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CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH
(CIRCUIT AT PORT BLAIR)

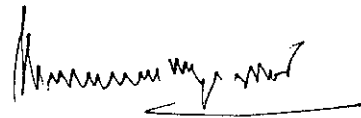
7 JRD ADV

No. O.A. 453/A&N/2017

Date of order: 24.7.19.

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

1. Shri C. Rajankam
Son of P. Chinnathambi
Resident of Garacharma
Port Blair Tehsil
South Andaman
2. Shri K. Vijay Kumar
Son of Krishna Murthy
Resident of Rangat
North & Middle Andaman.
3. Shri Bester Toppo
Son of Late Rapheal Toppo
Resident of Rangat
North & Middle Andaman.
4. Shri Jogeshwar Bhagat
Son of Sukhrum Bhagat
Resident of Mayabunder
North & Middle Andaman
5. Shri R. Shanmugham
Son of Ramalingam
Resident of Rangat
North & Middle Andaman
6. Shri P. Benjamin
Son of Peter Sabastin
Resident of Delanipur
Port Blair Tehsil
South Andaman District
7. Shri Tapash Mondal
Son of Darasath Mondal
Resident of Wandoor
Ferrargunj Tehsil
South Andaman District



8. Shri Angal Benjamin
Son of L. James
Resident of Austinabad
Port Blair Tehsil
South Andaman District
9. Shri C. Radhakrishnan
Son of S Chellaiah
Resident of Rangat
North & Middle Andaman
10. Shri R. Shakti Vel
Son of N Ramachandra
Resident of Bathu Basti
Port Blair Tehsil
South Andaman District
11. Shri Biswajit Roy
Son of Kalipada Roy
Resident of Diglipur
North & Middle Andaman
12. Shri Surya Narayan
Son of Surya Demudu
Resident of Guptapara
Ferrargunj Tehsil
South Andaman District
13. Shri Susheel Ekka
Son of Late Darjan Ekka
Resident of Ferrargunj
Ferrargunj Tehsil, South Andaman District

Administrative Tribunal

.. 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.

Submitted by Mr. M. S. M.

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).

Since the present applicants are seeking similar relief from the same respondents, the prayer for joining together under Rule 4(5)(a) of Central Administrative Tribunals (Procedure) Rules, 1987 is allowed.

2. This O.A. has been preferred by the thirteen 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 45 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.

(b) An order be passed 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

[Signature]

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."

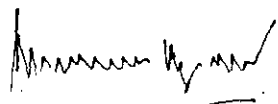
3. Facts of the case of the applicants are that in pursuance of the advertisement published in the local daily newspaper whereby the respondent No. 5 invited applications to fill up the post of Heavy Vehicle Driver (Bus Driver) from the qualified and eligible local candidates whose names are registered in the local Employment Exchange and possessing Local Certificate on contract basis under the respondent No. 5, the applicants being eligible, applied for the said post of Heavy Vehicle Driver (Bus Driver). After a selection process, vide office order No. 1282 dated 9th August 2005, 53 persons were engaged by the respondent No. 5 in pursuance of administration letter, No. 43-44/95-TR dated 27.05.2005 and on the recommendations of the Selection Committee meeting held on 08.08.2005 as Bus Drivers (Heavy Vehicle Driver) on short-term contract basis against the existing vacancies of Bus Driver on consolidated wages of Rs. 5000/- per month. After the order of appointment, the applicants were discharging the duties of Heavy Vehicle Driver under the respondent No. 5.

4. Although the names of the applicants were initially kept in the waiting list, subsequently, vide memorandum dated 4th/5th May 2006, offer of appointment was issued in favour of them along with 7 others in terms of the recommendation of selection committee which was held on 08.08.2005

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for engagement of bus drivers. The applicants accepted the said offer of appointment issued by the office of the respondent No. 5 and on the basis of same, vide office order No. 1283 dated 12.05.2006, the applicants along with 4 others were engaged by the respondent No. 5 in pursuance of Administration letter No. 43-44/95-TR dated 24th April 2006 on daily wages basis as Bus Driver for a period of 6 months w.e.f. the date of reporting duty at their respective postings. The said engagement of the applicants on daily wages basis was extended from time to time. Subsequently, the applicants were further engaged on short term basis against the existing vacancy of bus driver on a consolidated wage of Rs. 5000/- per month vide different orders. Accordingly, till date, they are discharging their duties under the respondent No. 5 at par with the regular Bus Drivers (Heavy Vehicle Drivers).

