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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL APPLICATION NO.931 OF 1995

DATE OF ORDER: 29 January, 1998

BETWEEN:

M.V.J.MOHANA RAO

.. APPLICANT

AND

1. The Telecom Distirct Manager,
O/o The GMT, Vijayawada 520010,
2. The Director General,
Telecom (representing Union
of India),
New Delhi 110 001.

.. RESPONDENTS

COUNSEL FOR THE APPLICANT: Mr.C.SURYANARAYANA

COUNSEL FOR THE RESPONDENTS: Mr.N.R.DEVARAJ, Sr.CGSC

CORAM:

HON'BLE SHRI R.RANGARAJAN, MEMBER (ADMN.)

HON'BLE SHRI B.S.JAI PARAMESHWAR, MEMBER (JUDL.)

JUDGEMENT

ORDER (PER HON'BLE SHRI R.RANGARAJAN, MEMBER (ADMN.))

Heard Mr.C.Suryanarayana, learned counsel for the applicant and Mr.N.R.Devaraj, learned senior standing counsel for the respondents.

2. The applicant in this OA was engaged as Casual Driver with effect from 2.1.87 under R-1. He submits that he had learnt to read and write in Telugu and do simple arithmetic calculations. He also submits that he learnt English alphabets and can sign in Roman script. But he did not study in any school. He obtained the driving licence

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to drive the motor vehicle on 25.7.85. He had also renewed the driving licence from time to time and it is valid upto 20.7.94. He had also registered his name in Sub Employment Exchange, Machilipatnam on 7.4.90.

3. A notification No. E-42/Drivers/Rectt/ColVII/16 dated 6.12.90 (Annexure A-I at page 12 to the OA) was issued for recruitment to the cadre of Motor Drivers both departmental and outside vacancies and applications were invited from the departmental candidates and the Casual Mazdoors/Casual Drivers who were having the required qualifications and who are working in Vijayawada Telecom District and VJ Territorial Divisions and who desires^d to work as Motor Vehicle Drivers. The scale of pay for Motor Drivers prescribed is Rs.950-1500.

4. The applicant submits that he applied for recruitment to the post of Motor Driver against the outside vacancies. He submits that he fulfils^{ed} all the conditions as prescribed in the notification for filling up one OC vacancy of Motor Driver against outside quota. The other conditions prescribed in the notification are that a casual worker must be in employment in that unit of recruitment as on 16.7.90 and must have completed 240 days (206 days in office observing 5 days a week) of service in the immediately two preceding calendar years. As he had joined on 2.1.87, he was in service in that unit as Casual Driver as on 1.7.90 and had completed the reasonable days of service as given by the Assistant Engineer proof of which was enclosed at page 18 to the OA. The age and the educational qualifications to be fulfilled as per the

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notification is as follows:-

"Age: Candidates should have between 21 and 28 years as on 1.7.90. However age relaxation will be eligible as a one time measure as per DOT lr.No.269-12/90-STN dt. 23.8.90 circulated by CGMT HD vide letter No.TA/RE/20-1/Rlgs/4 dated 17.9.90.

Educational Qualifications: Ability to read and write local language and to make simple arthemetical calculations. Middle standard pass is desirable".

5. It is also further enjoined that the attested copy of the date of birth certificate in duplicate issued by the recognised school or Municipal birth certificate in case of out side candidates is to be enclosed. The applicant submits that he had enclosed copies of all the certificates. Hence his case ~~cannot be~~ ^{Could have been} rejected. However, the DPC rejected his candidature by letter No.E-A4/Drivers/Rectt/Col VII/82 dated 26.7.1991 (Annexure A5 at page 21 to the OA). The reason given for rejection of his candidature is as follows:-

"Sri M.V.Jagan Mohan Rao : He is not having educational qualification. He has also not produced a proof of the date of birth i.e. certificate either from the school or from Municipal authorities. However he produced a Notary certificate which is not valid. Hence the DPC declared the candidate is not eligible for taking the test for recruitment to the cadre of Van Drivers as his age cannot be assessed correctly in the

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absence of the correct date of birth as required in the rule."

