

(14)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.NO.1650/99

New Delhi, this the 9th day of May, 2000.

HON'BLE MRS. LAKSHMI SWAMINATHAN, MEMBER (J)

Hawa Singh, S/O Inder Singh, R/O K-7,
Gandhi Ashram Road, Narela, Delhi - 40.

.....Applicant.

(By Advocate: Mrs. P.K.Gupta)

VERSUS

1. Union of India through Secretary,
I.B., Ministry of Home Affairs,
North Block, New Delhi.
2. Director/T.Chem, East Block-6,
R.K.Puram, I.B.Hqrs, New Delhi.
3. Asstt. Director/T.Chem. East
Block-6, R.K.Puram, I.B.Hqrs., New
Delhi.
4. Director, I.B., Ministry of Home
Affairs, R.K.Puram, I.B.Hqrs.
North Block, New Delhi.
5. Asstt. Director (E), I.B.,
Ministry of Home Affairs, East
Block, VII, R.K.Puram, I.B.Hqrs.
New Delhi.

...Respondents.

(By Advocate: Mr. Gajender Giri)

O R D E R (ORAL)

By Hon'ble Mrs. Lakshmi Swaminathan, M (J):

The applicant has challenged the orders passed by the respondents dated 22.2.99, 20.1.99 (Annexure A-1) and 4.3.98 (Annexure A-2), rejecting his request for regularisation as a group 'D' employee and in particular, not granting his request for age relaxation.

- B.
2. The breif relevant facts of the case are that the applicant states that he was engaged as a casual labourer by the respondents on 21.2.89 and has been granted temporary status on 30.3.94. He has been continuously

(15)

working as casual labourer with the respondents from Feb., 89. Mrs. P.K.Gupta, learned counsel submits that the applicant belongs to OBC community and his initial appointment was through the Employment Exchange in 1989. The respondents by the impugned Memoranda mentioned above, have stated that he cannot be regularised in the rank of group 'D' because, as per the existing instructions, casual labourers who are within the prescribed age limit of 25 years at the time of initial engagement, are eligible to be regularised. Admittedly, the applicant was over 26 years and one month at the time of the initial appointment in 1989 as casual labourer, whereas the prescribed upper age limit was 25 years at that time.

3. Learned counsel for the applicant has submitted that the applicant has put in more than 11 years of service with the respondents and especially after granting him temporary status in 1994, they cannot now take the plea that he was overaged at the time of initial appointment as casual employee in 1989, so as to deny him the benefit of regularisation under the Govt. of India, DOP&T Scheme dated 1.9.93. Admittedly, the applicant has been granted temporary status in accordance with Para 4 of this Scheme. She has relied on the provisions of para 8 of the Scheme in which it has been provided, inter alia, that the age relaxation would be given equivalent to the period for which an employee has worked continuously as a casual labourer. Learned counsel for the applicant has, therefore, submitted that the impugned Memoranda may be quashed and set aside and a direction

Pr

may be given to the respondents to regularise the applicant's services from the date his juniors were regularised. She has submitted that a number of juniors to the applicant have been regularised from 1998. She also relies on the observations of the Tribunal in Hari Ram Vs. Union of India & Ors., OA-989/92, decided on 1.8.97 (copy placed on record).

4. I have seen the reply filed by the respondents and heard Sh. Gajender Giri, learned counsel for the respondents. Learned counsel has submitted that the respondents have indeed referred the case of the applicant to the competent authority, i.e. DOP&T, which is the concerned authority for implementation of the Scheme dated 1.9.93 in respect of granting upper age relaxation in his case. However, that authority has not agreed to their proposal stating that the orders regarding age relaxation issued on 25.1.95 under which persons upto 27 years could be recruited, cannot apply retrospectively. Learned counsel has, therefore, submitted that as the applicant had not been appointed within the age limit prescribed by the rules existing in 1989, i.e. below 25 years, he cannot, therefore, be regularised at this stage. He has also submitted that the temporary status granted to the applicant in 1994 is in terms of the aforesaid Scheme where no age limit as such is prescribed. He has, therefore, prayed that the OA may be dismissed. The applicant has also filed rejoinder in which he has more or less reiterated the submissions made earlier in the OA.

18

(4)

5. I have carefully considered the pleadings and submissions made by both the learned counsel for the parties.

6. The applicant was admittedly overaged at the time when he was recruited as casual labourer with the respondents on 21.2.89. The DOP&T Scheme dated 1.9.93 provides that it is applicable to casual labourers in employment of the Ministries/ Departments of Govt. of India barring certain Departments mentioned therein. The respondents have granted temporary status to the applicant in 1994 in terms of this Scheme as he was then working as casual labourer with the respondents and had completed the requisite number of days prescribed in it. After grant of temporary status, the Scheme lays down the procedure for filling up of Group 'D' post which is mentioned in para 8 and casual labourers with temporary status are within the consideration zone. Taking into account the totality of the facts and circumstances of the case, the arguments of the learned counsel for the respondents that they are not required to follow the extant rules regarding the age limit while granting temporary status but the same will come in the way of regularisation of the applicant are somewhat contradictory. I find force in the submissions made by the learned counsel for applicant that after the applicant has rendered more than 11 years of service, even though as casual labourer with the respondents, at this late stage the respondents ought not to come out with an argument that he was overaged even at the time of

12

the initial appointment. What remedial action they have taken against the erring officials is also not placed on record. The grant of temporary status in 1994 should have also been done by respondents in accordance with the Rules. It is also relevant to note here that the applicant belongs to the weaker section of the community, being an OBC candidate and at present he would also be overage for many other jobs. He has also rendered more than 11 years service as casual labourer with the respondents. These facts had also been considered by the Tribunal in Hari Ram's case (Supra) wherein a direction had been given to the respondents to make out a suitable case for relaxation and if relaxation is permitted, to consider him in view of the long service for regularisation. In the present case, it is a fact that the respondents have indeed referred the applicant's case to the concerned authority for seeking relaxation of the rules. It is also relevant to point out that the view taken by the DOP&T that the orders regarding age limit issued on 25.1.95 are in the circumstances of the case, not effective retrospectively. Be that as it may, the respondents cannot also take advantage of their own fault.

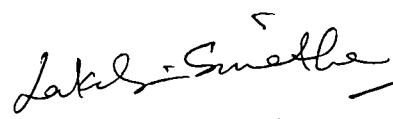
7. In the light of what has been stated above, as a special case and not to be quoted as a precedent, considering the relevant facts, including the fact that the applicant belongs to the OBC community, has rendered more than 11 years service with the respondents and the age relaxation is about 13 months, the orders dated 22.2.90, 20.1.99 (Annexure A-1) and order dated 4.3.98

18;

(6)

(Annexure A-2) are quashed and set aside. The respondents are directed to refer the matter once again to the concerned authority, who may consider the case for relaxation, keeping in view the observations made above. Necessary action in this regard shall be completed within a period of three months from the date of receipt of a copy of this order with intimation to the applicant.

8. The OA is disposed of as above. No order to costs.


(Mrs. Lakshmi Swaminathan)
Member (J)

/sunil/