

(2024) 03 CAT CK 0050

In the Central Administrative Tribunal

Case No : Original Application No. 180, 344, 180, 00355 Of 2016

Sunilkumar. G, Outsider, Nalanchira Speed Post Hub & Others APPELLANT
Vs

Union Of India, Represented By The Secretary & Director RESPONDENT
General, Department of Posts, Dak Bhavan New
Delhi-110001 & Others

Date of Decision : 28-03-2024

Acts Referred:

Citation : (2024) 03 CAT CK 0050

Hon'ble Judges : K. Haripal, Member (J); K.V. Eapen, Member A

Bench : Division Bench

Advocate : Vishnu S Chempazhanthiyil, Sinu G Nath, N.Anilkumar

Final Decision : Dismissed

Judgement

K.Haripal, J

1. As common questions are involved, both the cases were heard together and are disposed of by this common order.

2. On 19.03.2016 the 4th respondent in O.A.344/2016 issued Annexure-A6 notification inviting applications for regular appointment to the post of Gramin Dak Sevak Mail Deliverer at Speed Post Hub, Nalanchira, to which the applicants were aspirants. They filed applications claiming that they, being part time contingent employees are entitled to get preference over open market candidates since they were working as outsiders continuously, without any break of service for long years. The 1st applicant claims that he had been engaged by the 3rd respondent for the previous 14 years in various post offices, the 2nd applicant was working in Mannanthala Post Office for the past 15 years and the 3rd applicant is working in Nalanchira Post Office for long years. All of them claimed that they have completed 290 days of engagement in 2014, that their engagement continues from 01.10.2013 without any break. So, claiming benefit of the Annexure-A1 communication of the Director General of Posts dated

06.06.1988 they claimed that they should be given preference for appointment in the GDS vacancy. All of them made separate representations before the respondents 2 to 4. However, that were not considered. By Annexure-A14 series communications their claims were rejected and aggrieved by the same, they have approached this Tribunal for setting aside Annexure-A14 series documents and to direct the respondents to consider their applications for appointment to the post of GDSMD-I, II and III Speed Post Hub Nalanchira in preference to open market candidates.

3. The sole applicant in O.A.355/2016 claims that he has been working as an outsider in the Speed Post Centre, GPO, Thiruvananthapuram since 2009 and has completed more than 240 days every year since 2009. According to him, he has completed 240 days of engagement every year till 2015. Referring to Annexure-A6 notification inviting application for regular appointment to the post of GDS Mail Deliverer-XIV in SPCC Nodal Hub Thiruvananthapuram, he says that he is entitled to get preference over open market candidates. When his claim was rejected, he moved representation which has been rejected through Annexure-A13 communication which is challenged in the case.

4. Pleadings and reliefs sought for in both these O.A.s are identical. Adv.Sri.Vishnu S Chempazhanthiyil appears for the applicants in both the cases. According to the applicants, as per Annexure-A1 communication dated 06.06.1988 a preferential treatment to be granted in the matter of appointment to the GDS post for casual labourers, whether full time or part time, has been recognised. They also placed reliance on the orders of this Tribunal in O.A.Nos.534/2003, 571/2001, 3/2005, 785/2010, 109/2010, 733/2011 etc. where the right of such preferential claim of similarly placed contingent employees have been upheld by this Tribunal. Referring to the judgments of the Hon'ble High Court in W.P.(C) 33732/2005, OP(CAT) 979/2012 etc., OP(CAT) 4501/2013 it is submitted that those orders have been confirmed by the High Court. Copies of all these orders/judgments have been exhibited by the applicants.

5. The sum and substance of the claim of the applicants is that as they have served more than 240 days a year as contingent staff under the respondents in line with Annexure-A1 communication, they should be given preference in the matter of appointment to the post of GDS and the contra stand taken by the respondents is illegal and arbitrary.

6. Respondents have opposed the claim. According to them, the applicants are not part time or full time casual labourers under the respondents. Opening a Speed Post Hub at Nalanchira Post Office was under consideration for the efficient and speedy delivery of speed post articles. The total number of Mail Deliverers required etc. were studied for some time. During this period of experimentation many outsiders including the applicants were engaged in different spells for delivery work. The applicants in O.A.344/2016 are only outsiders engaged in Nalanchira Post Office by the Sub Postmaster for delivery of

speed post articles. Similarly, the applicant in O.A.355/2016 was engaged in National Speed Post Centre only occasionally. Recruitment of fresh casual labourers has been forbidden by the Directorate by communication dated 15.05.1988. The respondents have not recruited any casual labourer since 01.09.1993. Hence the applicants are not entitled to get any preference in recruitment of Gramin Dak Sevaks as claimed by them.

