

CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A.Nos. 667/89 and 756/89

Date of order: 25-6-1992.

Between

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1. Deputy Director (P&A),
DMD Establishment,
Secunderabad-500 003.
2. Union of India, rep. by its
Secretary, Min. of Defence,
New Delhi.

Appearance:

Counsel for the applicants in both the OAs : Mr.P.N.Venkatachari, Advocate for : Ms.S.Tripura Sundari, Advocate

Counsel for the Respondents : Mr.N.Bhaskara Rao, Addl.CGSC
is both the Q.P's

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The Hon'ble Mr. P.C.Jain, Member (Administration)

The Hon'ble Mr. C.J.Roy, Member (Judicial)

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JUDGMENT OF THE BENCH DELIVERED BY THE HON'BLE
MR.P.C.JAIN, MEMBER (A)).

The applicant No.1, Shri G.Ramesh in O.A. No.667/89 was appointed as casual labourer in 1986. The applicant No.2 in this O.A. was appointed as casual messenger in 1987. They claim to have put in service as below:

Applicant No.1 Shri G.Ramesh:

S.No.	Date of appointment	Date of termination
1.	24-3-1986	20-5-1986
2.	1-6-1986	23-8-1986
3.	3-9-1986	26-11-1986
4.	1-12-1986	25-2-1987
5.	2-3-1987	25-5-1987
6.	27-5-1987	
7.	21-8-1987	16-11-1987
8.	19-11-1987	12-2-1988
9.		31-5-1988
10.	1-6-1988	29-6-1988
11.	1-8-1988	29-8-1988
12.	1-9-1988	25-11-1988
13.	29-11-1988	24-2-1989
14.	28-2-1989	
15.	30-5-1989	25-8-1989

Applicant No.2 Shri E.Gopal:

S.No.	Date of appointment	Date of termination
1.	25-5-1987	23-6-1987
2.	1-7-1987	31-7-1987
3.	4-8-1987	28-10-1987
4.	30-10-1987	18-1-1988
5.	25-1-1988	20-4-1988
6.	25-4-1988	31-5-1988
7.	1-6-1988	29-8-1988
8.	1-9-1988	25-11-1988
9.	29-11-1988	24-2-1989
10.	28-2-1989	23-5-1989
11.	30-5-1989	

The applicant in O.A.No.756/89 Shri S.M.Vijaya Kumar was appointed as a casual messenger on 12-8-1987 and the details of service said to have been put in by him are as below:

S.No.	Date of appointment	Date of termination
1.	11-8-85 (?)	6-11-87
2.	10-11-87	4-2-1988
3.	7-2-88	4-5-88
4.	9-5-88	31-5-88
5.	1-6-88	21-6-88
6.	27-7-88	29-8-88
7.	1-9-88	25-11-88
8.	29-11-88	24-2-89
9.	28-2-89	23-5-89
10.	30-5-89	25-8-89
11.	29-8-89	

All the three applicants have stated that they have been working continuously, except for the technical breaks deliberately given to them, from the date of their initial appointment and they have prayed for a direction to the Respondents to regularise their services with effect from their respective dates of their initial appointment with all consequential reliefs.

2. As the issues involved are common in both the O.As., and since the three applicants who were given casual employment by the respondents viz. Respondent No.1, it would be convenient to dispose of both these O.As. by a common judgment, and we proceed to decide the matter accordingly.

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3. In O.A.No.667/89, the Respondents have taken an objection that the applicants had filed O.A.No.919/88 for the same relief and the same was dismissed as not pressed. They, therefore, contended that this O.A. is not maintainable. Neither a copy of O.A. 919/88 as aforesaid has been filed nor a copy of the orders passed therein has been placed on record by either party. The applicants have, however, stated in para 6(c) of the O.A. that when they came to know that the 1st Respondent was intending to fill the posts by candidates from Employment Exchange and other sources, and that their cases were not being considered on the ground that their names have not been sponsored by the Employment Exchange, they had filed O.A. No.919/88. However, as the 1st Respondent continued to engage their services, the above said O.A. was got dismissed as not pressed on 1-9-1989. In the reply the Respondents have not given any specific reply to the above sub-para. It appears to us that the issue of regularisation was not gone into and decided in O.A.No.919/88 as such we are not inclined to uphold the plea of the respondents that this O.A. is not maintainable.

