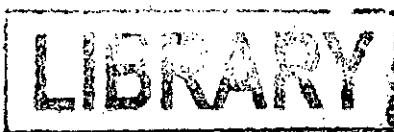


18-7



DISTRICT: ANDAMAN

BEFORE THE CENTRAL ADMINISTRATIVE
TRIBUNAL AT CALCUTTA
CIRCUIT BENCH AT PORT BLAIR

O.A.No. 897/AN of 2017

IN THE MATTER OF:

1. Govt. Motor Transport Driver's Union,
(Affiliated to Centre of Indian Trade Unions),
Through the General Secretary,
Shri. P.K. Khalid,
Crusade House, Phoenix Bay,
Haddo P.O., Port Blair.
2. Shri. Mahabir Oraon,
S/o Shri. Bandhan Oraon,
R/o S.T.S. Colony,
Hutbay, Little Andaman,
Andaman & Nicobar Islands.
3. Shri. K. Mohammed Safique,
S/o Shri. K. Veeran Kutty,
R/o Ograbraj, South Andaman,
Andaman & Nicobar Islands.
4. Shri. Dilip Baroi,
S/o Late Kunju Baroi,
R/o Rangat,
North & Middle Andaman.

5. Shri. K. Basheer,
S/o Shri. K. Alvi,
R/o Calicut, South Andaman,
Andaman & Nicobar Islands.
6. Shri. Abdul Salam,
S/o Late. K. Mohammed,
R/o Ograbraj, South Andaman,
Andaman & Nicobar Islands.
7. Shri. Vijesh Lall,
S/o Kishen Lall,
R/o Garacharma, South Andaman,
Andaman & Nicobar Islands.
8. Shri. Pratap Singh,
S/o Shri. Satyanarayan Singh,
R/o Kadkachan, South Andaman,
Andaman & Nicobar Islands.
9. Shri. C. Sanju Kumar,
S/o Shri. L. Chandran,
R/o Austinabad,
South Andaman,
Andaman & Nicobar Islands.
10. Shri. K. Thangaswamy,
S/o Shri. Karuppaiah,
R/o Guptapara,
South Andaman,
Andaman & Nicobar Islands.

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17. Shri.R. Selvam,
S/o Late. Raja Manickam,
R/o Pattargudda,
South Andaman,
Andaman & Nicobar Islands.
18. Shri.K. Kannan,
S/o Shri. P. Karuppaiah,
R/o Rangat,
North & Middle Andaman.
19. Shri.P. Murugesan,
S/o Shri. P. Panchavanam,
R/o Biblitan,
South Andaman,
Andaman & Nicobar Islands.
20. Shri.G. Krishnan,
S/o Shri. Ganeshan,
R/o Bakultala, Rangat,
North & Middle Andaman.
21. Shri.R. Muthu Raman,
S/o Shri. M. Ramaswamy,
R/o Tylerabad,
South Andaman,
Andaman & Nicobar Islands.
22. Shri.Murukesan,
S/o Shri.Muthuraman.
R/o Guptapara,
South Andaman,
Andaman & Nicobar Islands.

23. Shri.Arunasaiak Kumar,
S/o Shri. Narayanan,
R/o Rest Camp, Mayabunder,
North & Middle Andaman.
24. Shri.Gopal,
S/o Late. Kannu Swamy,
R/o Mazarpahad, Shadipur,
South Andaman,
Andaman & Nicobar Islands.
25. Shri.Shibu Soman,
S/o Late. Somen,
R/o Chakargaon,Port Blair,
South Andaman,
Andaman & Nicobar Islands.
26. Shri.B. Karuna Nidhi,
S/o Shri. Baluswamy,
R/o Vegetable Basti, Bathubasti,
Andaman & Nicobar Islands.
27. Shri.K. Ramamurthi,
S/o Shri. P. Konda Swamy,
R/o Machapahad,Burmanallah,
South Andaman,
Andaman & Nicobar Islands.
28. Shri.P. Partha Sarathi,
S/o Shri.N. Pacha Muthu,
R/o Subhashgram, Diglipur,
North & Middle Andaman.

