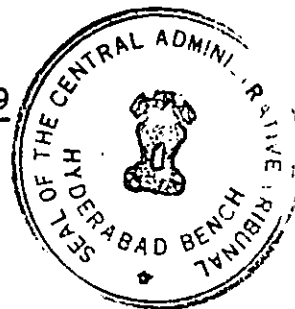


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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

ORIGINAL APPLICATION NOS. 1748/98 & 54/99

DATE OF ORDER : 8.6.1999.



Between :-

- | | |
|----------------|-------------------------------|
| 1. V.Bollaiah | ... Applicant (in OA 1748/98) |
| 2. K.Pitchaiah | ... Applicant (in OA 54/99) |

And

- | | |
|--|-----------------|
| 1. The Chief General Manager, Telecommunications, AP Circle, Abids, Hyderabad. | |
| 2. The General Manager, Telecom, Guntur - 522 007. | |
| 3. The Superintendent, Central Telegraph Office, Guntur - 522 002. | ... Respondents |

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Counsel for the Applicant : Shri V.Venkateshwar Rao

Counsel for the Respondents : Shri V.Rajeshwar Rao, CGSC
(in OA 1748/98)
Shri B.Narasimha Sharma, Sr.CGSC
(in OA 54/99)

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CORAM:

THE HON'BLE JUSTICE SHRI D.H.NASIR : VICE-CHAIRMAN

(Order per Hon'ble Justice Shri D.H.Nasir, VC).

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... 2.

: O R D E R :

(PER HON'BLE SRI JUSTICE SHRI D.H.NASIR, VICE CHAIRMAN)

1. The applicant's case for regularisation as regular Mazdoor is rejected by the Respondent No.2, vide memo No.A-1/TSM/97-98, dated:28-11-1997, the legality of which is challenged in this O.A.

(as per candidate)
2. The applicant was initially engaged as Physically Handicapped Public Telephone Attendant (PHPTA for short) on 1-3-1985, at Central Telegraph Office, Guntur. It is pointed out by the learned Standing Counsel Sri V.Rajeshwar-Rao for the Respondents that similarly situated PHPTAs filed various OAs before the Hyderabad Bench of the Tribunal seeking relief of being absorbed as Telephone Operators/ Telephone Attendants. In OA.No.502 of 1991, the Tribunal directed the department to absorb them on regular basis in accordance with the scheme. In the meantime the Department decided to extend the benefit of the existing scheme known as "Casual Labour (Grant of Temporary Status & Regularisation) Scheme, 1989" to PHPTAs. Aggrieved by the decision of the Department, the present applicant along with several others similarly situated filed various OAs one out of which bearing OA.No.187 of 1994 was disposed of by the Bench *of Mr. P. Subrahmanyam* by making following observations:-

"We are of the considered view that the decision of the Respondents to extend the Casual Labour (Temporary Status & Regularisation) Scheme, 1989, is reasonable and fair. But, in considering the case of the applicant for grant of temporary status,

the Respondents must take into consideration the total continuous service rendered by the applicants from the date of their casual engagement. All the applicants who opted for and brought under the scheme will have to be considered for regular absorption in Group-'D' posts in accordance with the seniority and as per the scheme/relevant instructions".

In obedience to the above directions given by the Tribunal, the applicant was granted temporary status with effect from 1-10-1989, vide letter dated:6-5-1996 of the General Manager, Guntur.

3. The learned Standing Counsel for the respondents submitted that regularisation of temporary status mazdoors according to the scheme was to be enforced in a phased manner. In the first instance "Temporary Status Mazdoors" who had put in 10 years of service as on 31-12-1991 were to be considered for regularisation and thereafter regularisation was to be done on year to year basis at the end of each financial year.

4. He further pointed out that the birth date of the applicant was 20-5-1949. He was initially engaged on 1-3-1985. His age on 31-3-1997 was 47 years 10 months and 11 days. Age relaxation as per the existing rule to the extent of casual labour service as on 31-3-1997 was 12 years and one month. The resultant age after age relaxation in the case of the applicant worked out to 35 years 9 months and 11 days.