7. The respondents have denied the claim of the applicants that they have been working continuously from 01.10.2013 for more than 240 days engagement. According to them, the 1st applicant in O.A.344/2016 was engaged only for 25 days in 2014 and 189 days in 2015. Similarly, the 2nd applicant was engaged for 193 and 217 days respectively. The 3rd applicant was engaged for 193 days in 2014 and 120 days in 2015. The applicant in O.A.355/2016 also did not serve for 240 days as claimed. Now, they are trying to make back door entry claiming that they were engaged for more than 240 days. The representations filed by them were considered and rejected by the respondents. Moreover, referring to Annexure-R1(d) order produced along with reply in O.A.344/2016 they contended that, in the light of the judgment in Secretary, State of Karnataka v. Umadevi [2006] 4 SCC 44] such a claim cannot sustain.

8. We heard the learned counsel on both sides.

9. It is true that in Annexure-A1 communication dated 06.06.1988 the Director General had conveyed the approval to give preference to the full time or part time casual labourers in the matter of recruitment to ED posts. But that was conditioned by the requirement that they should put in a minimum service of one year. For that purpose service of 240 days in a year may be reckoned as one year's service. It is also stated that 'it should be ensured that nominations are called for from Employment Exchange to fill up the vacancies of casual labourers so that ultimately the casual labourers who are considered for ED vacancies have initially been sponsored by Employment Exchange.'

10. Later, some of the casual labourers who were engaged otherwise than through Employment Exchange approached this Tribunal seeking preference on account of long period of engagement rendered by them. This Tribunal held that those casual labourers who rendered long period of service shall be given the benefit of the communication dated 06.06.1988. In other words, the fact that they were not engaged by the Employment Exchange was not considered as an impediment. Such orders were confirmed by the Hon'ble High Court.

11. We also take notice of the fact that a ban was imposed by the Directorate of Posts for engaging casual labourers beyond 01.09.1993.

12. The representations of the applicants were considered and rejected by the respondents on the factual premise that they were not part time or full time casual labourers, nor they had put in minimum period of service for 240 days a year. Thus their prayer for granting preferential treatment was declined. It is stated by the respondents that the applicants are outsiders engaged

intermittently and were made to work only occasionally. They have asserted that the applicants have never worked for more than 240 days a year. The relevant portion of the impugned orders in O.A.344/2016 reads thus:

".....The National Speed Post Centre is functioning in Thiruvananthapuram. The matter of opening of a speed hub at Nalanchira was under the consideration of the Department so that the speed post articles in and around the area of Nalanchira can be delivered through the hub efficiently without any delay. Obviously for this purpose, the volume of mails to be delivered, the beat length, the total number of Mail Deliverer required etc were studied on experimental basis for some time. After proper review regarding the receipt and delivery of mails, the competent authority decided to create a new speed hub in Nalanchira Post Office with 3 GDS Mail deliverer posts vide letter No.A/SPCC/IV dated 29.01.2016 by redeploying 3 unjustified GDS posts one each from TVM Fort post office, TVM ISRO post office and Vanchiyur post office. During this period many outsiders, including the applicant were engaged in different spells for delivery works....."

A similar communication was given to the applicant in O.A.355/2016 as well.

13. The applicants have not produced any document proving the claim that they were engaged as casual labourers, either part time or full time, by the respondents. The claim that they were engaged for more than 240 days stands rebutted. The circumstances under which they were engaged intermittently for doing works of occasional nature have been explained by the respondents. Now the attempts of the applicants is to make back door entry in GDS service, which cannot be appreciated.

14. Moreover, we have come across the judgment of the Hon'ble High Court in OP(CAT)293/2017 etc. dated 05.08.2022, where claim for casual labourers who were engaged either full time or part time after 01.09.1993 has been repelled by the High Courts, confirming the decision taken by this Tribunal in O.A.891/2015 etc. That decision has been upheld by the Apex Court.

The applicants could not make out a case. Both the Original Applications are bereft of merits and are dismissed. No costs.

(Dated this the 28th March, 2024.)