

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

O.A.No.2276 of 1994

New Delhi, this 10th day of March, 1999.

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HON'BLE MR. JUSTICE S. VENKATRAMAN, VICE CHAIRMAN(J)  
HON'BLE MR. K. MUTHUKUMAR, MEMBER(A)

Hira Singh  
S/o Late Shri Alam Singh  
R/o H-237 Gali No.9 Raj Nagar  
Palam Colony  
New Delhi - 110045.

... Applicant

By Advocate: Shri S.C. Luthra

versus

1. Union of India, through  
Secretary  
Ministry of Home Affairs  
North Block  
New Delhi.

2. Director  
Intelligence Bureau  
Ministry of Home Affairs  
North Block  
New Delhi.

... Respondents

By Advocate: Shri S. M. Arif

O R D E R (ORAL)

HON'BLE MR. S. VENKATRAMAN, VC(J)

The applicant was engaged in 2nd respondent's office as a Fielder on daily wage basis on 5.4.1986. While the applicant alleges that he was working from 1986 continuously, the respondents submit that the applicant had absented himself at intervals. The applicant had applied for the post of Security Assistant in the Subsidiary Intelligence Bureau (SIB) in 1991 in response to a notification calling for applications. The date of birth of the applicant is 27.9.1959. The last date fixed for filing applications was 30.9.1991. The age limit for the

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post was 25 years relaxable to the extent of actual experience up to a limit of five years. The applicant was 32 years and 3 days of age on that date. In spite of that, the applicant was allowed to take the written test. When he was not called for interview, he gave a representation and pursuant to the representation he was also called for the interview. When he was not included in the select list, he filed OA.1123/93. The only ground that was taken by the respondents in that application was that even if the five years relaxation was given, the applicant would be age barred and, therefore, would not be eligible for selection. The Tribunal taking note of some irregularity in the appointment of one Vats directed the respondents to consider the case of the applicant afresh and pass speaking order. The respondents have now passed the impugned order at Annexure A-1 dated 23.8.94 to the effect that the last general candidate selected had secured 89.66 marks out of 150 while the applicant had secured only 81.33 marks and as such the applicant could not be selected. They have pointed out that there were only 75 vacancies available for recruitment. The applicant has now challenged Annexure A-1.

2. The learned counsel for the applicant contended that as the respondents had not at all pleaded that the applicant had secured marks which were not sufficient to include his name in the panel in the earlier application and that the only defence that they had taken was that the applicant was age barred, it is not open to the respondents now to contend that because of the marks obtained by him he

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is not entitled to be selected. It is no doubt true that the respondents ought to have taken the plea that even if the applicant was held to be eligible he could not have been selected in view of the marks obtained by him in the earlier application. The question is whether because of the failure of the respondents to put forth that plea in the earlier case they are debarred now from taking up that plea. The order of the Tribunal has directed the respondents to consider the case of the applicant afresh and pass a speaking order. As such, in pursuance of that order if the respondents have again examined the applicant's case and found that even on the basis of the marks secured by him he could not have been appointed, we do not think that there was any bar for the respondents to indicate that reason in the speaking order which was passed by them. The order of the Tribunal did not direct the respondents only to reconsider the question of age bar and to give him appointment if he was found to be not age barred. The respondents placed before us the mark list of the candidates who had appeared for that selection and in view of the marks obtained by him he could not have been included in the panel, as the last general candidate had secured much more marks than the applicant.

3. The learned counsel for the applicant next contended that the applicant having worked on daily wage basis for more than 12 years, is entitled to the benefit of the scheme formulated by the respondents for conferment of temporary status of casual labourers. That scheme is

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applicable only to casual labourers in Group 'D' and the regularisation can also be made after conferment of temporary status in a Group 'D' post. It is not disputed that the post of Security Assistant in which post the applicant wants himself to be regularised is a Group 'C' post. The applicant is at present working as a Fielder, as a casual employee. It appears that he would be in the class of Group 'D' employee. The fact that the applicant had been working in the respondents office from 1986 as a Fielder is not disputed.

4. The Apex Court in State of Haryana & Ors. Vs. Piara Singh & Ors. has observed that if for any reason an ad hoc or a temporary employee is continuing for fairly long spell, the authorities must consider his case for regularisation provided he is eligible and qualified according to rules and his service records are satisfactory and the post does not come under any reserved category. The applicant's case must be considered from humanitarian angle. He has been working for about 12 years with the respondents and there is no likelihood of his being securing employment elsewhere. He must have at least some security of service at this age. The respondents do not complain of any shortcoming in his performance. As there is a scheme for conferment of temporary status even on casual employees, we feel that this is fit case where the respondents should consider the applicant's case under the scheme for Conferment of Temporary Status and ultimately regularise his services at least in Group 'D' post in accordance with rules. Even if it is found that the

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applicant was age barred by some years at the relevant point of time, taking into consideration his long services with the respondents, the respondents should consider giving necessary relaxation as per rules for regularisation under the scheme.

5. For the above reasons, we dispose of this application giving directions to the respondents to consider the applicant's case for conferment of temporary status as a casual labourer and thereafter to consider him for absorption in Group 'D' post by giving age relaxation if necessary as per rules. The respondents are given four months' time from the date of receipt of a copy of this order to implement these directions. No costs.

  
(K. Muthukumar)  
Member (A)

  
(S. Venkatraman)  
Vice Chairman (J)

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