4. There is not much dispute in regard to the relevant facts regarding initial engagement and re-engagement after breaks after 89 days of service or so as mentioned by the respondents in their reply. The case of the applicants is mainly that after having put in service of the prescribed number of days in two consecutive years they have acquired right for regularisation in accordance with the government instructions. It is further their case that denial of consideration for regularisation of their service on the sole ground
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of having been not sponsored by the Employment Exchange is illegal. On the other hand, the case of the Respondents is that as per the Government instructions and the guidelines prescribed in this regard the applicants cannot claim for regularisation. They have also stated that the applicants in O.A.No.667/89 also do not possess the minimum educational qualification and that the applicant in O.A.No.756/89 is not within the age limit prescribed in the Recruitment Rules. The plea of discrimination raised by the applicants has been denied. In the instructions issued by the Government on the subject of "Appointment of Casual Labourers to the Group-D posts", it is provided that casual labourers appointed through Employment Exchange possessing a of two years' experience of minimum/continuous service as casual labourer in the office/establishment to which they are so appointed will be eligible for appointment to the posts on the regular establishment in that office/establishment without any further reference to the Employment Exchange. It is also provided that the aforesaid casual labourers recruited direct without reference to the Employment Exchange should not be considered for appointment to regular establishment unless they get themselves registered with the Employment Exchange, render, from the date of such registration, a minimum two years continuous service as casual labour and are subsequently sponsored by the Employment Exchange in accordance with their position in the Register of the Exchange. It is also provided that casual labourers may be given the benefit of two years continuous service as casual labour if they put in atleast 240 days (220 days in the case of offices observing 5-day week) of service as casual labour.

including broken period of service during each of the two years of service referred to above. Vide Government of India, Department of Personnel and Training O.M. No. 49014/18/84-Estt. (C) dated 7-5-1985, decision of the Government was communicated to the effect that casual workers recruited before the issue of these instructions may be considered for regular appointment to Group-D posts in terms of the general instructions, even if ^{through} they were recruited otherwise than Employment Exchange provided they are eligible for regular appointment in all other respects.

5. All the three applicants were initially appointed after the issue of instructions dated 7-5-85 and as such, under the instructions as adverted to above they are not eligible for consideration for regular appointment as it has not been shown that they were either sponsored by the Employment Exchange at the time of their initial appointment as casual labourer/messengers or they got themselves registered with the Employment Exchange during the period they were in service with the Respondents and that they have put in a minimum of two years continuous service as casual labour after such registration and subsequently were sponsored by the Employment Exchange. Thus, under the Government instructions as they exist, none of the three applicants is eligible for consideration for regularisation. However, the learned counsel for the applicants relied on the judgment of the Supreme Court in the case of Union of India and Ors. Vs. N. Hargopal and Ors. (AIR 1987 SC 1227) in support of his contention that sponsorship by the Employment Exchange cannot be a condition precedent for regularisation and such a condition imposed by the respondents is illegal.

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We have gone through the judgment in the cited case and find that this is of no help to the applicants. In the cited judgment, the Supreme Court has held that Employment Exchanges (Compulsory Notification of vacancies) Act, 1959 does not oblige any employer to employ those persons only who have been sponsored by the Employment Exchanges. This was clear from the provisions of sub-section 4 of Section 4 of the above Act. However, their lordships of the Supreme Court also considered the question whether the instructions issued by the Government from time to time have the effect of compelling the employers to restrict their field of choice to candidates sponsored by the Employment Exchanges. After consideration of various aspects of this issue, their lordships held as below:

"9. It is clear that it is the desire of the Government of India that all Government Departments, Government Organisation and statutory bodies should adhere to the rule that not merely vacancies should be notified to the employment exchanges, but the vacancies should also be filled by candidates sponsored by the employment exchanges. It was only when no suitable candidates were available, then other sources of recruitment were to be considered. While the Government is at perfect liberty to issue instructions to its own departments and organisations provided the instructions do not contravene any constitutional provision or any statute, these instructions cannot bind other bodies which are created by statute and which function under the authority of statute. In the absence of any statutory prescription the statutory authority may however adopt and follow such instructions if it thinks fit. Otherwise, the Government may not compel statutory bodies to make appointments of persons from among candidates sponsored by employment exchanges only. The question, of course, does not arise in the case of private employers which cannot be so compelled by any instructions issued by the Government."

