

(26) (R)

CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : HYDERABAD.

C.A. NO. 1269/95 + OA.1551/95

F.A. NO.

DATE OF DECISION August 22, 96

D. Khadar Basha & 5 others (1269/95) (PETITIONER (S))

S. Khader Basha (OA.1551/95)

BSA Satyanarayana

ADVOCATE FOR THE PETITIONER(S)

VERSUS

Union of India, rep. by
its Secretary, Min. of Telecom
New Delhi, and four others
(OA.1269/95 + OA.1551/95)

RESPONDENT (S)

N.V. Ramana

ADVOCATE FOR THE RESPON-
DENT (S).

THE HON'BLE MR. JUSTICE M.G. CHAUDHARI, VICE CHAIRMAN

THE HON'BLE MR. H. RAJENDRA PRASAD, MEMBER (ADMN.)

1. Whether Reporters of local papers may be allowed to see the Judgement ? ye
2. To be referred to the Reporter or not ? ye
3. Whether their Lordships wish to see the fair copy of the judgement ? n/v
4. Whether the Judgement is to be circulated to the other Benches ? n/v

Judgment delivered by Hon'ble Sri H. Rajendra Prasad, M(A)

G. M.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH
AT HYDERABAD

OA.1269/95. + OA.1551/95

dated : 22 August, 96

Between

1. D. Khadar Basha
2. J. Venkata Ramana
3. R.V.R. Mohan
4. S. Mallikarjuna
5. M. Veeraswamy
6. Manohar

Applicants (OA.1269/95)

and

1. Union of India rep. by its
Secretary, Min. of Telecommunications
New Delhi
2. Chief Post Master General
AP Circle, Hyderabad
3. The Post Master General
AP Southern Region
Kurnool 518005
4. Director of Postal Service
O/o PMG AP Southern Region
Kurnool 518005
5. Supdt. of RMA AG Divn. Guntakal

Respondents (OA.1269/95)

AND

Between

Mr. S. Khader Basha

Applicant (OA.1551/95)

and

1. Union of India, rep. by
Secretary, Min. of Communications
Dept. of Posts, New Delhi-1
2. Post Master General
SPSR, Kurnool 518005
3. Supdt. RMS, AG Division
Guntakal
4. G. Narayana ED Mail Man
HRO, RMS, Guntakal
5. K. Santharaju
ED Mailman, HRO, RMS Guntakal

Respondents (OA.1551/95)

Counsel for the applicants
(in both the cases)

: BSA Satyanarayana
Advocate

Counsel for the respondents
(in both the cases)

: N.V. Ramana
SC for Central Govt.

CORAM

HON. MR. JUSTICE M.G. CHAUDHARI, VICE CHAIRMAN

HON. MR. H. RAJENDRA PRASAD, MEMBER (ADMN.)

8/1
m/s

OA.1269/95 + OA.1551/95 decided on : August, 96

Judgement

Order (per Hon. Mr. H. Rajendra Prasad, Member (Admn))

Heard.

2. The applicants in these OA's - who describe themselves variously and simultaneously as Casual Mazdoors/Outsiders/ (ED) Substitutes - are aggrieved by the action of SRM, AG Division, Guntakal, in inviting a panel of names of suitable candidates from the Employment Exchange for consideration of their appointment to certain existing or arising posts of Extra Departmental Mailman. In doing this, the applicants complain, their own long past services have been ignored, and they are thus subject to unfair discrimination in the matter of employment.

2.1 The applicants pray for a direction to be issued to SRM, RMS AG Division, to appoint them as EDMM by declaring that his action in calling for any fresh list of names from the Employment Exchange is arbitrary and unjust.

2.2 By an interim order passed on 25-10-1995, this Tribunal stayed the interviews of the candidates sponsored by the Employment Exchange.

3. Heavy reliance is placed by the applicants on the judgement of this Tribunal in a batch of cases (OA.323/93, etc) passed on 25-2-1994. It would be useful, therefore, to indicate the broad facts, the findings and the directions of the Tribunal in those cases :

i) Facts : The applicants in these cases had, like the present applicants, worked as substitutes for regular ED employees. They applied for appointment as EDMM in response to a notification by SRM AG Division,

29

31

2 b

and were duly selected even though, as per rules, only casual labourers were eligible for such selection. The selections were rescinded as a sequel to a vigilance enquiry into the matter. However, they were duly noticed, and given an opportunity to respond thereto, before their names were removed from the select list.

