

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No.
~~XXXXXX~~

597/89 182

DATE OF DECISION 18.12.90

N. Unnikrishnan

Applicant (s)

M/s MR Rajendran Nair
and PV Asha

Advocate for the Applicant (s)

Versus

Union of India, Secretary
Ministry of Finance and another

Respondent (s)

Mr. NN Sugunapalan, SCGSC
through Mr. Madhusoodhanan

Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. S.P. Mukerji - Vice Chairman

and

The Hon'ble Mr. N. Dharmadan - Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not? NO
3. Whether their Lordships wish to see the fair copy of the Judgement? NO
4. To be circulated to all Benches of the Tribunal? NO

JUDGEMENT

(Hon'ble Mr. S.P. Mukerji, Vice Chairman)

In this application dated 8th October, 1989 filed under Section 19 of the Administrative Tribunals Act, the applicant who has been working as a casual worker in the office of the Accountant General, Kerala at Trichur since 3.6.85 has prayed that he should not be denied employment from 29.9.89 ~~but~~ regularised in a Group 'D' post of Peon. The only road block in his regularisation, which has been put forward by the respondents is the Department of Personnel Circular dated 7.6.88, a copy of which is at Annexure 3. This

Circular has been issued with the intention of regularisation of casual workers in pursuance of the judgment of the Hon'ble Supreme Court in the ~~Celebrated~~ ^{Engineer-in-Charge CPWD AIR 1986 SC 584} case of Surinder Singh and ~~Another~~ Vs. ~~Another~~

The main thrust in that Circular is that a casual worker who has been in employment for a considerable period should be considered for regularisation and if at the time of regularisation his age is more than the upper age limit fixed for that post, his case should be considered for relaxation of the upper age limit in case at the time of initial appointment as casual labour he was within the upper age limit for that post. The other limitation is about availability of vacancies and those ~~less~~ fortunate ones who cannot be accommodated due to lack of vacancies have been directed to be discharged. The applicant before us is aggrieved by the restrictive clauses of the aforesaid Circular. His Date of Birth is admittedly 11.9.1954 and he was employed for the first time on a casual basis on 3.6.85 when he had crossed 30 years of age. The upper age limit for appointment to a group 'D' post is 25 years and since at the time of initial appointment on a casual basis he was over-aged, his regularisation stands debarred by Clause (X) of para 1 of the aforesaid Circular dated 7.6.88. It

appears that the immediate superiors of the applicant had recommended his case for relaxation of the upper age limit but the relaxation was not accorded as he had crossed the upper age limit even at the time of initial recruitment. In this connection it will be useful to quote para 1 clauses(X) and (XI) of the aforesaid Circular as follows:

- "x) The regularisation of the services of the casual workers will continue to be governed by the instructions issued by this Department in this regard. While considering such regularisation, a casual worker may be given relaxation in the upper age limit only if at the time of initial recruitment as a casual workers, he had not crossed the upper age limit for the relevant post.
- xi) If a Department wants to make any departure from the above guidelines, it should obtain the prior concurrence of the Ministry of Finance and the Department of Personnel and Training."

A perusal of the aforesaid two clauses would indicate that the intention of relaxation did not end where the upper age limit is crossed at the time of initial recruitment and as the aforesaid clauses ex facie would indicate that when the upper age limit had been crossed at the time of initial recruitment on a casual basis, the department could depart from the guidelines ~~with~~ the prior concurrence of the Ministry of Finance and Department of Personnel and Training. Whereas the respondents' case is that the benefit of clause(X) is not available to the applicant, the learned counsel for the applicant states that if the

case had been properly taken up for relaxation under clause XI, the applicant could have been regularised.

The learned counsel for the applicant further cited a precedent case of one Shri Dominic in whose case even though he had crossed the upper age limit of 25 years at the time of his initial employment on a casual basis in June, 1976, he was regularised with effect from 1.9.85. The learned counsel argued that there is no reason why the applicant also should not be accorded the same degree of relaxation as has been given to Shri Dominic. To this the learned counsel for respondents argued that Dominic's relaxation materialised on 1.9.85 i.e., long before the Circular of 7.6.88 was issued. He, however, conceded that even before the Circular of 7.6.88 there were instructions extant in which restriction of upper age limit had been imposed ~~and~~ imposed and that in the case of Dominic, relaxation of the upper age limit at the time of initial engagement was considered and given. It is true that the applicant joined casual employment on 3.6.85 for the first time when Shri Dominic had already completed about 9 years of casual employment. But the fact remains that the applicant also had completed three years of service on 3.6.88 before the Circular of 7.6.88 was issued. Our attention was also drawn to the letter of the Office of the Comptroller and Auditor General

dated 5.3.89 addressed to the Accountant General (Audit), Kerala in which the applicant's case was rejected out of hand on the basis of the restriction in clause X para 1 of the aforesaid Circular whereas we feel that the possibility of departure from the guidelines as indicated in clause XI in the same Circular was not adequately explored in favour of the applicant. It may also be recalled that this Tribunal on M.P.716/90 filed by the applicant directed the respondents to interview the applicant also provisionally for regular appointment to Group 'D' post and the applicant was accordingly so interviewed. The result of the interview has not yet been announced.

2. In the facts and circumstances, we allow the application to the extent of directing the respondents to announce the results of the interview and if the applicant comes within the zone of ~~selection~~⁶, to consider relaxation of the upper age limit in terms of para 1 clause XI of the aforesaid Circular of 7.6.88. We hope that in view of what has been stated above and in the context of the precedent case of Shri Dominic, the respondents will not find it very difficult to accord the age relaxation in case the applicant falls within the zone of selection.

Till such time the case of the applicant is finally settled

:6:

on the above basis, the applicant should be continued
on casual employment depending upon the availability
of work. There will be no order as to costs.


(N.DHARMADAN)
MEMBER (JUDICIAL)

18.12.90


(S.P.MUKERJI)
VICE CHAIRMAN

18.12.90

Ks.