29. Shri.C. Aboobacker,
S/o Late. C. Moideen Kutty,
R/o Tsunami Shelter,Babooflat,
South Andaman,
Andaman & Nicobar Islands.
30. Shri.U. Siva Kumar,
S/o Shri. M. Veiu;
R/o S.T.S. Colony,
Hutbay, Little Andaman,
Andaman & Nicobar Islands.
31. Shri.P. Dilleshwar Rao,
S/o Shri. P. Aiambari,
R/o Megapoad Road, Haddo,
Port Blair, South Andaman,
Andaman & Nicobar Islands.
32. Shri.Fuljan Kumar Badaik,
S/o Shri. Mangru Badaik,
R/o Mathura, Ferrargunj,
South Andaman,
Andaman & Nicobar Islands.
33. Shri.Mohan,
S/o Shri. Venkat Raman,
R/o Dollygunj, Port Blair,
South Andaman,
Andaman & Nicobar Islands.
34. Shri.C. Asai Tambi,
S/o Shri. C. Vella Swamy,
R/o Pattharguuda, Port Blair,
South Andaman,
Andaman & Nicobar Islands.

35. Shri.Prem Prakash Minj,
S/o Shri. Zakrias Minj,
R/o Campbell Bay,
South Andaman,
Andaman & Nicobar Islands.
36. Shri.M.A. Karim,
S/o Late. Hasmat Ali,
R/o Marine Dockyard Gate No.I,
Port Blair, South Andaman,
Andaman & Nicobar Islands.
37. Shri.Prabash Ram,
S/o Shri. Rodh Ram,
R/o Calicut, Port Blair,
South Andaman,
Andaman & Nicobar Islands.
38. Shri.Subranshu Biswas,
S/o Shri. Sagar Biswas,
R/o Khudirampur, Diglipur,
North & Middle Andaman.
39. Shri.Imitiaz Ali,
S/o Shri. Hasmat Ali,
R/o Wimberlygunj, Ferrargunj,
South Andaman,
Andaman & Nicobar Islands.
40. Shri.Suresh Mondal,
S/o Shri. N. Mondal,
R/o Machi Line, Port Blair,
South Andaman,
Andaman & Nicobar Islands.

.....Applicants

- Vs -

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of

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1. The Union of India
Service through the Secretary,
Ministry of Human Resource & Devel.
Shastri Bhawan, New Delhi - 110001.
2. The Chief Secretary,
A & N Administration,
Secretariat, Port Blair.
3. The Secretary-cum-Director of Transport,
A & N Administration, Port Blair.
4. The Deputy Director(Admn./Vig)
Directorate of Transport,
A & N Administration, Port Blair.
5. The Asst. Director (Admn.)
Directorate of Transport,
A & N Administration, Port Blair.

.....Respondents

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH
CIRCUIT SITTING AT PORT BLAIR

OA. 897/AN/2017

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

Govt. Motor Transport Driver's Union & Ors.
Vs.
A & N Admn. (Transport)

For the Applicant : R. George, Counsel

For the Respondents : Md. Tabraiz, Counsel

Heard On : 07.06.2019

Date of order: 18.7.19

ORDER

Per Ms. Bidisha Banerjee, JM:

The applicant union and its 39 affected members have jointly preferred this application to seek the following reliefs:

"8(a) Leave be granted to the applicants to move this original application jointly under Rule 4(5)9a) of the CAT (Procedure) Rules, 1987 as the cause of action and the nature of relief prayed for is same having common interest in nature.

(b) A mandatory order directing the Respondents authorities to cancel/set aside/rescind/quash or recall the vacancy notice dated 04.06.2017 and not to give or any further effect to the said vacancy notice.

