

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO. 1194/90

DECIDED ON : 30.3.1993

Smt. Risalo

... Applicant

Vs.

Commissioner of Police etc. ... Respondents

CORAM :

THE HON'BLE MR. J. P. SHARMA, MEMBER (J)

THE HON'BLE MR. S. R. ADIGE, MEMBER (A)

Shri Mahesh Srivastava, Counsel for Applicant
Ms. Ashoka Jain, Counsel for Respondents

JUDGMENT (ORAL)

Hon'ble Shri J. P. Sharma, Member (J) —

The applicant has filed this O.A. under section 19 of the Administrative Tribunals Act, 1985 aggrieved by the order dated 14.6.1989 rejecting her request for appointment as Sweeper with the Deputy Commissioner of Police under Delhi Administration. In this application she has prayed that appropriate direction be issued to the respondents to reinstate her with continuity of service with full backwages and that the impugned order dated 14.6.1989 be quashed.

2. The relevant facts of this case are that the applicant was initially engaged as a part time worker at the rate of Rs.75/- per month in the office of the Deputy Commissioner of Police, I.P. Estate at P.S. Naraina. The applicant continued to perform that job. With effect from 2.2.1984 the applicant was treated as a daily wager and was paid remuneration at the rate of Rs.11.60 per day as admitted by the respondents in para 4 (c) of their counter. She continued to work without any break ^{and by} till the impugned order dated 14.6.1989 was passed. She was not regularised.

She was discharged from service w.e.f. 29.7.1988 in view of the fact that all those employees who were working as daily wagers were screened by the DPC for regularisation. The applicant was also screened but since she could not give any evidence regarding her date of birth and on a reference to Civil Surgeon, Civil Hospital, Old Police Lines, Delhi Dr. B. Singh, Medical Suptd.-cum-Medico Legal Expert gave the report dated 15.2.1986 assessing the age of the applicant as 32 years, and after giving the due benefit belonging to SC community of five years more, the age of the applicant was still not within the range of employment and she has become overage by two years. The respondents, therefore, did not retain her as a daily wager because the D.C.P. did not recommend her case for regularisation on account of her being over age for entry into Government service as per extant rules.

3. The respondents contested the application and opposed grant of the relief to the applicant on the ground that as she has become overage even counting her 240 days of working as casual labour in each year of her service, even then she does not come within the range of admissible age limit for entry into Government service. In view of this, it is stated that the impugned order has been rightly issued by the respondents in not regularising her services and as a consequence thereof she was discharged from employment.

4. We have heard the learned counsel for the parties. Firstly, we find that the applicant belongs to a down-trodden community and obviously is illiterate and the status and community to which she belongs, it cannot be said that she

has concealed her age in order to get entry into service. In fact, it is all ignorance on her part and as such she continued to work only at a paltry amount of Rs.75/- per month as a part-time worker till she was paid w.e.f. 2.2.1984 at the rate of Rs.11.60 per day as a daily wager by the respondents. All this she has been doing in the hope that one day her services will be rewarded by getting a regular service with the respondents, but as the ill-luck had been, she could not satisfy the respondents regarding her age and the impugned order came into light.

5. The learned counsel for the applicant could not show any circular/rule/regulation giving the power of relaxation of age beyond the admissible 30 years as applicable to the case of SC candidates to which the applicant belongs. The application also in this connection is vague. However, going through the counter of the respondents, we find in the brief facts of the case that the applicant was sent for medical examination for getting the assessment of her age from the Civil Surgeon, Civil Hospital, Old Police Lines, Delhi and a report dated 15.2.1986 was received from the Medical Suptd.-cum-Medico Legal Expert that the age of the applicant is 32 years. In the counter, in reply to para 4(c) of the application the respondents have stated that "she was appointed as daily wage sweeper w.e.f. 2.2.84 @ Rs.11.60 paise per day not @ Rs 500/- per month as alleged." This fact has also been repeated in para 5 (vii) of the counter that she was appointed as daily wager Sweeper w.e.f. 2.2.1984 at the rate of Rs.11.60 per day and not Rs.500/- per month. A daily wager who gets from the consolidated funds of the Govt. of India as an employee is at par with temporary/casual employees employed on ad-hoc basis by the Union of India. If the applicant was

eligible to be appointed as a daily wager on 2.2.1984 then the respondents would have given her appointment on account of her eligibility as regards age also. Otherwise also, by virtue of the medical report dated 14/15.2.1986, the applicant was assessed to an age of 32 years. By this calculation on 2.2.1984 her age would be 30 years. When she joined the service as a daily wager at the age of 30 years and continued to work as such without any break, when regularisation had taken place some times in 1989, she could not be characterised as overage on the date when the DPC met for screening the daily wagers. It was for the respondents to regularise the daily wagers as soon there is a vacancy available with them and keeping off ad-hoc or daily wagers for years together is a policy which has not earned support in various judgments of the Hon'ble Supreme Court and also in various O.M.s issued by the Ministry of Personnel and Administrative Reforms. In any case, the applicant cannot be denied the right of her engagement if the DPC has been held when she has already put in about five years of service as a casual/daily wage worker.

6. In view of the facts and circumstances of the case and also that the applicant is a poor lady belonging to a down-trodden community, the respondents should have considered her case sympathetically invoking the power of relaxation of age, if any, available with the Commissioner of Police.

7. The relief claimed in this application is for treating the applicant in continuous service. However, since the action of the respondents is also because of non-furnishing

of adequate evidence regarding her correct date of birth, it cannot be said that the impugned order has been passed against the statutory rules. The respondents have considered the case of the applicant even giving the benefit of 240 days of service in each year when she was working as a casual/daily wager. However, the respondents had in their mind that when the DPC met for screening the daily wagers she had become overage and they were oblivious of the fact that their own Medico Legal Expert has assessed the age of the applicant as 32 years on 14.2.1986.

8. In view of the above circumstances, the applicant cannot be given continuity of service after her discharge as a daily wager. The application is, therefore, disposed of with the following directions :-

(a) The applicant shall be re-engaged as a regular Class-IV employee, Sweeper, or in any other equivalent post available within two months from the date of receipt of a copy of this order by the respondents. She shall draw the remunerations/salary and other allowances from the date she joins the service.

(b) The service she has rendered as daily wager since 2.2.1984 till the date she was discharged from service shall, of course, be counted for all purposes for giving her retirement benefits and also fixing her seniority in the cadre of Class-IV employees and she may also be considered for higher promotions, if any, after adding that service.

In the circumstances of the case, we leave the parties to bear their own costs.

S. R. Adige
(S. R. Adige)
Member (A)

J. P. Sharma
30.3.93
(J. P. Sharma)
Member (J)