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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn. No. OA 606/89

Date of decision: 02.02.1990.

Shri Hari Mohan Gupta

....Applicant

Vs.

Union of India & Another

....Respondents

For the Applicant

....Shri K. Kumar, Counsel

For the Respondents

....Shri M.L. Verma,
Counsel

CORAM:

THE HON'BLE MR. P.K. KARTHA, VICE CHAIRMAN(J)

THE HON'BLE MR. D.K. CHAKRAVORTY, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgment? *Yes*

2. To be referred to the Reporters or not? *Yes*

(The Judgment of the Bench delivered by Hon'ble Shri P.K. Kartha, Vice Chairman(J))

The applicant, who is working as a Caretaker in the Institute of Criminology and Forensic Science under the Ministry of Home Affairs, Government of India, filed this application under Section 19 of the Administrative Tribunals Act, 1985, praying that he be declared confirmed in the post of Caretaker of the said Institute from the due date and that he be granted all service benefits available to a permanent Government servant including due seniority over respondent No. 2 who is also working as a Caretaker in the said Institute.

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2. The case has not been admitted. The pleadings are, however, complete and we feel that the application could be disposed of at the admission stage itself. We have perused the records of the case carefully and have heard the learned counsel of both parties.

3. The facts of the case are not in dispute. The applicant was duly selected in an interview held on April 14, 1980. He was given the offer of appointment as Caretaker vide letter dated 19th April, 1980 and he took over as Caretaker on 29th April, 1980. The offer of appointment (which is at Annexure II, page 15 of the Paper Book) states that he has been offered a temporary post of Caretaker in the Institute, that he will be on probation for 2 years, that failure to complete the period of probation to the satisfaction of the Government will render him liable to be discharged from service, that he will be liable to be discharged from service if on any information received relating to his nationality, age and health etc., the Government are satisfied that he is ineligible or otherwise unfit for being a member of the Institute and that during the probationary period the appointment may be terminated at any time by a month's notice given by either side. It is, further, stipulated that the appointment will be subject to production of original certificates and three copies of attestation form to be completed and returned by the applicant.

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4. By order dated 19.7.83, the applicant along with 27 other employees of the Institute was made quasi permanent (vide Annexure A-I, pages 12 to 14 of the Paper Book).

5. The second respondent who was appointed as Caretaker ^{On} with effect from 9.7.80 along with some others have been confirmed, while the applicant has not been confirmed. His several representations in this regard did not yield any result.

6. The case of the respondents is that at the time of his initial appointment, he was overage by 2 years. The age limit for appointment as Caretaker was between 18 to 30 years. The applicant was born on 26.12.47 and he had already attained the age of 32 years when he applied for the post. He was selected as Caretaker by a Selection Committee which comprised, *inter alia*, Shri K. Kumar, the then Assistant Director (Ballistics) of the Institute who has since retired and who is the legal counsel of the applicant before us in this case. There was grave illegality involved at the very root of the appointment of the applicant. The respondents have stated that the applicant was also considered for confirmation but the competent authority did not find him fit for confirmation. They have also denied that he was senior to respondent No. 2. They have further alleged that on scrutiny of the records, the applicant did not fulfil the terms and conditions of age and his mandatory pre-enrolment character and antecedents are yet to be verified. He was ^{On}

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asked to submit the attestation form duly completed vide the Institute's letter dated 24.2.1988 but he has not complied with the same.

7. In the rejoinder-affidavit, the applicant has stated that the Selection Committee which was constituted by the respondents was headed by the then Deputy Director of the Institute and three Assistant Directors and the Administrative Officer were the members thereof. The appointment was subject to the approval of the Director. The applicant did not suppress anything while submitting his application. The applicant has also contended that having worked for over 9 years as Caretaker and having received several testimonials and cash awards for good work/cannot be told at this stage that his appointment is vitiated in any manner.

8. There is no material on record to indicate that the applicant is guilty of any suppression of information either at the time of his initial entry into service as Caretaker or at any time thereafter. It was the duty and responsibility of the respondents to have verified his character and antecedents as also his age at the time of his entry into service in April, 1980. In 1983 when the respondents declared him as quasi permanent along with other officers, they could have again verified these particulars. After having served the respondents for over 9 years, it will not be consistent with the principles of justice and fair play to contend that his initial appointment was void ab initio on the ground that he was age ~~xxxx~~ barred. The respondents also cannot at this stage ask him to furnish attestation forms for the purpose of verification of his character

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antecedents.

9. The applicant has not, however, stated that he submitted the attestation forms at the time of his initial entry into service. Nor has he contended that he fell within the age group of 18 to 30 years at the time of initial entry into service. In case the applicant wants to be confirmed in the post of Caretaker, the respondents would be within their rights to ask him to furnish any information required for the purpose and the applicant will be bound to furnish the same. The applicant will not be entitled to any declaration that he is deemed to have been confirmed in the post of Caretaker ~~de hors~~ the requirements of rules.

10. In the light of the forgoing while we see no merit in the reliefs sought in the present application, we order and direct that the applicant should be allowed to continue in the post of Caretaker so long as the said post ~~exists~~ continues. He should also be considered for other service benefits as per the relevant rules. The application is disposed of accordingly.

The parties will bear their own costs.

D. K. Chakravorty
(D. K. CHAKRAVORTY)
MEMBER (A)
2/2/1990

P. K. Kartha
2/2/1990
(P. K. KARTHA)
VICE CHAIRMAN (J)