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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL APPLICATION NO.99 of 1996

DATE OF ORDER: 27th August, 1998

BETWEEN:

1. M.Venkataramana,
2. Shaik Basheer Ahmed,
3. Shaik Sardarbabu,
4. Sk.Ahmed Basha,
5. K.Mohanakrishna.

.. APPLICANTS

and

1. The Telecom District Manager,
Nellore Telecom District,
Nellore 524 050,
2. The Superintendent, Incharge,
Central Telegraph Office,
Nellore 524 003,
3. The Assistant Superintendent,
Telegraph Traffic, Telegraph Office,
Gudur (NL) 524 101,
4. The Assistant Superintendent,
Telegraph Traffic,
Telegraph Office,
Kaveli 524 201,
5. The Chief General Manager,
Telecommunications,
A.P.Circle,
Hyderabad 500 001.

6. The Director General,
Telecommunications, Sanchar
Bhawan, New Delhi.

.. RESPONDENTS

COUNSEL FOR THE APPLICANTS: Mr.T.V.V.S.MURTHY

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.T.V.V.S.Murthy, learned counsel for the applicants and Mr.N.R.Devaraj, learned standing counsel for the respondents.

2. There are five applicants in this OA. All of them were engaged as Part-time employees in the various Telegraph Offices/Telecom Centres in Nellore Telecom District. The statement showing service particulars of the applicants and their designation, office in which they were employed and duties allotted to them is at Annexure A-1 (at page 14) to the OA. A bunch of letters have been enclosed as Annexures A-2 to A-8 in regard to the certificates issued by the concerned Heads of the offices showing the dates from which they were working. Annexures 9 to 10 ^a were also enclosed to show that there was sanction for retention of the posts. By notification No.E/Gr.D/Rectt/94-95/1 dated 30.9.94 (Annexure A-11 at page 24 to the OA) applications were called for from the eligible casual mazdoors/part-time employees/Non-test category officials of Group-D in Telegraph Traffic Wing for recruitment to Group-
^{posts}
D in Nellore Telegraph Traffic Division and it is also notified in that notification that applications may be forwarded to R-1's office on or before 22.10.94. The conditions of eligibility etc. have been indicated in that notification. The applicants submit that they had responded to that notification and applied for the same. They were called for literacy test/interview on 19.1.95 and 20.1.95. A properly constituted Departmental Promotion Committee recommended the successful candidates in the written and oral tests held on 19/20th January, 1995. All

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the five applicants herein were ordered to report to the office named against their names positively on 1.2.95 at 10.00 hrs. for on-job training for one week and subsequent appointment as Test Category Group-D officials subject to some conditions indicated therein. This is evident from the letter No.E/Gr.D/RECTT/94-95/29 dated 27.1.95 (Annexure A-12 at page 26 to the OA). By the order No.E/GR.D/RECTT/94-95/32 dated 2.2.95 (Annexure A-13 at page 28 to the OA) the applicants were posted ^{to} in the stations indicated in that order even before they completed their training. The applicants submit that the orders at Annexures A-12 and A-13 were issued by the competent authority, namely, the Superintendent of Telegraph Traffic, Nellore Division, Nellore. However, the said orders were kept in abeyance by the Superintendent Incharge, CTO, Nellore (R-2 herein). The applicants submit that such withholding of the postings by ~~the~~ ^{an} incompetent authority, namely R-2, is irregular and arbitrary. The applicants submitted a representation on 8.12.95 (Annexure A-16 at page 32 to the OA) addressed to R-5 through proper channel i.e, through R-1. It is stated that no reply had been received by them. The payment of wages admissible to the part-time employees is being done by the TDM Nellore (R-1 herein) as usual for the present i.e, for December 1995. They apprehend that they may not be paid at the old rates any longer.

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3. It is also submitted by them that the letter No.TA/TFC/20-1/92/PT/K dated 31.7.95 (Annexure A-18 at Page 35 to the OA) whereby part-time employees/casual mazdoors who were recruited after 22.6.88 should be replaced by the contract labourers on individual basis, is irregular and cannot be a valid order. In view of the above, they ^{have} filed this OA.

4. This OA is filed for setting aside the impugned order No.TA/TFC/20-1/92/PT/KW dated 31.7.95 (Annexure A-18 at page 35) of R-5 and the consequential order No.A-3/TT/95-96/19 dated 30.11.95 (Annexure a-15 at page 31 to the OA) issued by R-1 and for a further direction to the respondents to appoint the applicants herein as Group-D employees as per the appointment and the posting orders already issued by the erstwhile Superintendent, Telegraph Traffic, Nellore Division, Nellore in his Memo No.E/Gr.D/Rectt/94-95/29 dated 27.1.95 and E/Gr.D/Rectt/94-95/32 dated 2.2.95 (Annexures A-12 and A-13 at pages 26 to 29 to the OA).

