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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

RA NO. 254/2004
MA NO. 1832/2004 & MA NO. 1833/2004
OA NO. 961/2003

New Delhi this the 21st day of September, 2004

HON'BLE MR. JUSTICE M.A. KHAN, VICE CHAIRMAN (J)
HON'BLE MR. S.A.SINGH, MEMBER (A)

1. Union of India, through
the Secretary, Ministry of Agriculture,
Deptt. Of Dairying & Animal Husbandary,
Krishi Bhawan, New Delhi-110001.
2. The General Manager,
Delhi Milk Scheme,
West Patel Nagar, New Delhi.

(By Advocate: Sh. Rajeev Bansal proxy for Sh. B.K.Aggarwal)

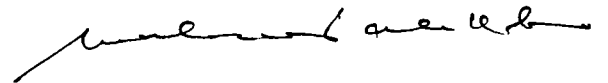
Versus

1. Mahesh Chand, S/o Sh. Som Nath,
11/151, DMS Colony, Amrit Kunj,
Hari Nagar, New Delhi-110064.
2. Hans Raj, S/o Sh. Jaswant Singh,
11/163, DMS Colony, Amrit Kunj,
Hari Nagar, New Delhi-110064.
3. Krishan Kumar, S/o Sh. Raj Karan,
F-5/95, Sultanpuri, Delhi-110041.
4. Mahinder, S/o Sh. Khublal Singh,
2132/A/128, Prem Nagar (West),
Patel Nagar, New Delhi-110008.
5. Gajender Singh, S/o Sh. Kalu Ram,
54, Rampura, Gali Mali Wati, Delhi-35.

ORDER (ORAL)

By Hon'ble Mr. Justice M.A.Khan, Vice Chairman (J)

Present application is filed by the respondents for review of the order of the





Tribunal dated 22.3.2004 passed in OA-961/2003. Alongwith this application MA-1833/2004 is also filed for condonation of delay in filing the application.

2. Counsel for review applicant stated at bar that the order dated 22.3.2004 has not been challenged in petition before the Hon'ble High Court and has become final. According to the counsel for applicant delay is sought to be condoned on the ground that the matter was considered by authorities at different level and reference was made to concerned Ministries before final decision was taken to seek review. We are inclined to condone the delay in filing of the application for condonation of delay since we are of the considered view that the review application cannot be sustained on merit. Assuming that there is no delay in filing the application, we proceed to consider the application of applicant for review of the order dated 22.3.2004 on its own merit.

3. From the application and the argument which are advanced on behalf of the respondents, we understand that only ground for review of the order is that the Court while deciding the OA has not specifically ^{dismissed} ~~dismissed~~ the contention of the applicant (respondents) that as per the recruitment rules applicable in the present case and that in the letter dated 5.6.1997 of the Ministry of Agriculture, Government of India it has been stated that there was no provision existing in the notified recruitment rules to be given in the case for allowing the departmental candidates alongwith the nominations of the Employment Exchange against direct recruitment quota and the recruitment should be strictly in conformity with the recruitment rules applicable and that as per the recruitment rules applicable in the present case there was no provision for relaxation of the age of departmental candidates. The argument of the learned counsel for applicant is that the Court has not taken into consideration that the recruitment rules did not provide for relaxation of the age of the departmental candidates and the relaxation in the age of these



candidates accorded by the department was in violation of the recruitment rules, so the same will not help the applicant in any manner. We are afraid that these questions were specifically urged before this Tribunal by learned counsel for the applicant and they have taken note of and discussed by this Tribunal in its order at various places.

4. In para 5, there is a mention of the argument advanced on behalf of the review applicants, "therefore mates cannot be treated as departmental candidates for the benefits of age relaxation as departmental candidates". Again in para 6, the arguments of the counsel for respondents was noted which reads, "therefore, the prevailing practice in DMS to allow departmental candidate against direct recruitment without a specific provision in the recruitment rules is not in conformity of the recruitment rules. Rather it is in violation of recruitment rules".

5. In para 8 of the order, the argument advanced on behalf of the applicant was noted and it was observed, "Annexure R-8 which prescribe that there is no provision existing in the notified recruitment rules for allowing the departmental candidates alongwith the nominees of Employment Exchange was issued on 5.6.97 as stated by the department itself. So by that time even the departmental candidates had not applied. Respondents should have denied the applicants consideration on the basis of the letter dated 5.6.97 itself at the very threshold instead of asking the applicants to undergo the selection and then giving them appointment on ad hoc basis".

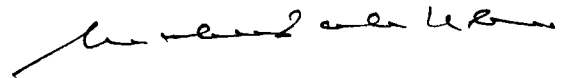
6. At another place in para 11, the Court noted the arguments of the counsel for respondents that the recruitment rules did not permit the clubbing of the candidates from the department with candidates who are to be appointed as direct recruits, so the appointment given to the applicants was bad in law that is why they have been reverted. In our view this contention of the counsel for respondents have no merit because the

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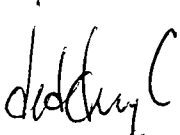
recruitment rules only show that there are only two sources of appointment; 50% by direct recruitment and 50% by promotion and in case the applicants who are otherwise eligible to be appointed as direct recruits, department cannot of its own place any restriction on the applicants to apply for the post which has occurred under the direct recruit quota, unless there is specific prohibition in the recruitment rules applicants may be working in department they too have a right to appear and compete for the post available under the sources of direct recruitment, if they are otherwise eligible.

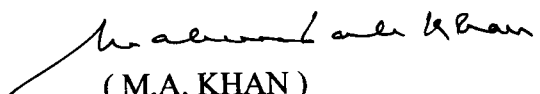
7. The Court further observed in para 12, "in this case since applicants have been permitted to compete for the post with direct recruits and their eligibility have been tested and only thereafter they have been given appointment, but it was given on ad hoc basis because of the pendency of some other OA and not because of any shortfall in the qualifications or otherwise eligibility conditions of the applicants. The recruitment rules also do not prohibit the departmental candidates to compete for the direct recruit vacancies specifically. Thus, we find that the applicants had been rightly considered and had been given job rightly.

8. The bare reading of the order of this Tribunal is sufficient to convince that the question of age relaxation of the candidates making them eligible for consideration as a departmental candidate was specifically raised and was taken into consideration by the Tribunal. The applicant cannot, in the grounds of review application, reagitate the contention which was in the mind by the Tribunal while deciding the question involved. In fact, there was no provision in the recruitment rules prohibiting age relaxation of departmental candidates and the appropriate authority ^{was} conscious of this fact and it also knew about the DOP&T letter dated 5.6.1997 before applying its mind and accorded^g relaxation in age and decided about the eligibility of departmental candidates. For the



aforementioned reasons, we do not find that the applicant with the present application has been able to produce any material or evidence which was put before the Court when the OA was disposed of and which was not taken into consideration by the Tribunal while deciding the OA on its merits. There is no other reason for this Tribunal to reconsider the question raised in the MA warranting review of the impugned order. We do not find any merit in the review application and the same is accordingly dismissed.


(S.A. SINGH)
Member (A)


(M.A. KHAN)
Vice Chairman (J)

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