

CENTRAL ADMINISTRATIVE TRIBUNAL

CHANDIGARH BENCH

O.A.NO.060/01507/2017

Orders pronounced on: 17.09.2019
(Orders reserved on: 20.08.2019)

**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J) &
HON'BLE MR. A.K. BISHNOI, MEMBER (A)**

1. Bal Krishan aged 47 years S/o Shri Hari Chand, Room Attendant
2. Ramesh Kumar aged 49 years, S/o Shri Ambika Parsad, Room Attendant

Both working at the U.T. State Guest House, Hospitality Department, Chandigarh, Group D.

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Applicants

Versus

1. Union of India, through Secretary to Govt. of India, Ministry of Home Affairs, North Block, Cabinet Secretariat, Raisina Hill, New Delhi.
2. The Home Secretary, Chandigarh Administration, U.T. Secretariat, Sector 9, Chandigarh.
3. The Director, Hospitality Department, Union Territory, Sector 9, Chandigarh.

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Respondents

**Present: Mr. Dinesh Saini, Advocate, for Ms. Monika Arora, Advocate, counsel for applicant.
Mr. Arvind Moudgil, Advocate, for respondents.**

ORDER
(BY HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)):

For the reasons stated in M.A. No. 060/01929/2017, it is allowed and the applicants are permitted to file this Original Application (OA) jointly.

2. The applicants have invoked the jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985, seeking issuance of direction to the respondents to regularize their servicer as per direction/advice given by the Government of India etc.

3. The facts of the case are largely not in dispute. Applicant No.1 was appointed on Daily wage basis on 10.11.1990 as Room Attendant whereas applicant No. 2 was appointed as such in 1989 in U.T. Guest House, Hospitality Department, Chandigarh Administration and by now have worked for more than 26 years. In pursuance of decision dated 11.3.2010 in O.A.No. 686-CH-2009 of this Tribunal, the respondents vide order dated 9.9.2010, granted temporary status w.e.f. 1.9.1993, to the applicants on the ground that seven posts lying vacant had lapsed and as such regularization could not be granted. The applicants along with others again approached this Tribunal through O.A.No. 28-CH-2011 (**ROSHAN LAL & OTHERS VS. UOI ETC.**) which was disposed of on 9.10.2012 with direction to consider their case for regularization as they had put in about two decades of service. However, their claim was declined on the ground that they did not fulfil essential qualifications, vide order dated 9.3.2013. This order was challenged in O.A.No. 1172-CH-2013 which was disposed of on 11.9.2013, with direction to Director, Hospitality, Chandigarh Administration, to place the matter of regularisation either before the Home Secretary and if required, before Administrator for satisfaction of the claim of applicants including for relaxation of qualifications etc. However, it was conveyed vide

order dated 7.11.2014, that case of regularization can be considered only when seven lapsed posts are revived by competent authority.

4. The case of revival of 7 Group 'D' posts was sent by Respondent No.3 to Ministry of Home Affairs, vide letter dated 7.11.2014, to which reply was given on 11.3.2015, that posts cannot be revived but with a direction to Administration to take priority action for regularization of their services as per Scheme dated 10.2.2014. Vide letter dated 11.3.2015, it was decided that since there were no posts, the services of applicants cannot be regularized. However, Pritam Chand, Water and Bachan Singh, Room Attendant have retired in October, 2016 and March, 2017, respectively, thus, two slots have become available, against which their services can be regularized. The legal notice dated 4.9.2017 sent on behalf of the applicants has failed to evoke any response, hence the O.A.

5. The respondents have filed a reply. They submit that one post of Waiter fell vacant w.e.f. 1.11.2016 and another of Bhisti (Group D) w.e.f. 1.4.2017. These are lying vacant and applicants can be considered only if they fulfil the edibility criteria. Both the applicants have crossed the age limit of 37 years, whereas one should have age of 18-27 years for appointment against these posts. Ramesh Kumar, does not fulfil qualification for the post of Waiter, whereas applicant No.1 fulfills the eligibility criteria, but is overage. In short, they submit that unless there is relaxation of age, educational qualification and technical qualification, they cannot be regularized. As per additional affidavit dated 11.2.2019, the work and conduct of the applicants has been found to be good and nothing is adverse against them.

6. The learned counsel for the applicants argued that in earlier litigation, there has been direction to the respondents to consider the case of

applicants for regularization which was declined for lack of vacancies but now since posts are available, their claim cannot be rejected on the ground of ineligibility and in any case relaxation can always be granted in their favour. On the other hand learned counsel for respondents reiterated what is stated in the short written statement.

7. We have considered the rival contentions raised by both sides.

8. The controversy is very short one and in fact stands clinched in earlier round of litigation as to whether if applicants are ineligible, they should be granted relaxation or not. While disposing of O.A. No. 1172-CH-2013(**ROSHAN LAL ETC.VS. UOI ETC.**) on 11.9.2013, this Tribunal had issued the following directions in favour of the applicants :-