5. An interim order was passed in this OA on 25.1.96 whereby it was directed that "the applicants shall not be discharged so long as there is work and their juniors are continued".

6. A reply has been filed in this OA. The respondents submit that the applicants Nos.3, 2 and 5 were appointed after ²⁶ 2.2.88 and such a recruitment is irregular. It is also stated that they were working as contract labourers on monthly contract basis from the date of their engagement. Hence they are not entitled for absorption against regular Group-D posts even though they

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were selected and sent for training by the orders dated 27.1.95 and 2.2.95. In view of the above, the CTO Nellore (R-2 herein) had kept in abeyance their posting orders. The above is in accordance with the letter of R-5 dated 31.7.95 (Annexure A-18 to the OA).

7. The respondents do admit that the applicants herein were selected by the DPC and their posting orders were kept in abeyance in view of the reasons stated above. It is further stated that certain irregularities were alleged by the Circle Secretary, Line Staff and Group-D in the selection of the applicants and that resulted in ~~posting~~ keeping in abeyance of the ~~orders~~ as the allegations related to certain irregularities in considering the cases of the applicants for regular promotions in the Test Category. It is also stated that R-5 vide his letter No.TA/TFC/20-1/PT/KW dated 31.7.95 directed them to entrust the work of cleaning of offices, bringing water etc. to a contract agency after calling for competitive quotations or tenders and not from the individual contract labourers. It is stated that the posting orders already issued are not cancelled. It is kept only in abeyance. The respondents also submit that the applicants were allowed to continue in the original post from which they were selected from Group 'D' post. Thus, the respondents sustain their action.

8. The reported allegations submitted by the All India Telecom Employees Union, line staff and Group-D, Andhra Circle due to which the posting orders were kept in abeyance is enclosed as Annexure to the reply. It appears from that letter that the selections of Group-D is

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violative of DoT New Delhi's letter dated 17.12.93. The candidates entered in the service as casual employees after 22.6.88 should not be called for interview in view of the letter dated 17.12.93 and selection is violative of directions of the DoT. The other allegations are not very material. The respondents also have enclosed conditions of engagement of contract labourers in CTO/TO/TC in the Nellore Telecom Traffic Organisations. It appears from the above condition that individuals may be appointed as contract labourers on the basis of payment of certain fixed amounts. Remuneration has been indicated in the letter dated 3.5.90 enclosed to the reply.

9. All the contentions raised by the respondents have been contested by the applicants in the rejoinder. It is also stated in the rejoinder that the selection list was cancelled by the order No. ESTT/GR-D-RECTT.95/97-98/2 dated 30.6.97 (Annexure RJ-7 at page 20 to the rejoinder). This letter was issued after filing of this OA on 25.1.96 when the OA is pending.

10. The main point to be considered is eligibility of candidates who have applied for the post of Group-D Test Category. The Casual employees employed upto 22.6.88 are to be regularised even if they were not sponsored by the Employment Exchange as per the standing instructions of the Department. From the reply, it appears that the Applicants 1 and 4 were appointed as Part-time employees earlier to the crucial date of 22.6.88. Hence the allegations enclosed to the reply may not be applicable to them as their consideration for the post of Group-D is not

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violative of the orders of the DoT dated 17.12.93. Hence withholding of the regular appointment order of the applicants 1 and 4 on the basis of the allegations of the All India Telecom employees Union, Line Staff and Group-D does not appear to be in order. Further, the notification itself clearly states that the casual mazdoors/part-time employees/non-test category officials Group-D in Telegraph Wing can apply for the post in pursuance of the notification dated 30.9.94. When they have applied and found eligible for selection, there appears to be no reason to stop them from joining as regular Group-D ^{Employees} when they were empanelled and trained. Hence the selection and appointment of the applicants 1 and 4 has to be upheld and they should be posted as Group-D in the Non-test category posts. As lot of time had elapsed already, it may be possible that there may not be posts available now. If no vacant posts are available to accommodate the applicants 1 and 4 at once, they should be posted immediately in the vacancies occurring in future.

11. The next point to be considered is whether the applicants 2, 3 and 5 can be regularly appointed in view of the fact that they were appointed after 22.6.88 and that too as contract labourers as per submission of the respondents. If they are allowed to sit for the examination, it is not clear why should they be denied of regular appointment at a later date due to some complaints. Further, it is seen that they were treated as contract labourers. The meaning for the word "contract labourer" is not clear. Normally if contract labourers are required for executing a job, tenders are invited for supplying a specified number of labourers for discharging a particular work. The posts of Sweeper/Waterman/Farash/Telegraphman

