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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH : GUWAHATI-5

O.A. Nos. 208, 209 & 210 of 1994

Date of decision 9-5-95

1. Sri Sunil Kumar Modak(O.A. 208/94)

2. Sri S.C.Bhadra (O.A. 209/94)

PETITIONER(S)

3. Sri B. Chakraborty (O.A. 210/94)

Sri S. Talapatra

ADVOCATE FOR THE
PETITIONER(S)

VERSUS

Union of India & Others.

RESPONDENT(S)

Mr. S. Ali, Sr. C.G.S.C.

ADVOCATE FOR THE
RESPONDENT(S)

THE HON'BLE JUSTICE SHRI M.G.CHAUDHARI, VICE-CHAIRMAN.

THE HON'BLE SHRI G.L.SANGLYINE, MEMBER (ADMINISTRATIVE).

1. Whether Reporters of local papers may be allowed to see the Judgement? *yes*

2. To be referred to the Reporter or not?

3. Whether their Lordships wish to see the fair copy of the Judgement? *No*

4. Whether the Judgement is to be circulated to the other Benches?

M.G. Chaudhary

Judgement delivered by Hon'ble Vice-Chairman.

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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 208 of 1994
with
Original Application No. 209 of 1994
and
Original Application No. 210 of 1994

Date of decision : This the 9th day of May, 1995.

The Hon'ble Justice Shri M.G. Chaudhari, Vice-Chairman.
The Hon'ble Shri G.L. Sanglyine, Member (Administrative).

O.A. No. 208/94

Shri Sunil Kumar Modak,
Son of late Harendra Lal Modak
Village-Mohanpur
P.S. Sidhai,
Dist. West Tripura Applicant

O.A. No. 209/94

Shri Sudhan Chandra Bhadra,
Son of Kalachand Bhadra
Village-Shibnagar
P.S. Bishalgarh
District-West Tripura Applicant

O.A. No. 210/94

Shri Biswajit Chakraborty
Son of late Dulal Chandra Chakraborty
Madhya Badharghat,
P.S. West Agartala,
Dist. West Tripura Applicant

By Advocate Sri S. Talapatra.

-versus-

1. The Union of India (service through the Secretary, Ministry of Information & Broadcasting, New Delhi).

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2. The Director General,
Doordarshan,
Mandi House : Copernicus Marg,
New Delhi-110 001

3. The Station Director
Doordarshan Kendra : Agartala,
Tripura

..... Respondents

By Advocate Sri S. Ali, Sr. C.G.S.C.

O R D E R

CHAUDHARI J (V.C.)

These three Original Applications can be conveniently disposed of by a common order as similar reliefs are claimed.

Facts in O.A. 208/94.

The applicant was employed as Security Guard at DDK, Agartala under Central Government Service Group D Non-gazetted in the scale of pay of Rs. 750 - 940/- on 25.8.1992. His name had been sponsored by the Employment Exchange and he was duly selected after interview. The conditions of service stipulated probation for a period of two years. The applicant completed that period on 26.8.94. However instead of confirming him in the post the respondents No. 3 issued an order of termination of his service bearing No.AGT/DDK/1(6)/94-S dated 30.9.94 to be effective on expiry of a period of one month. That order was passed in pursuance of sub-rule (1) of Rule 5 of the Central Civil Services(Temporary Services) Rules, 1965. The same is challenged in this Original Application. The

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✓ applicant prays that the said order ~~to~~^{be} quashed and he be directed to be reinstated and confirm^{-ed} in the post of security guard. The Original Application was filed on 31.10.94.

Facts in O.A. 209/94.

✓ The applicant was employed as security guard ^{at} ~~at~~ DDK under the Central Services Group D non-gazetted post in the scale of pay Rs. 750-940 with effect from 18.9.92. His name had been sponsored by the Employment Exchange and he was duly selected at the interview. The conditions of service prescribed for a probation period of two years. The applicant completed the said period on 19.9.94. ✓ However instead of he ^{being} ~~being~~ confirmed thereafter the Respondent No. 3 terminated his service in pursuance of Sub rule (1) of Rule 5 of the CCS (Temporary Services) Rules, 1965 by order No. AGT/DDK/1(6)/94-95 dated 30.9.94 with effect from expiry of the period of one month from the date of service of the order. The said order is ✓ challenged in this O.A. The applicant prays that the same may be quashed and the respondents may be directed to reinstate and confirm him in the post of security guard. ✓ The O.A. was filed on 31.10.94.

