

500

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH: AT HYDERABAD.

D.A.No. 627/90 89

DATE OF DECISION:- 29 June, 1990

T.A.No.

Between:-

Mr. A.V.V. Satyanarayana Petitioner(s)
Sri DVS Murthy Advocate for the
petitioner(s)

Versus

Asst. PF Commissioner, Visakhapatnam Respondent.
and others
Sri K. Jagannatha Rao, Standing Counsel Advocate for the
Respondent(s)

CORAM:

THE HON'BLE MR. B.N. JAYASIMHA, VICE CHAIRMAN

THE HON'BLE MR. J. NARASIMHA MURTHY, MEMBER(J)

1. Whether Reporters of local papers may be allowed to see the Judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgment ?
4. Whether it needs to be circulated to other Benches of the Tribunals ?
5. Remarks of Vice Chairman on columns 1, 2, 4 (To be submitted to Hon'ble Vice Chairman where he is not on the Bench)

(HBNJ)

(HJNM)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD (51)
BENCH AT : HYDERABAD

O.A.No.627/89

Date of Order:29.6.1990

BETWEEN

A.V.V. Satyanarayana

.. Applicant

Versus

1. Asst. Provident Fund Commissioner,
Sub-Regional Office, 4th Floor,
RTC Complex, Visakhapatnam.
 2. The Regional Provident Fund Commissioner,
Barkatpura, Hyderabad.
 3. Central Provident Fund Commissioner,
9th Floor, Mayor Bhavan, Connaught
Circle, New Delhi
- .. Respondents

APPEARANCE

For the applicant : Sri D.V.Seetharama Murthy, Advocate
For the Respondents: Sri ~~G. Parameswara Reddy~~ ^{G. Parameswara Reddy}, Standing
Counsel for the Respondents

--

CORAM

HON'BLE MR. B.N. JAYASIMHA, VICE CHAIRMAN

HON'BLE MR. J.NARASIMHA MURTHY, MEMBER (JUDICIAL)

...

(JUDGEMENT OF THE BENCH DELIVERED BY HON'BLE SHRI
B. N. JAYASIMHA, VICE CHAIRMAN)

The applicant who is a Clerk-cum-Salesman, Office of the Asst. Provident Fund Commissioner, Visakhapatnam has filed this application seeking a direction to the Respondents to permit him to appear for the LDC recruitment examination to be conducted in August, 1989 and to declare as illegal the letter No.AP/Admn.II/LDC(R)/89/79 dated 30.1.89 issued by the Regional Provident Fund Commissioner, Visakhapatnam, rejecting his representation to permit him to take the LDC recruitment examination.

(Contd.....2)

2. The applicant says that he was selected to the post of Clerk-cum-salesman in the Staff Canteen of the Asst. Provident Fund Officer, Visakhapatnam by an order dt.9.8.'83. He was taken under the quota reserved for Physically Handicapped. He was initially placed in the scale of Rs.220-335/-. There are no further avenues of promotion in the Canteen Service. After consideration of a number of representations received from the Canteen service employees, the Department of Personnel Administrative Reforms, Ministry of Home Affairs, Govt. of India, issued a notification No.6(2)/23/77-Welfare, dt. 11.12.1979 in which it was decided that all posts in the Canteens and the tiffin rooms run departmentally would be treated as posts in connection with the affairs of the Union. This would take effect from 1.10.1979.

3. As he was qualified and eligible for appointment as LDC, he submitted an application to Respondent No. 2 requesting that he may be permitted to appear for the LDC recruitment examination. The Respondent by memo No. AP/Admn.I/F7/52/84 dt.5.5.84 informed him that according to the existing instructions any class IV employees who ~~has~~ passed Matriculation or equalant examination and within the age limits 18-25 years are eligible to appear in the recruitment test for the post of L.D.C along with the nominees of Employment Exchange. It was also stated that Class IV employees who have crossed 25 years can appear after completion of 3 years service in the organisation.

4. On coming to know that 1st Respondent was holding Departmental test to fill the post of LDCs, the applicant submitted an application. By letter dt.14.10.1985 of the Respondent No.1 his request was rejected stating that his application could not be considered. The applicant

(Contd...)

P2
76
5/11/8

thereafter submitted one more representation on 24.9.'86 requesting that he may be permitted to appear for L.D.C recruitment test that was to be conducted shortly. He was once again informed by letter dt.26.10.87 that the application of the applicant cannot be considered since he does not possess typing qualifications. The applicant submitted thereafter a representation pointing out ^{that} (as) he was a Physically Handicapped person. According to the Ministry of Home Affairs OM 15/8/61 ESH(D) dt.28.12.1961, typing qualification had been relaxed in respect of Physically Handicapped persons who are otherwise qualified to hold clerical post. The applicant was informed by letter dated 30.1.'89 that according to the regulations framed for Departmental canteen employees they could be allowed to take interviews/examinations for recruitment, provided they are within the upper age limit of 35 years. Aggrieved by these actions, the applicant has filed this application.

