

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No. MA 697 of 2004
(OA 1525 of 1996)

Date of order : 10.8.07

Present: Hon'ble Mr.B.V.Rao, Judicial Member
Hon'ble Mr.P.K.Chatterjee, Administrative Member

TAPAN KR. SARMA

VS

UNION OF INDIA & ORS.

For the applicant : Mr.B.Chatterjee, counsel
For the respondents : Mr.P.K.Arora, counsel

O R D E R

Mr.B.V.Rao, J.M.

This is an application purported to have been filed under Rule 24 of the CAT (Procedure) Rules, 1987 seeking re-calling of the order dated 30.9.04 passed in the aforesaid OA. In the prayer portion, however, it is prayed that this application may also be treated as a Review Application to review the aforesaid order dated 30.9.04, and to recall the same.

2. The applicant had joined as a Substitute Cleaner in January, 1988 after applying in response to an advertisement dated 29.10.87. At the time of his application he disclosed his date of birth as 2.1.60 but it subsequently revealed that he has already passed the Secondary Examination wherein his date of birth was recorded as 2.1.57. For such false declaration of age, the applicant was proceeded against in a disciplinary proceedings and after an enquiry he was removed from service by order dated 20.9.96 and his appeal against the punishment order was also dismissed by the Appellate Authority by order dated 7.11.96. Challenging the aforesaid orders the applicant had approached this Tribunal by filing OA 1525/96. The OA was earlier disposed of by a Division Bench of this Tribunal on 11.8.2000 dismissing the OA. The applicant thereafter filed MA 490/2000 under Rule 24 of the CAT (Procedure) Rules, 1987 contending that the decision of the Tribunal dated 11.8.2000 was per incurium inasmuch as the decision

of the Hon'ble Supreme Court regarding non-extension of reasonable opportunity to defend in the Disciplinary Proceeding by non-supplying the documents asked for was omitted to be considered. Another Division Bench of this Tribunal by order dated 1.2.01 recalled the order dated 11.8.2000 and the matter was fixed for re-hearing. Thereafter another Division Bench of this Tribunal re-heard the matter and dismissed the OA on 30.9.04 by a detailed order. By filing the instant application again under Rule 24 the applicant has once again prayed for recalling the order dated 30.9.04 taking the same plea of it being per incurium on similar ground.

3. We have heard the ld.counsel for the parties. Ld.counsel for the applicant, Mr.B.Chatterjee, submitted that since the applicant was not given reasonable opportunity to defend himself by non-supplying necessary documents, and since the order of the Tribunal failed to consider the extant decision of the Hon'ble Supreme Court in that regard, the decision is to be treated as per incurium. Mr.Chatterjee has also submitted that even otherwise this application may also be treated as an application for review.

4. While on earlier occasion the Tribunal by order dated 1.2.01 recalled the order dated 11.8.2000, it took into consideration the decision of the Hon'ble Apex Court in the case of Trilok Nath –vs- Union of India & ors. [SLR 1967(1) 759] to the effect that non-supply of documents relied upon by the Enquiry Officer at the time of Disciplinary Proceeding against the applicant was not permissible. Since the Tribunal over-looked this point of law on earlier occasion, it recalled the order dated 11.8.2000 and fixed the matter for re-hearing. During the re-hearing all the points were urged and the Tribunal while passing the impugned judgment dated 30.9.04 took into consideration the aforesaid decision of Trilok Nath's case. It was also noticed that had the applicant disclosed his correct age he would have been age-barred to be employed under the Railways. Moreover, it was also noticed that the applicant during the course of proceeding admitted that he gave a false declaration about his date of birth and also prayed for mercy. The Tribunal, however, came to the conclusion that there was no merit in the OA and accordingly it was dismissed.

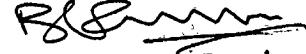


5. The objection that the order being per incurium as contended by the 1d.counsel for the applicant is not tenable because the decision in Trilok Nath's case has been considered by the Tribunal. The applicant has also contended that in terms of Railway Establishment Code, once the age is declared it cannot be altered or challenged. However, it is settled position of law that if a person obtains an employment by fraud, the employment itself becomes void ab initio. Here the applicant had already passed the School Final Examination and his date of birth was recorded in the Board. Knowing fully well and in order to get the employment he gave a false declaration by lowering his age so that he could obtain the employment as the maximum age limit was 28 years, which he could not have got had he declared his true age. We therefore find no ground to recall our order nor it is a case of review as no mistake or error apparent on the face of the record has been pointed out. The entire argument of the 1d.counsel for the applicant is on the point of law which is not permissible in a review petition which is to be done only within the parameters set out in order 47 Rule 1 of CPC.

6. For the reasons stated above we do not find any reason to recall our order and accordingly the MA is dismissed. No order as to costs.


MEMBER (A)

in


MEMBER (J)