

**Central Administrative Tribunal
Principal Bench, New Delhi**

**OA-2492/2013
New Delhi this the 27th day of August, 2018**

Hon'ble Sh. Ashish Kalia Member (J)

1. Hemlata,
W/o Sh. Praksh Mishra,
R/o E-680, Sanjay Gandhi Marg,
Babarpur, Shahdara, Delhi

2. Prem Raj,
S/o Sh. Nathmal,
R/o A-16, East Arjun Nagar,
Shahdara, Delhi. ...Applicant

(By Advocate : Sh. M K Bhardwaj)

Versus

UOI &Ors through :

1. The Secretary,
Ministry of Environment & Forests,
Govt. of India, Pryavaran Bhawan,
New Delhi.

2. Central Pollution Control Board,
Parivesh Bhawan, East Arjun Nagar,
Delhi through its Chairman ...Respondents

(By Advocate : Ms. CharuAmbwani)

ORDER (ORAL)

The O.A has been filed by the two applicants who were appointed as Project Officer/Project Assistant from the ENVIS w.e.f. 10.10.2008. They have invited the appointment on 27.04.2009. In 12.06.2012, respondents constituted a committee to

review the cases of employees working on temporary status/adhoc/contractual/causal basis and on compassionate grounds in different projects in CPCB for regularisation. All of sudden the applicants verbally told that their cases have not been send to the competent authority as per the recommendation of the committee. The applicants were approached to this tribunal for redressal of their grievance. 2. 2. 2.

2. Notices were issued and respondents have filed a detailed reply stating that they were appointed purely on contract basis under ENVIS project sponsored and funded by the Ministry of Environment & Forests purely on co-terminus and contractual basis on the following terms :-

“Your appointment is purely temporary for a period of one year from the date of your joining or till the Project is over whichever is earlier.”

3. The service of the applicants in the Project will not entitle for claiming absorption permanently in any post/cadre in Central Pollution Control Board. During the period of appointment, Smt. Hemlata will be paid consolidated remuneration of Rs. 13,000/- p.m. and Sh. Prem Raj consolidated remuneration of Rs. 8,000/- p.m. Applicants are not entitled to any kind of leave. Their services can be terminated any time. It is further submitted that the applicants were subjected to the selection process and after being found fit by the competent selection Board, were appointed for the post. That

the applicants were granted extension on year to year basis being a contractual employment, the applicants could not have derived benefits of a regular post. The respondents prayed for rejection for the O.A.

4. Heard the learned counsel for the parties.

5. Sh. M.K. Bhardwaj, learned counsel for the applicant has drawn my attention to sub-clause reads as under:-

'l', Smt. Hemlata (S.No. 49 of annexure-I & S.No. 10 of Annexure-IV) having Master of Computer Application Degree was appointed as Project Officer in the ENVIS Project on 13.04.2009 and possesses requisite qualification and prescribed age limit for the post of Project Officer. However, no such post exists in the RR, 1995. She can be considered to the post of LDC subject to fulfilment of other conditions. This case however required one time age relaxation."

(m) In the case of Sh. Prem raj (S.No. 50 of annexure-I & S.No. 11 of Annexure-IV) having Master of Arts and Diploma in Computer Application was appointed as Project Assistant in ENVIS Project. He possesses the requisite qualification and was within age limit for the project post. However, no such post exists in the RR, 1995. He can be considered for the post of LDC subject to fulfilment of other conditions. This case however required one time age relaxation.

The upper age could be relaxed wherever found to be necessary. The lower age limits should, however, in no case be relaxed below 18 years.

