805 of 1987

Date of Order: 26.7.1990.

Between:

1. Central Public Works Department
Mazdoor Union (Regd) rep. by
its Branch, Secretary B. Premdas,
Hyderabad

2. M. Sriramulu, s/o Sri Iddaiah,
Beldar, CPWD Hyderabad

Applicants

and

1. The Director General, CPWD, New Delhi.

2. The Superintending Engineer, Electrical,
C.P.W.D. Hyderabad

3. The Executive Engineer, Electrical
C.P.W.D., Hyderabad.

4. Shri K. Rajiah

Respondents

APPEARANCE

For Applicants: Shri G. Ramachandra Rao, Advocate

For Respondents: Shri N. Bhaskar Rao, Addl. CGSC

C O R A M:

HON'BLE SHRI B.N. JAYASIMHA: VICE CHAIRMAN

HON'BLE SHRI D. SURYA RAO: MEMBER (JUDICIAL)

(JUDGMENT OF THE BENCH DELIVERED BY HON'BLE SHRI B.N.
JAYASIMHA: VICE CHAIRMAN)

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1. The applicant no.1 is the Central Public
Works Department Mazdoor Union represented by its
Branch Secretary and applicant no.2 viz., Sri M. Sriramulu,
is a Beldar in the C.P.W.D. Hyderabad. They have filed
this application questioning the action of the 3rd

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respondent in engaging the 4th respondent as Driver.

2. The applicants state that there are two posts posts of Motor Lorry Drivers vacant under the administrative control of the respondents 2 and 3. These two drivers are required to drive the one Jeep and one Trekker. These posts are under Workcharged Establishment under the respondents 2 and 3 and as per the Central Public Works Department Manual Volume III, the post of Motor Lorry Driver in Workcharged Establishment has to be filled up either by direct recruitment or by promotion. 50% of posts are reserved for direct recruitment and the remaining 50% of posts by way of promotion from the categories of Assistant Mechanic, Assistant Fitter and Assistant Operator. Respondents 2 and 3 have not taken steps to fill up the said posts in accordance with the procedure laid down under the CPWD Manual Volume II. Adhoc arrangements are being made for filling up the posts of Motor Lorry drivers without considering all the eligible employees and other categories who know driving the vehicles and possess the valid driving licence. Respondent no.3 is using the services of 4th respondent who is a lift operator. The applicants contend that the lift operator is not eligible to be appointed to the post of Motor Lorry Driver under the rules referred to earlier. Though the 2nd applicant is working as Beldar, he knows driving of motor vehicles and also holds a valid licence from 18-7-1985. The respondents should have considered the case of the 2nd applicant for the post of Motor Lorry Driver instead of appointing and utilising the services of a Lift Operator. The applicants also state that there are several other candidates in the category of Asst.Operators, Asst.Mechanics etc who are eligible for promotion, but the respondents have not taken any steps to fill^{up}/the post on regular basis.

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The respondents are paying heavy amounts towards over-time allowance to the 4th respondent by utilising his services to drive the jeep or trekker.

3. The 1st respondent submitted a representation dated 21-8-1987 to respondent no.2 and subsequently in a joint meeting held on 29-9-1987, the 2nd respondent stated that necessary action would be taken in the matter. So far no action has been taken. Hence, they have filed this application seeking a direction to the respondents to initiate action to fill up the post of Motor Lorry Driver on regular basis in accordance with the rules.

4. The counter of ^{the} respondents states that the application is barred by limitation and deserves to be rejected on the sole ground. Respondent no.4 is on the job of driving vehicle since August 1984 onwards. Applicant no.2 is not eligible at all for the post of Motor Lorry Driver. The applicant no.1 in his representations dated 21-2-1987, 12-10-1987 and 19-10-87 exhibited threat to the respondents and acted in an irresponsible manner. Applicant no. 2 is a Baildar and does not belong to the feeder grade and he is not eligible for consideration in promotional quota for the post of Motor Lorry Driver. For the post of Motor Lorry Driver one must have atleast 5 years of driving experience of which atleast 3 years of experience in driving of Heavy Motor Vehicles. The 2nd applicant is neither in the feeder category nor ^{does} he possesses the required experience. There is no vacant post of ~~M&D~~ Motor Lorry Driver in the unit of

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Seniority since August 1984. In August 1984 there was a requirement of two posts of Motor Lorry Driver for the two new vehicles. While the ~~post~~ ^{for the post} sanction was anticipated from the Government due to the existing ban, the department has not been in a position to create new posts and the field officers have been directed to reorganise deployment of existing staff to manage the operation and maintenance of new areas. Many new buildings have not been provided with new staff. The contentions of the applicants that the respondents have not taken steps to fill up the post is therefore without any basis. There was only one vacancy of Motor Lorry Driver and all efforts had been made and is being made to obtain sanction for the creation of another vacancy of Motor Lorry Driver and thereafter action will be taken to fill up the posts by direct recruitment from the candidates sponsored by the Employment Exchange. The respondents, therefore, contend that the services of respondent no.4 is utilised on grounds of exigencies and the applicant no.2 who is not eligible for consideration cannot have any grievance.

5. We have heard Shri G. Ramachandra Rao, learned counsel for the applicant and Shri Naram Bhaskar Rao, Additional Standing Counsel for the Department.

6. The main point urged by Shri Ramchandra Rao is that according to Para 1104 of the Central Public Works Department Establishment Manual, transfer of workcharged staff to regular Establishment or Vice Versa cannot be made.

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To

1. The Director General, CPWD, New Delhi.
2. The Superintending Engineer, Electrical, C.P.W.D. Hyderabad.
3. The Executive Engineer, Electrical C.P.W.D. Hyderabad.
4. One copy to Mr.G. Ramachandra Rao, Advocate
3-4-498, Barkatpura, Kachiguda, Hyderabad - 1.
5. One copy to Mr. N.Bhaskara Rao, Addl.CGSC.CAT.Hyd.Bench.
6. One spare copy.

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Respondent no.4 who is in the regular Establishment could not have been transferred to work as a Driver which comes under the Workcharged Establishment. This is contrary to the instructions. Shri Bhaskar Rao states that respondent no.4 is still working as a Lift Operator. His services are being utilised as a Driver since he has a valid driving licence and it is always open to the administration to use the services of an employee in the interests of administration. As already pointed out since applicant no.2 is not eligible for consideration at all, he cannot have any grievance of this arrangement. Shri Bhaskar Rao states that in the feeder category of staff in the Workcharged establishment, there is no one who possess driving licence with required experience. We have given careful consideration to these submissions. No regular appointments could be made until the posts are sanctioned. Applicant no.2 is not eligible for appointment as a Motor Lorry Driver since he is not in the feeder category. The respondents have not made out any regular appointment to the post of driver and only the services of respondent no.4 are being utilised purely in the exigencies of administration. We do not find any merit in the contention of the applicants. The application is accordingly dismissed. No costs.

B.N. Jayasimha
(B.N. JAYASIMHA)
VICE CHAIRMAN

D. Surya Rao
(D. SURYA RAO)
Member (Judl)

Dt. 26th July, 1990

SDH*

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[Signature]
DEPUTY REGISTRAR (JUDL)