

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH
* * * * *

Commercial Complex (BDA)
Indiranagar
Bangalore - 560 038

Dated : 20 JUL 1988

APPLICATION NO.

1045

/87(F)

W. P. NO.

Applicant(s)

Respondent(s)

Smt P. K. Rohini Kutty

To

v/s

The Secretary, M/o Defence, New Delhi & 2 Ora

1. Smt P.K. Rohini Kutty
Lower Division Clerk
Electronics & Radar Development
Establishment (LRDE)
Ministry of Defence
High Grounds
Bangalore - 560 001
2. Shri R.U. Goulay
Advocate
90/1, 2nd Block
Thyagarajanagar
Bangalore - 560 028
3. The Secretary
Ministry of Defence
South Block
New Delhi - 110 011
4. The Scientific Adviser to Raksha Mantri
& Director General Research and
Development
Ministry of Defence
Directorate of Personnel - RD 22
Sena Bhavan
DHQ P.O.
New Delhi - 110 011
5. The Director
Electronics & Radar Development
Establishment (LRDE)
Ministry of Defence
High Grounds
Bangalore - 560 001
6. Shri M.S. Padmarajaiah
Central Govt. Stng Counsel
High Court Building
Bangalore - 560 001

Subject : SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith the copy of ORDER/STAY/INTERIM ORDER passed by this Tribunal in the above said application(s) on 15-7-88.

Encl : As above

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R. V. V. V. S. B.
DEPUTY REGISTRAR
(JUDICIAL)

ISTRAR

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: BANGALORE

DATED THE 15TH DAY OF JULY, 1988.

Present: Hon'ble Shri Justice K.S. Puttaswamy .. Vice Chairman
Hon'ble Shri L.H.A. Rego .. Member (A)

APPLICATION NO. 1045/87(F)

Smt
Mrs. P.K. Rohini Kutty
Lower Division Clerk
L.R.D.E.
Bangalore.

(Shri R.U. Gouley, Advocate)

.. Applicant

Vs.

1. Union of India by its Secretary
Ministry of Defence
New Delhi.
2. Scientific Adviser to
Minister of Defence
and Director General and Research and
Development, Directorate of
Personnel-RD 22, Ministry of Defence
Sena Bhavan, DHQ PO., New Delhi-110 011.
3. The Director
LRDE, High Grounds
Bangalore.

.. Respondents

(Shri M.S. Padmarajaiah, Senior Standing Counsel for
Central Govt. for respondents)

This application having come up before

the Tribunal today, Hon'ble Shri L.H.A. Rego, Member (A),
made the following:

ORDER

The applicant herein prays, that the
Tribunal issue an order or direction to the respondents (R)
to relax her overage, when she entered service as Lower
Division Clerk (LDC) in the Defence Department and grant
her consequential benefit of confirmation in that grade
and promotion to the next higher post of Upper Division
Clerk (UDC) according to her turn.

2. In a nutshell, the facts giving rise
to this application are as follows. The applicant was



recruited as LDC, on a purely temporary basis for a period of three months, on 21.5.1969 and posted in the office of the Headquarters, Jullunder Recruiting Zone, Jullunder Cantonment and is todate, working in that capacity. According to the terms of her appointment, her services were liable to be terminated at any time without notice. She was accordingly discharged from service with effect from 19.8.1969 and struck off from the strength of the unit, the same date. She was however once again appointed as LDC, on 29.8.1969, for a period of three months on a temporary basis as above. On expiry of that period, she was re-appointed for a further period of three months from 29.11.1969 on a purely temporary basis. Once again, she was appointed for 90 days thereafter, with effect from 28.2.1970 and again for a period of 6 months from 29.5.1970 on a similar basis.

3. She was posted permanently at the Terminal Ballistic Research Laboratory, Chandigarh (TBRL, for short) with effect from 27.11.1970 and resumed duty there on 28.11.1970.

4. From TBRL she was permanently transferred to the Electronics and Radar Development Establishment, Bangalore (LRDE, for short) and was relieved from there on 1.6.1971. She joined duty at LRDE, Bangalore, on 4.6.1971 and is working there ever since.