5. The respondents in their counter state that the applicant who is physically handicapped person was sponsored by the Employment Exchange, Visakhapatnam and he was selected to the post of Clerk-cum-Salesman in the Staff Canteen at the office of the Regional Provident Fund Commissioner, Visakhapatnam. He joined duty on 20.8.1983. At the relevant time the canteen was run by staff cooperative credit society. As the applicant is appointed w.e.f., 20.8.1983 he was not entitled to the facilities available to the Departmental Canteen Staff at that time. The cooperative canteen was converted as EPF Staff Departmental Canteen w.e.f. 1.10.1984. The representation of the applicant

(Contd.....)

54

dt.13.3.84 was therefore rejected as he was not entitled since the cooperative canteen was converted as 'Departmental Canteen' w.e.f., 1.10.1984.

6. According to the rules governing recruitment to the posts of LDCs, 35% of the posts in the cadre are reserved for promotion from Class III employees whose scale of pay is lower than that of LDCs and from Class IV employees serving in respective offices and who fulfilled the requisite qualifications. According to the said regulations, the departmental employees serving in canteens are not entitled to appear for the Departmental examination for promotion to the posts of LDCs. The request of the applicant was therefore negatived. The application dt.24.9.86 was not considered as there was no move for a direct recruitment at that time. Subsequently the recruitment rules for the posts have been amended and as per the rules, communicated vide CPFC's Notification No.P.IV/1(14)/84/A dt.18.5.87, the following are the essential qualifications;

- i) Matriculation or equivalent; and
- ii) 30 WPM speed in Typewriting in English or 25 WPM speed in Typewriting in Hindi.

As the applicant did not possess the qualification in typewriting, he was informed that his request could not be accepted. The applicant being a physically handicapped person sought exemption from qualifying in the Typing test. Further no tests were conducted during the years 1986 to 1988 and hence the question of allowing the applicant to take examination did not arise. As per the Rule 8-11 of the Departmental Canteen Regulations, the employees of such canteens are to be permitted to appear as departmental candidates provided they are otherwise eligible and that they are within the age limits of 35 years. As per the records the date of birth of the applicant is 6.12.52 and

bns

and he has completed the maximum age limit of 35 years by 5.4.1987. Since the applicant had crossed the maximum age limit of 35 years his request to permit him to take the recruitment test was rejected. For these reasons the respondents oppose the contentions of the applicant.

7. We have heard Mr. D.V. Seetharamamurthy, Counsel for the applicant and Mr. ~~Ch. Parameswara Rao~~ ^{Ch. Parameswara Rao}, Standing Counsel for the Respondents.

From the facts narrated above, it will be noticed that the applicant is a physically handicapped person and is therefore eligible for exemption from typing test given as laid down in Ministry of Home Affairs OM No.15/8/61 Estt(D) dt.28.12.61. The question that arises for consideration is whether the contention of the respondent that the applicant is not eligible to appear for the LDC recruitment examination to be conducted in August, 1989 on the ground that he has crossed 35 years of age is valid. It is admitted that no examinations were conducted during the years, 1986, 1987 and 1988. The applicant completed 3 years of service on 20.8.86 and became eligible for consideration for the first time in the year 1986. In 1986 he was also within the age limit as he was below 35 years and if any examination had been conducted in that year he would have been eligible. He would have been also eligible if any examination had been conducted in 1987. The applicant became overaged only in the year 1988. It is not clear from the averments whether the reason for not conducting of the examination during 1986 and 1987 is because there were no vacancies available at all. If any vacancies were available during 1986 and 1987 the applicant ^{when he} ~~was~~ ^{to be considered} ~~and~~ ^{the} had a right to be considered for these vacancies. Failure to

(56)

conduct the examinations for vacancies for these years cannot deprive the applicant of his right. In the result we direct the respondents to determine the vacancies arising for the years 1986 and 1987 and if there are vacancies, permit the applicant to take the prescribed examination giving him the exemption from typing test and in the event of his qualifying the examination give him the promotion. The application is allowed to the extent indicated above. No order as to costs.

B.N. Jayasimha
(B.N. JAYASIMHA)
Vice Chairman

J. Narasimha Murthy
(J. NARASIMHA MURTHY)
Member (Judicial)

Dated: 29 June, 1990

S. Narasimha Murthy
Sd/-
DEPUTY REGISTRAR(J)

TO:

1. The Assistant Provident Fund Commissioner, Sub-Regional Office, 4th Floor, RTC Complex, Visakhapatnam.
2. The Regional Provident Fund Commissioner, Barkatpura, Hyderabad.
3. The Central Provident Fund Commissioner, 9th floor, Mayor Bhavan, Connaught Circle, New Delhi.
4. One copy to Mr. D.V. Seetharama Murthy, Advocate, 1-1-591, New Bakaram, Gandhi Nagar, Hyderabad.
5. One copy to Mr. ~~K. Jagannatha Rao~~ *G. Panamrao*, Standing counsel CAT, Hyderabad.
6. One spare copy.

. . . .

kj.

PCSLM
5/7/90

Mvs