6. Against the letter of rejection of his candidature for the post of Motor Driver against the outside quota, the applicant submitted a representation on 6.8.91 (Annexure A6 to the OA). He also submitted another representation on 30.10.91 enclosing the certificate of birth issued by the Registrar of Births and Deaths, Municipal Corporation of Vijayawada to the effect that his date of birth is 31.7.1960 (Annexure A-8 and A-9 at pages 24 and 25 to the OA). In spite of that his case was not considered. The applicant submits that he is eligible for consideration to that post as per DOT circular No.16-5/91-NCG dated 10.9.91 circulated under CGMT-AP 1r.No.1TA/RE/25-1/Rlgs dated 20.9.91 (Annexure A-7 at page 23 to the OA).

7. As his case was not considered, he has filed this OA praying for a direction to the respondents to appoint him as Van Driver at least against the unfilled departmental vacancy declaring that the DPC's findings are not only in accordance with the provisions of the notification dated 6.11.90 (Annexure A-1 to the OA) but suffer from arbitrariness, in violation of the provisions of Articles 14 and 16 of the Constitution of India, besides being in violation of the principles of natural justice and that the applicant is entitled to be paid weekly offs and wages at 1/30th of the monthly wage of a regular Van Driver in the scale of pay of Rs.950-1500 with a consequential direction to pay him the arrears of his wages within a stipulated period.

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8. A reply has been filed in this OA. The respondents submit that the applicant is not entitled to be paid in the scale of pay of Rs.950-1500 as he was not appointed as Driver to be eligible for the scale of Rs.950-1500. The applicant should be in the age group of between 21 and 28 years as on 1.7.90 as stipulated in the notification dated 6.12.90. The DPC which met on 24.7.91 had declared the application of the applicant invalid as he failed to produce the proof of date of birth certificate either from school or from Municipal authorities. The DPC also did not recognise the affidavit produced by the applicant for his date of birth as it was not a valid certificate. The Drivers in Group C are in the scale of pay of Rs.950-1500 which is superior post and acceptance of affidavit for such post is not permissible. The respondents further submit that his candidature was not rejected on the basis of the educational qualification but due to his failure to submit proof of age from school or municipal authorities. They also submit that the orders of DoT dated 10.9.91 are not applicable to him as the same were issued after the notification for recruitment of Drivers was issued. Further that letter dated 10.9.91 is applicable only to those who were recruited as Casual Drivers prior to 1.4.85. As the applicant was recruited on 2.1.87 i.e, after 1.4.85 that letter does not come to his help. In his affidavit the applicant had submitted his date of birth as 6.4.59 whereas the certificate produced by him from the Registrar of Births and Deaths, Municipal Corporation of Vijayawada shows his date of birth ~~is indicated~~ as 31.7.60 and hence both the certificates are contrary to each other and the applicant is not clear about

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his own date of birth and furnished different dates of birth on different occasions.

9. In view of what is stated above, the respondents submit that the applicant is not eligible to be recruited and the OA is liable to be dismissed.

10. A rejoinder has been filed in this OA. In the rejoinder the judgement of the Kerala High Court in "Kuriakose v. State of Kerala; 1985(1) SLR 191" is relied upon wherein the Kerala High Court had held that "an omission of a venial nature could be waived or relaxed by the appropriate authority without in any way causing detriment to public interest or going counter to public policy and that the stipulations and conditions are ordinarily to be complied with; but that does not mean that the slightest infringement of one of those very irrelevant stipulations would entail dismissal of the application or refusal of selection". By relying on this, the applicant submits that he has produced an affidavit which declared his date of birth as 6.4.59 and subsequently also he produced the date of birth certificate issued by the Registrar of Births and Deaths, Municipal Corporation of Vijayawada which showed his date of birth as 31.7.60 and on that basis the respondents should have decided his correct age and should have considered his case for appointment as Motor Driver. The above view is in accordance with the citation referred to above. The applicant also submits in his rejoinder that the letter of DoT dated 10.9.91 is of clarificatory nature and hence such a letter is to be followed in his case also and only doubts in the minds of

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the departmental officers have been cleared by that letter. As per that letter, recruitment may be made from amongst casual laborers of temporary status doing job of Drivers subject to fitness and that recruitment may be made in the order of seniority based on length of casual service as Casual Labour (engaged as Drivers) and also Casual Drivers/Casual Labourers engaged as Drivers may be given age relaxation to the extent of service rendered by them as Casual Drivers. The applicant also basing on the DoPT OM No.49014/2/86-Estt.(C) dated 7.6.88 (A copy of which is enclosed to the rejoinder) submits that a casual worker may be given relaxation in the upper age limit only if at the time of initial recruitment as casual worker he had not crossed upper age limit for the relevant post.

