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CENTRAL ADMINISTRATIVE TRIBUNAL
Principal Bench

O.A. No.1516/2004
And
O.A. No.1520/2004

New Delhi this the 7th day of March, 2004

Hon'ble Shri Shanker Raju, Member (J)

OA No.1516/2004

Nanu Ram,
Son of Shri Chunni Lal,
Resident of Village Bharthal,
New Delhi-110045. -Applicant

(By Advocate: Shri Y.S. Chauhan)

Versus

1. Union of India
Through the Secretary,
Ministry of Health, Nirman Bhawan,
New Delhi-110001.

2. Director General of Health Services,
DDA Building, Nirman Bhawan,
New Delhi-110001.

3. The Director,
DDA Building, Nirman Bhawan,
New Delhi-110001.

4. Deputy Director (Administrative),
Ram Manohar Lohia Hospital,
New Delhi. -Respondents

(By Advocate: Shri D.S. Mahendru)

OA No.1520/2004

Chander Singh,
Son of Shri Madan lal,
Resident of A-156, Holambi Kalan
Metro Vihar, Delhi. -Applicant

(By Advocate: Shri Y.S. Chauhan)

Versus

1. Union of India
Through the Secretary,
Ministry of Health, Nirman Bhawan,
New Delhi-110001.

2. Director General of Health Services,
DDA Building, Nirman Bhawan,
New Delhi-110001.

3. The Director,
DDA Building, Nirman Bhawan,
New Delhi-110001.

4. Deputy Director (Administrative),
Ram Manohar Lohia Hospital,
New Delhi. -Respondents

(By Advocate: Shri D.S. Mahendru)

ORDER (Oral)

As these OAs are founded on identical facts involving common question of law, they are being disposed of by these common order.

2. In these OAs, respondents' order dated 7.6.2004 has been assailed whereby show cause notice has been issued to the applicants terminating their services on the ground that at the time of engagement on casual basis, they were overage.

3. At the outset, as per DOPT OM of 7.6.88, casual labourer were earlier recruited on being requisitioned from employment exchange except Clause-10 of DOPT OM dated 7.6.88 provides relaxation of age on consideration of regularization.

4. In the wake of decision of the Tribunal in OA No.1540/2004 decided on 28.6.2004 **Raj Kumar Vs. Union of India & Ors.**, DOPT formulated a Scheme of 10.9.1993 according temporary status of Casual Labourer who has rendered two years of service as per the working schedule of concerned Ministry/Department and inter alia provided accord of temporary status which does not bestow any right of continuity under Clause-7 of the Scheme. However, Clause-8 of the Scheme for regularisation on available vacancies in accordance with rules and instructions and the provisions of age relaxation is also incorporated. Learned counsel of the applicants stated that in so far as Chander Singh is concerned, an S.C. candidate is entitled for age relaxation in the

maximum age limit laid down for engagement of casual worker but the applicant in OA-1516/ Lalu Ram is concerned who belongs to unreserved category, it is stated that a requisition was sent in 1992 to the employment exchange and as the applicants were within the prescribed age limit, they had been observed to be fulfilled all eligibility criteria as acknowledged by the respondents vide their letter dated 13.11.99. Further, it is stated that vide letter dated 4.5.2000 acknowledged by the respondents that all the casual workers are eligible in all respect to be considered for regularisation.

5. In the above backdrop, it is stated that OM 13.10.83 issued by the Government of India provides age relaxation to the casual workers being engaged. He further relied upon Office Memo dated 5.1.88 reiterates the aforesaid plea.

6. By an order dated 13.12.2004, respondents have been directed to produce a copy of the requisition sent to the employment exchange in 1992 on the basis of which both the applicants were engaged on casual basis. An additional affidavit has been filed by the respondents, wherein in Para-4, it is stated that copy of letter initially sent to the employment exchange for appointment of the applicants is not available on the concerned file and despite all these efforts the same is not traceable. Learned counsel in this backdrop contends that having decided that the applicants fulfil all eligibility criteria, respondents are estopped from taking a contrary view which is disadvantageous to applicants and would be barred by the principle of promissory estoppel.

7. Learned counsel further states that resorting to a decision of High Court of Delhi in **Sunil Chauhan Vs. The Commissioner, Municipal Corporation of Delhi & Anr**. 2004 (1) SLJ 181 to contend that if one fulfils all the conditions cannot be given age relaxation.

8. On the other hand respondents' counsel Shri D.S. Mahendru vehemently opposed the contention and stated that as per the Scheme of DOPT even on acquirement of temporary status, one has no right to continue on serving a show

cause notice or a salary of one month's service of casual labour with temporary status can be dispensed with.

9. By referring to the Recruitment Rules and demonstrating a requisition sent in 1996 to the employment exchange, it is contended that the age limit for recruitment/engagement of the casual workers was at the relevant time when the applicants were engaged between 18 to 25 years and as admittedly the applicants were beyond the age limit, they were not eligible to be appointed and as such their initial appointment is sought to be cancelled. Now, respondents are within their power to prescribe age limit under Clause 7 of the DOPT Scheme 1993.

10. On careful consideration of the rival contentions of the parties, it is no more res-integra that while considering a casual worker who has acquired temporary status for regularisation against Group D posts, age relaxation is permissible for the period when a casual worker has rendered service on casual basis.

11. It is trite law that for non-production of records summoned by the Court an adverse inference can be drawn against the Government clearly stating and demonstrating that earlier requisitions were sent pertain to engagement of those casual workers between 18 to 25 years is not a definite proof of the requisition sent in 1992 when the applicants were engaged. The aforesaid plea is also belied on the fact that by a conscious orders issued on 13.11.99 and 13.1.2000 as well as 4.5.2000 while considering regularisation of service of all the casual workers decided that these casual workers were fully eligible in all respects. Now raking up the issue of initial engagement and the applicants as barred by age, they are estopped from taking the aforesaid plea as there is no evidence or material to demonstrate that earlier requisition sent was limited to those casual workers who were within the age of 18 to 25 years and also for want of any material that the aforesaid mistake was detected and why this has not been rectified for all long 13 years and at a time when the applicants are legitimately accepting their

regularisation. It would be neither equitable nor justifiable to deprive them of the benefits.

12. Moreover, High Court's decision though pertains to MCD clearly shows that condition of age can be relaxed when all other conditions are satisfied. A casual worker when appointed on the sole of proof of age etc. and employment exchange recommendation, it is for the Government at that time to ensure that no ineligible candidate is appointed but once a candidate is appointed or in case of a casual workers engaged having been accorded temporary status from 1.1.93, when vacancies are available to consider the aforesaid persons for regularisation in the light of the fact that age can be relaxed at the time of regularisation why not such a relaxation is permissible at the initial stage of engagement which otherwise would create an anomalous position and would be detrimental to the interest of the applicants.

13. It is not the case of the respondents that applicants are otherwise unsuitable for regularisation.

14. In this view of the matter as equity demands age relaxation in the case of the applicants, these OAs are allowed. Impugned orders are quashed and set aside. Respondents are directed to consider the case of the applicants after according them age relaxation for regularisation allowed as other casual workers in accordance with law. No costs.

15. Let a copy of this order be placed in the file of each case.

S. Raju
(Shanker Raju)
Member (J)

cc.