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CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH
(CIRCUIT AT PORT BLAIR)

No. O.A. 428/A&N/2017

Date of order: 24.7.19.

Present: Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Mr. N. Neihisial, Administrative Member

1. Shri Subash Kumar
Son of Late N. Sadasivan
Resident of Burmanallah
Ferrargunj Tehsil, South Andaman.
2. Shri L. Rammanathan
Son of Lakshman
Resident of Dignabad
Port Blair Tehsil
South Andaman District.
3. Shri N. Hari Krishna
Son of Late N. Tulasayya
Resident of Bathubasti
Port Blair Tehsil
South Andaman District.
4. Shri Pradeep Kumar
Son of Bal Bahadur
Resident of Bathu Basti
Port Blair Tehsil
South Andaman.
5. Shri CH Kamraj
Son of CH Rajaiah
Resident of Dairy Farm
Port Blair Tehsil
South Andaman District.
6. Shri R. Veeraiah
Son of Raju
Resident of Phongychaung
Port Blair Tehsil
South Andaman District.

.. Applicants

-Versus-

1. The Union of India through the Secretary
To the Govt. of India
Ministry of Home Affairs
New Delhi – 110001.
2. The Union of India
Through the Secretary to the Govt. of India
Ministry of Road Transport and Highways
Transport Bhawan, Sansad Marg
New Delhi – 110001.
3. The Lieutenant Governor
Andaman and Nicobar Islands
Raj Niwas, Port Blair.
4. The Chief Secretary
Andaman and Nicobar Administration
Secretariat, Port Blair – 744101.
5. The Secretary-cum-Director (Transport)
Andaman and Nicobar Administration
Port Blair – 744101.

.. Respondents

For the Applicants : Mr. G.B. Kumar
For the Respondents : Md. Tabraiz

ORDER**N. NEHSIAL, MEMBER (A):**

This O.A. has been preferred by the six applicants under Section
19 of the Administrative Tribunals Act 1985 seeking the following reliefs:-

"8.(a) An order be passed directing the respondent authorities, particularly the respondent No. 5 to consider the case of the applicants at par with the 43 regular Heavy Vehicle Drivers (Bus Drivers) and appoint them on regular basis to the post of Heavy Vehicle Driver (Bus Drivers) under relevant scale of pay under the respondent No. 5.

Amrinder Singh

(b) An order be pleased directing the respondent authorities to transmit the original records of the case before this Hon'ble Court so that after perusing the same, conscionable justice may be rendered to the applicant giving them regular appointment.

(c) Any other relief or reliefs, order or orders, direction or directions, as your Honour deem fit and proper."

2. The grounds for relief are as follows:-

- (i) That the impugned non action on the part of the respondent authorities, particularly the respondent No. 5 whereby deprived the applicants of regular appointment to the post of Heavy Vehicle Driver (Bus Drivers) at par with other 43 regular Heavy Vehicle Driver (Bus Drivers) appointed from the same selection process is bad in law and in fact. The respondent No. 5 ought to have considered the fact that the applicants are placed in similar circumstances as that of the other 43 Heavy Vehicle Drivers (Bus Drivers), who were appointed along with the applicants on the basis of the same selection process in 2005, subsequently the 43 Heavy Vehicle Driver (Bus Drivers) were appointed on regular basis on different dates by the respondent No. 5 ignoring the claim of the applicants for regular appointment.
- (ii) That the respondent No. 5 failed to appreciate that the applicants were placed in similar circumstances like the 43 Heavy Vehicle Drivers (Bus Drivers) whose services were made regular on different dates by the respondent No. 5 and thereby deprived the applicants of regular appointment to the post of Heavy Vehicle Driver (Bus Drivers), which attracts violation of Article 14 and 16 of the Constitution of India.
- (iii) That the respondent No. 5 failed to appreciate that the applicants were appointed to the post of Heavy Vehicle Drivers (Bus Drivers) against existing regular vacancies under the respondent No. 5. There is no cogent grounds wherein the candidature of the applicants for appointment on regular basis can be rejected when admittedly the case of other 43 Heavy Vehicle Drivers (Bus Drivers), who are placed in similar circumstances with the applicants, were considered by the respondent No. 5 and their services were made regular on different dates under the respondent No. 5.
- (iv) That said employment of Heavy Vehicle Driver (Bus Drivers) is the only source of livelihood for the applicants and if the applicants are deprived of their legitimate right to secure regular appointment at par with the 43 Heavy Vehicle Driver (Bus Drivers), who were appointed through the same selection process and subsequently their appointment was

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made regular on different dates by the respondent No. 5, irreparable loss and injury will be caused to the applicants.

- (v) That the applicants have been discharging their duties at par with the 43 Heavy Vehicle Drivers (Bus Drivers) under the respondent No. 5 and thereby the applicants are entitled to get regular appointment as Heavy Vehicle Driver (Bus Drivers) at par with the 43 Heavy Vehicle Drivers (Bus Drivers) inasmuch they are placed in similar circumstances with the said 43 Heavy Vehicle Drivers (Bus Drivers).
- (vi) That on four occasions, the respondent No. 5 vide different orders offered regular appointment altogether to 43 Heavy Vehicle Drivers (Bus Drivers) who were initially appointed on short-term contract basis along with the applicants through a selection process in 2005:
- (vii) That the applicants have been serving under the respondent No. 5 for the past more than eleven years and with the passage of time, the applicants have been barred by age and if their service is not made regular at par with the 43 Bus Drivers, the applicants will be deprived of any regular government jobs.
- (viii) That due to non-consideration of their cases for regular appointment, the applicants are getting less wages than the other 43 Heavy Vehicle Drivers (Bus Drivers) though they are discharging similar nature of duties and responsibilities at par with the other 43 regular Heavy Vehicle Drivers (Bus Drivers).

