

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH

ALLAHABAD.

Original Application No. 1182/97
Transfer Application no.

Date of Decision 12.02.2002

M C Sonkar

Applicant(s)

Sri Chandre Prakash

Counsel for the Applicant

Counsel for the
Applicant(s)

V E R S U S

Union of Indus & Co

Respondent(s)

Sri Amit Sholekar

Counsel for the
Respondent(s)

C O R A M

Hon'ble Mr. G. K. Srinivasan AM

Hon'ble Mr. _____

1.

1. Whether Reporters of local papers may be allowed to see the judgment ?

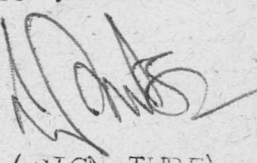
yes.

2. To be referred to the Reporters or not ?

yes.

3. Whether their Lordship wish to see the fair copy of the judgment ?

6. Whether to be circulated to all Benches ?


(SIGNATURE)

PIYUSH/

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Allahabad this the 12th day of February 2002.

Original Application no. 1182 of 1997.

Hon'ble Maj Gen K.K. Srivastava, Administrative Member.

Mahesh Chand Sonkar,
S/o Sri Heera Lal,
R/o 120 Arya Bazar, Cantt.,
ALLAHABAD.

... Applicant

By Adv : Sri Chandra Prakash

V E R S U S

1. Union of India through the Secretary,
Ministry of Defence, Govt. of India,
NEW DELHI.
2. Engineer in Chief, Army Head Quarters,
NEW DELHI.
3. Commander Works Engineer, Military Engineering Services
(M.E.S.) behind High Court building,
ALLAHABAD.
4. Garrison Engineer (A.F.), Bamroli,
ALLAHABAD.

... Respondents

By Adv : Sri A. Sthalekar

O R D E R

Hon'ble Maj Gen K.K. Srivastava, Member (A).

In this O.A. filed under section 19 of the
A.T. Act, 1985 the applicant has prayed for direction
to the respondents to appoint the applicant as Oil
Engine Driver and to pay the entire wages and conseq-

....2/-

quential benefits admissible to him from time to time and also to grant him seniority and promotion from the date his juniors were promoted with all consequential benefits.

2. The facts, in short, giving rise to this OA are that the applicant was employed on casual basis as Oil Engine Driver in Military Engineering Service (in short MES). He worked under Garrison Engineer (AF) (in short GE) Bamrauli for a total of 267 days. He was called for interview on 30th September 1987 as his name was sponsored by Employment Exchange to appear before the Board of Officers for selection and regular appointment. After interview the applicant was selected for the post but could not get the appointment on the ground that he was overaged on the date of appointment on regular basis. His case was referred for age relaxation while other candidates junior to the applicant were given the appointment.

3. Heard Sri Chandra Prakash learned counsel for the applicant and Sri Amit Sthalekar learned counsel for the respondents and perused records.

4. Sri Chandra Prakash, learned counsel for the applicant has submitted written arguments. The learned counsel while arguing submitted that no relaxation of age and also the formal sanction was necessary as per rules and the provisions laid down in Ministry of Defence G.O. dated 28.06.1980. The relevant date for consideration of age in the date on which the candidate is first appointed

casual basis and not the date when he is to be absorbed on regular basis. The applicant was selected by ^hduly constituted Board of Officers but could not be appointed ^hto due to ban on recruitment. Applicant was within age on the last date fixed for receipt of application and on the date he was considered for appointment. Therefore, he has a legal right to be appointed. The learned counsel for the applicant placed reliance on the judgments of this Tribunal in OA 892 of 1991 Avadh Kishore Vs. Union of India in which it has been held that the crucial date for determining the age of the candidate is the closing ~~date~~ ^hfor receipt of a ^happlication ~~from~~ ^hthe candidates. The same view has been taken by this Tribunal in OA 893 of 1991 and 1235 of 1995. ^hThe case of the present applicant is identical and as such ^hhe is entitled to the benefit accorded to the applicants ^has ~~decided~~ ^hby the Tribunal in above OAs.

