

29
RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD

Dated: this the 4th day of July, 2012

Original Application No. 1353 of 2006

Hon'ble Ms. Jayati Chandra, Member – A

Hari Shankar, S/o Mool Chandra, R/o Subhash Market (Sahiba Saari Centre), Sipari Bazaar, Jhansi.

... Applicant

By Adv : Shri R.K. Shukla

V E R S U S

1. Union of India through its General Manager, Northern Central Railway, Allahabad.
2. Divisional Railway Manager, Northern Central Railway, Jhansi.
3. Chief Work-shop Manager, Northern Central Railway, Jhansi.

... Respondents

By Adv: Shri A.K. Sinha

(Reserved on 15.05.2012)

ORDER

The applicant Shri Hari Shanker, has filed this OA under Section 19 of the Administrative Tribunal's Act, 1985 seeking order and direction directing the respondents to consider the claim of the applicant for his absorption on a Group 'D' post in pursuance of the notification dated 28.02.2001 and 30.08.2001 w.e.f. the date of his juniors.

2. The applicant has stated that he was initially engaged as casual labour/waterman from 01.04.1987 and, thereafter, from 01.04.1988 to 28.08.1988, 10.04.1989 to 28.08.1989. The applicant was sent for medical examination on 28.03.1989 to examine his medical condition as a ~~per~~ ^{Ich.} requisite for granting him temporary status. The medical examination cleared him for appointment to the post of Waterman in B-1 category. Thereafter, the applicant was granted temporary status w.e.f. 01.04.1989.

J. Chandra

J. Chandra 40

He had further argued that he had worked from 01.04.1990 to 22.07.1990 and again from 01.04.1991 to 22.07.1991. The total number of working days is 556 and his name was borne on the Live Casual Labour Register. In tune with the Railway Board's circular No. E(NG)-II/99/CL/19 dated 28.02.2001 his case was to be considered.

3. As per instruction in the said circular the educational qualification for direct recruitment in Group 'D' post was Class 8th pass and upper age limit was 40 years for general, 43 years for OBC and 45 years for SC/ST candidates. The applicant was 42 years, 09 months and 17 days old on the date of circular i.e. 28.02.2001. Despite his age being less than 43 years on the date of passing the policy the respondents did not regularize him on the basis of his crossing the upper age limit for OBC candidates. Thereafter, the applicant gave many representations with no avail.

4. Both in the Rejoinder Affidavit and during the course of arguments the applicant has taken recourse of the following cases, in which age relaxation has been allowed:-

- i. *Civil Misc. WP No. 1758/10 – U.O.I. & Ors Vs. Central Administrative Tribunal, at Allahabad and another (Hon'ble Allahabad High Court)*
- ii. *(2009) 3 SCC 35 – Council of Scientific and Industrial Research and Others Vs. Ramesh Chandra Agrawal and another (Hon'ble Supreme Court)*
- iii. *OA No. 1421/09 – Manohar Lal Vs. U.O.I. & Ors (CAT Allahabad Bench)*

5. Separately MA No. 4214/06 has also been filed for condoning delay in filing OA on the basis that the applicant was waiting for taking decision in his case. He has cleared the medical condition and has been working for 556 days which ~~is the~~ ^{J. Chandra} fact not denied by the respondents.

6. The respondents have raised preliminary objection on the ground of delay. They have admitted all other averments of the applicant except to

J. Chandra

u)

say that his case was not considered as he was over-aged on the date on which the actual implementation of the circular takes place. The applicant was regularly appointed in the summer season as waterman as per Railway Board's circular dated 28.02.2001. The age relaxation upto 43 years could be given on the date of actual absorption and not on the date of passing the circular.

7. The actual absorption followed various formalities which had to be complied with in pursuance of the order dated 28.02.2001 which was calling for applications in proper format etc by 30.08.2001. On 30.08.2001 the applicant was already 43 years, 03 months and 19 days old. Hence, he was considered illegible. The respondents have also cited the following case :-

- i. *CMWP No. 45739/06 – Rajendra Singh & Ors Vs. Central Administrative Tribunal, Allahabad Bench, Allahabad & Ors (Hon'ble Allahabad High Court)*
- ii. *OA No. 1079/05 – Virendra Singh Vs. U.O.I. & Ors (CAT Allahabad Bench)*
- iii. *OA No. 106/05 – Uma Shanker Vs. U.O.I. & Ors (CAT Allahabad Bench)*
- iv. *OA No. 32/05 – Mohd. Zaheer & Ors Vs. U.O.I. & Ors (CAT Allahabad Bench)*
- v. *OA No. 573/06 – Ram Babu Vs. U.O.I. & Ors (CAT Allahabad Bench)*
- vi. *OA No. 562/10 – Munna Lal Vs. U.O.I. & Ors (CAT Allahabad Bench)*
- vii. *OA No. 1397/06 – Ram Swaroop Vs. U.O.I. & Ors (CAT Allahabad Bench)*

8. I have heard Shri R.K. Shukla, learned counsel for the applicant and Shri A.K. Sinha, learned counsel for the respondents and perused the entire facts of the case. Without going into the merit of the case, firstly the question of question of delay has to be addressed. In this case the applicant was well aware of the entire process of regularization. He had also submitted an application for consideration of his regularization in terms of Railway Board's circular dated 28.02.2001. Even if he felt that his case was genuine and he was not being regularized with or without age

J. Chandra

relaxation he should have approached this Tribunal within a reasonable time frame. Section 21 of the Administrative Tribunal's Act, 1985 clearly stipulates one year from the date on which final order is made. Even if certain allowances are made for process of decision making and submitting representation etc. that period cannot be stretched from 30.08.2001 to the date of filing of OA i.e. 01.12.2006. Even in the delay condonation application filed by the applicant he has not even shown any overwhelming reason which would explain his failure in approaching this Tribunal for nearly 05 years from the date of cause of action. Hence the Misc. Application for condonation of delay in filing OA lacks merit and the same is dismissed. Accordingly the OA is also dismissed as time barred.

No cost.

J. Chandra

Member (A)

/pc/