

Central Administrative Tribunal
Principal Bench

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OA No. 2270/2000

New Delhi this the 9th day of October, 2001.

Hon'ble Mr. Shanker Raju, Member (J)

Parvesh Dutt, S/o Sh. Sewa Ram,
R/o RZ-5D, Indira Park,
Palam Colony,
New Delhi.

-Applicant

(By Advocate Dr. Surat Singh)

-Versus-

1. Union of India through its
Secretary,
Ministry of Finance,
North Block,
New Delhi.
2. Joint Commissioner of Central Excise,
Delhi I, C.R. Bldg,
I.P. Estate,
New Delhi.
3. Administrative Officer,
Headquarters, Office of Commissioner
of Central Excise,
C.R. Bldg, I.P. Estate,
New Delhi.

-Respondents

(By Advocate Shri Mohar Singh)

ORDER

The grievance of the applicant is that despite accord of temporary status w.e.f. 29.3.97 he has been refused to participate in the physical test meant for regularisation of casual labours with temporary status for the post of Sepoy commenced on 30.10.2000. It is the grievance of the applicant that instead of counting the service from 1994 the same has been counted from 1996 for the purposes of according age relaxation to the applicant. By way of an interim order passed on 18.12.2000 a post of Sepoy has been kept vacant till further orders. The applicant by placing reliance on the certificate issued by the Superintendent Headquarter on 1.12.94 contended that

he has been initially engaged w.e.f. 16.8.94 and has been paid remuneration as admissible to casual workers performing the full time work and as such this cannot be treated as rendered on part time basis to reckon it for the purpose of consideration for regularisation against Group 'D' post. The applicant further contended that he has been working with the respondents since 1994 as casual labour and the service rendered as such may be taken for the purpose of age relaxation as per the guidelines of the Government of India. The applicant further contended that he belongs to OBC category.

2. The learned counsel for the respondents, on the other hand, strongly rebutting the contentions of the applicant contended that the applicant had joined on casual basis as daily wager w.e.f. 29.3.96 and previously in the year 1994 the applicant had worked on part time basis and further placing reliance on a letter issued by the Commissioner of Customs on 6.9.95 wherein the applicant's name has been mentioned at serial No.19 of the selected candidates who were engaged on part time basis on emergent basis for cleaning, sweeping and dusting. In this backdrop it is stated that as per the decision of this Court in OA-196/98 in Mrs. Yasoda Rani v. Union of India part time worker is not amenable to the provisions of the scheme of 1993 and as such service rendered by the applicant on part time basis has not been reckoned for the purpose of giving relaxation for consideration for regularisation against Group 'D' post. The applicant was appointed as daily wages w.e.f. 29.3.96 and by that time his age was 29 years, two months and 28

days, as his date of birth was 1.1.67. The applicant belongs to OBC category and his upper age limit is extendable upto 28 years. Since the applicant has crossed the age of 28 years on initial appointment as daily wager he is not entitled to get the age relaxation as Group 'D' employee as per the instructions issued by OM dated 7.6.88. The respondents' counsel has further placed reliance on DOPT OM dated 12.7.94 to contend that temporary status cannot be accorded to part time casual workers and the condition regarding age and educational qualification would be applicable as per the extant recruitment rules.

3. I have carefully considered the rival contentions of the parties and perused the material on record. The action of the respondents by not calling the applicant for interview for the purpose of regularisation against Group 'D' post cannot be found fault with. The applicant who has been appointed as a daily wager on casual basis on 29.3.96 was accorded the benefit of OBC as per the extant recruitment rules and having crossed the upper age limit of 28 years on the date of his initial engagement w.e.f. 29.3.96 and was found to have attained the age of 29 years, two months and 29 days he is not eligible for consideration for regularisation against the Group 'D' post.

4. As regards the contention of the applicant that the service rendered from 1994 should be treated as on casual basis is concerned, the same is not valid and sustainable. From the perusal of the

letter of the respondents dated 6.9.95 it is apparent that the applicant has been initially engaged as part time casual worker and continued till he was engaged on daily wages as casual worker on 29.3.96. As per the DOPT scheme as well as the decision in Mrs. Yasoda Rani's case (supra) the part time employee is not amenable to the benefit of the Scheme of the DOPT of 1993 and cannot be treated as a casual worker for the purpose of reckoning the age of eligibility as envisaged under the DOPT Scheme of 1993. The contention of the learned counsel for the applicant that the certificate issued to him by the Superintendent where there is no reference of any part time engagement and is being paid the allowances which were admissible to full time workers would clearly indicate that his engagement was not part time but on daily wages as a casual worker does not hold water. The certificate placed on record by the respondents is issued by the higher authority, i.e., Commissioner, wherein the decision has been taken to engage the applicant on part time basis on emergent basis. Having not controverted the veracity of this document the same, which is from the official record of the respondents, cannot be ignored. In this view of the matter the engagement of the applicant w.e.f. 16.8.94 cannot be treated as casual basis but as on part time basis and for the purpose of age relaxation the same would not be reckoned with, as per the DOPT Scheme of 1993.

5. In the result, the OA fails and is dismissed. The interim order passed on 8.12.2000 is vacated. No costs.

S. Raju
(Shanker Raju)
Member (J)