5. The applicant has further relied upon judgment passed by Hon'ble High Court in the case of **PreetiRathi&Ors** on 15.11.2011 in Writ Petition No. 1641/201, wherein the following order was passed :-:-

“13. In the rules, nowhere the expression “departmental candidates” has been defined. It has to be in these circumstances, assigned natural connotation. A department candidate would be the candidate who is not an outsider but is already working in the concerned department namely MCD in the instant case. Admittedly the respondents are working in MCD as Primary Teachers on contract basis and one has to assign practical meaning to the foresaid terminology and we are of the considered opinion that the respondents shall be treated as department candidates for the purpose of appointment to the post of Primary Teachers on regular basis when they are already working in the same post on ad-hoc basis for the last ten years. Reference may be made to UPSC v. Dr. Jamuna Kurup (2008) 11 SCC 10 where the expression “employees of MCD” in the advertisement granting age relaxation with respect to recruitment to the post of Ayurvedic Vaida was held to include both permanent or temporary, regular or short term contractual or ad hoc employees of the MCD. Accordingly those appointed on contract basis were held to be employees of MCD and entitled to age relaxation. The earlier judgment in UPSC v Girish Jayanti Lal Vaghela (2006) 2 SCC 482 relating to Government employees was held to be not applicable to the expression “employees of MCD.” We see no reason why the said dicta of the Supreme Court be not applied to the present situation also.

6. He has also relied upon the judgment passed by this Tribunal in OA No. 3044/2010 and also relied upon the judgment passed by the Hon’ble High Court in the case of Ritu Kushwaha and Ors. Vs. UOI and Ors. in Writ Petition No. 7808/2012, wherein the following order was passed:-

x x x x x

“14. In our view, this reasoning is fallacious. The petitioners are not seeking recruitment to Group –C posts in an open recruitment process. These petitioners may not even be eligible to apply in response to any such recruitment process as all of them may be overage by now, and most of them may not even possess the minimum educational qualification of matriculation. The petitioners fall in an altogether different

class. They are seeking regularization of their services on account of having rendered over ten years of casual service. It is not the respondents' case that they did not meet the educational qualification required of them, to be recruited against Group -D posts of Safaiwala/Labourers. Merely because, in the meantime, the Group-D posts stands abolished, it does not mean that their right to be considered for regularization would be defeated. Such class of casual employees would have to be considered for regularization upon completion of ten years of continuous service by applying the same criteria of educational qualification as was applicable to them at the time of initial recruitment as casual employees. The conversion of Group-D posts into Group-C posts of MTS is an act of the respondents, and if the effect of regularization is that they would be entitled to pay scale and benefits available for Group-C posts, so be it.

15. It is rather shocking and surprising that, on the one hand, the DOP&T sought to reject the cases of the petitioners when respondents NO.1 & 2 favourably recommended the same for regularization, on the other hand, the DOP&T itself proceeded to regularize several casual employees, who were similarly placed as the petitioners. There is absolutely no justification for adoption of these double standards. It appears that the DOP&T does not practice what it preaches."

6. On the cogent hearing of the above said judgments , this Tribunal has found that the Hon'ble High Court was of this view that both the applicants can be treated as departmental candidates for the purpose of relaxation. As Hon'ble High Court in the case of Ritu Kushwaha (supra) has directed the department to consider Primary Teacher on contractual basis as departmental candidates. Thus, if we apply the same analogy in the present case, the applicants should have also been considered as departmental candidates and they are entitled to age relaxation.

7. Learned counsel for the applicant further submitted that the respondents have recommended their names for regularization but in the final select list, their names were conspicuously absent. No reason whatsoever has been assigned for the same which is discriminatory qua the applicant who are similarly situated persons.

8. This Tribunal while going through the judgment passed by Hon'ble High Court in the case of Ritu Khushva (supra), observed that the applicants should have been considered as departmental candidates for all practical purposes and they are also entitled for age relaxation etc. As per the committee's recommendation clause 'o', upper age could be relaxed wherever found to be necessary. Thus, this clause 'o' can be a plea to rescue the applicants herein.

9. Thus, this Tribunal is of the considered view that the department should have sent their names for consideration of regularization to the post of LDC or equivalent at present or in future. The service of the applicants shall not be terminated as they are working with the department for last so many years and employees by another set of ad-hoc employees. The present OA deserves to be allowed. The judgment passed by the Hon'ble High Court in the case of Ritu Khushwa (supra) , the department should grant age relaxation and treated as

departmental candidates and should be considered to the next available to LDC or equivalent.

10. OA. is allowed and there shall be no order as to costs.

sarita

(Ashish Kalia)
Member (J)