Facts in O.A. 210/94.

The applicant was employed as Khalasi at DDK Agartala under Central Services Group D non-gazetted post in the scale of Rs. 775-1025 with effect from 25.8.1992. The name of the applicant had been sponsored by the Employment Exchange and he was duly selected for the said

appointment. The conditions of service prescribed the probation period of two years which the applicant completed on 26.8.94. However instead of confirming him the Respondent No. 3 passed an order terminating his service under Sub rule (1) of Rule 5 of CCS(Temporary Services) Rules 1965 bearing No. AGT/DDK/1(6)/94-S/3766 dated 30.9.94. The said order is challenged in this Original application. The applicant prays that the said order ~~to~~ be quashed and the respondents may be directed to reinstate and confirm him in the post of Khalasi permanently in the scale of Rs. 775-1025. The Original Application was filed on 31.10.94.

Reasons (Common to all O.A.s).

The appointments of the applicants was not in pursuance of their own applications. Their names were sponsored by the Employment Exchange in pursuance of requisition made by the Doordarshan Kendra to the Employment Exchange for that purpose. The applicants were thereafter called for the interview and were duly selected. After they were found suitable, offer of appointment was made to them. The terms of offer were same in respect of all the three applicants. The material clauses of the letter of offer ^{read} ~~was~~ as follows :

"With reference to your selection by the interview dated you are offered the temporary post on the following terms and conditions.

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- ii. Your appointment is purely on temporary capacity and until further orders.
 - iii. Your services are terminable on one month's notice from either side in accordance with the CCS(Temporary Services) Rules 1965, without assigning any reasons
 - iv. You will be on probation for a period of 2(two) years which period may be extended or curtailed at the discretion of the competent authority.
 - v.
- to
xiii.
- xiii. You will be required to produce the following certificates in original :-
 - a) Degree/Diploma/Certificates of Educational qualification and other technical qualifications.
 - b) Certificate of age.
 - c)
 - xiv.

The offer was accepted and the applicants were appointed and completed the probationary period.

2. These terms and conditions have to be read ~~altogether~~. The clauses (ii) and (iii) have to be read with clause iv. Clause iv contemplated that on the completion of the probation ^{of 2 years} ~~either~~ the period may be extended unless the prescribed period was curtailed earlier. Since the period of the probation of the applicants was not curtailed the competent authority had either to issue confirmation order or terminate the services forthwith or to extend the

period. Although that was within the discretion of the competent authority that ^{discretion} had to be exercised, and exercised diligently, by him by placing the matter before the Departmental Committee or in such manner as may have been prescribed by the rule. Such exercise was not done and the applicants continued in the service beyond the probationary period. Though that continuation could be only as probationers their services could not be terminated without a valid reason and without considering their cases for confirmation or for extension of the probationary period. It is also not the case of the respondents that the services were terminated for unsatisfactory performance during the probationary period.

3. The respondents have stated in the written statement that the reason for passing the order of termination in regard to the applicant (in O.A. 208/94) was that on some complaint having been received by the Director General, Doordarshan in October 1992 from the Kendra and after examining all the facts and rule position it was found that the applicant was not eligible for Government Service and his appointment for the post of Security Guard was irregular as per the provisions of the Recruitment Rules inasmuch as his assessment in the Army Discharge Certificate was only 'Good' whereas it was required to be 'Very Good' hence the notice of termination was issued. (As regards the applicant (in O.A. 209/94) it is their explanation that during the course of examination of the facts by the Director General it was found that the applicant was overaged by one year.

{ Para 3 A. ✓

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at the time of his selection and thus his appointment was irregular hence notice of termination was issued.

4. As regards the applicant (in O.A. 210/94) it is the explanation of the respondents that the Director General on scrutiny had found that the appointment of applicant was irregular because at the time of selection he was under age by 4 months hence notice of termination was issued.

5. Thus in all the three cases the respondents seek to justify their action of issuing the notices of termination of service in exercise of powers under CCS (Temporary Services) Rules on the ground of irregularity in the selection.

6. Mr. Talapatra the learned counsel for the applicants submits that the aforesaid reason given by the respondents is untenable and therefore the impugned orders are not valid. He has drawn our attention to the Recruitment Rules and has placed reliance upon the decision of the Calcutta High Court in Mira Bagchi and another Vs. Gobinda Chandra Pal & Ors. 1992 (1) SLR (Cal) P 477 and on the short note appearing in (1988) 8 ATC 719 on the decision of the Bombay Bench of Central Administrative Tribunal in the case of Vijaya Venkatesh Pai Vs. U.O.I. & Ors. in support of his submission.

