

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

JAIPUR, this the 5th day of December, 2006

ORIGINAL APPLICATION No 459/2006

CORAM:

HON'BLE MR. M.L.CHAUHAN, MEMBER (JUDICIAL)
HON'BLE MR. J.P.SHUKLA, MEMBER (ADMINISTRATIVE)

Gopal Das Poshak
s/o Shri Shanker Lal Poshak,
aged about 35 years,
r/o village Budhwara,
Tehsil Pisangan,
Distt. Ajmer.

..Applicant

(By Advocate : Ms. Neerja Khanna)

Versus .

1. Union of India through
the Secretary to the Govt. of India,
Ministry of Agriculture,
New Delhi.
2. The Director General,
Indian Council of Agriculture Research,
Krishi Bhawan,
New Delhi.
3. The Director,
Central Institute of Arid Horticulture,
Shri Ganga Nagar Highway,
Beechwal Industrial Area,
Bikaner.
4. Administrative Officer,
National Research Centre for Seed Spices,
Tabiji Farm,
Ajmer.

42
.. Respondents

ORDER (ORAL)

The applicant was given contract for executing work of Tractor Driver in the office of respondent No.4 i.e. Administrative Officer, National Research Centre for Seed Spices, Ajmer ^{w.e.f.} ~~in~~ 14th August, 2000. The applicant has placed copy of one of such contract letter dated March 31, 2001 on record as Ann.A5. Perusal of this letter shows that the applicant was awarded contract for two months on monthly payment of Rs. 3500/- per month. It is averred that the said contract was continued from time to time without any break till date. It is further stated that in the month of November, 2005 an advertisement was issued by the respondents which came to be published in daily newspaper whereby applications were invited for appointment on the posts belonging to Group 'C' category whereby one post was for Technical Assistant and one post was for Tractor Driver in the office of respondent No.4. The qualification prescribed for appointment as Tractor Driver was Matriculation and having valid driving licence of heavy vehicle and the maximum age limit prescribed was 30 years as on 10.1.2006. The applicant has placed copy of said advertisement on record as Ann.A1. In sum and substance, case of the applicant is that pursuance to the said advertisement, he submitted his application/bio data on 7.1.2006 as the last date for

submitting application in the prescribed proforma was 10.1.2006. The interview for the aforesaid post is likely to be held in the first week of December, 2006 and on further inquiry it was found that his candidature has not been considered on account of over age. Accordingly, he has filed this OA thereby praying that appropriate order or direction may be issued to the respondents to call the applicant for interview to be held in the first week of December, 2006 in pursuance of advertisement Ann.A1 for consideration of his candidature for appointment on the post of Tractor Driver by invoking the age relaxation clause.

2. We have heard the learned counsel for the applicant at admission stage.

3. We are of the view that the applicant is not entitled to any relief. As can be seen from advertisement Ann.A1, the post of Tractor Driver is mentioned at item No.2. For the said post pay scale, age, number of posts, essential qualification and desirable qualification have also been mentioned besides provision regarding age relaxation which, is in the following terms:-

"Applications are invited for the following Group 'C' in the prescribed format

Sl.No.	Name of post, Pay scale, age	No. of posts Reservation	Essential qualification	Desirable qualification
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1....

2. T-1 (Driver)
(Rs.3200-85-4900)
Age: 18-30 years
as on 10.01.2006

01 (UR)

Matriculation
pass from
recognized
board

Possession of
of a valid and
heavy vehicle
driving licence
from prescribed
Govt. authority
(the candidate will
have to pass the
practicle skill test
to be taken by an
appropriate committee
of the centre).

Age relaxation	SC/ST	OBC	PH	Departmental/ICAR candidates
	5 years	3 years	10 years	As per ICAR norms

The application in the prescribed proforma given below should reach the Administrative Officer, NRCSS, Ajmer latest by 10.1.2006."

4. In the application submitted by the applicant in the prescribed format Ann.A6, at Sl.No.4 'Birth place and Date' has been mentioned as 'Ajmer 1.6.1970'. As can be seen from Ann.A4, which is certificate issued by respondent No.4, the applicant was working on contract basis from 14th August, 2000 and he is still continuing. Admittedly, on 14th August, 2000, the age of the applicant was 30 years 2 months and 13 days. Thus as per provisions contained in recruitment rules, the applicant could not have been engaged as temporary/adhoc/casual or on daily wage basis, as such, the Department resorted to the method of awarding contract. Further, from perusal of Ann.A5, it is evident that before awarding contract to the

applicant for two months, quotations were invited and it appears that applicant who must have submitted his ^{lowest} quotation was accepted for driving the Tractor for a period of two months and accordingly, the contract was awarded to the applicant. Thus, the applicant was assigned the work on contract basis by calling quotations and he was not employed after following due procedure. As such, it is clear that even the engagement of the applicant was not contractual appointment on contract basis. Rather, he was awarded contract for a period of two months on the basis of quotations submitted in that behalf and he was made payment for two months as is evident from letter dated 17.11.2000 (annexed with Ann.A5). Further, from perusal of terms and conditions Ann.A5, it is clear that the Department and the applicant entered to an agreement and it is on the basis of this agreement that work was awarded to the applicant.