(c) A mandatory order upon the respondent concerned to take necessary steps to regularise the service of the applicants in the post of Bus Drivers from their initial appointment with all consequential benefits while taking into consideration of their continuous service of more than 10 years rendered to the A & N Administration.

(d) Any other appropriate relief or reliefs, as your lordship may deem fit and proper."

2. The applicants are aggrieved as they were deployed to run the state transport buses and have been discharging the duties of Bus Driver on daily rate, since 2005 onwards, without break and have served even the remotest areas of the Islands, but their prayer for regularisation has been mercilessly turned down and instead, on 04.06.2017, the respondent authorities, ignoring their claim of regularization, invited the applications to fill up 49 posts of Bus Drivers on regular basis through the direct recruitment without cancelling or recalling their earlier order of the cancellation of the employment notice dated 08.06.2016.

Their repeated prayers have fallen on deaf ears. Hence, the present OA.

3. The following admitted facts emerge from the pleadings of the parties:

During 2005 such engagements on daily wage was extended from time to time with the same conditions as mentioned in their Engagement order.

As per the initial engagement order, they had to serve in any part of A&N Islands where the transport Department was having its jurisdiction. Hence, they were also transferred from one place to another. Though the vacancy notice, offer of

engagement and order of engagement were issued from the Directorate, the main intention was to operate bus services in all 14 STS Units in these Islands. Hence their engagement on Daily rated basis and further extension, were not only meant for Port Blair but also for the other parts of the Islands. Many such employees have willingly served in many parts of these Islands on earlier occasions.

On the basis of the duly constituted Review Committee, the period of engagement was extended from time to time after every 6 months on the basis of their performance report. While issuing the extension orders, change of posting of some deserving daily rated employees who had requested for such postings was also considered giving due weightage of their request and the welfare of their families. The staff placed to perform duty in distant Islands were brought back after a fixed interval so that the hardship in performing duty in remote places was shared by all.

To select daily rated employees through a fair and transparent process a vacancy notice was published in the Daily Telegrams during 2006. It was also mentioned in the Employment notice as well as in the offer of appointment/memorandum and engagement letters such daily

wage engagement shall not bestow upon them any right for future appointment and they shall have to serve in any part of A&N Islands where the transport Department is having its jurisdiction.

The engagement on daily wages of the applicants was extended from time to time with some change of posting.

The notice of 2006 notice was published in the Daily Telegrams to ensure a fair and transparent selection of daily rated drivers and not for appointment of drivers on regular basis. Though the said notification, applications were invited for engagement of drivers on daily rated basis and as such their eligibility while selecting them were only for engagement on daily rated basis but not for regular appointment.

On selection as Bus Driver on daily wages/contract basis, they were given all admissible benefits such as wages applicable time to time, overtime for extra hours work, weekly off etc. RR in force does not permit regularization of daily rated bus drivers to the post of regular bus driver. Regular vacancies of Bus Drivers arose at a later date and in the meantime RR for the post had been amended as per the 6thh CPC in the year 2010. As such, on the date of availability of regular vacancies, the prevailing RR's provisions needs to be followed.

In the meantime, the Recruitment Rules (RR in short) of Heavy Vehicle Driver was amended in the year 2010 as per the 6th CPC recommendations. As per the amended RR for the post of Bus Driver, the method of Selection was by direct recruitment and the essential qualifications were prescribed as follows:

- i. *Pass in Secondary Examination (10th std) or its equivalent from a recognized Board/Institution.*
- ii. *Must possess valid Professional Heavy Vehicle Driving License (PSV).*
- iii. *At least 3 (three) years experience in driving Heavy Motor Vehicle.*
- iv. *Should qualify in the Trade Test to be conducted by duly constituted Selection Committee.*

A vacancy notice was published in the Local News Paper on 8th June, 2016 for filling up the 49 vacant posts of Bus Driver (General- 28, OBC-18 and ST- 03) on regular basis. But the said vacancy notice had to be withdrawn/cancelled in view of the order passed by the Hon'ble High Court at Calcutta, Circuit Bench, Port Blair on the petition filed by the Malayalee Settlers Association of A & N Islands who desired their inclusion in the OBC list of A& N Administration. The Administration clarified the position and since nothing was pending in the Hon'ble High court, the vacancy Notification of 49 regular post of Drivers was republished on 04.06.2017. To safeguard the interest of

the daily rated/contract employees working in the department, weightage of 30 marks out of a 100 marks was given towards their experience as bus driver in any Govt. organization.

