

CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH

O.A. No. 494 of 1996.

Wednesday this the 5th day of February 1997.

CORAM:

HON'BLE MR. P.V. VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

HON'BLE MR. A.M. SIVADAS, JUDICIAL MEMBER

1. P. Lathi Kumari,
W/o L.R. Sasikumar,
Upper Division Clerk,
Regional Passport Office,
Cochin.
2. K.A. Sulabha,
W/o V.V. Omanakuttan,
Upper Division Clerk,
Regional Passport Office,
Cochin.
3. V.A. Raghuprasad,
Upper Division Clerk,
Regional Passport Office,
Cochin.
4. K.S. Leelamani,
W/o K.P. Ramakrishnan,
Upper Division Clerk,
Regional Passport Office,
Cochin.

.. Applicants

(By Advocate Mrs. Preethi for Mr. P. Ramakrishnan)

Vs.

1. The Union of India represented by
the Secretary, Ministry of
External Affairs, New Delhi.
2. The Joint Secretary and Chief
Passport Officer, Ministry of
External Affairs, Patiala House,
New Delhi.
3. The Regional Passport Officer,
Office of the Regional Passport
Officer, Cochin.

.. Respondents

(By Advocate Shri TR Ramachandran Nair, ACGSC)

The application having been heard on 5th February
1997, the Tribunal on the same day delivered the following:

O R D E RPV VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

Applicants are Upper Division Clerks in the Regional Pass Port Office, Cochin. They were initially appointed in 1977 as Daily Rated Clerks, as part of a batch of 59 persons. According to the rules then in force, the age limit for appointment was fixed as twenty five. Subsequently, applicants were found to have exceeded the age limit of twenty five years by a few months as on the date they joined as Daily Rated Clerks. In R1, it is stated:

"Though there is nothing on record to show how these over-aged candidates assumed duty as DRCs, it is understood that according to the system followed by the Employment Exchanges in Kerala, the crucial date for age limit is reckoned as 31st of December of the year in which the recruitment takes place. This, however, cannot be applied in our case as the candidates who have completed 25 years of age on the date they joined as DRCs are considered overaged for purposes of regularisation."

It is obvious that the difference in perception on how the age limit is to be reckoned is the reason why the applicants were treated differently from their batch-mates. Be that as it may, by A-2 letter dated 25.12.78 the names of the applicants were recommended for absorption as regular Lower Division Clerks and by A-3 letter dated 15.3.79, it was ordered that:

"The Chief Pass Port Officer has approved the appointment of 59 DRCs sent with your letter under reference with effect from 8.12.78. You are requested to serve these DRCs, individually,

contd.

with the terms of appointments.... On receipt of the acceptance, a complete list of appointees may please be sent to the Ministry for issue of formal orders."

Till this point of time, there was no difference between the applicants and their other batch-mates. Thereafter, it was found that the applicants did not satisfy the age limit of 25 years at the time of joining as DRCs, and by R.1 letter dated 29.3.79, it was recommended:

"Since the above officials have been continuously in services with this office for long, it is recommended that upper age limit be relaxed in their case and sanction issued for their regular absorption in relaxation of rules."

In R.1, it was also pointed out that:

"...a similar case in June 1977... Two candidates, namely Smt P Sreekumari and Kum A Indira Amma, who had joined this office as DRCs... were overaged and their absorption as regular LDCs was held up... sanctioned absorption of these two officials by relaxing the upper age limit... in terms of Ministry of Home Affairs Memorandum No.4/1/55-RPS dated 12th February, 1955."

The grievance of applicants is that they have not been regularised along with their batch-mates, but were regularised only on 3.7.1980.

3. Respondents contend that by the time the mistake was discovered, new rules which were applicable since June, 1979 has come into force since the Staff Selection Commission had

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been empowered to take over recruitment of all Clerks. According to respondents, absorption ordered in the case of Smt P Sreekumari and Kum A Indira Amma was under the old rules, and so cannot be applied to the case of the applicants.

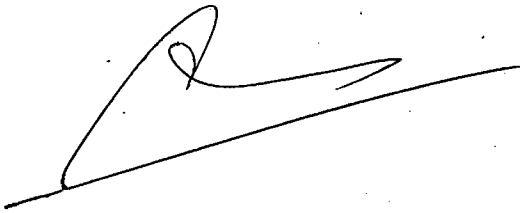
4. We find that in this case, the applicants had been recruited and appointed in 1977 and at the time of their appointment there had been no mention of their not satisfying the age criteria. All along, the presumption has been that they were within the age limit prescribed. It was on this presumption that A-2 has been issued recommending their cases for absorption and it was on the same presumption that A-3 order dated 15.3.79 was also issued by the Ministry of External Affairs approving appointments of applicants. It is only subsequently that it was noticed that applicants did not satisfy the age criteria. Even then, it appears that there had been no clear stand taken by the respondents. In R-1, it is stated that those who had completed 25 years of age on the date they joined as DRCs were considered overaged for the purpose of regularisation. Apparently, this can be taken to mean that applicants were not overaged for recruitment, but for regularisation, they might require certain relaxation. This cannot be taken to mean that regularisation by relaxation of age, when and if ordered, is to take effect only from the date on which such relaxation is ordered. Relaxation of age when granted, in effect, means that applicants have been recruited in relaxation of the age limit prescribed and, therefore, the relaxation is to apply, in point of time, to that date on which they were recruited. It will be meaningless to hold that age relaxation is granted to them only from a date in 1980, which is only a fortuitous date on which the mistake was detected, and has no nexus to the fact of applicants being over-aged at the time of their recruitment.

contd.

5. In the light of the discussion above, we consider that applicants are entitled to regularisation from the date on which they had been appointed in the same manner as the other persons recruited along with them were regularised, i.e. applicants are entitled to be regularised with effect from 8.12.1978, the date on which their batch-mates were regularised. Second respondent is directed to pass appropriate orders regularising applicants with effect from 8.12.1978 in terms of the above declaration within three months of today. Applicants will be entitled to all consequential benefits, which would arise from such regularisation.

6. Application is allowed with the aforesaid directions.
No costs.

Dated the 5th February, 1997.



AM SIVADAS
JUDICIAL MEMBER



PV VENKATAKRISHNAN
ADMINISTRATIVE MEMBER

List of Annexures

Annexure A2: True copy of letter No.101(i)Ket/77
dated 25.12.1978 from the 3rd respondent
to the under Secretary (PVA), Ministry of
External Affairs, New Delhi.

Annexure A3: True copy of letter No.V.IV/584/9/78
dated 15.3.79 from from under Secretary (PVA)
to the 3rd respondent

Annexure R1: True copy of the letter No.101/1/Ker/77
dated 29.3.1979 sent by the Regional Passport
Officer to the Ministry of External Affairs.