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CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

~~NEW~~ BOMBAY BENCH

CAMP AT NAGPUR

O.A. No. 113/88

198

T.A. No.

DATE OF DECISION 11.3.1992

Ramesh S. Pathak

Petitioner

Mr. M.M. Sudame

Advocate for the Petitioner(s)

Versus

Union of India & Ors.

Respondent

Mr. Bhangaḍe

Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. Justice U.C. Srivastava, V/C

● The Hon'ble Mr. M.Y. Priolkar, M(A)

1. Whether Reporters of local papers may be allowed to see the Judgement ? 7
2. To be referred to the Reporter or not ? ✓
3. Whether their Lordships wish to see the fair copy of the Judgement ? ✓
4. Whether it needs to be circulated to other Benches of the Tribunal ? ✓


(U.C. Srivastava)
V/C

A BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY
CAMP AT NAGPUR
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Original Application No.113/88

Ramesh S. Pathak

... Applicant

V/s

Union of India & Ors.

... Respondents

CORAM : Hon'ble Vice-Chairman, Shri Justice U.C.Srivastava
Hon'ble Member (A), Shri M.Y.Priolkar

Appearances:

Mr. M.M.Sudame, Advocate
for the applicant and
Mr. Bhangade, Counsel
for the respondents.

ORAL JUDGMENT:

Dated : 11.3.1992

(Per. U.C.Srivastava, Vice-Chairman)

The applicant after getting himself enrolled in the Employment Exchange in the year 1977 was employed by the Assistant Collector of Central Excise as Full-time Water Sprinkler-cum-Water in the month of April 1982. In the appointment order it was stated that he would be a temporary contingent paid employee on daily wages basis until further orders and that he will get daily wages at the rate of Rs.7.75 per day and he would not be entitled to leave and that his services could be terminated without assigning reasons and without issuing notice. The applicant worked upto 30th June 1982. Again he was appointed on 15.4.1983 as water sprinkler-cum-waterman and continued upto 30.6.1983. Thereafter he was appointed as Farrash on 23.2.1985 and worked till 11th January, 1988 without any break. In the year 1987 i.e. on 26.7.1987 he applied to the respondents to regularise him in service and it was stated by him that the respondents have recruited sepoys in the department and he also appeared in the medical

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examination in the year 1986 for that purpose and although he has passed but he has not been called for interview. The applicant was given a reply on 11th January 1988 that his case could not be considered for regularisation by the respondents as he was not recommended through the Employment Exchange and his age exceeded by 1 year 2 months and 6 days from the prescribed age limit by the Government. The applicant agitated this matter pointing out that he has worked for more than 240 days in a particular year and now he has worked on another post and he should be regularised but the applicant was faced with the termination order which has been challenged by him in this application. Although the applicant's application was rejected on two grounds that he has not come through Employment Exchange and that he was over aged, but it appears that now this plea has been given up and from the documents it appears that the applicant had come in the department through Employment Exchange. Once a person enters into the department through Employment Exchange and thereafter he is continued may be with break, he cannot be asked to get his name sponsored every now and then by the Employment Exchange. According to the respondents he was engaged as full-time Water Sprinkler-cum-Waterman as a temporary contingent paid employee and in the year 1982 he worked for 60 days and in the year 1983 he worked for 2½ months and as there was need of one person for doing miscellaneous work like cleaning tables, chairs, racks, etc. and for storing drinking water he was engaged on daily wages with effect from 23rd February 1985. Thus there is no denial of the fact that the applicant was taken in service thereafter on daily wages as Farrash till his services were discontinued on 8th January 1988.

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In every year, therefore, he has worked for more than 240 days as per the case of the respondents themselves. For regularisation the respondents have placed reliance on the circular issued by the Department of Personnel & Administrative Reforms dated 21st March 1979 in which the following conditions were laid down:-

- i) The casual employees should have been engaged through employment exchange.
- ii) They should possess experience of minimum of two years continuous service as casual labour in the office/establishment to which they are to be appointed. The casual employees who have put in at least 240 days as casual labourers (including broken periods of service) during each of the two years of service referred to above shall be eligible to get regularised.
- iii) Broken periods of service rendered as casual employees shall be taken into account for purpose of regularisation in regular establishment provided that one stretch of service is for more than six months.
- iv) They should be eligible in respect of maximum age on the date of regularisation. For this purpose, the casual employees may be allowed to deduct from their actual age the period spent by them as casual employees and if after deducting this period, they are within the maximum age limit, they should be considered eligible for regularisation.
- (v) No casual employee shall be considered eligible for appointment on the regular establishment unless he possesses educational qualifications prescribed for the post.

The respondents have stated that in view of the circular which has been issued by the Department of Personnel and Administrative Reforms, the applicant did not fulfil all

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the criteria and that is why there was no question of his regularisation and further though he had passed his SSC Examination in the year 1977. It is thus obvious from this fact that so far as the first ground is concerned that the applicant's name was not sponsored by the Employment Exchange that was not correct on the basis of his representation was also earlier rejected. But the only ground which stands in the way of the applicant is that he was over aged.. The respondents with open eyes appointed the applicant as a casual labourer first on daily wage basis and thereafter as Farrash which is some sort of a regular post, when he was over aged. He was given appointment as a Farrash in the year 1985 though earlier he had worked only as a Water Sprinkler-cum-Waterman and he was allowed to work three years continuously. Although there was no order for relaxing the age, qualification etc. but it appears that being satisfied with his work there was some sort of tacit relaxation in the age and that is why he was given the appointment. It is in these circumstances that the fitness of justice require that the respondents should consider the case of the applicant not for regularisation but for appointing him again by relaxing the age, qualification etc. in view of the fact that they have appointed him earlier when he was over aged and subsequently also he was given another appointment of Farrash when he had crossed the maximum age much earlier. Let this consideration be made within a period of three months from today. No order as to costs.



(M.Y. Priolkar)
Member(A)



(U.C. Srivastava)
Vice-Chairman