4. According to the amended RRs notified in the year 2010, the minimum essential educational qualification was 10th pass. The respondents have emphatically declared that all the applicants in this OA are entitled to avail of the following concession if they apply for the post of Bus Drivers:

- i. *Age relaxation as per Admn's Circular No. 45/1998-PW dated 19.09.2011.*
- ii. *Weightage of 30% marks out of total 100 marks on account of experience in driving as Bus Driver and any Govt. Organisation.*
- iii. *For the remaining 70 marks, the candidate would be subjected to a trade test. As they are well experienced Bus Driver, it is obvious that their performance would be better during the skill/trade test.*

They have further averred that various representations that were received by the department from the applicants relating to regularization of services of Bus Driver (OG) and Conductor in the dept. on contract basis/daily rated basis was also referred to the Admn. for consideration. The views of the Admn. was to examine the matter in the light of the GOI, Ministry of Personnel, OM No. 49019/1/2006-Estt dated 11.12.2006 which says :

"A constitution bench of the Supreme Court in civil appeal No. 3595-3612/1999 etc. in the case of Secretary State of Karnataka and ors. - vs- Uma Devi and others has reiterated that any public appointment has to be in terms of the Constitutional Scheme. However, the Supreme Court in para 66 of the aforesaid order directs that the Governments and their instrumentalities should take steps to regularise as one time measure the services of such irregularly appointed, who are duly qualified persons in terms of the statutory recruitment Rules for the post and who have worked for 10 years or more in duly sanctioned post but not under cover of orders of Courts or Tribunals. The Apex court has clarified that if such appointment itself is in infraction of the Rules or if it is in violation of the provisions of the Constitution, illegality cannot be regularized. Thus the above OM contains following essential ingredients for regularisation of the services against sanctioned post.

- i. The persons who are working continuously should be qualified in terms of the statutory Recruitment Rules for the post at the time of their engagement.
- ii. They must have worked for 10 years or more against duly sanctioned post, but not under cover of orders of Courts or Tribunal.
- iii. They should have completed 10 years of service as on January 2006, since it was one time step. The issue relating to regularization of the services of Bus Drivers (OG) working in the department on Contract/Daily Rated Basis was also referred to the Administration for giving weightage of experience to these Contract/Daily Rated Bus Drivers. The proposal is to grant age relaxation for the entire period of their service on daily wage/contract basis as per Administration's Circular and to award 30% weightage for experience of driving as bus driver in a Govt. department has been accepted by the Administration and communicated to the Union during the meeting.

The upper age relaxation of such applicants was never an issue as in terms of Administration circular No. 45/1998-PW dated 19.09.2011 they were within the upper age limit at the time of their initial engagement.

The representations of the Union for regularization of services of Bus Drivers on short term contract/daily wages, were examined thoroughly by the Administration but turned down on the following grounds:

- i. *The department had published vacancy notice for engagement of daily wages/short term contract Bus Drivers/Bus Conductors and not for regular appointment.*
- ii. *There were no terms in the initial engagement order of the department to provide any preference in future for bringing them into regular post.*
- iii. *The notified RR for Bus Driver/Bus Conductor does not have any provision for extending the privilege of regularization to the daily rated/contract workers engaged and presently working in the department. The engagements were not made against any regular vacancies of Bus Driver under General/OBC category.*

5. The respondents would contend that the issue of regularization against sanctioned posts came up for consideration before the Hon'ble Supreme Court in Civil Appeal No. 3595-3516 of 1999 involving the Secretary, State of Karnataka & Ors. Vs. Uma Devi & Ors, which was disposed of on 10.04.2006 with the observation that regular appointment should be made against sanctioned post and after adopting due process of law i.e. by following the notified Recruitment Rules.