7. The copy of the extract of Appendix II of Doordarshan Manual Vol. III - Administration, Accounts and Programmes provides as regards Establishment Matters as follows :

"9. Age requirements.

- (i) Crucial date : The crucial date of determining the age limit may be indicated in the advertisement notifying vacancies or in the requisitions sent to Employment Exchanges. Before call letters are

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sent to the candidates for interview/test it should be ensured that they fulfill the conditions of age.

Age relaxations :

(b) Retrenched Central Govt. employees	Period of service in Central Govt. plus three years.
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The table showing the requirements to be fulfilled for appointment to the posts under consideration reflects following position :

T A B L E - I

Name of post	Age limit for direct recruits	Educational and other qualifications required for direct recruits	Period of probation if any
2	7	8	10
Security Guard	35 years	1.Ex.Serviceman who has put in not less than 3 years of service in the Armed Forces & who has got 'very good' character assessment in his Army Discharge Certificate. OR Ex-Police personnel who has put in not less than 3 years of service in the Central or State Police Forces & who has got 'Very Good' character assessment.	2 years.

N.B. The crucial date for determining age limit shall be the last date upto which the Employment Exchange are asked to submit names.

T A B L E - II

Name of the post	Qualifications etc. for direct recruitment		Period of probation
2	Age limit	Educational & other qualifications required	11
Khalashi	Below 25 yrs.	Good Physique	Six months

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8. The applicant in O.A. 208/94 is Ex-serviceman holding Army Discharge certificates. The respondents have proceeded on the basis that as the character assessment of ^{the} applicant in ~~O.A. 208/94~~ in the Army discharge certificate is only 'Good' and not 'Very Good' he does not fulfill the prescribed qualification (see col. 8 of Table I above). Whether this condition is to be strictly observed or can be relaxed is the question. Since the qualifications have been prescribed as part of the recruitment rules it is undoubtedly difficult to hold that ordinarily these can be departed from. Yet where it is found as in these cases that there has not been strict compliance with the prescribed requirements the appointment would at the highest be irregular as is also the case of the respondents in the instant cases and not necessarily illegal. That squarely raises the question as to whether the irregularity has been the result of any conduct on the part of the applicants or it has occurred due to lapse or mistake on the part of the respondents. In the instant cases the lapse was entirely on the part of the respondents as we shall presently demonstrate. That certainly entitles the applicants to invoke the Tribunal's Equity Jurisdiction.

9. The reasons for which we are inclined to take the above view are as follows :

- i. When the posts of Security Guards were to be filled in it is presumed that the concerned authorities of the respondents had notified the Employment Exchange to sponsor the names of candidates fulfilling the conditions of eligibility as per the Doordarshan Manual.

The fact that eventhough the applicant in the first case did not hold the 'Very Good' assessment still he was called for interview leads to the inference that the concerned officer of the respondents had not indicated that qualification as essential to the Employment Exchange or that even with the assessment 'Good' the applicant was considered suitable to be called for the interview.

- ✓ ii. The same is the position as regards age requirement which is the ^{factor} ~~facts~~ relating to the applicants in the other two cases.
- iii. The call letters for interview required the applicants to appear alongwith all relevant certificates/documents in original. The fact that applicants were selected after the interview implies that they had produced the relevant certificates. The condition of recruitment that the person concerned should have 'Very Good' assessment must be presumed to be known to the interviewing/selecting authority. If the applicant (in the first case) had not produced the character assessment certificate he would not have been selected and if he had produced the certificate with the remark 'Good' it has to be presumed that that was considered sufficient compliance with the rule of eligibility. It was open to the concerned authority to reject the names of the applicant but instead he was selected.
- iv. Similar would be the position as regards age requirement relating to the applicants in the other two cases.

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- v. The next stage was when the letter of offer was issued. As already noted under column xiii thereof the applicants were required to produce the certificates mentioned therein in the original. It is not the case of the respondents that these were not produced. It is however pertinent to note that the certificates required to be produced do not mention the Discharge Certificate with the remark 'Very Good'.
- vi. The applicants were allowed to complete their respective probationary periods. The authorities did not at any time treat the appointments as irregular.
- vii. It is stated that on some complaint to the Director General the records were scrutinised and the irregularity in the appointments was found. It is however not stated as to what was the nature of the complaint or whether it was directed against the applicants and whether any fault was found on the part of the recruiting officers themselves.