5. On verification of her service record at LRDE, Bangalore, it was noticed, that she was overage at the time of entry in service. Her date of birth (DOB for short) was seen to have been recorded initially in ^{her} ~~her~~

Service Book as 1-10-1944 instead of 10-1-1944, which was her actual DOB as recorded in her Secondary School Leaving Certificate ('SSLC', for short). The respondents allege, that by manipulation of her DOB as above, she manoeuvred to surmount the bar of overage (the maximum age limit being 25 years) and secure employment in Government service. They further state, that even though she was in possession of her SSLC wherein her DOB was clearly entered as 10-1-1944, she suppressed the same, at the time her DOB was recorded initially in her Service Book. The respondents aver, that this was evident from the fact, that she gave a wrong declaration about her age, before the Recruiting Medical Officer, who on that basis, gave a medical certificate on 21-5-1969 and again on 29-8-1969, in regard to her age. They state, that this action on the part of the applicant, was premeditated with the sole object of fraudulently securing Government service, by circumventing the age-limit prescribed.

6. On 8-12-1970, her DOB recorded initially as 1-10-1944 on 21-5-1969 is seen to have been abruptly corrected as 10-1-1944 by the Administrative Officer of the Jullunder Recruiting Zone by his Order No. DO. Part II No. 28(c) dated 8-12-1970. According to this altered DOB, she was overage at the time she entered Government service on 21-5-1969 but strange enough, this irregularity was neither noticed by the respondents nor prompt action taken thereon by them.

7. Article 51 of the Civil Service Regulations ('CSR' for short) which is relevant to this case, reads as under:

"A person whose age exceeds twenty-five years, may not ordinarily be admitted into the pensionable service of the State without sanction of the Head of the Department."

8. The discovery that the applicant was overage, at the time of entry into service posed a problem to the respondents, while considering issue of a quasi-permanency certificate to her and her claim for eventual promotion to the higher grade of UDC.

9. Respondent 3, is said to have pursued the matter with the authorities concerned, in regard to relaxation of her overage, at the time of entry in service but strange enough the respondents have not furnished the chronological details, as to how the matter was pursued and with what result. A long period of nearly 18 years, is thus shrouded in mystery.

10. It is noticed from Annexure-A, that the Senior Administrative Officer II, LRDE, in his letter dated 11-5-1977, had at the instance of the Headquarters, Research and Defence Organisation, New Delhi, asked the applicant to explain the discrepancy in regard to her DOB. How the matter progressed thereafter, surprisingly, could not be explained to us chronologically, by both sides, to our satisfaction.

11. However, according to the letter dated 18-6-1983 from R-2, which is reproduced below, the matter is seen to have reached finality, in that, the request of the applicant in regard to relaxation of her overage, at the time of entry in Government service, was rejected.



" No. Pers/24407/RD-22
MINISTRY OF DEFENCE
Research & Development Organisation
New Delhi, the 18 June '83.

To

The Director
Electronics & Radar Development
Establishment
Post Box No.5108, High Grounds
Bangalore - 560 001.

Subject:- RELAXATION OF UPPER AGE LIMIT : SMT.
P.K. ROHINI KUTTY, LDC

Reference your letter No.11658/Adm, dated
9.5.1983.

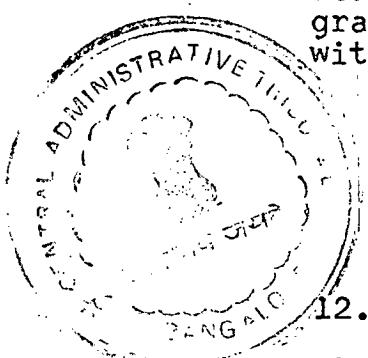
The case regarding upper age relaxation in respect of Smt. PK Rohini Kutty, LDC has again taken up with Army Hqrs, who have stated that it is seen from the Medical report at page 17 of service records that Smt. PK Rohini Kutty has herself given a wrong declaration relating to her age before the doctor at the time of appointment. This was done intentionally by her inspite of the fact that she was in possession of School Certificate/contained her date of birth. As such, it is regretted that the case of the lady cannot be taken up again with the Ministry of Defence for grant of relaxation of upper age limit.

