

NOTES OF THE REGISTRY

ORDERS OF THE TRIBUNAL

Counter not filed.

23
2.1.01

Bench

Counter not filed.

23
1.2.01

Bench

Copy of counter
not served.

23
22/2/01

Bench

For Admission

23
7.4.01

Bench

J.M.

Order dated 9.4.2001

In this application the petitioner has prayed for quashing the selection and recruitment to the post of Driver in Berhampur Telecom District with a direction to Respondent Nos. 2 and 3 to consider his case for the post of Motor Driver. In consideration of the prayer for interim relief it was ordered on 27.7.2000 that any appointment made in pursuance of Annexure-4 should be subject to result of this application.

Respondents have filed their counter opposing the prayer of the applicant. No rejoinder has been filed. We have perused the pleadings. Heard Shri P.V. Ramdas, learned counsel for the petitioner and Shri A.K. Bose, learned Sr. St. Counsel for the Respondent. For the purpose of determining this dispute it is not necessary to refer to all the averments made by the parties in their pleadings. Applicant has stated that his date of birth is 1.3.1970 and this has not been denied by the Respondents. Admittedly recruitment process was undertaken for filling up of one unreserved post of Motor Driver in Berhampur Telecom District. Respondents have stated in Para-4 of their counter that the petitioner was an applicant for the said post, but his application was summarily rejected as his age was more than 30 years as on 1.7.2000. Going by the date of birth of the applicant as on 1.3.2000 it is seen that on 1.7.1970 the applicant's age was 30 years and 4 months. Respondents have further stated in the same para of the counter that age relaxation is also available for those candidates engaged in the Department of Telecom as Motor Drivers to the extent of service rendered in the D.O.T. The applicant's case is that he worked as Motor Driver for 2 years from 1.1.1994 to 31.12.1994 vide Annexure-1 and from 1.1.1995 to 30.12.1995 vide Annexure-2. Respondents have stated in their counter that these two certificates have been given by S.D.O. Telegraph, Paralakhemundi on 15.4.1995 and 6.1.1997. They have stated that prior to 22.1.1997 no departmental vehicle was available with S.D.O. Telegraph, Paralakhemundi. They have stated that the work during this period was managed by hiring vehicle from the private parties and the applicant had

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worked under the contractor, who had supplied the vehicle. Respondents have denied that the applicant has worked under them for the period of two years as mentioned above vide two service certificates at Annexures-1 and 2.

As the respondents themselves have admitted that age relaxation is available to the extent of service rendered under them, the sole point for determination is whether the applicant has rendered service as Motor Driver under them for the period of two years, as claimed by him and if so whether on the basis of such service he is entitled to age relaxation to the tune of two years. We find from the record that these two certificates have been given by one Shri J. Pradhan, S.D.O., Telegraph, Paralakhemundi. In the certificate at Annexure-2 it is unequivocally stated that the applicant worked as a Driver temporarily on daily wage basis from 1.1.1995 to 30.12.1995. If the applicant did work under the contractor, there was no reason why the SDO, Telegraph gave such certificate stating that he worked as daily rated Motor Driver under Paralakhemundi Telecom Sub-division. In the 1st certificate also it is mentioned that the applicant worked as temporary driver from 1.1.1994 to 30.12.1994 under Paralakhemundi Telegraph Sub-division. But the respondents have stated that the applicant had worked under the contractor during this period. They have not even mentioned the name of the contractor under whom, according to respondents, the applicant had worked for two years. They have also not indicated the reason as to why SDO, Telegraph, Shri J. Pradhan had given such misleading certificates if at all and what action has been taken against him for giving such certificates. In view of the above, it is not possible to accept the stand of the respondents that the applicant had not worked under the respondents for the period from 1.1.1994 to 30.12.1995. In view of this we hold that the applicant has rendered two years of service under the respondents as Motor driver on daily wage basis and therefore, he is entitled to age relaxation to the tune of two years. We further hold that rejection of the candidature of the applicant on the ground of his having completed 30 years as on 1.7.2000 is not legally sustainable. The rejection of the candidature of the applicant is, therefore, held to

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be illegal. Respondents are directed to conduct a test in respect of the applicant for the single unreserved vacant post of Motor driver. This test should be conducted within a period of 90(Ninty) days from the date of receipt of copy of this order and further action should be taken on the basis of applicant's performance in the test. X

Applicant has prayed for quashing the test already conducted in respect of other candidates. We do not see any reason for this, because in the O.A. no averment has been made the ground on which the test conducted in respect of other candidates is liable to be set aside. In view of this, this prayer is accordingly rejected.

In the result, O.A. is disposed of in terms of observation and direction made above, but without any order as to costs.


MEMBER (JUDICIAL)


VICE CHAIRMAN

9.4.2001

Free copies of final
order dt. 9.4.2001
issued to counsels
for both sides.


S.O.


12/4/01