

5
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 737 OF 1994.
ORIGINAL APPLICATION NO. 738 OF 1994.

Cuttack, this the 12th day of May, 1999.

O.A.NO. 737 of 1994.

Balaram Mandal. Applicant.

- Versus -

Union of India & Others Respondents.

O.A.NO. 738 of 1994.

Nimai Biswas. Applicant.

- Versus -

Union of India & Others..... Respondents.

(FOR INSTRUCTIONS)

1. Whether it be referred to the reporters or not? *Yes*
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? *No*

(G. NARASIMHAM)
MEMBER (JUDICIAL)

....

V. S. N. S. J.
(BOMMATHI SOM)
VICE-CHAIRMAN
12.5.99

b 6

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 737 OF 1994.
ORIGINAL APPLICATION NO. 738 OF 1994.

Cuttack, this the 12th day of May, 1999

C O R A M:

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN

A N D

THE HONOURABLE MR. G. NARASIMHAM, MEMBER(JUDICIAL).

• • •

O.A. NO. 737 OF 1994.

Shri Balaram Mandal, aged about 39 years,
S/o. Late Jogendra Mandal, Village-M.V. No.1,
PO/PS. Malkangiri, Dist. Malkangiri. ... Applicant

By legal practitioner: M/s. Bansidhar Baug, O.N. Ghosh,
M. N. Mohapatra, S.S. Prusty,
Advocates.

- Versus -

1. Union of India represented through its Secretary, Rakhyा Bhawan, Ministry of Defence, Secretariat, New Delhi.
2. The General Manager, Ordnance Factory, Bolangir (P), At. Badmal, PO. Gandapatrapalli, Via. Saitala, Dist. Bolangir.
3. Works Manager (Administration), Government of India, Ministry of Defence, Indian Ordnance Factory, Bolangir (P), At. Badmal, PO. Gandapatrapalli, Dist. Bolangir. Respondents.

By legal Practitioner : Mr. B. Dash, Additional Standing Counsel.

O.A. NO. 738 OF 1994.

Shri Nirmal Biswas, aged about 40 years,
S/o. late Mahajan Biswal, resident of
MV/43, PO. Gaudaguda, PS. Malkangiri,
Dist. Malkangiri. ... Applicant.

By legal Practitioner: M/s. B. Baug, O.N. Ghosh, M. N. Mohapatra, S. Prusty
Advocates

- Versus -

7 2
112//

1. Union of India represented through its Secretary, Ministry of Defence, Rakhyा Bhawan, Secretariat, New Delhi.
2. The General Manager, Ordnance Factory, Bolangir(P), At. Badmal, Po. Gandapatrapalli, Via. Saitala, Dist. Bolangir.
3. Works Manager (Administration), Government of India, Ministry of Defence, Indian Ordnance Factory, Bolangir(P), At. Badmal, Po. Gandapatrapalli, Dist. Bolangir. ... Respondents.

By legal Practitioner : Mr. B. Dash, Additional Standing Counsel.

0=0=0=0=0=0=0

O R D E R

MR. SOMNATH SOM, VICE-CHAIRMAN.

These two applications have been heard separately but the facts of both the cases are identical, the prayer made by two applicants in these two cases are also identical, counter filed by Respondents are also in the same lines and the points for decision are also the same, therefore, one order will cover both these cases.

2. For the purpose of the decision of these applications, it is not necessary to go into the too many facts of the matter. Two applicants are refugees from East Pakistan (Bangladesh), rehabilitated in Malkangiri and both of them belong to Scheduled Caste category. Both of them have passed Higher Secondary School Certificate examination from the Board of Secondary Education, Madhya Pradesh, which is equivalent to High School Certificate Examination/Matriculation in Orissa. According to the certificates, which is at Annexure-1 in both the OAs, the date of birth of the applicant in OA No. 737 of 1994 is '9.6.54' and that of the applicant in OA No. 738 of 1994 is '7.1.1954'.
S. Som

Their case is that the General Manager, Ordnance Factory, Bolangir, Respondent No. 2 called for names from the Employment Exchange for filling up of the post of Danger Building Worker in the Ordnance Factory. The Employment Exchange Officer, Bolangir, in his letter dated 27-7-1990 sponsored names of these two applicants, alongwith some other candidates. Works Manager (Admn.), Ordnance Factory, Bolangir, Respondent No. 3 called both the applicants to appear the interview in his letter dated 31.8.1990 which is at Annexure-2 to both the OAs. Both the applicants appeared at the interview on 20.9.90. At that time, they were aged about '36' years and were within the prescribed age limit for appointment to the post of Danger Building worker. During interview, applicants produced all Original documents as had been indicated in the call letters. After the interview was over, on 20.9.90, Respondent No. 3 issued letter on 24.11.1990, which is at Annexure-3 in both the OAs, to both the applicants enclosing three copies of attestation form and directing that the same should be returned duly filled in alongwith three copies of Pass-port size photograph. Applicants returned the attestation form with photographs but no further action was taken by the Respondents. After long delay, in letter dated 11.7.94 (Annexure-4 in both the applications), petitioners were offered appointment as Danger Building Worker in the scale of pay of Rs.800-1150/- plus other admissible allowances. Pursuant to this, applicants in OA No. 737/94 reported before the Res. No. 3 for joining on 26.7.94. Applicant in OA No. 738/94 reported for joining on 28.7.94. But they were not allowed to join. In letter dated 28-7-1994, which is at Annexure-5 in both the applications, both the petitioners were separately informed that as they were found over aged for the post of Danger Building worker for

S. Sam

appointment in the Factory, the matter will be examined further and a separate communication will follow after the examination. Applicants waited for a long time but there was no further communication from the side of the Respondents and ultimately, both of them issued Pleader's notice which is at Annexure-6 in both the applications but without any result. Applicants have stated that, Respondents have not indicated what was the maximum age limit for appointment to the post of Danger Building worker. They have also stated that even though the interview was held in 20.9.90 and Attestation forms were sent to both the applicants on 24.11.1990, thereafter Respondents did not take any action and offer of appointments were issued about four years later on 11-7-1994. Therefore, for being overaged, applicants, are not responsible in any manner. In the context of the above facts, both the applicants have prayed for quashing the letter dated 26-7-1994 at Annexure-5 and have prayed for a direction to the Respondents 2&3 to allow both the applicants to join the post of Danger Building worker in pursuance of the offer of appointment at Annexure-4.

