

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

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CA.No.3227 of 1992
MA.No.880 of 1998

New Delhi, this 31st day of July, 1998

HON'BLE SMT. LAKSHMI SWAMINATHAN, MEMBER(J)
HON'BLE SHRI K. MUTHUKUMAR, MEMBER(A)

Sudesh Kumar
S/o Shri Kailash Chander
R/o Sector VI/561
R.K. Puram
NEW DELHI.

... Applicant

By Advocate : Shri M.K. Gupta

versus

Union of India, through

1. The Secretary
Department of Culture
Ministry of Human Resources Development
Shastri Bhawan
NEW DELHI 110001.

2. The Director General
Anthropological Survey of India
West Block No.2, Wing No.6
1st Floor, R.K. Puram
NEW DELHI 110006.

... Respondents

By Advocate: Shri P.H. Ramchandani

O R D E R (ORAL)

Hon'ble Smt. Lakshmi Swaminathan, M(J)

On the preliminary point whether the reply filed by the respondents on 12.5.94 should be taken on record or not, MA.880/98 was taken up for consideration. Shri P.H. Ramchandani, learned Senior Counsel has submitted that unfortunately some delay has occurred in filing the reply in view of the fact that the answering respondents are at Calcutta and there has been some communication gap between the

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office and him. However, learned counsel for the applicant drew our attention to the Tribunal's order dated 28.10.93. In view of this order, MA.880/98 is rejected.

2. We have heard Shri M. K. Gupta, learned counsel for the applicant and Shri P.H. Ramchandani, learned Sr. Counsel for the respondents on ~~the~~ merits.

3. The grievance of the applicant in this application is that inspite of the fact that the respondents have called him for interview for the post of Data Entry Operator on 1.7.92, his candidature has not been approved for appointment on the ground that he was overaged at that time. Learned counsel for the applicant has submitted that the respondents were aware that the applicant was overaged and inspite of that, he had been called for interview. He has also submitted that the applicant has an excellent record of service as is evident from the recommendations of the officers, placed on record. He has further submitted that the Director General in respondent-2's office had made a recommendation that one post of Data Entry Operator should be kept vacant for the applicant only because of his excellent work. However, we note that the proposal was later rejected. Learned counsel for the applicant also submits that in view of the Tribunal's order dated 11.12.92, the applicant is still continuing to work as Data Entry Operator. In the circumstances, he has very vehemently submitted that the applicant should be regularised in the post

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of Data Entry Operator and a direction should be given to the respondents to relax the rules with respect to age, particularly having regard to his record of service with them.

4. Shri P.H. Ramchandani, learned Sr. Counsel has submitted that the applicant being only a daily wage, he has no vested right of absorption or for relaxation of the Recruitment Rules. He has also submitted that the respondents office do not have sufficient work at the moment. Further, he has submitted that the applicant was well aware at the time of the application for the post of Data Entry Operator in response to the advertisement that the upper age limit for candidates was 25 years. Therefore, the applicant was well aware that at the time when he applied, he was overaged. He has, however, submitted that in view of the interim order passed by the Tribunal dated 11.12.92, the respondents have continued to engage the applicant on daily wage basis as and when work was available. In the circumstances, he has submitted that the application may be dismissed as the applicant cannot be regularised as he is overaged.

5. We have considered the pleadings on record and the submissions made by the learned counsel for the parties. We are not impressed by the arguments advanced by Shri M.K. Gupta, learned counsel that there has been a legitimate expectation raised by the action of the respondents in calling the applicant for

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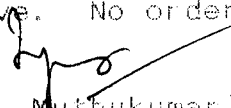
interview on 1.7.92 that he would be appointed to the post of Data Entry Operator even though he was overaged. He relies on the judgment of the Supreme Court in State of Haryana Vs Pyara Singh 1992 (3) SLJ 34 and submits that since the respondents have not denied that the applicant has worked for a number of years, he should be regularised. It is relevant to note that the applicant admittedly does not fulfil the requirements of the eligibility conditions prescribed in the Recruitment Rules and in the circumstances, he does not have a right for regularisation or for relaxation of the rules. However, it cannot also be ignored that the respondents themselves are totally faultless because they could have easily checked his date of birth when the applicant was called for the interview. It is also relevant to note that even after the interim order was passed on 11.12.92, the respondents have not made any attempt to file an appropriate application for modification or vacation of the interim order and they are continuing to use the services of the applicant as and when required on daily wage basis. It is settled law that a daily wage person who is employed on adhoc basis does not have a right for regularisation in the post unless he fulfils the eligibility conditions prescribed under the Recruitment Rules. In this view of the case the application fails.

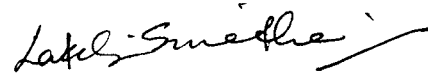
5. However, in the peculiar facts and circumstances of the case mentioned above **and particularly** that the respondents themselves had sought to take necessary

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sanction for regularisation of the applicant earlier and he has been continuously working, in case the respondents still have a post of Data Entry Operator and require his services they may, if they wish to, examine his case in accordance with the Recruitment Rules. This shall be done within a period of three months from the date of receipt of a copy of this order with intimation to the applicant.

7. The OA accordingly fails ~~but~~ is disposed of as above. No order as to costs.


(K. Muthukumar)
Member (A)


(Smt. Lakshmi Swaminathan)
Member (J)

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