5. It was further urged on behalf of the Respondents that the applicant should be between 18 years and 25 years of age for appointment to Group-'D' post. He was not eligible for regularisation even after age relaxation to the extent of his casual labour service as per existing rules on the subject and therefore, the case of the applicant was rejected for regularisation on the ground of over age. Further according to the respondents, the age condition for recruitment of Group-'D' cadre laying down that the age should be between 18 years and 25 years was not applicable to PHPTAS ^{and it is} was not borne out of any rule of the department or law of the land. The Hyderabad Bench of the Central Administrative Tribunal also in its Order dated: 1-2-1995 in OA.No.187 of 1994 and batch held as stated in para.10 thereof, that regularisation should be considered as per the scheme/relevant instructions.

6. From the above facts it transpires that the initial engagement of the applicant as PHPTA was on 1-3-1985, and he was granted temporary status with effect from 1-10-1989. However, while considering the question of granting regularisation as per the scheme, the applicant's case was over-looked on the ground that he was over aged as on 31-3-1997.

7. According to the learned Counsel Sri V.Venkateshwara-Rao for the applicant, incorrect interpretation was made by the respondents in the matter of granting age relaxation to the physically handicapped candidates. According to Sri V.Venkateswar Rao under the instructions contained in OM

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No.4-3-68-Estt(D), dated:7-1-1976 issued by the Government of India, Department of Personnel and Administrative Reforms, physically handicapped persons belonging to SC/STs would be eligible for age relaxation of five years admissible to them as SC/STs, meaning thereby that a person who was physically handicapped was entitled to 10 years' age relaxation and the SC/ST who was incidentally also a physically handicapped person would be entitled to 15 years age relaxation with reference to the maximum age limit. It is not disputed that the maximum age prescribed for recruitment/regularisation to Group-'D' posts was 25 years. After taking into account the age relaxation of 10 years applicable to physically handicapped person, the maximum age limit in the applicant's case would be 35 years as on 31-3-1997 but the respondents were ignoring the fact that the applicant was entitled to the said age relaxation and the benefit of the same was to be given to the applicant as the position stood on 31-3-1997. The relaxation to which the applicant was entitled as physically handicapped person, according to the Counsel, was in addition to the said concession available to a casual employee under the casual labour scheme.

8. Further, according to the learned Counsel Sri V.Venkateshwar Rao for the applicant as per the Judgment of this Tribunal dated:1-2-1995 in OA.No.211 of 1994 filed by the applicant, it was not open to the authorities to raise an objection with regard to the age limit for the purpose of regularisation, inasmuch as the applicant had already been granted temporary status in accordance with the scheme by extending the benefit as applicable to the casual

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labourers under the said scheme and, therefore, the respondents were estopped from raising such objection. According to the learned counsel Mr.V.Venkateshwar Rao, since the judgment of the Tribunal dated 1.2.1995 in OA No.211 of 1994 had become final and had been implemented by applying the scheme to the applicant for granting temporary status, the respondents had no locus standi to raise such objection. The facts and circumstances of the case being as stated above, the learned counsel for the applicant Mr.V.Venkateshwar Rao urged that denial of regularisation and other consequential benefits to the applicant would be violative of Articles 14, 16 and 21 of the Constitution of India, inasmuch as it amounted to depriving the applicant of his livelihood illegally and arbitrarily.

9. On the question of relaxation of age the Supreme Court in GANGA SINGH Vs. COMMISSIONER OF POLICE (1987 (1) SLR 473) held that the petitioner was entitled to ^{be} appoint^{ed} as he was falling within the prescribed age limit which was relaxed upto 35 years for SC/ST candidates. However, the matter with which we are concerned in this O.A. is whether additional relaxation of age for an SC/ST candidate who is also a physically handicapped person could be given simultaneous advantage of relaxation of age for physically handicapped person. In paragraph-4(III) of the O.A. it is stated that as per the instructions issued by the Government of India the physically handicapped candidates are entitled to relaxation of upper age limit upto 10 years in addition to 5 years if they belong to SC/ST community. However, the learned counsel has not been able to point out from any

