

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

CJ

O.A. NO. 2277/2004

New Delhi, this the 15th day of April, 2005

**HON'BLE MR. SHANKER RAJU, MEMBER (J)
HON'BLE MR. M.K. MISRA, MEMBER (A)**

Sri Krishna Das,
S/o Sh. Deo Krishan Das
R/o A-40, Gulab Bagh,
Uttam Nagar, Delhi.

...Applicant

(By Advocate: Shri A.K. Bhatt)

-versus-

1. Union of India through
Secretary,
Ministry of Health & Family Welfare,
Nirman Bhawan,
New Delhi - 110 001.
2. The Director General,
Health Services,
Nirman Bhawan,
New Delhi - 110 001.
3. The Medical Superintendent,
Dr. Ram Manohar Lohia Hospital,
New Delhi.
4. The Deputy Director (Admn.),
Dr. Ram Manohar Lohia Hospital,
New Delhi.
5. The Secretary (Expenditure),
Ministry of Finance,
South Block,
New Delhi.

...Respondents

(By Advocate: Shri Ashish Nischal proxy for Sh. Rajinder Nischal)

ORDER (ORAL)

By M.K.Misra, Member (A):

Applicant (Shri S.K. Das) assails the impugned order dated
24.12.2003 by which he was denied regularization of his service resulting

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in not allowing the benefit of Assured Career Progression (for short ACP) Scheme. Briefly, the facts of the case are that the applicant had been working on the post of Psychiatric Social Worker w. e .f. 12.2.1981 in Dr. Ram Manohar Lohia Hospital and Nursing Home, New Delhi. The appointment of the applicant was made on ad hoc basis and his services were extended from time to time as per the requirement of the Hospital. At the time of appointment of the applicant in 1981, he was 34 years of age whereas the maximum prescribed age limit was only 28 years. Therefore, the respondents treated the appointment of the applicant as irregular ab-initio and, as such, the competent authority could not regularize the same. The learned counsel for the applicant submits that at the time of appointment of the applicant, he was the only candidate found suitable for that post by the respondent authorities. The age limit of 28 years has arbitrarily and unreasonably been fixed inasmuch as the age limit for the post of Junior Psychiatric is 35 years whereas the educational qualifications for both the posts are identical. A proposal for age relaxation was also sent to the Director General, Health Services but the relaxation was not granted to the applicant by the competent authority. The applicant also crossed the efficiency bar w. e. f. 1.11.1994 vide order dated 16.8.1995. The applicant made various representations before the competent authority for regularization of his services and other benefits but the same remained un-responded. Therefore, the applicant approached this Tribunal by filing OA No. 1384/2002 and this Tribunal, vide its order dated 24.5.2002, gave direction to the respondents to decide the representation of the applicant within a period of two months by passing a speaking order and communicating the same to the applicant.

2. As a consequence of the directions of the Tribunal, respondent no. 2 sent a proposal to the Director General, Health Services, for seeking

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relaxation of recruitment rules in the case of the applicant as one time measure. The proposal sent by the Hospital Administration was rejected by the competent authority without considering the length of service of the applicant and accordingly the impugned order was passed on 24.12.2003 and was communicated to the applicant rejecting his claim on the ground that at the time of appointment on ad hoc basis in 1981, he was overage. Therefore, his appointment was irregular ab initio.

3. Learned counsel for the applicant referred to the decision of the Delhi High Court in the case of **Delhi Jal Board vs. Workman of Delhi Water Supply and Sewage** (CWP No. 5228/02) wherein it was held that when the respondents workmen were working on the post of Pump Operator since last more than 12 years, then there was no force in the argument that the workmen did not satisfy the recruitment rules and it was too late in the day to ask the workmen to give their willingness for regularization on a lower post of Beldar. In the present case, the applicant is still working since 1981 and has completed more than 23 years of service and now declaring his appointment as irregular ab initio by the respondents is devoid of merits and violates the principles of natural justice.

4. Learned counsel for the applicant also referred to a decision of the Hon'ble Supreme Court in the case of **State of Haryana & Others etc. etc. vs. Piara Singh and Others etc. etc.** JT 1992 (5) SC 179, wherein the Apex Court held that the services of the employees should be regularized as early as possible if they are working for a period of more than 2-3 years. It was submitted that services of one Mrs. Munaveer Masood, who was working in the ENT Department of the Hospital on a technical post under the similar circumstances as of the applicant, have been regularized by the respondent authorities despite the fact that she

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was also overage, as per the recruitment rules. Therefore, there is a violation of Articles 14 & 16 of the Constitution of India.