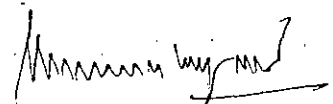
5. The respondent No. 5 on the basis of the recommendation of the selection committee meeting for Group C posts, vide order No. 1051 dated 21.04.2006, appointed 12 Bus Drivers (Heavy Vehicle Driver) on regular basis vide order No. 1052 dated 21.04.2006. This was followed by another appointment of 24 Bus Drivers (Heavy Vehicle Driver) on regular basis. Thereafter, vide order No. 4847 dated 30.11.2007, appointment of another 6 Bus Drivers (Heavy Vehicle Driver) was done. All these appointments on regular basis were made from the incumbents who were selected on the basis of the same selection process wherein the applicants were also selected.



6. The grievance of the applicants is that while the similarly situated individuals have been given regular appointment, they have not been given the said regular appointment inspite of having worked for more than 10 years. They have also highlighted that this discriminatory treatment of the respondent authority particularly respondent No. 5 is clear violation of Article 14 and 16 of the Constitution of India.

7. The respondent authorities in their written statement filed on 20.08.2018 had admitted that the respondent department appointed 36 Bus Drivers on purely temporary basis in the year 2006 and 06 Bus Drivers in the year 2007 on arising vacancies of Bus Drivers as these candidates qualified the trade test for testing driving skills of Bus Drivers on contract/daily wage basis in the year 2005 and the candidates were found fully eligible as per the then prevailing recruitment rules. However, in the year 2010 with implementation of 6th CPC, the recruitment rule has undergone a change wherein apart from others, the basic education qualifications are:-

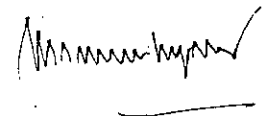
- (i) Pass on Secondary School Examination (10th Std.) or its equivalent from a recognized board/institution;
- (ii) Must possess valid profession heavy vehicle driving license (PSV),
- (iii) At least three years experience in driving heavy motor vehicle and
- (iv) Should qualify in the Trade Test to be conducted by duly constituted selection committee.



8. In spite of this revised recruitment rules, the respondent authorities do concede that these candidates were entitled for the following concessions if they apply for the post of Bus Drivers:

- (i) Age relaxation as per the Administration's circular dated 19.09.2011,
- (ii) 30% marks out of total marks on amount of experience in driving as a Bus Drivers in any Govt. organization,
- (iii) They also admitted that as they are well experienced Bus Drivers, it is obvious that their performance would be better during the skill/trade test.

9. We have perused the records, submissions and pleadings made by both the parties. From the records submitted by the applicants as well as respondents, it is observed that the present applicants were initially placed in the wait list, from merit list Sl. No. 54 to 69. However, subsequently, they have been engaged by the respondent authorities vide their office order No. 1283 dated 12.05.2006 in pursuance with Administration's letter No. 43-44/95-TR dated 24.04.2006. The respondent No. 5 also vide office order No. 2383 dated 17.09.2009 appointed some individuals on regular basis amongst the wait list to which the present applicants were also put in the same list. Aggrieved with this selective appointment, the applicants through their Union made representations on 17.08.2016 to kindly consider the grievances of the applicants for regular appointment at par with other Heavy Vehicle Drivers (Bus).



10. It is further observed from the submissions of the respondent authorities that they have not specifically contested against giving of regular appointment to the present applicants. In fact, they stated that these candidates have bright chances for getting selected as experienced Bus Drivers during the skill/trade test and also they are entitled to get age relaxation and also 30% marks of extra credit of the experience as Bus Drivers.

11. Keeping in view of the above, after careful consideration, it is felt that the applicants deserve to be considered by the respondent authorities for giving regular appointment, as in case of other similarly situated individuals who have since been given regular appointment. Accordingly, respondents are hereby directed to give regular appointment to all the present applicants, if necessary by getting approval from the competent authority for relaxation of educational qualification etc. under the new recruitment rules of 2010, within a period of three months from the date of receipt of a copy of this order. However, applicants shall not be entitled to any back wages and service seniority.

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

(N. Neihśāl)

Administrative Member

10.10.11
(Bidisha Banerjee)
Judicial Member