11. The notification for recruitment of Drivers against the outsider quota is very clear. As regards the educational qualification it only states that the candidate should be able to read and write local language and to make simple arthemetical calculations and middle standard pass is desirable. As per the submission of the applicant, he is able to fulfil the conditions except that he has not studied in any school. Whether he is able to read and write local language and to make simple arthematic calculations can definitely be examined by the DPC and on that basis his educational qualifications could have been decided. Attending school is not necessary. Though in the rejection letter rejecting his candidature on 26.7.91 states that his case was rejected for not having educational qualifications, the respondents in their reply categorically state that his case was rejected not on the

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basis of the educational qualifications but failure to submit the proof of his age from school or municipal authorities. Hence it has to be held that his candidature was not rejected due to educational qualification.

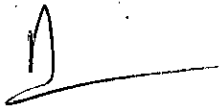
12. In view of the above, the only point to be decided in this OA is whether rejection of the candidature of the applicant due to non submission of the proof of his age is in order or not.

13. No doubt, the applicant had produced an affidavit from a Notary in regard to his age. The respondents submit that the Notary affidavit cannot be accepted as he has to be appointed in a Group-C post and that requires only a School Leaving Certificate or a certificate from the Registrar of Births and Deaths. The applicant was engaged as Casual Driver with effect from 2.1.87. If the respondents are particular about the age, it is necessary for them to have obtained his age certificate even at the time of engaging him as Casual Driver. The age being an important ingredient for engaging/appointing an outsider, it goes without saying that even for engaging a candidate of casual nature, his age should have been ascertained at the time of casual engagement itself so as to ensure that overaged candidates are not engaged even on casual basis. Though the learned counsel for the respondents submits that the initial engagement of the applicant was only on casual basis and at that time it is not necessary to ascertain his age, we do not subscribe to that view. Mere fact that the age being an important ingredient in allowing the candidate to join Government service, the respondents could not

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ignore that fact even for engagement as casual nature especially when he is taken for duty connected with driving of vehicle involving safety aspect. If an old man is engaged as Casual Driver, it may be possible that he may drive the vehicle in an unsafe condition. But a young man with proper driving licence can do that job with adequate interest and safety consciousness. Hence engaging him as casual driver without ascertaining his age at the time of initial engagement itself in our opinion is an irregular process. In Railways, even Casual Khalasis are engaged only after ascertaining the proof of their age. P&T Department which also employs quite a good number of casual labour cannot ignore this aspect.

14. The learned counsel for the respondents further submits that no casual labour is employed as Group-C as there is no procedure for regularisation of such casual Group-C employees in Telecom Department. This statement does not appear to be correct and reasonable as we find that the notification itself says that the casual drivers are permitted to apply against the outsider quota for recruitment as Drivers. Hence it has to be stated that the Department itself has reconciled to the idea that the casual engagement of Drivers is not prohibited and those who are appointed as such should also be considered for regularisation in Group-C against outsider quota provided ofcourse after completion of requisite service as prescribed in the other conditions in the notification. The applicant no doubt possesses the number of days of service as required in the notification. Further, we also find from the letter of DoT dated 10.9.91 that against the



50% quota of the vacancies of Drivers meant for outsiders, recruitment should be made only from among those Drivers who are already appointed on Casual basis before 1.4.85 and if that was not possible, the letter do permit the casual labour engaged after that date for consideration provided they fulfil the conditions laid down in that letter. Thus, we come to the conclusion that the contention that there is no regularisation in Group-C posts from those engaged on casual basis is not borne by record. The applicant is entitled for regularisation in Group-C post as Driver provided he fulfills other conditions laid down in the notification.

15. The applicant in OA 673/94 is also a Casual Driver and the respondents themselves agree^d in their reply in that OA that he will be paid as Temporary Mazdoor and thereafter he can be considered as Driver in his turn. Thus, it is evident that even the Telecom Department has conceded to the treatment of casual labourers employed in Group-C post for regularisation in Group-D post at least. Hence it cannot be said that a Casual Group 'C' employee cannot be considered for regularisation.