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The contention of the respondents in the cited case to the effect as to whether the instructions issued by the Government that in the case of Government Departments the field of choice should, in the first instance, be restricted to candidates sponsored by the Employment Exchanges, offend Articles 14 and 16 of the Constitution, was also considered in para 10 of the judgment and the Supreme Court observed as below:-

"10. The submission of Shri Parameshwara Rao is indeed appealing and attractive. Nonetheless, we are afraid we cannot uphold it. The object of recruitment to any service or post is to secure the most suitable person who answers the demands of the requirements of the job. In the case of public employment it is necessary to eliminate arbitrariness and favouritism and introduce uniformity of standards and orderliness in the matter of employment. There has to be an element of procedural fairness in recruitment. If a public employer chooses to receive applications for employment where and when he pleases, and chooses to make appointments as he likes a grave element of arbitrariness is certainly introduced. This must necessarily be avoided if Articles 14 and 16 have to be given any meaning. We, therefore, consider that insistence of recruitment through employment exchanges advances rather than restricts the rights guaranteed by Articles 14 and 16 of the Constitution. The submission that Employment Exchanges do not reach every where applies equally to whatever method of advertising vacancies is adopted. Advertisement in the daily Press for example is also equally ineffective as it does not reach every one desiring employment. In the absence of a better method of recruitment, we think that any restriction that employment in government department should be through the medium of Employment Exchanges does not offend Articles 14 and 16 of the Constitution.
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On the question of requirement of recruitment through employment exchanges, we may, with respect, also reproduce below the observations of their lordships of the Supreme Court in para 23 of the judgment in the

6. In the light of the foregoing discussion, we are unable to uphold the contention of the applicants that the action of the Respondents in not regularising the services of the applications on the ground that they were not sponsored by the Employment Exchanges before they were appointed on casual basis, is either unconstitutional or illegal.

7. As already stated above, the Respondents have also stated that the applicants in O.A.No.667/89 do not possess the prescribed educational qualification and the applicant in O.A.No.756/89 has crossed the prescribed age bar. These averments have remained unrebutted. If these are the requirements of the relevant recruitment rules, having statutory force, as it appears to be so, these cannot be ignored. If there is a provision in the recruitment rules for relaxation, then it is for the Respondents to consider whether such a relaxation will be justified or not; we in the process of judicial review cannot give a direction to the Respondents to relax the rules. At best, we can only observe that while computing the age of the applicant for assessing the age qualification in terms of the recruitment rules, the service put in by the applicant in O.A.No.756/89 as a casual messenger can and may be excluded at the time of his case being considered for regularisation if he is otherwise eligible under the recruitment rules and under the Government instructions which have already been adverted to as above in a fairly detailed manner.

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PROOF

OA 667/89

(4)

16-6-92

(3)

As per our orders dated 15-6-92, this O.A. is to be listed for dismissal on 18-6-92 but the office, by mistake, has listed this OA today. The office is strictly informed that there should not be recurrence of such type of mistakes in future. The office is directed to list this OA for dismissal as per our directions dated 15-6-92, on 18-6-92.

T. C. R
HTCSR
M(J)

(C)
HPCJ
M(A)

18-6-92

Notice for the applicant. The same was the petition on 15-6-92. When the OA was accordingly listed today for dismissal, even then there is no pleader for the applicant. Sri Vagan Mohan Reddy proxy counsel for Sri Bhavtar Rao is representing present for the respondents.

OA is accordingly dismissed for default.

HCSR
M(J)

(C)
HPCJ
M(A)

Similarly, in the case of both the applicants in O.A. No.667/89, it is only for the Respondents to consider whether the experience gained by the applicants during the course of their casual service can be considered as an adequate substitute for the deficiency in educational qualifications keeping in view the requirements of the job and in the public interest. We make it clear that these are our observations and not directions for mandatory implementation by the respondents and that it is for the Respondents to take a view on the request of the applicants in terms of the relevant recruitment rules and the relevant government instructions on the subject.

8. In the light of the foregoing discussion, we find that both the O.As., are devoid of merit and they are accordingly dismissed leaving the parties to bear their own costs.

Subir Roy
(C.J.Roy)
Member (J)

25/6/92
(P.C.Jain)
Member (A)

Dated: 25 th day of June, 1992.

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8/6/92
Deputy Registrar (J)

To

1. The Deputy Director (P&A) DMP Establishment, Secunderabad-3.
2. The Secretary, Union of India, Min. of Defence, New Delhi.
3. One copy to Mrs. S.Tripura Sundari, Advocate, 11-6-868, Red Hills, Hyd.
4. One copy to Mr. N.Bhaskar Rao, Rao, Addl.CGSC.
5. One copy to Hon'ble Mr. P.C.Jain, M(A)CAT.Hyd.
6. One copy to Hon'ble Mr. C.J.Roy, M(J)CAT.Hyd.
7. Copy to All Reporters as per standard list of CAT.Hyd.
8. One spare copy.
9. One copy to Deputy Registrar (J), CPS, Hyd.

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15/17/92