ii) Findings: "It can be stated that one who merely worked as a substitute was not eligible for consideration as the Annexure R-IV made it clear that the recruitment was only from among the part-time casual labourer. But if one worked for a minimum of one year as a part-time casual labourer and if he satisfies the other conditions referred to in the said notification, there was no bar for consideration of his case for selection as EDMM as per the said notification even if he also worked as a substitute for some period." (para 12 of the judgement)

iii) Directions: a) "The Superintendent, RMS, AG-Division Guntakal, has to verify the relevant records from 1-4-1985 till 16-3-1992 in the presence of the applicant and / or his representative. That representative should not be either retired employee or an office bearer of the unit. He should be a person working under the control of the Superintendent, RMS, AG-Division, Guntakal. The record that has to be verified is only that record which discloses about the payment of the

Q
20/8

..3.

employee as an outsider. It has to be made clear that it is not a case of the applicants that they worked as casual labourers other than outsiders.

b) We have to make it clear that it is only one of verification on the basis of the records available with the Superintendent, RMS, AG-Division, Guntakal and also on the basis of any documents issued by the RMS, AG-Division, Guntakal, to the applicants in regard to their appointment as outsiders, if any. No oral evidence is permitted.

c) It is needless to say that if on verification any of these applicants had not worked as part-time casual labourer (part-time casual labour is one who worked for less than 8 hours a day as per Annexure-R-III) for atleast 240 days as envisaged in the notification dated 16-3-1992 (Annexure R-IV), they are liable to be removed from service on the ground that they were not eligible for consideration in pursuance of the notification dated 16-3-1992 (Annexure R-IV).

The facts of the present case being identical to the above OAs the same directions hold good.

4. One additional fact in the instant case is that, whereas the applicants in the earlier OAs were duly noticed before removing their names from the select list, no such notice was served on the present applicants. It has to be held, therefore, that the unilateral subsequent cancellation of the select list of 25-8-1992 is bad in law and cannot be sustained.

5. Under the circumstances we direct, SRM, RMS, AG-Division, to cause verification of the applicants to determine

whether they worked for 240 days in a year, as outsider casual labourers, during the period from 1-4-1985, and proceed to take further action, on that basis, to select such of the applicants who fulfil all the relevant conditions and appoint them as EDMM. This exercise may be completed within forty five days of the receipt of a copy of those orders by SRM, RMS, AG-Division.

6. We also make it clear that if any of the applicants are selected for appointment at the end of the verification of their past services, and subject to fulfilment of other conditions, the same shall not create any right for other applicants in future. The directions issued in this OA shall not constitute a precedent for future litigation.

7. Before we part with the case, we deem it necessary to add our uneasy feeling that - judging from the persistent and recurring litigation in this regard - the system of ED Substitutes in RMS appears liable to widespread misuse. Whatever may have been the original scheme or its justifications, the system seems to have degenerated into an arrangement which can be grossly abused, with ease and impunity in a variety of ways. It is difficult to conceive that a person can continue to function, without break, or at rapid intermittance, as a substitute for an absentee worker for years on end. This is a pointer to the clear possibility that the system can be easily subverted to frustrate official recruitment procedures, by creating an ancillary supplementary route to employment totally at variance and in violation of basic rules in this regard. The Chief Post master-General may like, therefore, to examine if an improved and more fool-proof system can be evolved to eliminate such possibilities in the future. While it is for the Department

8/18

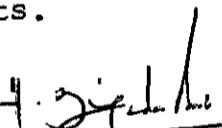
32

34

to examine the issue in all its ramifications, one possible solution could be to draw up and operate Record Office-wise Panels of Employment Exchange-sponsored candidates to meet the contingency of frequent absenteeism and periodic requirements of additional manpower in the ED cadres of RMS. Apart from possessing the virtue of clarity, such panels may also serve to eliminate the uncertainty inherent in the present methods, and help impart transparency to the existing procedures. The suggested revised procedure would also eliminate the need of maintaining long lists of proxies waiting for a number of years for regular appointments without relation to the actual manpower requirements in operative offices, and without any reference and relevance to sanctioned modes of recruitments or rules and instructions pertaining thereto.

8. With the above observations, the OAs ~~are~~ disposed of.

No costs.

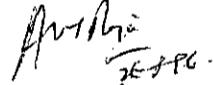

(H. Rajendra Prasad)
Member (Admn.)

22 Aug 96


(M.G. Chaudhary)
Vice Chairman

sk

Dated : 22nd August, 96


Deputy Registrar (J) C.R.