16. As stated earlier, the notification clearly states that the age as on 1.7.90 should be between 21 and 28 years. In the letter dated 10.9.91, provision exists for Casual Drivers/Casual Labourers engaged as Drivers to be given the age relaxation to the extent of service rendered by them as Casual Driver. In this case the applicant had put in a number of days of service as Casual Driver during 1987, 1988, 1989, 1990 and 1991 when the notification was issued. Hence it is essential that the age to the extent

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of the number of years of service he has put in as Casual Driver reckoned on the basis of the number of days he had worked during that period, has to be added so as to find out whether he is within the age between 21 and 28 as on 1.7.90 as per the notification. The above view is also in consonance with the Department of Personnel and Training letter dated 7.6.88 which provides for relaxation of upper age limit on the basis of reckoning his service put in by him in casual service. Considering the above, we are of the opinion that the applicant's age should be checked whether he was within the age between 21 and 28 as on the crucial date prescribed in the notification by deducting the casual service from his actual age as on 1.7.90. If that is done, then the eligibility of the applicant in regard to his age ^{qual. for} ~~calculation~~ can be decided without any difficulty.

17. The next point arises is in regard to non submission of his date of birth certificate from the competent authority along with the application. The only point made out by the learned standing counsel for the respondents is that even the certificate submitted by him from the Registrar of Births and Deaths was later than the last date prescribed in the notification and hence the same cannot be taken note of while considering his case. The initial affidavit filed by him is not valid and the age mentioned in the affidavit is also different from the age mentioned in the certificate of the Registrar of Births and Deaths.

18. We have already observed that even at the time of engaging him as Casual Driver, his age should have been

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ascertained. The respondents' submission that declaration of age is not necessary at the time of engagement as he was engaged only as a Casual Driver initially is not in order. In Government service, whether engaged regularly or on casual basis, one should give his correct date of birth which is essential qualification for engagement in a Government service. As the respondents have failed to observe that rule at the time of engagement of the applicant, they cannot say that the applicant had failed to submit a proper certificate along with the application in pursuance of the notification dated 6.12.90. The applicant even though submitted the certificate of birth issued by the Registrar of Births and Deaths late, it has to be seen on the basis of that certificate whether he possesses necessary age as required in the notification giving the age relaxation for the casual service rendered by him as provided for in the DoT letter dated 10.9.91 and the DoP letter dated 7.6.88. If he comes within that age as prescribed in the notification, then his case has to be reviewed for absorption as Driver in the respondents' organisation.

19. The applicant submits that there is a vacancy against the departmental quota for which notification dated 6.12.90 was issued. This could not be verified by us. If such a vacancy exists and that could not be filled by a departmental candidate due to non availability of departmental candidate, then the case of the applicant should be considered after examining his date of birth as directed above and to consider his case for absorption for the post of Motor Driver in accordance with the


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notification dated 6.12.90. If no such vacancy is available, then if a vacancy against the outsider quota exists on that date even if it is not included in the notification dated 6.12.90, then his case should be considered for that post after making necessary check in regard to his age as on 1.7.90. If it is not possible to absorb him as Driver as directed above, then the applicant should be treated as a Temporary Mazdoor by conferring Temporary Status on him and absorbed in Group-D category in accordance with the rules. Thereafter his case may be considered for appointment as Driver as and when his turn comes in future against departmental quota.

20. With the above directions, the OA is disposed of.
No order as to costs.



(B.S. JAI PARAMESHWAR)
MEMBER (JUDL.)

29.1.98


(R. RANGARAJAN)
MEMBER (ADMN.)

DATED: 29th January, 1998

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D.R.

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TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

THE HON'BLE MR. B. RANGARAJAN : M(A)

AND

THE HON'BLE MR. B. S. JAI PARAMESHWAR :
M(J)

DATED: 29/1/98

ORDER/JUDGMENT

M.A./R.A/C.A.NB.

in

B.A.NC.

931/95

ADMITTED AND INTERIM DIRECTIONS
ISSUED

ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

DISMISSED FOR DEFAULT

ORDERED/REJECTED

NO ORDER AS TO COSTS.

II COURT

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केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
दस्तावेज / DESPATCH

- 9 FEB 1998

हैदराबाद न्यायपीठ
HYDERABAD BENCH