5. In their reply, the learned counsel for the respondents submitted that at the time of appointment the applicant was more than 34 years of age **(Date of Birth - 1.7.1947 and Date of Appointment - 8.1.1982)**. Under the recruitment rules, the age was prescribed between 21-28 years. The applicant was found fit by the duly constituted Selection Committee and, therefore, he was appointed on ad hoc basis as Psychiatric Social Worker pending his age relaxation for which a letter dated 13.3.1982 was sent to the Director General (Health Services) as a special case in public interest and patient care. The Director General (Health Services) replied that the matter was being taken up with the Government for issue of the necessary approval for age relaxation in favour of the applicant. It was further mentioned by the respondent authorities that since the post was reserved for Scheduled Caste, it was suggested to the Hospital authorities that vigorous efforts be made to fill up the post among the reserved category candidates in accordance with recruitment rules. Since all steps taken to find out the candidate among the reserved category candidates had failed, a proposal for de-reserving the said post held by the applicant was sent to the Director General (Health Services) for approval. Since till 1986, no such candidate could be found, the applicant was allowed to continue to work on ad hoc basis. Therefore, the appointment of the applicant is de hors the recruitment rules.

6. It was further submitted on behalf of the respondents that the applicant had earlier filed the Original Application before this Tribunal and in compliance with the directions of the Tribunal, the order was accordingly passed communicating the applicant that since his appointment was irregular from the very beginning, his services cannot be

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regularized in view of the fact that the Government of India did not grant relaxation in age to the applicant.

7. It was further submitted by the respondents that ACP is granted to the Government servants who hold the posts on regular basis as per the instructions contained in DOP&T OM dated 9.8.1999 and since the applicant is holding the post on ad hoc basis, therefore, he could not be granted the ACP benefits.

8. As regards the instance quoted by the applicant of Smt. Munaveer Masood, the respondents submitted that she is working as Orthopapist in the Eye Department of the respondents Hospital. She was earlier directed to work in an officiating capacity w.e.f. 8.3.1980 to 4.6.1990 for 89 days and her services were further extended. She was also appointed against the post meant for Scheduled Caste candidate and since no Scheduled Caste candidate was available, later on the Selection Committee recommended the name of Mrs. Munaveer Sultana (Munaveer Masood after marriage) for appointment as Orthopapist on ad hoc basis. In this case, it is submitted by the respondents that a decision was taken by the Hospital authorities to select a candidate with no age bar for recruitment, therefore, her services were regularized and her appointment is not dehors the recruitment rules. It was further submitted by the respondents that relaxation of rules in the case of Mrs. Munaveer Masood as a special case cannot be taken as a basis for a right of relaxation in age in the case of the applicant.

9. The applicant filed the rejoinder repeating the same arguments as mentioned in the Original Application.

10. We have heard the learned counsel for the parties and have also perused the material on record.

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11. We observe that the applicant is still serving the respondents in the same capacity when he joined the Hospital in 1981/1982. We also notice that the applicant was admittedly selected after completion of selection process and has served the respondents for more than 23 years. When the applicant was appointed on ad hoc basis, the fact of overage was very much in the knowledge of the respondent authorities and his appointment was made because of his special technical qualification. We further observe that in the case of Mrs. Munaveer Masood, the age bar restriction was not put in the recruitment rules though she is similarly placed person as that of the applicant. Since the respondents held that the initial appointment of the applicant is irregular, if at this moment, after having put in more than 23 years of service, the applicant is removed from service by the respondent authorities, he would not be able to get any appointment due to age factor. In this view of the matter, the action of the respondent authorities in not utilizing the services of the applicant is against the principles of natural justice.

12. The Hon'ble Supreme Court in a decision rendered in the case of ***State of Haryana & Others vs. Plara Singh & Others*** (supra), cited by the applicant's counsel, has also held as under:

"So far as the work-charged employees and casual labour are concerned, the effort must be to regularize them as far as possible and as early as possible subject to their fulfilling the qualifications, if any, prescribed for the post and subject also to availability of work. If a casual labourers is continued for a fairly long spell- say two or three years – a presumption may arise that there is regular need for his services. In such a situation, it becomes obligatory for the concerned authority to examine the feasibility of his regularization. While doing so, the authorities ought to adopt a positive approach coupled with an empathy for the person. As has been repeatedly stressed by this court, security of tenure is necessary for an employee to give his best to the job. In this behalf, we do commend the orders of the Government of Haryana (contained in its letter dated 6.4.1990 referred to


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hereinbefore) both in relation to work charged employees as well as casual labour.”


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13. If an employee is continued for a fairly long spell say two or three years – a presumption may arise that there is regular need for his services. In such a situation, it becomes obligatory for the concerned authority to examine the feasibility of his regularization. While doing so, the authorities ought to adopt a positive approach coupled with empathy for the person concerned. In the case in hand, the applicant has put in more than 23 years of service, which shows that the work is very much available with the respondents and, therefore, the respondents should examine the feasibility of regularization of the services of the applicant adopting a positive approach coupled with empathy of the applicant, as held by the Apex Court in the case of **State of Haryana & Others vs. Piara Singh & Others** (supra).

14. In the facts and circumstances of the case, we dispose of the present Original Application by quashing the impugned order dated 24.12.2003 and restraining the respondents from terminating the services of the applicant, in case his termination from service is under their consideration. No costs.


(M.K. Misra)
Member (A)

/na/


(Shanker Raju)
Member (J)