

Central Administrative Tribunal
Principal Bench
New Delhi

O.A.No.3533/2013

Order Reserved on: 04.05.2016
Order pronounced on 16.05.2016

Hon'ble Shri V. Ajay Kumar, Member (J)
Hon'ble Dr. B. K. Sinha, Member (A)

Mamunisha
w/o Ashrafi
Beldar T/S, age about 50 years
Working under Supdt. Archaeologist
A.S.I. Delhi Circle
Safdarjung Tomb,
New Delhi -110 003. ... Applicant

(By Advocate: Sh. Malaya Chand)

Versus

1. Union of India
Through its Director General
Archeological Survey of India
Janpath,
New Delhi – 110 003.
2. Superintending Archaeologist
Archaeological Survey of India
Delhi Circle, Safdarjung Tomb
New Delhi – 110 003. ... Respondents

(By Advocate: Sh. Amit Anand)

ORDER

By V. Ajay Kumar, Member (J):

The brief facts, as narrated in the application, are that the applicant was appointed as Casual Labour under the Respondent-

Archaeological Survey of India, in the year 1988, and was conferred with the Temporary Status as Beldar in the year 1993. At that time, the applicant submitted a Certificate issued by the Gram Panchayat/Gram Pradhan showing her Date of Birth as 15.08.1962 and accordingly the same was shown in the Annexure A2-Seniority List as well as in her Service Book.

2. Vide Annexure A3, dated 05.08.2000 the respondents requested the Medical Superintendent, Safdarjung Hospital, New Delhi to issue an age certificate of the applicant and certain others, after ascertaining their age through Ossification Test. Thereafter, vide Annexure A4-Notice dated 08.02.2011, issued to the applicant stated that the Specialist of the Safdarjung Hospital opined that the applicant's age is around 60 years, however, the competent authority has decided to fix the age of the applicant as 58 years as on the date of Medical Examination i.e., 26.10.2010 and accordingly the applicant will retire from service w.e.f. 26.10.2012, i.e., on completion of 60 years.

3. The applicant made Annexure A5 representation against the said Notice, however, the respondents vide Annexure A6 dated 17.05.2012 reaffirmed that the applicant will retire from service w.e.f. 31.10.2012.

4. Aggrieved by the same, the applicant preferred OA No.1965/2012, which was disposed of by this Tribunal by its

Order dated 15.10.2012 (Annexure A1), the relevant parts of which read as under:

"4. Sh. Malaya Chand, learned counsel for the applicant would submit that the applicant would be satisfied by a direction for examination of her case by any other Hospital other than Safdarjung Hospital where the first medical examination had been done. While an interim protection till such examination would also be urged by the learned counsel; the same would be sought to be modified by Shri Amit Anand, learned counsel for the respondents. Shri Amit Anand would urge that the future course of action in the case of the applicant should be made dependent upon by the outcome of the report of the said second examination.

5. Considering the facts of the case and the decisions already taken in similar matters by the Coordinate Benches of this Tribunal, we find it appropriate to dispose this OA with a direction to the Director General, ASI to refer the matter for a second medical examination to a hospital as decided by them, but other than Safdarjung Hospital. The report of such examination is to be obtained within 15 days; or latest within a month. The outcome regarding the continuation or otherwise of the applicant would be subject to the opinion of the second medical board. In the event of the opinion being rendered by the second medical board in favour of the applicant, she would be entitled to all benefits in accordance with law.

Issue DASTI."

5. In pursuance of the aforesaid Order, the applicant was re-examined in Dr. Ram Manohar Lohia Hospital on 30.11.2012 and as per the said report, the age of the applicant is between 55 and 60 years. According to the applicant, taking advantage and by misinterpreting the said report, the respondents forcibly retired her from service on 31.10.2012. Hence, the OA.

6. Heard Shri Malaya Chand, the learned counsel for the applicant and Shri Amit Anand, the learned counsel for the respondents, and perused the pleadings on record.

7. Shri Malaya Chand, the learned counsel appearing for the applicant, while drawing attention of this Tribunal to the 2nd Medical Examination Report issued by Dr. Ram Manohar Lohia

Hospital, submitted that it was mentioned in the report that the Bone-age of the applicant is 50 years and even otherwise as per physical and dental examination of the applicant also her age is between 55 and 60 years only and hence, the respondents ought to have fixed the age of the applicant at 55 only as on the date of the said 2nd Medical Examination, i.e., 30.11.2012 and accordingly the applicant is entitled to be continued in service for 5 more years.

8. The learned counsel placed reliance on a Coordinate Bench judgement of this Tribunal in OA No.4243/2010 dated 11.08.2011 (**Rajesh Kumar Singh v. Union of India**).

9. Per-contra, Shri Amit Anand, the learned counsel appearing for the respondents submits that the Safdarjung Hospital, after examining the applicant, opined that the age of the applicant is around 60 years plus or minus 5 years of age, as estimated by the Radiological Method. Even Dr. Ram Manohar Lohia Hospital, on re-examination, opined that the age of the applicant is between 55 and 60 years. Accordingly, the decision of the competent authority fixing the age of the applicant, as aforesaid, is legal and valid. The contention of the applicant that in the report of Dr. Ram Manohar Lohia Hospital, the Bone-age of the applicant has been mentioned as 50 years, and accordingly she should be allowed to continue in service beyond 31.10.2012 is untenable and unsustainable, as the same was mentioned only

an observation and to arrive the final conclusion that the age of the applicant is between 55 and 60 years, which is consistent and also matching with the report of the Safdarjung Hospital.

10. It is not in dispute that there is no valid age proof for the applicant, other than the Certificate issued by the said Gram Pradhan. Hence, the action of the respondents to refer the applicant and certain identically placed persons for Ossification Test for fixing the age, is unobjectionable. Further, it is also not in dispute that the Safdarjung Hospital opined that the age of the applicant is around 60 years plus or minus 5 years. Similarly, Dr. Ram Manohar Lohia Hospital also opined that the age of the applicant is between 55 and 60. The respondents fixed the age of the applicant as 58 years as on the date of the first examination of the applicant, i.e., by Safdarjung Hospital and continued the applicant in service upto 31.10.2012. The contention of the applicant that Dr. Ram Manohar Lohia Hospital observed that the Bone-age of the applicant as 50 years, is unsustainable as finally it was opined that the Bone-age of the applicant is between 55 and 60 years, and also even as per Ossification Test, Physical and Dental examination her age is between 55 and 60. When the medical authorities opined that the age of the applicant can be anything between 55 and 60, and since the respondents fixed the age of the applicant at 58 years as on 26.10.2010, the same cannot be found fault with.

11. The Judgement in **Rajesh Kumar Singh** (supra) pertaining to directing the respondents to refer the applicant therein for a 2nd Medical Examination and to take appropriate decision basing on the same only, and hence, it will not help in any manner to the applicant's case.

12. In the circumstances and for the aforesaid reasons, the OA is devoid of any merit and the same is accordingly dismissed. No order as to costs.

(Dr. B. K. Sinha)
Member (A)

(V. Ajay Kumar)
Member (J)

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