The picture therefore that emerges is that the applicants were not in any manner responsible in bringing about their appointment in an irregular manner but it was the result of lapses/mistakes on the part of recruiting officers in not verifying whether the required qualifications were fulfilled or not in the case of the applicants. The conditions of recruitment were never made known to the applicants. On the other hands the officers of the respondents are presumed to know them. The applicants were obviously found by the Employment Exchange to be eligible to be sponsored as per the requisition of the

respondents. The respondents called the applicants for interview and found them suitable to be appointed. The officers will be presumed to have verified the certificates produced and to have found them in order and sufficient. Clause 9 of the Manual (quoted above) itself contemplates that the determining age limit has to be indicated in the requisitions sent to Employment Exchange. The same would be expected as regards other eligibility requirements. The respondents thus cannot escape the blame for exposing the appointments to unjust termination. The respondents are clearly estopped from going back upon what they did and make the applicants suffer. That would be opposed to ~~Principle~~ of justice, equity and good conscience. There are also no circumstances to deny the applicants relief on equitable grounds. It is not the case of the respondents that their performance during the probationary period was unsatisfactory or that their service record was not clean or they were involved in any unbecoming conduct. That shows that even if they did not fulfil the desirable qualifications they have not been found deficient in any manner or unsuitable to discharge their duties as Security Guards/Khalashi. The thin ^{line} ~~true~~ of demarcation between the assessment as 'Good' and 'Very Good' largely depends upon the subjective as well as objective approach of the officer concerned. That would not be ^{the sole} ~~a fair~~ criteria to determine the suitability of the applicants (in the 1st case) to perform the job satisfactorily. The presence of the applicant is not therefore likely to result in undeserving employees being foisted upon the respondents. After all with the assessment

given as Good the Army Authority has also made the remark that applicant was fit to be promoted. Such situation can be reconciled with the object behind the qualifications as are prescribed. Emphasis clearly appears to be on suitability and therefore we are inclined to hold in the facts and circumstances of this case that the irregularity is not of such a degree as can justify the termination of service of the applicant. Similar would be the position in respect of the other two applicants on account of the age factor.

10. According to the respondents the applicant in O.A. 209/94 was found to be overaged by one year at the time of his selection. As noted earlier the prescribed age is 35 years. That is arrived at after deducting the period of Army Service from actual age. His date of birth is 3.2.1948. The period he spent on duty with Army is 8 years 72 days. That is why he is stated to be ineligible as he was past the age limit of 35 years. As already discussed, since the applicant had disclosed his date of birth and the period spent on Army Duty and had produced the Certificates on the points the authorities of the respondents cannot be said to have been unaware of the requirement as well as the details appearing on the certificates and yet they had considered the applicant fit. That estops them from disqualifying the applicant on the ground of being overaged.

11. Mr. Talapatra submitted that the respondents in any event ought to have given relaxation in terms of

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Clause 9 of the Manual. We however find that that provision applies to retrenched personnel and cannot be applicable to the applicant (in O.A. 209/94) as he is not a retrenched person.

12. Now in so far as the applicant in O.A. 210/94 is concerned what is to be noted is that the rules do not prescribe any minimum age. (See Table II above). It only prescribes that the person should be below 25 years of age. His date of birth is 13.12.1974. He was selected on 9.7.92 and appointed with effect from 25.8.92. These facts were within the knowledge of recruiting officers. Even so according to the respondents his appointment was later on found to be irregular as his age was 17 years 8 months at the time of entry into the service and thus he was underage. It is however not explained as to what was considered to be the minimum age required but it can be implied from the written statement that it is taken as 18 years. That however is not so prescribed under the recruitment rules. The rational way therefore would be to take the age at which the applicant was registered with the Employment Exchange and admittedly he was so-registered much prior to the date of selection. Even therefore he may have completed the age of 18 years he cannot be held to be disqualified for the appointment. We draw support to this view from the decision of the

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Calcutta High Court in Mira Bagchi's case (supra). In that case a Notification of the Govt. of West Bengal relating to determination of seniority of typists in Education Department who were employed in Govt. Service before attaining 18 years of age was impugned. Their Lordships of the High Court were pleased to declare the notification/order to be legal and valid. In the course of discussion it was observed as follows :

"As we see it, appointment of a person below the age of 18 is not illegal. Reference in this connection may be made to the relevant provisions of the Indian Contract Act which makes it unmistakably clear that appointment of a minor as an agent is perfectly legal.
We have not been able to find anything in the ~~general~~ ^{general} law under which it can be ruled that appointment of a servant below the age of 18 is illegal

Our attention has been drawn to the Notification No. 645 Mis. dated 21st May, 1941 labelled as "Rules for recruitment of typists in the secretariat and in certain other Government offices", wherein it has been provided that a person in order to be qualified for the appointment as typist "must be less than 25 years". There is no minimum age limit in that Notification and that being so, it cannot be urged with any amount of plausibility that the appointment of any person below 18 would have been contrary to this Notification or otherwise illegal."