The proposal does not come under the purview of Office Memorandum No. 49019/1/2006/Estt. Dated 11.12.2006 of Govt. of India, Ministry of Personnel, Public Grievances/Pension (Department of Personnel & Training), New Delhi. The fact was also conveyed to all the Unions of the Transport Department during their meetings with the Secretary (Transport). As such the department finally moved for direct recruitment as the posts are lying vacant since for a long period. ✓

6. The respondents would further emphatically declare that, "since these candidates cleared the trade test for Bus Drivers on daily wages/contract basis in the year 2006 and are continuously performing the duties of Bus Drivers, the Department moved a proposal to the Administration for giving weightage of experience to these daily wage/contract Bus Driver". The proposal "to grant age relaxation for the entire period of their service on daily wage/contract basis as per Administration's circular and to award 30% weight age to experience of driving as bus driver in a Govt. Dept. has been accepted by the Administration and already been communicated to the Union during their meetings with the department".

7. A vacancy notice was published in the Daily Telegrams on 04.06.2017 which is extracted as under:

Vacancy Notice

Recruitment to the Post of "Bus Driver (OG)" in The Directorate of Transport, A&N Administration Port Blair.

The Directorate of Transport, A&N Administration invites applications from the eligible candidates who posses the requisite qualification for filling up of the following posts of "Bus Dirver (OG)".

1. Details/Categories of Vacancies.

1.	Name of post	Bus Driver (Ordinary Grade)
2.	Number of Vacancies	49 Nos. (forty nine)
3.	Category	General- 28 OBC - 18 ST- 03
4.	Classification	General Central Services Group 'C', Non Gazetted, Non-Ministerial
5.	Educational & Other qualification	<p>Essential:-</p> <p>1. Pass in Secondary School Examinatin (10th std) or its equivalent.</p> <p>2. Must possess valid professional heavy vehicle driving licence (PSV)</p> <p>3. At least 03 years experience in Driving Heavy Motor Vehicle.</p> <p>4. Should qualify in the Trade Test to be conducted by duly constituted Selection Committee.</p> <p>Desirable:</p> <p>1. Knowledge of Motor Mechanism and capable to locate and rectify minor defects in the vehicle.</p> <p>2. Should possess knowledge of Hindi.</p>
6.	Pay Band and GP/Pay Scale	Pay Matrix Level- 2 (Rs. 19900-63200)
7.	Age Limit	<p>For Male 18-33 years For Female 18-38 years (Relaxable for Govt. Servants and ST candidates upto 05 years in accordance with the instructions/orders issued by the Central Govt. from time to time.)</p> <p>Note: i. the Crucial date of determining the age limit shall be the closing date of receipt of application from the candidates.</p> <p>ii. relaxation of upper age limit would also be admissible to DRMs/Adhoc/Contractual workers working in the Dept. of A&N Administration as per Administration's Circular No. 45/1998/PW dated 19.09.2011. Hence such candidates should submit supporting documents while submitting the applications.</p>
8.	Scheme Examination of	<p>1. Trade Test- 70 (seventy) Maximum Marks 2. Experience- 30 (thirty) Maximum Marks.</p> <p>1. Trade test would be held to assess the candidate's driving skill on various parameters while driving a long chassis bus, knowledge of</p>

