

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 74 of 2010

Tuesday, this the 25th day of October, 2011

CORAM:

**Hon'ble Mr. Justice P.R. Raman, Judicial Member
Hon'ble Mr. K. George Joseph, Administrative Member**

V.P. Nirmala, D/o. The late Govindan Nair, aged 49 years,
working as Sweeper (Daily Wages), Calicut Commissionerate of
Central Excise, Central Revenue Buildings, Mananchira, Kozhikode,
residing at Valyaparambath House, P.O. Makkada, Via.,
Kakkodi, Calicut - 673 617. **Applicant**

**(By Advocate – Mr. O.V. Radhakrishnan, Sr. along with
Mr. K. Ramachandran & Mr. Antony Mukkath)**

Versus

1. Central Board of Excise and Customs, represented by its Chairman, New Delhi.
2. Chief Commissioner of Central Excise and Customs, Kerala Zone, Cochin.
3. Commissioner of Central Excise and Customs, Calicut Commissionerate of Central Excise, Central Revenue Buildings, Mananchira, Kozhikode-673 001.
4. Union of India, represented by its Secretary, Ministry of Finance, Department of Revenue, New Delhi.

(By Advocate – Mr. S. Jamal, ACGSC)

This application having been heard on 30.09.2011, the Tribunal on

25-10-11 delivered the following:

ORDER

By Hon'ble Mr. K. George Joseph, Administrative Member -

The applicant in this OA is a part time Safaiwala of Cochin-II Commissionerate since 26.5.1999 on daily wages for cleaning office premises of the 3rd respondent. She has sought a declaration that she is legally eligible and entitled to be regularized in Group-D considering her long continuous service for over 10 years as Sweeper in Group-D and having regard to the fact that she is a meritorious sports person who has represented the country and State in various events of games/sports qualifying as meritorious sports person for consideration for appointment to Group-C and Group-D posts under the Central Government as per OM dated 21.3.1991. She also sought direction to the respondents to regularize her service as Sweeper in Group-D with effect from the date of her initial engagement as Sweeper in Group-D.

2. The applicant submitted that Annexure A-39 letter of the second respondent rejecting her claim for regularization of her service in Group-D showing reasons which have no factual or legal foundation is illegal, arbitrary and discriminatory. She was engaged directly by the 3rd respondent as Sweeper in Group-D on daily wage basis without being sponsored by the employment exchange considering her meritorious contribution in the field of sports and in view of the fact that 5% vacancy in the direct recruitment quota is earmarked for appointment in the department of the Government of



India. The stand of the second respondent that the claim of the applicant for permanency based on the dictum of the Hon'ble Supreme Court is not sustainable because the said judgment is applicable only to those qualified casual workers engaged in irregular manner in duly sanctioned posts, is wholly misconceived and is legally not sustainable. The applicant is a meritorious sports person. She was eligible to be appointed against the Group-D post in terms of Annexure A-28 OM dated 4.8.1980 and 21.3.1991. She is also entitled to relaxation in upper age limit up to a maximum of five years for the purpose of appointment.

3. The respondents submitted that the applicant was working in the 3rd respondent's office on daily wages on contract basis since May, 1999 for cleaning office and premises. From September, 2005 onwards the work of cleaning has been out sourced to various private contractors. The applicant has been engaged by the appointed contractors for cleaning the office of the 3rd respondent and she has been attending to the work regularly. The request of the applicant for regular appointment was already rejected by the Cochin Commissionerate which is the cadre controlling authority for recruitment, vide letter dated 15.9.2000. The maximum age limit as per the relevant rules prescribed for appointment in group-D posts is 25 years and it can be relaxed for 5 years for sports persons. In the instant case the applicant in 2002 had already crossed 40 years of age. The appointment against sports quota is only for 5% of vacancies and as and when vacancies arise the selection is subjected to the detailed procedure prescribed in this regard.

4. In the rejoinder the applicant submitted that as on the date of her initial engagement as Group-D she was within the age limit and that no age limit is prescribed for regularization. In Annexure R-4 letter dated 17.2.2004 the Additional Commissioner (P&V) considering her meritorious performance in sports requested the Ministry of Finance, Department of Revenue to grant her age relaxation as a special case so as to enable her to get appointment in Group-D in the Department on regular basis.

5. We have heard the learned counsel for the parties and perused the records.

6. The representation of the applicant dated 22.6.2009 for permanency in the post held for 10 years was turned down vide Annexure A-39 order dated 11.9.2009 for the reasons that she was only a contract labour working under the contractors on contract basis and she was not recruited against duly sanctioned post. Her request for permanent employment was rejected on 15.9.2000 (Annexure R-2) and on 1.12.2005 (Annexure R-5) as she had crossed the age limit. The recommendation of the Additional Commissioner (P&V) dated 17.2.2004 (Annexure R-4) for granting the applicant age relaxation as a special case in view of her meritorious performance in sports does not appear to have been considered. The undisputed fact is that the applicant is an outstanding sports person suffering economic hardship. She is legally not entitled for regular appointment. She is over aged too. As per OM dated 4.8.1980 and 21.3.1991 meritorious sports persons can be



considered for appointment to Group-C and D posts in relaxation to the recruitment rules. R-4 letter proposing special consideration of the applicant for relaxation in the age limit for appointment to a Group-D post should have been considered in the spirit of the OMs mentioned above. The claim of the applicant for appointment is solely based on her meritorious performance as a sports person. The respondents had at no point of time considered this aspect of the applicant's case.

7. The issue is whether the Government would like to appreciate the meritorious performance of the applicant as sports person in the light of the OMs referred to above. Since the impugned order at Annexure A-39 does not advert to the relevant aspect of the applicant's case it is arbitrary and is set aside. The respondents are directed to consider the proposal of the Additional Commissioner (P&V) dated 17.2.2004 to consider the case of the applicant sympathetically and to consider grant of age relaxation as a special case so as to enable her to take up the appointment in a Group-D post in his department. The same should be considered and disposed of by passing a speaking order by the Secretary, Ministry of Finance Department of Revenue, New Delhi, i.e. respondent No. 4 within a period of three months from the date of receipt of a copy of this order. OA is disposed of as above. No costs.


 (K. GEORGE JOSEPH)
 ADMINISTRATIVE MEMBER
 "SA"


 (JUSTICE P.R. RAMAN)
 JUDICIAL MEMBER