

CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

Original Application No. 1127/93

Transfer Application No.

Date of Decision 19.2.1997

J.A.Pathan

Petitioner/s

Shri B.Dattamoorthy

Advocate for  
the Petitioners

Versus

Union of India & Ors.

Respondent/s

Shri S.S.Karkera for Shri P.M.Pradhan

Advocate for  
the Respondents

CORAM :

Hon'ble Shri. M.R.Kolhatkar, Member (A)

Hon'ble Shri.

- (1) To be referred to the Reporter or not ?
- (2) Whether it needs to be circulated to  other Benches of the Tribunal ?

*M.R.Kolhatkar*

(M.R.KOLHATKAR)

MEMBER (A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI

OA.NO. 1127/93

Wednesday this the 19th day of February, 1997

CORAM: Hon'ble Shri M.R.Kolhatkar, Member (A)

Jabbarkhan Ahmedkhan Pathan  
Jeep Driver (outsider),  
Office of the Senior Supdt.  
of Post Offices, Dhule Division,  
Dhule.  
C/o. B.Dattamoorthy,  
Advocate, 47/4, Asmita,  
Tarun Bharat Society,  
Chakala, Bombay.

By Advocate Shri B.Dattamoorthy

... Applicant

V/S.

1. The Senior Supdt. of Post Offices, Dhule Division, Dhule.
2. Union of India through Director, Postal Services, Aurangabad Region, Aurangabad.

By Advocate Shri S.S.Karkera  
for Shri P.M.Pradhan, C.G.S.C.

... Respondents

O R D E R (ORAL)

(Per: Shri M.R.Kolhatkar, Member (A))

The applicant was employed as Extra Departmental Delivery Agent on 27.2.1979 and continued to work as such till 20.2.1980. After the abolition of the post of the Delivery Agent, he was appointed as Branch Postmaster from 21.2.1980 and thereafter he was appointed as Jeep Driver from 29.3.1982. Although there is no specific order, it is not disputed vide para 5 of the written statement that he was appointed as Jeep Driver on daily wages from that date. By the order dated 1.6.1982 (page 18) the applicant was appointed to the temporary post of

Driver-cum-Mechanic. But this order was subsequently modified by the order dated 10.8.1982. It is seen that since then till date the applicant has been working as outsider appointed as driver on daily wage basis. His prayers are to direct the respondents to absorb him as Jeep Driver by granting relaxation of age and alternatively for absorption in Group 'D' or Postman's cadre.

2. The respondents have opposed the OA. It is not disputed that applicant is otherwise qualified to be appointed as a Jeep Driver except for age qualification. The applicant at the time of engagement as daily wage Driver on 29.3.1982 was over aged, his date of birth being 1.3.1946 (on that date he was 36 years 27 days of age) whereas the minimum age for appointment of a Driver is 35.

3. The applicant contends that there are orders of the Government regarding relaxation of upper age limit. The respondents contend that under the O.M. of DOP dated 8.4.1981 to which application ~~was referred~~ relaxation of upper age limit was granted as a one time measure to casual labourer in Group 'D' cadre. These orders are to be seen at page 40 of OA. vide Annexure-14. These orders were issued keeping in view the fact that the casual labourers belong to the economically weaker sections of the society and termination of their services would cause undue hardship to them. However, the orders do not apply to Group 'C' and admittedly the post of Driver is a Group 'C' post. Respondents also contend that it is

not possible to consider the case of the applicant for appointment as Postman in Group 'D' cadre because the applicant does not fall in the zone of consideration for appointment as Postman. In fact, the permission earlier granted to the applicant to appear for the examination for promotion to the post of Postman cadre on 20.10.1991 was cancelled by the respondents as being irregular vide page 33, Annexure-11. The applicant's case for temporary status as casual labourer also could not be considered because the scheme in that regard applies to Group 'D' staff only vide para 16 of written statement.

4. It would thus be seen that the respondents have taken work from the applicant continuously for about 15 years as a Jeep Driver but on daily wages and according to them, he cannot be regularised as a Jeep Driver because he does not fulfil the <sup>minimum of entry</sup> requirement as to age. In fact, it appears from the reply of the respondents that the matter was considered by the DPC on 17.2.1984 and although the applicant was not sponsored by Employment Exchange, he was interviewed by the DPC. However, DPC directed vacancy to be remonitored. It would appear, however, that no further action was taken to notify the vacancy and fill the post. Counsel for the respondents, however, states at the bar that a post of a Jeep Driver is available in the department.