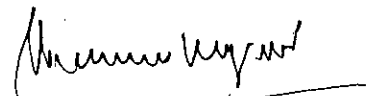
3. Facts of the case are that the applicants were appointed along with others vide office order No. 1282 dated 9th August 2005 (who appeared at Sl. No. 45, 46, 49, 50, 51 and 53) on short term contract basis for a period of six months against the existing vacancies of Bus Driver on consolidated wages of Rs. 5000/- only pm. Out of these 53 initially appointed on short term contract basis, 12 of them were given regular appointment vide office order No. 1051 dated 21.05.2006 in the scale of pay of Rs. 3050-75-3950-4590. Subsequent to this, vide office order No. 1052 dated 21st April 2006, another 24 Bus Drivers were appointed in the same scale of pay. On the

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basis of the recommendation of the selection committee held on 05.11.2007, another six of them have been appointed vide office order No. 4847 dated 13th November 2007 in the same scale of pay as Heavy Vehicle Drivers/Bus Drivers. It is however, noted in this order that Sri Sanjay Lal, Sl. No. 44 of the original list and Sri Tapan Kumar Halder, Sl. No. 47 of the original list have been indicated against category of OBC. Then another office order No. 2363 dated 17.09.2009 has been issued on the recommendation of the Selection Committee meeting held on 22.07.2009 wherein three individuals have been appointed out of which Shri Rasheed Khan was 52 of the original list and other two namely Shri Mohammed Ali and Shri N.K. Abdul Sammad were from the waiting list of the original selection list. Subsequent to this, on 17.08.2016, State Transport Employees Union made a representation to the Chief Secretary, Andaman & Nicobar Administration requesting for appointment of the left over individuals i.e. the present applicant. But no response has been given by the respondent authorities.

In this O.A., the applicants are basically asking that similar individuals in similar situation should be treated similarly. All of them have been initially appointed on contractual basis against existing vacancies. However, the respondent authorities have given regular appointment to 43 of them leaving out the present applicants without valid reasons.

4. In the reply filed by the respondent authorities on 20.06.2018, they have only pointed out that the Recruitment Rules for the post of Heavy

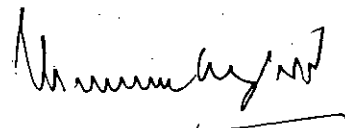


Vehicle Drivers has been amended as per the recommendation of the 6th CPC in the year 2010. As such, on the date of availability of regular as well as revised vacancies were filled by following the prevailing recruitment rules.

The case of 10 wait listed candidates and 3 other candidates appearing in the instant O.A. was not considered as the administration had decided to fill up the posts in terms of the prevailing recruitment rule by way of direct recruitment but further decided to grant certain relaxations and weightage for the past experience as indicated above. According to amended recruitment rule which was notified in the year 2010 the minimum educational qualification is 10th pass, as on date all applicants in the O.A. are entitled for the following benefits as decided by the Administration:

- a. Age relaxation in terms of administration circular dated 09.09.2011.
- b. 30% marks out of total marks on account of experience in driving as a bus driver in any govt. Organization.

5. We have considered the above submissions made by both the parties and heard their submissions/arguments during the hearing. It is found that only reason, the respondents have submitted for not giving regular appointment to these applicants is that the new recruitment has come into effect with the gazette notification dated 22.03.2010 and as per the said new recruitment rule, the basic educational qualification has been changed to class X standard or its equivalent.



6. We carefully considered the issues placed before us. These applicants along with others were appointed in 2005 on short term contract basis against the existing vacancies. When the rest of them i.e. 43 have been given regular appointment from time to time, the reason as to why these applicants have not been given is only due to the fact the respondent authorities notified new recruitment rule in 2010 wherein educational qualification has been raised from Class VIII to Class X.

7. We found that this contention for new recruitment rule notified by the respondents is not adequate reason to reject or deny regular appointment to these applicants. This is particular so when their own colleagues who have got appointment on short term contract basis initially having the same qualifications have been given by them regular appointment from time to time. We noted that the respondent authorities do not seem to have any other reason to refuse regular appointment to the present applicants. If the educational qualification of initial engagement was of Class VIII and since they have been engaged continuously from that time onwards along those who have been given regular appointment from time to time, we do not see any justification why they should be denied the regular appointment particularly when it was indicated in their initial appointment letter that their appointment was against the existing vacancies.

Amrinder Singh

8. Keeping in view of the above, we hereby direct the respondents to give regular appointment to all the present applicants, if necessary by getting the new Recruitment Rules of 2010 relaxed from the competent authority like their own colleagues immediately within a period of three months from the date of a receipt copy of this order. However, applicants shall not be entitled to any back wages and service seniority.

9. O.A. stands disposed of accordingly. No order as to costs.

/ ^{Wm} (N. Neihshai)
Administrative Member

(Bidisha Banerjee)
Judicial Member