OA NO. 2235/2002

This the 27th day of August, 2002

HON'BLE SH. KULDIP SINGH, MEMBER (J)

Chander Pal Singh,
S/o Sh. Gulab Singh,
R/o RZ-826/a, Pooran Nagar,
Palam Colony, New Delhi-45
(presently serving under
the Addl. Commissioner (P&V),
Central Excise, Delhi-II, Faridabad,
as Casual Worker (Temporary status).   ....   Applicant
(By Advocate: Sh. N.L.Berera)

Versus

1.   Union of India,
        Through its Secretary,
        Ministry of Finance,
        North Block, New Delhi.

2.   The Secretary,
        Ministry of Personnel Public Grievances
        and Pension, DOP&T (Department of
        Personnel and Training), New Delhi-1.

3.   Commissioner of Central Excise,
        C.R.Building, I.P.Estate,
        New Delhi.

4.   The Jt. Secretary (Admn.)
        Central Board of Excist & Customs,
        North Block, New Delhi-1.

O R D E R (ORAL)

By Sh. Kuldip Singh, Member (J)

Applicant has filed this OA seeking a direction to the respondents to grant age relaxation of 6 months and 4 days to the applicant and further direction to the respondents to give special dispensation to the applicant in regard to his age at the time of his initial appointment. Facts in brief are that the applicant has earlier filed an OA-1197/2002 seeking regularisation with relaxation in age. The said OA was disposed of by this Tribunal on 6.5.2002 wherein respondents were directed to dispose of the representation filed by the applicant and it was further directed that the OA filed by the applicant be also taken as supplementary representation and

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decide the same within a period of 2 months by passing a reasoned and speaking order.

2. In pursuance of the order passed by this Tribunal respondents have passed order Annexure A-1 dated 26.6.2002. This order has been passed by Additional Commissioner (P&V) and while passing this order the respondents reiterated that while considering regularisation of the services of casual worker as per OM dated 7.6.88 of the DOPT an employee may be given relaxation in the upper age limit only if at the time of initial recruitment as a casual worker, he had not crossed the upper age limit for the relevant post. Since the applicant has crossed the upper age limit at the time of initial appointment it is considered that he cannot be regularised in group 'D' post. Applicant challenged that discretion still lies with Resp. No.1, i.e., Ministry of Finance, Delhi who is the overall controlling authority of the Excise Department where the applicant is working. It is the Ministry who could have exercised the discretion in regularisation in favour of the applicant. When the earlier OA was filed, therein also the Ministry of Finance was made as Resp.1 but this representation has been decided only by order of Additional Commissioner (P&V). According to the applicant the matter has not been placed before the competent authority of the Ministry. Learned counsel for applicant has also relied upon a judgment cited in 2001 (3) SLR 223 Ricky George vs. Union of India where Hon'ble High Court has observed relaxation of age bar. The question was as to whether relaxation with regard to age falls within the jurisdiction of the employer

and in that case since the employer was Chief Surveyor of Forest under AIR FIS direction was given to the said authority to consider age relaxation.

3. Simlarly here in this case, the employer is the office of Commissioner of Central Excise, Delhi and the employer through its Additional Commissioner had passed the order based on OM dated 7.6.88 issued by the Ministry of Personnel & Public Grievances and Pension and since at the time of initial recruitment the applicant had crossed the upper age and he was overage by 6 months and 4 days so he cannot be regularised at group 'D' post. So employer considered the case of the applicant but findings it difficult to relax in accordance with the OM issued by DOPT employer expresed its inability to give age relaxation. So we find no further directions are required to be given. OA is dismissed. No costs.

(KULDIP SINGH)
Member (J)

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