"4. Learned counsel for the applicants submits that in pursuance of the above directions the respondents have passed an order dated 9.3.2013 (Annexure A-3) rejecting the prayer of the applicants for regularization of services on the premise that they do not fulfill the educational qualifications for the respective posts as prescribed in the Departmental Recruitment Rules for Group 'D' posts, notified by the Chandigarh Administration on 6.12.2001. Learned counsel would argue for invalidation of the impugned order, Annexure A-3 on the ground that respondents have not understood the true import of clause 8 of the Scheme of 1993, as reproduced in the impugned order itself inasmuch as the same clearly provides that in case of illiterate casual labourers or those who fail to fulfill the minimum qualification prescribed for post, regularization will be considered only against those posts in respect of which literacy or lack of minimum qualification will not be a requisite qualification. They would be allowed age relaxation equal to the period for which they have worked continuously as casual labour. Learned counsel would argue that the applicants have efficiently worked under the respondents having been engaged two decades back and as such it would be too harsh to expect them to fulfill educational qualifications on the basis of 2001 Rules and vacancies existing prior to 2001 can and should be filled as per rules / practice prevalent prior thereto. The second limb of argument raised by learned counsel for the applicants is that to deal with such hard cases the legislature has already made a provision in rule 7 of the Hospitality Department, Chandigarh Administration (Group 'D') Recruitment Rules, 2001 that "where the Administrator, Union Territory, Chandigarh is of the opinion that it is necessary or expedient so to do, it may, by order, for reasons to be recorded, in writing, relax any of the provisions of these rules with respect to any class or category of persons". It is argued that considering the peculiar facts of this case, it was a fit case where the Competent Authority should have invoked provisions of rule 7 thereof to render justice to the cause of the applicants who belong to a class or category which was appointed two decades back and it would be unjust to expect of them to possess qualifications prescribed in 2001 Rules. Learned counsel went on to submit that the non-possession of qualification by the applicants as provided in 2001 rules has never

been a cause of handicap in efficient discharge of their duties and responsibilities. In support of his claim learned counsel would also rely upon decision of Hon'ble Rajasthan High Court in **Smt. Ammini P.T. Vs. Union of India & Others**, 2012 LIC 1794 in which it was held that employee who had worked on daily wages on the post of Nurse for 27 years, without there being any complaint against her work and conduct, it would be very harsh to deny her confirmation on the ground that she lacked prescribed educational qualifications when her qualification had not come in the ways of discharge of her duties for such a long time of 27 years respondents were directed to consider her case for regularization on the post of Staff Nurse treating her to be fully qualified for the same. For this view, Hon'ble High Court followed **Bhagwati Prasad Vs. Delhi State Mineral Development Corporation**, AIR 1990 SC 371 and other decisions as well.

5. Qua the plea of relaxation, learned counsel would also rely upon decision in the case of **J.C. Yadav & Ors vs State Of Haryana & Ors**, 1990 AIR 857, in which it was held that power to grant relaxation may be exercised in case of an individual to remove hardship being caused to him or to a number of individuals who all may be similarly placed. This power may also be exercised to meet a particular situation where on account of the operation of the rules hardship is being caused to a set of individual officers. It was held that "Rule 22 of the Haryana Service of Engineers Class I PWD (Public Health Branch) Rules 1961 confers power on the Government to dispense with or to relax the requirement of any of the Rules to the extent and with such conditions as it may consider necessary for dealing with the case in just and equitable manner. The object and purpose of conferring this power on the Government is to mitigate undue hardship in any particular case. If the Rules cause undue hardship or operate in an inequitable manner, the State Government has power to dispense with or to relax the requirement of Rules. The Rule does not restrict the exercise of power to individual cases. The Government may in certain circumstances relax the requirement of Rules to meet a particular situation". The court held that the power of relaxation is generally contained in the rules with a view to mitigate undue hardship or to meet a particular situation. Many a time strict application of service rules create a situation where a particular individual or a set of individuals may suffer undue hardship and further there may be a situation where requisite qualified persons may not be available for appointment to the service. In such a situation, the Government has power to relax requirement of rules. The state Government may in exercise of its powers issue a general order relaxing any particular rule with a view to avail the service of requisite officers. The relaxation even if granted in a general manner would enure to the benefit of individual officers.

6. For the order which we propose to pass there is no need to issue any notice to the respondents as the respondents had no occasion to take a view on the contentions raised on behalf of the applicants in the legal notice and averments as noticed in the course of this order and more over the order was passed by the Director Hospitality and higher authorities had no occasion to consider the matter.

7. In view of the above, we direct the respondent No. 3 to place the matter before the Home Secretary and if required before the Administrator also qua the claim of the applicants in the light of facts noticed above including relaxation of qualifications and take a final decision thereon within a period of two months from the date of receipt of a certified copy of this order. Needless to mention that we have not expressed any opinion on the merit of the case."

No doubt, the aforesaid decision was rendered in limine but the fact of the matter is it was never challenged and attained finality and case of the

applicants was put up to the competent authority, who opined that in the absence of any post no action can be taken on the claim of applicants as the case relating to revival of posts was rejected by the competent authority. But it is equally true, now two posts are indeed available and if the applicants are not eligible in terms of age or other qualifications, their cases can be considered in view of facts noticed in the case of Roshan Lal (supra), in which applicants were a party and now the respondents are under obligation to re-consider the case of applicants as facts have undergone a change as vacancies have become available, which was basic objection for rejection of their claim at earlier point of time.

9. In the wake of aforesaid discussion, this O.A is allowed. The respondents are directed to re-consider the case of the applicants in view of posts having become available including grant of relaxation in age / qualifications, as per pleas noticed in extracted portion aforesaid including the judicial pronouncements mentioned therein, within a period of two months from the date of receipt of a certified copy of this order. No costs. M.A. No.060/01534/2018 also stands disposed of.

(SANJEEV KAUSHIK)
MEMBER (J)

(A.K. BISHNOI)
MEMBER (A)

PLACE: CHANDIGARH
DATED: 17.09.2019

HC*