

Central Administrative Tribunal, Principal Bench

O.A. No. 2643 of 1999

New Delhi this the 11<sup>th</sup> day of May, 2000

Hon'ble Shri Kuldip Singh, Member (J)

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Shri Krishna Nand  
S/o Shri Doman  
R/o House No.77 Shyam Colony,  
Balabghar,  
Ghaziabad.

...Applicant

By Advocate: Ms. Richa Goyal.

Versus

1. Government of N.C.T. of Delhi  
through Secretary (Medical),  
5, Shyam Nath Marg,  
Delhi.

2. Director,  
G.B. Pant Hospital,  
Jawaharlal Nehru Marg,  
Delhi.

3. Medical Superintendent,  
G.B. Pant Hospital,  
Jawaharlal Nehru Marg,  
Delhi.

...Respondents

By Advocate Shri Rajinder Pandita.

Order

By Hon'ble Shri Kuldip Singh, Member (J)

In this O.A. the applicant has asked for quashing of the impugned order (Annexure A-1) whereby he was considered for appointment to the post of Nursing Orderly in compliance with the directions given by this Tribunal in an earlier case filed by the applicant. But after considering the applicant for the said post, the respondents found that the applicant was overaged even after giving him the benefit of his working as casual employee with them and as such the applicant was not given the appointment. Aggrieved by the said order, the applicant has now again come up to this Tribunal with the present OA and has prayed for quashing of the impugned order and to consider him for appointment to the post of Nursing Orderly.

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2. The facts in brief are that the applicant along with certain other similarly situated candidates had worked as Nursing Orderly on daily wage basis for some period and thereafter had made an application for being conferred temporary status. When the temporary status was not conferred, the applicant and some other persons had filed an application which was registered as OA No.2851 of 1997 and was decided on 20.7.98, copy of the order is annexed as Annexure A-2.

3. In pursuance of the directions given in that order, the applicant was considered for direct recruitment to the post of Nursing Orderly but since he had become overaged, so the  impugned order was passed.

4. The main challenge to the impugned order is that the applicant was earlier appointed and even at that time he had crossed the age limit but as the respondents had appointed the applicant with the open eyes and knew fully well that the applicant was overaged, so it is claimed that the respondents are estopped to take up the plea that he has become overaged.

5. It is further pleaded that the continuance of the applicant as a Nursing Orderly for a period of approximately 2 years despite being overaged entitles him for relaxation in age and should be appointed as Nursing Orderly.

6. The OA is contested. The respondents have pleaded that the age relaxation for the period for which the applicant had worked with the Department has been given as a grace mark. Despite that the applicant is overaged and as such he cannot be considered for the post of Nursing Orderly. It is also pleaded that the applicant was engaged on daily wage basis on different

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intervals as a stop-gap arrangement which does not confer on him any right to be considered for regular appointment in relaxation of the upper age limit.

7. It is denied that the principle of estoppel applies to the respondents and they are bound to allow age relaxation, as claimed by the applicant.

8. I have heard the learned counsel for the parties and have gone through the records and as well as the judgments cited by the learned counsel for the parties at the bar.

9. The learned counsel for the applicant has referred to a judgment which is also annexed as Annexure RA-1 entitled as Ramesh S. Pathak Vs. U.O.I. & Others decided by the Bombay Bench, Camp at Nagpur wherein the Hon'ble Court had observed as under:-

" The respondents with open eyes appointed the applicant as a casual labourer first on daily wage basis and thereafter as Farrash which is some sort of a regular post when he was overage. He was given appointment as a Farash in the year 1985 though earlier he had worked only as a Water Sprinkler-cum-Waterman and he was allowed to work three years continuously. Although there was no order for relaxing the age, qualification etc., but it appears that being satisfied with his work there was some sort of tacit relaxation in the age and that is why he was given the appointment. It is in these circumstances that the fitness of justice requires that the respondents should consider the case of the applicant not for regularisation but for appointing him again by relaxing the age, qualification etc. in view of the fact that they have appointed him earlier when he was overage and subsequently also he was given another appointment of Farrash when he had crossed the maximum age much earlier.

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10. From a bare perusal of the observations made by the Bombay Bench I find that in the Bombay case the applicant was initially appointed on daily wage basis and thereafter he was appointed as Farash which was some sort of a regular post on which he worked continuously for 3 years without any break which was interpreted by the Bombay Bench as if the respondents' Department in that case had given him "tacit relaxation" in the age and that is why he was given the appointment but in the case in hand I find that the element of tacit relaxation in age is missing. The applicant in this case had never been given any sort of regular appointment. During the periods for which he had worked as Nursing Orderly and there were sufficient long breaks which shows that the applicant was working purely on casual basis as and when the work was available with the respondents and he had never been appointed against "some sort of regular appointment". So the case of the applicant is quite distinguishable from the case of the of the Bombay Bench relied upon by the learned counsel for the applicant. As such I am of the considered opinion that reliance by the learned counsel for the applicant on the judgment of the Bombay Bench is misplaced and the said judgment does not help the applicant at all.

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11. Since the applicant had already been considered for regular appointment in view of the earlier directions given by this very Tribunal as per Annexure A-1 and as the applicant had been found to be overaged despite giving him grace of age for the period for which he had worked, so now this Tribunal cannot direct the respondents to reconsider the claim of the applicant for giving relaxation in age. In this regard I am also fortified by the judgment reported in 1997 SCC (L&S) page 717 - Union of India and Others Vs. Mahender Singh and Others, wherein the Hon'ble Supreme Court has held as follows:-

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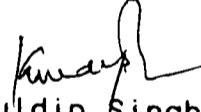
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Drivers in Intelligence Bureau, Headquarters seeking regularisation and relaxation of age-limit and educational qualifications for that purpose merely on the basis of long period (7 years in this case) of service - Such a claim, held, liable to be rejected".

12. In the aforesaid case the applicants had filed an OA before the Principal Bench of the Tribunal and the Principal Bench had directed to consider the case of the applicants for appointment in relaxation of age and educational qualifications, against which the Union of India had gone in appeal before the Hon'ble Supreme Court and the same was allowed by the Hon'ble Supreme Court.

13. Since in the present case also the impugned order, Annexure A-1 shows that the respondents had already considered the question regarding the age of the applicant and after considering the question of age and allowing him the relaxation of grace period, still they found that the applicant was an overaged candidate and could not be given appointment, so I find that as the question of age has since been considered, no interference is called for at this stage.

14. In view of the above discussion, I find that the application has no merits and the same is dismissed but without any order as to costs.

  
(Kuldeep Singh)  
Member (J)

Rakesh