material on record of this case that such instructions were issued by Government of India. Neither the copy of such instructions is produced nor any reference number and date has been stated so that the correctness of statement made in para-4(III) of the O.A. could be ascertained. In Memorandum No.E25/Reg/TH/VII/I dated 1.7.1997 which is produced as Annexure-A,V along with O.A. in connection with regularisation of temporary status Mazdoors as Regular Mazdoors, the eligibility conditions for regularisation are spelt out and it is mentioned in Clause 4 that Casual Mazdoors with temporary status should be in the age ground of 18-25 years on the date of initial entry into the department and that age relaxation of five years is admissible in case of SC/ST candidates as per rules in force. It is not clarified that such relaxation of five years would be in addition to age relaxation available to Physically Handicapped Public Telephone Attendants.

10. Division Bench of A.P.High Court in the case of K.DATHIAH Vs. A.P.STATE ELECTRICITY BOARD (1996 (4) ALT 250) held that for employment as casual labourers no age qualification was prescribed or followed as was evident from the fact that many of the ex-casual labourers were over-aged by the time when they were first given employment as casual labourers. It is further held that there was no dispute as regards the number of days each of the petitioners worked as casual labourers and therefore, it would be most unreasonable to deny the age qualification in respect of ex-casual labourers who are to be considered for regular absorption pursuant to the agreement

reached between the Worker's Union and the A.P. State Electricity Board.

11. We are afraid the above decision of the High Court of Andhra Pradesh cannot be applied to the facts of the case before us in view of the fact that in the case before us the question of laying down the maximum age or relaxation of age is not a matter of any agreement between the employer and the employee. The maximum age for entry into Government service is 25 years which is not unknown to any aspirant of public service unless it is specifically relaxed by taking into consideration some special factors such as age relaxation made available to weaker sections of the society. Moreover, the precise question before us is whether the age relaxation which could be made available to physically handicapped candidates is in addition to the age relaxation in case of SC and ST candidates which was not the case before the High Court in the case referred to above. We are, therefore, unable to agree with the submission made by the learned counsel for the applicants that any infirmity is created on the views expressed by us in relation to the relaxation of age as emerging from the decision of the High Court of A.P.

12. We are, therefore, not inclined to agree with the submission made by the learned counsel for the applicants that age relaxation available to physically handicapped person should be considered in addition to the age relaxation available to SC/ST candidates. This is precisely because of the limitation stipulated in clause 4 of Regularization of temporary status

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Mazdoors that "Casual Mazdoors with temporary status should be in the age group of 18-25 years on the date of initial entry into Department and that age relaxation of five years of service is admissible in case of SC/ST candidates as per rules in force."

11. In the instant case it cannot be disputed that the applicant had already attained the age of 35 years, nine months and eleven days which was exceeding the prescribed age limit even if age relaxation of five years which is admissible in case of SC/ST candidates is taken into account. There is no provision in the scheme that relaxation of age to the extent of 10 years be allowed in case of PHPTA candidates. The submission made by the learned counsel for the applicant in the rejoinder affidavit that " as per the instructions contained in the O.M.No.4/3/68-Estt (D) dated 7.1.1976 issued by the Government of India, Department of Personnel & Administrative Reforms physically handicapped persons belonging to SC and STs will be eligible for age relaxation of five years admissible to them as SC/STs." However, the O.M. dated 7-1-1976 is not produced which restrained the Bench from taking any ^{different} view in favour of the applicant. The O.A. therefore deserved^{to} to be dismissed and it is hereby dismissed. No order as to costs.

12. Same question arises for consideration in OA 54/99.
and therefore O.A. 54/99 also stands dismissed on the same
grounds. No costs.

प्रमाणित प्रति
CERTIFIED TRUE COPY

क्रम संख्या
CASE NUMBER OA 1748/98 & OA 54/99
निवेदन का तिथि
DATE OF DEPOSIT 8-6-99
प्रति तय्यार
COPY MADE READY ON 22-6-99

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सहायक न्यायाधीश
S. J. S. Court Officer
के. ए. न्यायाधीश
Central Administrative Tribunal
हैदराबाद बेंच
HYDERABAD BENCH.