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		<p><i>Motor Mechanism and capacity to locate & rectify minor defects in the vehicle.</i></p> <p><i>II. Experience: based on the experience of the candidate as Bus Driver in a Govt. Dept. or a Govt. undertaking, one would be given 0.5 marks for the first three years of holding heavy vehicle driving licence. Maximum marks would be 30 marks.</i></p>
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1. *The candidate, who fulfils the eligibility criteria for the post are required to apply in the prescribed format duly filled in with self attested copies of certificates/testimonials and other qualification such as Date of Birth, Live Employment Registration Card, ST Certificate, Experience Certificate and other Testimonials etc. in an envelope super scribbling "Application for the post of Bus Drivers (OG)" addressed to the Director of Transport, Andaman & Nicobar Administration, Port Blair and should reach this office latest by 30th June, 2017.*
8. The applicants feel aggrieved as, despite rendering service since 2005, i.e. for more than 14 years without any artificial breaks, they are sought to be replaced by regularly appointed drivers. They apprehend that being over aged and due to lack of suitable qualification they would be rendered ineligible to apply against the vacancy notification.
9. Per contra, the respondents would argue that the daily rated bus drivers have already been favoured with relaxation in age limit, and grant of due weightage to their experience. They would draw our attention to the recruitment notice that exemplifies the following :

7.	Age Limit	<p>For Male 18-33 years For Female 18-38 years (Relaxable for Govt. Servants and ST candidates upto 05 years in accordance with the instructions/orders issued by the Central Govt. from time to time.)</p> <p>Note: i. the Crucial date of determining the age limit shall be the closing date of receipt of application from the candidates. ii. relaxation of upper age limit would also be admissible to DRMs/Adhoc/Contractual workers working in the Dept. of A&N Administration as per Administration's Circular No. 45/1998/PW dated 19.09.2011. Hence such candidates should submit supporting documents while submitting the applications.</p>
8	Scheme of Examination	<p>1. Trade Test- 70 (seventy) Maximum Marks 2. Experience- 30 (thirty) Maximum Marks.</p> <p>I. Trade test would be held to assess the candidate's driving skill on various parameters while driving a long chassis bus, knowledge of Motor Mechanism and capacity to locate & rectify minor defects in the vehicle.</p> <p>II. Experience: based on the experience of the candidate as Bus Driver in a Govt. Dept. or a Govt. undertaking, one would be given 0.5 marks for the first three years of holding heavy vehicle driving licence. Maximum marks would be 30 marks.</p>

Citing the aforesaid provisions, ld. Counsel would submit that the applicants have no reason to apprehend that they would not get a fair chance of selection.

10. We heard the ld. Counsels and perused the materials on record.

11. We note that the applicants, who have rendered long years of service were infact engaged against existing vacancies of heavy vehicle drivers/bus drivers (ordinary grade), as evident from their engagement orders and on being selected through a Selection Committee, against a regular scale of pay but in the minimum of scale. They have given the prime of their life to serve even the remotest part of the Islands. Hence they ought to be given a fair chance of getting absorbed/regularised/regularly appointed.

12. We further note that the respondents have taken adequate measures to safeguard and protect their interest by affording due weightage to their skill and relaxation in age and educational qualification. Hence, their action cannot be termed as unjust or malafide or unfair.

13. The only stumbling block may be their lack of suitable educational qualification, which if placed before the Hon'ble Lt. Gov. for relaxation in terms of para 5 of the RR that reads:

"5. Powers to relax:

Where the Lieutenant Governor (Administrator), Andaman and Nicobar Islands is of the opinion that it is necessary or expedient so to do, he may, by order and for reasons to be recorded in writing, relax any of the provisions of those rules with respect of any class or category of person",

these applicants would have no reason to apprehend that they would be ousted from the job and would be declared ineligible in any manner.

14. Accordingly, in the aforesaid backdrop, we direct the authorities to allow all the contractual/daily wager bus driver under the administration to get regularly appointed through a regular process of selection. For the purpose the respondents shall take necessary steps to get the standards relaxed by invoking power in terms of para 5 of the RR of 2010 and make an honest endeavour to regularise/regularly appoint all the contractual bus drivers of the Administration.

15. Let the entire exercise be completed within 6 months. Till such time the applicants shall not be disengaged. No costs.

(*N. Neihsial*)
Member (A)

(*Bidisha Banerjee*)
Member (J)

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