3. Respondents have filed identical counter in which, they have stated that the maximum age limit for the post of DBW is 30 years relaxable by 5 years in case of SC/ST candidates. Date of birth of applicant in OA No. 737/94 is '9-6-1954' and the date of birth of Applicant in OA No. 738/94 is '7-1-1954'. Thus, when the Employment Exchange, Bolangir sponsored their names in their letter dated 27-7-1990, they were aged 36 years, 1 months and 8 days and 36 years, 6 months and 20 days respectively which is more than the maximum age limits prescribed even after giving age relaxation of five years to both these applicants who belongs

W. S. M.

115//

to SC category. Respondents have further stated that due to over-sight they were called to the interview and were empanneled, as per the select list dated 29.10.90 and were also issued offer of appointment. Respondents, have further Applicants stated that the/ have also not produced any documents, in support of their claim that they are refugees from East Pakistan (Bangladesh). After getting the Pleader's notice Respondents have looked into the matter. The relevant portion of the averments of the Respondents in paragraph-7 of their counter, in both these applications are quoted below:

"After getting the notice u/s.80 CPC from the Advocate of the applicant wherein it has been mentioned that the applicant is a refugee from East Pakistan the Respondent No;2 verified that the age relaxation upto 45 years available to refugee from East Pakistan was available only upto 31.12.1989 as published under Ministry of Personnel, P.G and Pensions, Department of Personnel and Training, New Delhi's Office Memorandum No.15012/7/87-Eatt. (D), dated 16.1.1989. Therefore, the applicant's case is not covered under the said Office memorandum. However, to ascertain the present position as regards to the age relaxation to refugee of East Pakistan (now Bangaladesh) the Res.No.2 has written to Ministry of Personnel and A.R. Department of Personnel and Training, New Delhi vide letter dated 31.10.94 to confirm any further extension given to the refugee from East Pakistan. The matter was also expedited through courier. But the Res.No.2 has not yet received any confirmation in this regard. Therefore, no final decision has yet been taken regarding the applicant's claim for appointment".

In the context of the above facts, Respondents have opposed the prayer of both the applicants.

S. Jam

4. Both the applicants have filed Rejoinder in which, they have stated that they are bona fide refugees from East Pakistan (Bangladesh) and now rehabilitated in Malkanagiri. Both the applicants have been issued refugee certificates and they have also acquired the citizenship

certificates and along with the rejoinder, copies of those certificates have been annexed and served on the counsel appearing for the Respondents.

5. We have heard Mr. B. Baug, learned counsel appearing for the petitioners and Mr. B. Dash learned Addl. Standing Counsel (Central) appearing for the Respondents in both these cases, and have also perused the records. From the above recital of facts, it is clear that the admitted position between the parties is that both the applicants were duly selected and were issued with the offer of appointment for the post of Danger Building Worker. But they have not been allowed to join because initially it was felt that they are ^{over aged} by the time their names were sponsored by the Employment Exchange. Respondents have also stated that for East Pakistan Refugees, the upper age limit is 45 years. They have also averred that the age relaxation upto 45 years was available upto 31.12.1989 according to the Ministry of Personnel PG & Pension Department of Personnel and Training Memorandum No.15012/7/87-Estt. (D), dated 16.1.1989. Respondents had written to the Department of Personnel and Training to ascertain if this upper age relaxation has been extended further beyond 31.12.1989 but they have not received any reply. Because of this, no final decision has been taken in the case of these applicants.

6. It is regrettable that even though the Respondents have tried to ascertain the position in their letter dated 31.10.1994 and more than four years have passed ^{in the meantime}, but they have not been able to get any reply. In these cases, Secretary Ministry of Defence has been ^{as} arraigned Respondent No.1 on behalf of the Union of India. It could not have been difficult for the Defence Ministry to obtain this clarification

S. Jam

from the Department of Personnel & Training much before the passage of more than four and half years. In view of this, these two original Applications are disposed of with a direction to Respondents that Respondents 2 & 3 should take up the matter of ascertaining if age relaxation upto 45 years available to the refugees from East Pakistan (Bangladesh) upto 31-12-1989, has been extended beyond that date. They should take up the matter, through the Ministry of Defence, within a period of 15(fifteen) days from the date of receipt of a copy of this order. Respondent No.1, is directed to obtain the clarification on this point, within a period of 30(thirty) days from the concerned Ministry and intimate the correct position to Respondents 2&3 within a period of 15(fifteen) days thereafter. On receipt of clarification, Respondents 2 & 3 should take further action in the matter, within a period of 30(thirty) days. To make it clear, it is ordered that in case the upper age relaxation has been extended beyond 31-12-1989 upto 27-7-1990, which was the date of sponsoring the names of the applicants by the Employment Exchange, then offer of appointment should be worked out and the Applicants, should be allowed to join in the posts of Danger Building Worker within the periods mentioned above.

7. In the result, these two Original Applications are disposed of with the observations and directions made in paragraph-6 above. No costs.

(G. NARASIMHAM)
MEMBER(JUDICIAL)

KNM/CM.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
12.5.99.