13. Thus we hold that the grounds on which appointment of applicants in O.A. 209/94 and 210/94 was held irregular are not tenable and consequently the impugned order cannot be sustained. We also hold that the appointment of applicant

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✓ in O.A. 208/94 ^{could not} ~~also cannot~~ be terminated for the reasons already discussed. We hold that the respondents are estopped by their conduct from doing so. 173

✓ In a similar situation the Bombay Bench of CAT in Vijaya Pai's case (Supra); where the fact that the applicant was above prescribed age limit and who had been appointed and had served for more than one year and six months whereafter the mistake was detected and her services were sought to be terminated, it was held that in view of the fact that she was allowed to appear in the competitive examination and was also allowed to join duty after her application had been scrutinized, it was not permissible for the Government to terminate her service on the ground of her being over age and that the declaration given by her that she had read eligibility conditions and was satisfying them did not operate against her as lapse lay equally on the part of the Commission and the Department and as the chances of applicant seeking alternative employment had become dim, the applicant's claim for continuance in service was justified in equity. Consequently the termination order was quashed.

✓ We are thus well supported in our view which we are inclined to take in these matters. Here also applicants in first two cases have stated that they have now become age barred to get any other employment. In our view the totality of the circumstances amply justify granting relief to the applicants in equity.

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15. Apart from all the eligibility conditions not appearing to have been intimated to the Employment Exchange or to the applicants we also see no justification for penalising the applicants mere so because they are not found otherwise unsuitable to continue in the service and consequently no prejudice is likely to be caused to the respondents by their continuation.

16. It appears that the Director General had not been apprised of all the relevant details in respect of these applicants when he scrutinized the matter and took the view that the appointments were irregular.

17. In the light of the foregoing discussion we pass the following order :

Order on O.A. 208/94.

- i. The impugned order dated 30.9.94 is hereby quashed and set aside.
- ii. The respondents are directed to reinstate the applicant in the same post in which he was working on the date of the impugned order and treat him to have been in continuous service from that date till the date of his reinstatement on the same terms and conditions on which his appointment was made and give him all consequential benefits from the date of the impugned order till the date of reinstatement including back wages.

iii. As even after the reinstatement the applicant would still be a probationer the respondents are directed to take steps for deciding upon his confirmation as per relevant rules as early as possible.

The Original Application is accordingly allowed.
No order as to costs.

Order on O.A. 209/94.

- i. The impugned order dated 30.9.94 is hereby quashed and set aside.
- ii. The respondents are directed to reinstate the applicant in the same post in which he was working on the date of the impugned order and treat him to have been in continuous service from that date till the date of his reinstatement on the same terms and conditions on which his appointment was made and give him all consequential benefits from the date of the impugned order till the date of reinstatement including back wages.
- iii. As even after the reinstatement the applicant would still be a probationer the respondents are directed to take steps for deciding upon his confirmation as per relevant rules as early as possible.

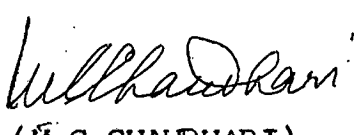
The Original Application is accordingly allowed.
There will be no order as to costs.

Order on O.A. 210/94.

- i. The impugned order dated 30.9.94 is hereby quashed and set aside.
- ii. The respondents are directed to reinstate the applicant in the same post in which he was working on the date of the impugned order and treat him to have been in continuous service from that date till the date of his reinstatement on the same terms and conditions on which his appointment was made and give him all consequential benefits from the date of the impugned order till the date of reinstatement including back wages.
- iii. As even after the reinstatement the applicant would still be a probationer the respondents are directed to take steps for deciding upon his confirmation as per relevant rules as early as possible.

The Original Application is accordingly allowed.
There will be no order as to costs.


(G.L.SANGLYINE)
Member(A)


(M.G.CHAUDHARI)
Vice-Chairman