2. In view of the position explained above it is stated that no relaxation in upper age limit can be granted and the case may be dealt with in accordance with the rules.

sd/-
Assistant Director
for DIRECTOR GENERAL RESEARCH & DEVELOPMENT
(Dr. J.C. MADAN)

12. The applicant states, that a copy of the above letter, was not sent to her and that she was aggrieved, only when some of her juniors came to be promoted as UDCs, superseding her recently in 1987, on account of which, she was constrained to approach this Tribunal for redress. The learned counsel for the respondents did not controvert this statement of the applicant.

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13. Shri R.U. Goulay, learned counsel for the applicant, stated that at the time of her entry in service as LDC, his client had produced her SSLC wherein her DOB was shown as 10.1.1944 and had furnished a copy thereof, duly signed by the Zonal Railway Officer, along with the medical certificate given by the Recruiting Medical Officer and her specimen signatures, to be preserved in her Service Book. He clarified, that, though she had declared her age as 24 years before the Recruiting Medical Officer, she had never stated before him that ~~her~~ DOB was 1.10.1944. The SSLC furnished by her, which indicated her DOB, he said, formed part of the Daily Order Point No. II 15(c)/1/69 dated 22.5.1969 issued by the Administrative Officer of the Jullunder Recruiting Zone.

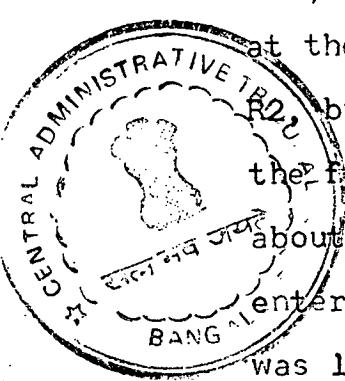
14. Her DOB initially shown in her Service Book as 1.10.1944, he pointed out, was later altered as 10-1-1944 without notice to her and without calling her explanation and therefore, the applicant, he said, could not be held answerable for the alteration. At best, he contended, this could have been a clerical error for which vicarious blame could not be imputed to his client and that too, after a long lapse of time of nearly a decade and a half.


Standing Shri Padmarajaiah, learned/Counsel for the Central Government, asserted, that the very fact that the Recruiting Medical Officer had on two occasions, namely, once on 21.5.1969 and soon after again, on 29.8.1969, categorically stated in the medical certificate, that

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"her age according to her own statement (emphasis added) is 24 years" and that the applicant had affixed her specimen signature thereon, led to the inevitable inference, that she had intently concealed her age, to surmount the prescribed age bar of 25 years, when according to her true DOB, as based on her SSLC, of which she was in possession, she was actually 25 years, 4 months and 11 days, and 25 years, 7 months and 19 days old respectively, on these dates. It was, thus, evident, Shri Padmarajaiah, argued, that the applicant had deliberately misled the Recruiting Medical Officer in this regard, which reflected on her integrity. This was a serious matter, which could not be treated with levity, he urged.

16. Since the applicant had put in nearly two decades of service in the Department, Shri Padmarajaiah, pointed out, that matter regarding relaxation of her age-limit, at the time of entry into service, was taken up by R3 with her but the latter did not grant relaxation, in view of the fact, that the applicant had given a wrong declaration about her age, before the Recruiting Medical Officer, while entering service, though she was well aware that her DOB was 10.1.1944 and that as on 21.5.1969, the date of her initial appointment, she was over 25 years in age.



17. Besides, Shri Padmarajaiah, asserted, that the applicant cannot claim relaxation by way of right and more so, when she was not truthful in declaring her age, when she entered service. He contended, that on preponderance of evidence based on probabilities, it was evident, that the applicant could not feign ignorance

about the wrong entry of her DOB in her Service Book, when she first entered service in the Department as LDC and its correction, within barely 3 months thereafter.

