

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No. OA 359 of 96

Present : Hon'ble Mr. Justice S.N. Mallick, Vice-Chairman
Hon'ble Mr. B.P. Singh, Administrative Member

Arun Kumar Mondal, S/o
Sahadeb Mondal, residing at
367/3 Mudiali Road, Ganden Reach,
Calcutta - 700 024.

.... Applicant.

- Versus -

1. Union of India, through the
Secretary, Ministry of Transport,
Govt. of India, New Delhi.
2. The Director, Marine Engineering
Training, P - 19 Taratola Road,
Calcutta - 700 088.
3. The Superintendent, Office of the
Marine Engineering Training,
P - 19 Taratola Road,
Calcutta - 700 088.
4. The Employment Officer,
Khiderpore Employment Exchange,
Karl Marks Sarani, Calcutta.

.... Respondents.

For the applicant : Mr. P.K. Ghosh, counsel

For the respondents: Mr. S.P. Kar, counsel

Heard on : 18.8.99, 6.9.99 & 20.9.99 Order on : 14-10-99

O R D E R

S.N. Mallick, VC

The petitioner in this OA has sought for a direction upon the respondent authorities to give him appointment in the post of Watchman which was offered to him on being selected for the said post as per letter dated 9.6.94 (Annexure 'A') and accepted by him by his letter dated 17.6.94 (Annexure 'C') on quashing of the order passed by the respondent authorities dated 5.8.94 as per Annexure 'E' whereby the offer of appointment was cancelled on the alleged ground of his being over-aged. The facts are as follows.

post of Watchman and he was asked to appear before the interview Board for the said post on 7.4.94 with all documents and testimonials in original as per their letter dated 3.3.94 (Annexure 'A'). The petitioner appeared before the Interview Board along with all documents and testimonials including the birth certificate in original. He was selected by the Interview Board for the said post and he was offered appointment as per the respondent authorities' letter dated 9.6.94 on the terms and conditions mentioned therein. One of the condition was that he was to produce the certificate of age in original with an attested copy of the same. He accepted the offer of appointment by his letter dated 17.6.94 (vide Annexure 'C'). In the meantime he resigned from the organisation where he was working and his resignation was accepted by his earlier employer as per their letter dated 16.6.94 (vide Annexure 'C'). Thereafter he was waiting for the formal order of appointment. But suddenly the order of offer of appointment was cancelled by the respondent authorities in their letter dated 5.8.94 (Annexure 'E'). Hence he has approached the Tribunal.

3. The respondent authorities have contested this application by filing a reply wherein their defence is that the petitioner being over-aged as specified in the relevant Recruitment Rule, the offer of appointment was cancelled. There was only an offer of appointment and not a formal appointment and as such the petitioner has no substantial right to be agitated before this Tribunal. It is stated that the date of birth of the applicant is 5.12.68 and the crucial date for calculating age is 13.12.93. He was age-barred as per the relevant Recruitment Rules.

4. The petitioner has filed a rejoinder wherein his original case has been re-stated. It is also averred that he was medically examined on 22.6.94 which would go to show that the respondent authorities waved the age bar if any.

5. We have heard Mr.P.K.Ghosh, 1d. counsel appearing ~~gax~~ for the petitioner and Mr.S.P.Kar, 1d. counsel for the respondents. Facts are all admitted. It is not the case of the respondents that the petitioner did not disclose his actual date of birth at the time of the interview. The departmental records have been produced before us. It is gathered from the said departmental records that the local Employment Exchange forwarded names of 20 candidates including the petitioner for the said post wherein the Employment Exchange recorded the date of birth of the petitioner as 5.12.68. Admittedly the date of birth of the petitioner is 5.12.68. It appears from the departmental records that all these facts were considered by the Selection Committee and the petitioner was alone selected for the said post and the Selection Committee approved the issuance of the appointment order to him. The requisition made to the Employment Exchange for the said post by the respondent authorities has not however, been produced before us. It is stated by the respondent authorities that the petitioner was over-aged as per Recruitment Rule on 13.12.93. There is nothing to show what was the maximum age limit for selection in the said post of Watchman. If the date of birth of the petitioner is admittedly 5.12.68 then it is difficult to apprehend the respondents' stand that he was age-barred on 13.12.93. He was only little over 25 years in age. Furthermore on consideration of the materials on record it appears to us that taking the same date of birth as correct the respondent authorities selected the petitioner and gave him the offer of appointment which was duly accepted by him. It is ~~not~~ the case of the respondents that due to adverse police report or on medical grounds the petitioner could not be issued the appointment letter. From the conduct of the respondent authorities before the issuance of the impugned order of cancellation it appears that even if there was any age bar it was condoned by them. Under such circumstances after the offer of appointment was accepted ^{lawful} by the petitioner there can be no reason on the part of the respondents to cancel the said offer. The respondent authorities in our view are estopped from taking the plea of age bar after the offer was made

to the petitioner and accepted by him. Here is a case where the petitioner was selected by the respondent authorities and given an offer of appointment which he accepted and expecting the formal order of appointment he resigned from the post he was holding under his erstwhile employer and was reasonably expecting the formal order of appointment to be issued by the respondent authorities as police & verification and medical examination was all over. The respondent authorities have gone beyond the standard of ethics in order to deprive the petitioner by cancelling the offer of appointment.

6. Under such circumstances we are of the view that the impugned order dated 5.8.94 should not be allowed to stand and the respondent authorities should be directed to issue formal order of appointment deeming the petitioner who have been given the appointment with retrospective effect from the date he accepted the offer i.e. u.e.f. 17.6.94. Accordingly the OA is allowed. The impugned order dated 5.8.94 is quashed and the respondent authorities are directed to deem the petitioner to have been appointed in the said post of Watchman from the date he accepted the offer by issuing a formal order of appointment. But we make it clear that his pay should be fixed on a notional basis from 17.6.94 till the date he actually joins in the said post. Such appointment letter should be issued by the respondent authorities within a fortnight from the date of communication of this order. No order as to costs.

Swami

MEMBER(A)

in

Ch. N. N. N.
VICE-CHAIRMAN