

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI

OA NO. 546/2001

This the 6th day of September, 2002

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

Krishna Manad s/o Sh. Domamn  
H.No. 77, Shyam Colony  
Ballabh Garh, (Haryana).

...Applicant

(By Advocate: Sh. U.Srivastava)

Versus

1. The Govt. of N.C.T. of Delhi  
The Secretary (Medical)  
5, Sham Nath Marg, Delhi.
2. The Director  
G.B. Pant Hospital  
J.N.M. Marg, New Delhi.
3. The Medical Superintendent  
Govt. of N.C.T. of Delhi  
G.B. Pant Hospital  
New Delhi.

... Respondents

(By Advocate: Sh. T.D.Yadav proxy for  
Sh. Vijay Pandita)

O R D E R (ORAL)

By Sh. Kuldip Singh, Member (J)

Heard counsel for the parties.

2. This is a second round of litigation. Applicant alongwith 4 other persons had earlier filed an OA-2851/1997 wherein the applicants had claimed that they had worked for 346 days, 380 days, 362 days, 291 days and 370 days so they should have considered the applicants for grant of temporary status and for appointment against regular vacancy as per seniority. Though the claim of the applicant was denied by the respondents but OA was allowed with the direction to the respondents to consider the applicants, if they make a request to that effect within 15 days from the date of receipt of a copy of this order to consider these alongwith other candidates who may be sponsored by the Employment Exchange.

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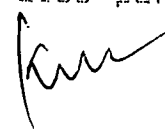
. 2.

Applicants did make representation and they were considered and vide impugned order dated 20.11.99, the case of the applicant was rejected on the ground that since he could not be selected due to the reasons that the applicant was overage as on 31.10.98 even after allowing grace period of their work as on daily wages.

3. The applicant by present OA has challenged the same and has submitted that relaxation in each case has not been granted in accordance with the rules relevant to the subject and for this purpose learned counsel appearing for the applicant referred to Annexure A-4 and the relevant portion of the same, in which the applicant has relied on, is reproduced below:

"The regularisation of the services of the casual workers will continue to be governed by the instructions issued by this Department in this regard. While considering such regularisation, a casual worker 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."

4. After referring this, counsel for applicant submit that exact procedure for considering the age relaxation is that it is for the department to see that at the time of initial recruitment applicant has crossed the age limit or not and casual workers was to be given relaxation in upper age limit keeping in view his class. But vide impugned order the overage was considered as on 31.10.98 but not from the date of initial recruitment which in the case of applicant is March 1994. Applicant has also referred to a judgment given in OA-2586/99 in case of Smt. Pushpa Sharma vs. Govt. of NCT of Delhi. Applicants in OA-2586/99 were also party to the



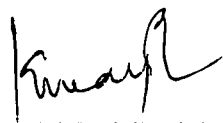
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.3.

earlier OA-2851/97 and their case was also rejected vide impugned memo Annexure A-1 on the same plea. Thus, the case of the applicant is on all fours and facts and as per law alongwith these 3 applicants in OA-2586/99 applicant is also identically placed and he is also entitled to the relief as granted to the applicants in OA-2586/99.

5. Respondents have also taken a plea of res judicata. In their reply, point is that this case is not covered under res judicata. Since it is the improper implementation of the directions given in OA-2851/97 and this plea was also taken up in OA-2586/99, the non-implementation of the order of the earlier OA in a proper manner does not show that the issue in the present OA and the earlier OA was same and have been factually decided by the earlier order. Decision in OA-2851/97 cannot be pressed to make a plea for res judicata. Plea of res judicata was not taken in OA-2851/97. However, the situation is same that whatever benefit has been given to three other applicants who are also applicants, the applicants are also entitled to same benefit.

6. Accordingly, OA is allowed. Respondents are directed to engage applicants by giving age relaxation to all the applicants wherever necessary as per DOPT instructions on the subject. Respondents are directed to take decision in this regard within a period of 3 months from the date of receipt of a copy of this order.

  
( KULDIP SINGH )  
Member (J)