5. Now the question which requires our consideration is whether the applicant is entitled to age relaxation as is admissible to departmental/ICAR candidates as per ICAR norms. The learned counsel for the applicant argued that since he is departmental/ICAR candidate as per ICAR norms, he is entitled to age relaxation for the services rendered by him in the Department during the period he was engaged as Tractor Driver on contract basis w.e.f. 14th August, 2000. Such a

submission made by the learned counsel for the applicant is wholly misconceived and cannot be accepted for more than one reason. Firstly, as already stated above, the applicant was not engaged as Tractor Driver by the respondents on contract basis as pleaded by him. In fact, the applicant was awarded a contract for two months on the basis of quotations invited by the respondents and he was paid for such contract at the rate of Rs. 3500/- per month in accordance with the terms and conditions mentioned therein. Copy of such letter dated March 31, 2001 whereby contract was awarded to the applicant has been placed on record by the applicant as Ann.A5. From perusal of this documents, it is evident that contract for two months was awarded to the applicant on the terms and conditions mentioned therein. It was permissible for the applicant to engage another person in terms of contract and he was not bound to perform duties of Tractor Driver. Thus, contention of the applicant that he was appointed as Driver on contract basis is wholly misconceived. Awarding of contract cannot be equated where the person has been appointed by the authority on contract basis. Thus, the contention of the applicant that he was engaged as Driver on contract basis by the respondents, as such, he is departmental/ICAR candidate is wholly misconceived and cannot be accepted. As can be seen from the advertisement, relevant portion of which has been

9

reproduced in the earlier part of the judgment, benefit of age relaxation has been given to departmental/ICAR candidates as per ICAR norms. Since the applicant was not a departmental/ICAR candidate, as such provision of age relaxation is not applicable to the applicant.

6. That apart, even if for arguments sake it is to be assumed that the applicant was engaged by the respondents as Driver on contract basis, the applicant has failed to show that he is eligible for consideration as per ICAR norms. Reliance has been placed by the learned counsel for the applicant on the Note below order No. 17-1/97.Estt.IV dated 18th July, 2000 which is regarding rationalization of the qualification for the post of Driver under the technical service of the Council, which is in the following terms:-

“Note:

Such Group DV Supporting Staff borne on the regular establishment of the Institute/Hqrs concerned who were deployed continuously and uninterruptedly as drivers and completed not less than a period of one full year on such continuous deployment as on 29th June, 1996 viz. the date of reclassification of the post of Driver, and who were otherwise, in all respects, fulfilling the eligibility for the post of Driver as per qualifications in force immediately prior to 29th June, 1996, would as a special one time relaxation be treated as eligible Departmental candidates for selection along with sponsored candidates for the post of Driver at the respective Institute/ICAR Hqrs.”

We have given due consideration to the note as circulated vide order dated 18th July, 2000. We fail to understand how this is helpful to the applicant. It speaks of Group DV supporting staff who were borne on

regular establishment of the Institutes and who were deployed continuously and uninterruptedly as drivers and completed one year of service as on 29th June, 1996 who were given one time age relaxation for the purpose of filling the post of Driver. Admittedly, the applicant was given contract in the year 2000 and he was not continuously deployed for one year prior to 29th June, 1996, as such, he cannot drive any assistance from this note.

7. That apart, as already stated above, the applicant was more than 30 years of age when contract was awarded to him for the first time. Even for arguments sake, if the period of contract i.e. 14th August, 2000 till 10.1.2006 is to be excluded for the purpose of age relaxation, even then the applicant was above 30 years of age as on 10.1.2006. Thus, according to us, the applicant is not entitled to any relief.

8. At this stage, it will also be useful to notice the Constitution Bench judgment of the Hon'ble Apex Court in the case of Secretary, State of Karnataka vs. Uma Devi (3), 2006 (4) SCC 1 whereby the Apex Court has categorically held that it is not permissible for the court to issue directions in exercise of powers under Article 226 for absorption, regularization or permanent continuance of such employees who have been appointed as temporary, contractual, casual or daily wage basis and the court should desist from issuing

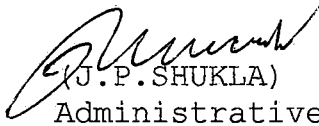
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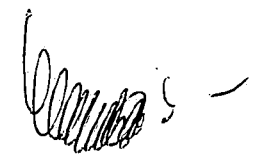
order preventing regular selection or recruitment at the instance of such persons and from issuing directions for continuance of those who have not secured regular appointment as per procedure established. It is further held that passing of orders for continuance tends to defeat the very constitutional scheme of public employment. It is further emphasized that this is not the role envisaged for the High Courts in the scheme of things and their wide powers under Article 226 are not intended to be used for the purpose of perpetuating illegalities, irregularities or improprieties or for scuttling the whole scheme of public employment. Its ~~is~~ role as the sentinel and as the guardian of equal rights protection should not be forgotten. The Apex Court further held that the public appointment should be made as per constitutional scheme strictly in terms of recruitment rules in adherence of Articles 14 and 16 of the Constitution. The Apex Court has also overruled the earlier decisions which run counter to the principles settled in the aforesaid decision.

9. Thus viewing the matter from this angle, we are of the firm view that the applicant who was awarded a contract cannot claim any right of age relaxation de hors the rules. In any case, the ICAR norms which prescribe age relaxation in cases of departmental/ ICAR candidates cannot be made applicable to the

applicant who was awarded only contract initially for two months on the basis of quotation which was accepted by the Department and subsequently his contract was renewed from time to time. The applicant was above 30 years of age which is maximum age as prescribed under the recruitment rules when contract of Tractor Driver was awarded to him w.e.f. 14th August, 2000.

10. For the foregoing reasons, we are of the view that the present OA is bereft of merit which is accordingly dismissed at admission stage with no order as to costs.


(J.P. SHUKLA)
Administrative Member


(M.L. CHAUHAN)
Judicial Member

R/