

Central Administrative Tribunal
Ernakulam Bench

OA No.331/2012

Tuesday, this the 25th day of June, 2013.

C O R A M

HON'BLE DR.K.B.S.RAJAN, JUDICIAL MEMBER

V.P.Nirmala, age 50 years
D/o Late Govindan Nair
Working as Sweeper (Daily Wages)
Calicut Commissionerate of Central Excise
Central Revenue Buiilding, Mananchira, Kozhikode.
Residing at Valiyaparambath House
Makkada PO, Kakkodi
Kozhikode-673 617. Applicant

(By Advocate: Mr.P.R.Sreejith)

Versus

1. Central Board of Excise & Customs
represented by its Chairman
New Delhi-110 001.
2. The Commissioner of Central Excise & Customs
Kerala Zone, Cochin-682 018.
3. The Chief Commissioner of Central Excise & Customs
Kerala Zone, Cochin-682 018.
4. Commissioner of Central Excise & Customs
Calicut Commissionerate of Central Excise
Central Revenue Buildings, Mananchira
Kozhikode-673 001.
5. Union of India representd by its
Secretary
Ministry of Finance
Department of Revenue
New Delhi-110 001. Respondents

(By Advocate: Mr.Sunil Jacob Jose, SCGSC)

This Original Application having been heard on 20th June, 2013, the
Tribunal on 25.06.2013 delivered the following:-

ORDERHON'BLE DR.K.B.S.RAJAN, JUDICIAL MEMBER

The impugned order vide Annexure A-5 is sequel to the order passed by the Tribunal in OA No. 74 of 2010 vide Annexure A-4 order dated 25th October, 2011.

2. Since the facts of the case upto the passing of that order had been reflected in the said order, the entire order as such, is reproduced for having a silhouette of the facts of the case.

"ORDERBy 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."

3. The respondents have, in pursuance of the directions given vide para 7 of the order above, considered the case at the Secretary level but rejected by a comprehensive order. The crux of the said impugned order is that the concession given to the sportspersons for appointment under the Sports Quota are defined as well as confined in the relevant Government orders dated 04-08-1980 and 21-03-1991 of the DoPT. Each of the certificate enclosed to the application of the applicant had been analysed and it has been found that certificates at Serial Nos. 1 to 5, 7, 8, 11 and 19 (nine in all) are of the State level, whereas the requirement is of the National or International level competitions. Certificates at Serial Nos. 9, 10, 12 and 14 (four in number) relate to Armsport or Armswrestling and these sports are not enlisted in the order dated 21-03-1991 of the DoPT and hence, they are of little consequence. In so far as certificate at Serial No. 6 is concerned, power lifting is a sport in which the applicant participated in 1988, but which has been enlisted in the list of sports approved for the purpose of consideration for appointment on regular basis under the Sports Quota only in 1991 and the same has no retrospective effect. The impugned order further goes to show that the matter was referred to DoPT for their considered opinion and the DoPT, the Nodal Ministry opined to examine the feasibility of regularization of the applicant's services as a casual labour as per the provisions of the DoPT OM dated 07-06-1988. The same was examined by the respondents but since the applicant's engagement as a casual labour is only through a contractor and she not being a casual labour engaged directly by the respondents, the basic requirement for consideration under the provisions of OM dated 07-06-1988, the applicant does not fill the bill. In addition, yet another condition that the casual labourers should have been within the age limit at the time of initial engagement too is not being fulfilled as the age of the applicant at the time of her initial engagement through contractor in 1999 was 38 years.



4. It is against the above impugned order that the applicant has filed this OA. According to the applicant, a hyper technical and uncalled for examination of the applicant's certificate for power lifting was made by the respondents. The continued service of the applicant cannot be termed as one outside the constitutional scheme. The nature of work she has been performing is one of perennial in character and according to the applicant, she has been working against a sanctioned Group 'D' post though her engagement is tagged as casual labour. Refusal to regularize smacks malafide and is vitiated due to arbitrariness. Certain certificates produced along with the earlier application had not been considered and no opportunity was given to produce them for consideration. Hence, the applicant has sought for the following reliefs:-

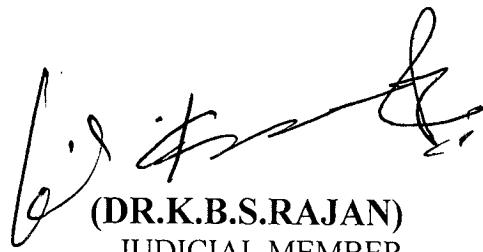
- a) Call for the records leading to Annexure A5 order dated 10.2.2012 and set aside the same as arbitrary and illegal;*
- b) Declare that the applicant is legally entitled to be regularized in Group-D service of the respondents considering her long and continuous service for over 10 years as Sweeper in Group-D and having regard to the fact that she is a meritorious sportsperson entitled for appointment to Group-C/Group-D post under Annexure A1 OM dated 21.3.1991;*
- c) Issue appropriate direction or order directing the respondents to regularize the service of the applicant as Sweeper in Group-D with effect from the date of her initial engagement as sweeper under the department and grant her all consequential service and monitory benefits, and;*
- d) Grant such other relief this Hon'ble Tribunal may deem fit to grant in the facts and circumstances of the case.*

5. At the time of initial admission, the counsel for the respondents was advised to seek instructions and in the meantime, status quo order was passed, vide order dated 18-04-2012.

6. Respondents have contested the O.A. They have contended with emphasis that the nature of engagement of the applicant is one coming under contract labour and to substantiate that such a provision is prevalent, they have annexed Annexure R-1 letter dated 07.09.2006. As regards the various sports certificates, the respondents have contended that the applicant does not meet the requirement as per the terms and conditions regulating the appointment under the sports quota.

7. Arguments of the counsel for the parties were heard and documents perused. The direction given in the earlier order of the Tribunal was to reconsider, sympathetically, the case of the applicant in the light of the provisions of OMs relating to sports quota at the level of the Secretary and the same has been so considered at the level of Secretary. The consideration, in the opinion of the Tribunal, has been full and complete and microscopic. Attempt made by the respondents to accommodate the applicant, though not under Sports Quota in which she was not found eligible as contained in the discussion in the impugned order, under the other provision of regularization of casual labour, clearly reflects that the respondents have considered the case sympathetically. Yet, since the case of the applicant did not fall within the prescribed parameter for either appointment under sports quota or under regularization of the casual labour, the case of the applicant has been rejected by the Respondents.

8. No illegality or infirmity, much less arbitrariness or malafide, could be discerned from the impugned order. The OA is, therefore, dismissed. No cost.



(DR.K.B.S.RAJAN)
JUDICIAL MEMBER

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