18. Article 51 of the CSR (which we have extracted in para 7 above), Shri Padmarajaiah stressed, envisaged relaxation of overage, at the initial entry of the applicant in service, under extraordinary circumstances as specified therein and not retrospectively, at this distance of time. In the instant case, he stressed, there was no extraordinary circumstances⁴⁸ to warrant relaxation of age of the applicant and that too, retrospectively at this distance of time.

19. Shri Goulay, learned counsel for the applicant, pleaded, that while the respondents had drawn a long bow, on the so called dubious role of his client in suppressing her age, they were glibly complacent in the matter, as they took no action against her, for this alleged misconduct. In this background, he submitted, that it would be extremely harsh and unfair, to deny his client, retrospective benefit of age relaxation and thereby jeopardise her service career. He argued, that the so called discrepancy in her DOB, was due to a bona fide error in the Department, to which no motives could be attributed to his client. He, therefore, pressed for relaxation of her age, at the time of her entry into service and grant of consequential benefit.

20. We have given due thought to the rival contentions and carefully examined the relevant record placed



before us. We are not oblivious of the misdemeanour of the applicant, in suppressing her true DOB, at the time of her entry in service. It is not unlikely, that in her eagerness and impetuosity to secure employment, particularly when she had just crossed the threshold of the maximum age-limit prescribed for the post of LDC in question, she must have succumbed to the temptation of remaining silent about her true age, before the Recruiting Medical Officer. This misdemeanour should have called for prompt deterrent action on the part of the respondents. We cannot but animadadvert on the extreme inertia on the part of the respondents for nearly two decades, in proceeding against the applicant on this respect. It appears that the administration was virtually mired in immobility, leaving the applicant almost in "beguiled expectation" about her being regularised in the Department.

21. The applicant is now in the autumn of her service, having crossed 44 years of age. A moot point, therefore, arises, as to how far it would be just and proper for the administration, to deny her the benefit of relaxation of the age-limit, at this distance of time, with perhaps the risk of terminating her services.

Where is the applicant to go now, in quest of alternative employment, so late in her career with the spectre of over-age staring at her? Should the Tribunal not take a humanitarian view of these extenuating circumstances, considering the fact, that the administration itself is not without blame and allowed the matter to drift for so long, leaving the applicant in a quandary? Besides



Besides, it is seen, that the applicant was only marginally overage, at the time of her entry in service. It has not been brought to our notice by the Department, that the applicant has been either wanting in or has given a poor account of herself in the discharge of her duties, for nearly two decades, which is nearly two-thirds of the normal service span of a civil servant.

22. In our view, in the above circumstances, it ill-behoves the department to adopt too formalistic and puritanical a view, to deny the benefit of relaxation of age-limit to the applicant at this distance of time, though we must record here, that the conduct of the applicant was blameworthy, the guilt of which got mitigated with efflux of time, compounded by inaction thereon, on the part of the respondents. In this context, the contention urged by Shri Padmarajaiah on the legal implication of Article 51 of the CSR (vide para 18 above) loses its sting and relevance.

23. In view of the foregoing, and bearing in mind what John Stuart Blacket, an eminent jurist, eloquently expressed, namely, "Sympathy without judgment is like wine without water, apt to degenerate into intoxication; and judgment without sympathy, is like water without heat, destined to end in ice," we are satisfied, that this is a fit case where we should temper⁴ justice with mercy. We, therefore, allow this application as a special case, in respect of the prayer, for relaxation



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of age-limit, at the time of initial entry of the applicant in service in the Department, with a direction, that the question of her promotion to the next higher cadre, be considered, with due regard to her service record and in accordance with law and the rules. The application is disposed of as above. No order as to costs.

Sd/-

(K.S.PUTTASWAMY)
VICE CHAIRMAN.

15/7/88.

Sd/-

(L.H.A. REGO)
MEMBER(A).

15.7.1988

TRUE COPY



P. P. Venkateshwaran
DEPUTY REGISTRAR (JUL)
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE

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