5. Sri Chandra Prakash, learned counsel for the applicant further submitted that when the ban was lifted in 1994 as per Chief Engineer Headquarters Central Command letter dated 24.12.1993, Commander's ^hWorks Engineer (in short CWE) Allahabad was required to prepare a list of those candidates who had already put in service of 240 days or more and offer appointment to such candidates. Respondent no. 3 kept the information about the inclusion of applicant's name in the list of candidates for regularisation secret. Applicant made a representation on 18.10.1996 and when nothing was heard from respondents upto 6 months, the applicant had no choice but to file this OA for relief. Applicant also sent an application ^hto respondent no. 3 ^hon 18.7.1995 i.e. CWE Allahabad for appointment as Oil Engine Driver

~~on 18.7.1995.~~

6. Sri Amit Sthalekar, the learned counsel for the respondents, while contesting the claim of the applicant submitted that the present case relates to regularisation of casual services rendered by the applicant during 1984 and 1985 as casual Oil Engine Driver. The applicant has worked for only 178 days and not 267 days as claimed during 1984 and 1985. Since the names of only those personnel who worked for 180 days in one year and 250 days or more in two consecutive years are forwarded to Ministry of Department for release of vacancies as well as relaxation of upper age limit for regularisation of their services, the name of the applicant was not considered for lack of requisite number of days of service.

7. Sri A Sthalekar further submitted that the name of the applicant was forwarded to Headquarters during 1993 alongwith the names of others who had completed 120 days but Ministry of Defence rejected the proposal on the ground that the applicant was not in service on the date of issue of OM dated 8.4.1991. As per OM dated 8.4.1991 the cases of those casual labours were to be considered for regularisation who were recruited prior to 7.6.1988 and were in service on the date of issue of OM dated 8.4.1991 as a one time measure.

8. The learned for the respondents finally submitted that the applicant's services were terminated in March 1985 and the OA has been filed only in 1997, the same is grossly time barred and is liable to be dismissed.

9. I have given careful consideration to the submissions made by the learned counsel for parties. The main grievance of the applicant is that there was no requirement to seek the sanction of the Ministry of Defence for relaxation in age as he was within the age limit when he was interviewed on 30.9.1989. The applicant has not produced any material to substantiate his claim. In absence of information about his date of birth, it is not possible for me to arrive at any conclusion whether the applicant was over age or not. Therefore there is no doubt that the applicant was overage and the action of the respondents seeking for sanction of Ministry of Defence for relaxation of upper age limit appears to be correct. During 1993 when the ban on recruitment was lifted the name of the applicant was again sponsored to Headquarter alongwith the names of other affected personnel who had completed 120 days and were recruited prior to 07.06.1988 in the light of guidelines contained in Department of Personnel and Training OM dated 07.06.1988 but Ministry of Defence rejected the proposal for regularisation of services of casual personnel in the light of following classification contained in Ministry of Personnel, Public Grievances and pension OM dated 8.04.1991 (Ann CA-2)

- a. to consider the cases of casual personnel who were recruited prior to issue of OM dated 7.6.1988 regarding qualifications for employment and remuneration etc.
- b. to consider the cases of casual personnel who were in service on the date of issue of OM dated 8.4.1991.

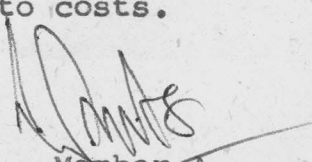
10. Although the applicant was recruited before 7.6.1988 but he was not in service on the relevant day

08.04.1991. Therefore, I do not find any reason to intervene. Once the Ministry of Defence rejected the claim of the applicant for regularisation, I do not find any illegality in the action of respondents. The judgments in cases relied upon by the learned counsel for the applicant will be of no help as these are not applicable in the present case.

11. I also find force in the submission of learned counsel for the respondents that the case is highly time barred. The applicant's services were terminated in March 1985. The cause of action arose in March 1985. Even if it is accepted that there was ban on recruitment the applicant should have taken legal action within one year of the lifting of ban in 1993, which he did not. I am unable to grant relief to the applicant because he did not seize the opportunity at the time by not filing the OA within the period of limitation under section 21 of the A.T. Act, 1985.

12. In view of the facts and circumstances and the aforesaid discussions the OA is liable to be dismissed. The OA is accordingly dismissed.

13. There shall be no order as to costs.


Member-A

/pc/