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cannot be individually appointed as contract labourers as these are the works to be executed daily and hence treating the applicants 2, 3 and 5 as contract labourers may not be correct. Further, the rules for recruitment to Class IV posts issued vide letter No.166-11/59-SPBI dated 28.10.70 indicate under Note No.3 of Annexure A.V at Page 24, that "Casual Labourers and part-time casual labourers may be considered against the vacancies for direct recruitment subject to the such conditions laid down by the Director General, Posts and Telegraphs, from time to time." In view of that, it appears that the applicants are eligible for consideration in accordance with the Recruitment Rules. This is also evident from the letter No.TFC/24-29 dated 17.2.79 of the Director of Telecom (P&A) A.P., Hyderabad. By the letter No.TA/STB/48-1 dated 25.3.81, the DoT had given instructions in regard to preference to the casual labourers for regularisation. As per those orders, it appears that the applicants 2, 3 and 5 are also eligible to be considered even though they were appointed after 22.6.88. A similar OA was filed in this Bench viz., OA 982/94 which was disposed of on 27.8.97. Para 6 of that judgment is very relevant and reasoning given in that para will also apply in the present case. That para is reproduced below:-

"If the applicants 1 and 4 were contract labourers it is not understood why they were called for written and oral tests held on 19.1.95 and 20.1.95 by the DPC as per A-1 to the MA.163/95. The relevant paragraph has been extracted above. The very fact that they were called for the

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written and oral tests and their names were also included in the select list and sent for training and subsequently posted as Group-D officials the contentions made now are not borne out by any proper record. Even presuming that they were contract labourers then when the telegram dt. 7.2.95 was issued a mention could have been made in the telegram to the effect that the recruitment of applicants who were contract labourers were made by mistake and hence inclusion of their names in the select list was to be deleted. But no such remark has been made in that telegram. Hence even after selection is over the respondents have not checked the correctness of the status in regard to applicants 1 and 4. Even in the reply no proof by way of record is shown for proving their status that applicants 1 and 4 were only contract labourers. In the absence of any proper proof based on reliable record it has to be held that applicants 1 and 4 were departmental part-time casual labourers and they were subjected to written and oral tests and on that basis they were selected for posting as Group-D test-category officials. They were also sent for training accordingly and posting order was also issued subsequently after they had completed their training successfully. Hence the contention now raised by the respondents is to be rejected for want of any reliable proof. Hence this contention fails."

On the basis of the above, the OA 984/94 was disposed of allowing the OA.

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12. In view of what is stated above, we are of the opinion that the case of the applicants 2, 3 and 5 has to be reconsidered and a detailed order has to be issued if their cases are rejected. Just because they were appointed after 22.6.88 and termed as contract labourers, that should not stand in the way of consideration of their cases for appointment as Group-D staff. Their cases should not be rejected merely on the ground of engagement after 22.6.88 and terming them as contract labourers.

13. Cancellation of the appointment of the applicants herein was issued on 30.6.97 when the OA was pending. All proceedings abate during the pendency of the OA as it is subjudice. Hence the order dated 30.6.97 has to be set-aside.

14. In view of what is stated above, following directions are given:-

(i) The order dated 30.6.97 cancelling the panel empanelling the applicants herein as Group-D staff is hereby set-aside;

(ii) The applicants 1 and 4 should be posted as Group-D in accordance with the panel position. If there are no vacancies to accommodate them immediately, they are to be appointed in the vacancies that will occur in the immediate future;

(iii) The cases of the applicants 2, 3 and 5 should be reconsidered as observed above and in case their

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cases are rejected, a detailed speaking order should be issued to them within a period of two months from the date of receipt of a copy of this order.

15. The OA is ordered accordingly. No order as to costs.


(B.S.JAI PARAMESHWAR)
MEMBER (JUD.)¹⁸⁸


(R.RANGARAJAN)
MEMBER (A.N.)

DATED: 27th August, 1998

vsn

DA.99/96

copy to :-

1. The Telecom District Manager, Nellore Telecom District, Nellore.
2. The Superintendent, Incharge, Central Telegraph Office, Nellore.
3. The Assistant Superintendent, Telegraph Traffic, Telegraph Office Gudur.
4. The Assistant Superintendent, Telegraph Traffic, Telegraph Office Kavelli.
5. The Chief General Manager, Telecommunications, A.P.Circle, Hyd.
6. One copy to Mr. T.V.V.S.Murthy, Advocate, CAT., Hyd.
7. One copy to Mr. N.R.Devaraj, Sr.CGSC., CAT., Hyd.
8. One copy to D.R.(A), CAT., Hyd.
9. One duplicate copy.
10. The Director General, Telecommunications
Smt. Sankar Bhawan, New Delhi.

Malala
II COURT

TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

THE HON'BLE SHRI R. RANGARAJAN : M(A)

AND

THE HON'BLE SHRI B.S. JAI PARAMESWAR
M(J)

DATED: 27/8/98

ORDER/JUDGMENT

M.A.R.A/C.P.NO.

in
C.A.NO. 99/98

ADMITTED AND INTERIM DIRECTIONS
ISSUED

ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

DISMISSED FOR DEFAULT

ORDERED/REJECTED

NO ORDER AS TO COSTS