5. It is, thus, clear that the main question to be considered in this case is whether the case of the applicant can be directed to be considered for appointment as a Jeep Driver in relaxation as to the upper age limit.

In this connection, the applicant relied on the decision of this Tribunal in OA.NO. 1115/92 decided on 22.6.1994. That case also related to post of Postman, i.e. Group 'C' post and Tribunal relying on Full Bench decision in G.Manjunath & Ors. vs. Postmaster General, Bangalore & Ors. (1992) 20 ATC 402, directed the department to give one more opportunity to the applicants to appear for the examination provided they are otherwise qualified as per the criteria laid down by not insisting on condition of upper age. It appears to me that the facts of that case do not apply to present case because it related to relaxation of age limit in respect of the outsider postmen after appearing for the departmental examination earlier and the question was whether the age relaxation should be allowed to the candidates if they are otherwise eligible for appearing in the examination.

6. <sup>Applicant</sup> Next, counsel for the ~~respondents~~ has also relied on Supreme Court judgement in Bhagwati Prasad with Smt. Bhagwati Devi & Ors. vs. Delhi State Mineral Development Corporation, A.T.R. 1990 (1) S.C. 152 relating to regularisation of service of daily rated workers. In Para 6 of the judgement Hon'ble Supreme Court has observed that :-

" 6. The main controversy centres round the question whether some petitioners are possessed of the requisite qualifications to hold the posts so as to entitle them to be confirmed in the respective posts held by them. The indisputable facts are that the petitioners were appointed between the period 1983 and 1986 and eversince, they have been working and have gained sufficient experience in the actual discharge of duties

attached to the posts held by them. Practical experience would always aid the person to effectively discharge the duties and is a sure guide to assess the suitability. The initial minimum educational qualification prescribed for the different posts is undoubtedly a factor to be reckoned with, but it is so at the time of the initial entry into the service. Once the appointments were made as daily rated workers and they were allowed to work for a considerable length of time, it would be hard and harsh to deny them the confirmation in the respective posts on the ground that they lack the prescribed educational qualifications. In our view, three years' experience, ignoring artificial break in service for short period/ periods created by the respondent, in the circumstances, would be sufficient for confirmation."

7. Counsel for the respondents submits that the case referred to by the applicant does not apply to the facts of the case. I am not able to accept this contention for two reasons. First of all, the case of the applicant needs to be considered on the grounds of equity alone. Undisputedly, the respondents had taken service from the applicant as a Driver for about 15 years. The question of regularisation has been under consideration of the department from 1984 onwards. The department has not seen its way to make out a case to regularise the service of the applicant either as a postman or as a casual Mazdoor. At the same time the department has not terminated his services so that the applicant can explore alternative job. When the department takes the services from the applicant as a driver for such a long time but refuses to regularise his services on one pretext or another, then equity favours the applicant. Secondly, the Hon'ble Supreme Court has clearly stated that when the applicants are allowed to work for a considerable

length of time than even three years' experience in the circumstances would suffice for confirmation. The Hon'ble Supreme Court was, of course, concerned not with age qualification but with educational <sup>qualification</sup> ~~experience~~. But then educational <sup>qualification</sup> ~~experiences~~ as much as age are part of "essential" qualifications for recruitment. In this particular case, the respondents should also have considered circumstances warranting age relaxation especially when relaxation of only one year was involved at the time the applicant was first engaged. The logic of the Supreme Court case relied upon therefore, clearly applies to the present case.

8. The next question is as to the date from which the regularisation should be directed. In my view, here the date of DPC, viz. 17.2.1984 is relevant because he was interviewed on that date and the D.P.C. could have recommended relaxation then but did not.

9. I am, therefore, of the view that the OA. succeeds and the same is therefore disposed of by passing the following order :-

The OA. is allowed. Respondents are directed to regularise the applicant as Jeep Driver on the footing that he was considered and recommended for appointment as such by the DPC held in 1984. He should be given all consequential benefits like pay fixation/seniority etc. notionally on the basis of this date of regularisation.

*M*

However, financial benefits by way of arrears of pay if any should be confined to one year prior to the date of filing this application. There would be no order as to cost. Action to be completed within three months.

MR Kolhatkar  
(M.R.KOLHATKAR)

MEMBER (A)

mrj.