
(2023) 02 CAT CK 0010

In the Central Administrative Tribunal

Case No : Original Application No. 260, 00768 Of 2012

Dilip Kumar Mendali

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 03-02-2023

Acts Referred:

Citation : (2023) 02 CAT CK 0010

Hon'ble Judges : Swarup Kumar Mishra, Member (J); Pramod Kumar Das, Member (A)

Bench : Division Bench

Advocate : Satyajit Behera, S.K. Patra

Final Decision : Dismissed

Judgement

Swarup Kumar Mishra, Member (J)

1. The applicant has filed this OA seeking to quash the order rejecting his representation for regularization taking into consideration his three years casual engagement in Group-D post and consequently for a direction to the respondents to regularize his service against any Group-D as per DPA R O.M. 49014/19184-Estt(C)/Dt. 26.10.1984. The respondents filed their counter contesting the case of the applicant and the applicant has also filed rejoinder. By applying the decision of the High Court of Orissa dated 11.07.2005 in WP(C) No. 4601 of 2003 (S.Bhaskar Dora Vs. UOI & Ors), the Division Bench of this Tribunal vide order dated 06.08.2004, dismissed the OA for lack of jurisdiction. The said order was challenged by the applicant before the Hon'ble High Court of Orissa in W.P.(C) No. 8998/2015 and the Hon'ble High Court, by applying the decision laid down in the case of Bansidhar Gochhayat Vs. UOI, 2015(1) OLR 12, quashed the order of this Tribunal dated 06.08.2004 and remitted back to this Tribunal for fresh adjudication. Accordingly, the OA was restored to file and the respective parties were heard afresh.

2. The case of the applicant is that he having worked as a casual labourer under

the respondents for about 634 days, by applying the order DPA R O.M. 49014/19184-Estt(C)/Dt. 26.10.1984, he is entitled to be regularized in Group-D post. His further case is that the respondents conducted the selection for the post of Group-D but his candidature was rejected on the ground of overaged without giving age relaxation to the extent of the casual work he had rendered to the department. Hence, the rejection of his representation and his candidature being illegal, arbitrary and without due application of mind by applying the decision of the Hon'ble Apex Court in the case of Amarkant Rai Vs. State of Bihar, (2015) 8 SCC 265 and State of Karnataka & Ors. Vs. M.L.Kesari & Ors. (2010) 9 SCC 247, he is entitled to be regularized against any Group-D post by quashing the order of rejection dated 05.07.2012 (A/8).

3. On the other hand, the case of the respondents is that to man the work of newly opened office of Principal Director of Audit, E.Co.Rly, in the year 2007, the applicant along with others were engaged on daily wage basis from time to time. The process of regular selection was initiated for filling up of Group-D posts as per Recruitment Rules by issuing advertisement dated 24.07.2010. In the advertisement, it was specifically made clear that the candidate must not attained the age of 27 years as on the closing date of receipt of application, which was fixed to 23.08.2010. The application of the applicant was rejected on the ground of he being overaged, even by allowing age relaxation of three years of his casual engagement and another three years he being an OBC category candidate; the DoB of the applicant being 14.06.1975, the applicant became aged about 35 years 2 months and 9 days as on last date of receipt of the application. Insofar as his grievance for regularization taking into consideration his engagement on casual period by applying the DPAR O.M. 49014/19184-Estt(C)/Dt. 26.10.1984, it is the stand of the respondents that the said Circular is not applicable since the engagement of the applicant on casual basis is not through employment exchange and that, when it was decided to fill up the post through regular process of selection wherein the applicant applied but was found ineligible due to he being overaged. Accordingly, it is the stand of the respondents that the OA being devoid of merit is liable to be dismissed.

4. We have considered the rival submission of the respective parties and peruse the records.

5. It is seen that the date of birth of the applicant is 14.06.1975. According to the applicant he was engaged on casual basis on 15.02.2008. As per the rules, the upper age limit for appointment to government service is 27 years. Thus, even by the time the applicant was engaged on casual basis, he was overaged by three years even by granting age relaxation of three years as an OBC candidate and on the last date of receipt of application he became overaged by five years as an OBC candidate and even granting necessary relaxation to the extent of his casual service he was still overaged. We have perused the DPAR O.M. 49014/19184-Estt(C)/Dt. 26.10.1984 wherein it is stated that those appointed through employment exchange and possessing two years casual service are

eligible for appointment to regular post without further reference to the employment exchange and those recruited directly without reference to employment exchange should register and then put in two years service before becoming eligible for regular appointment if nominated by employment exchange. We do not see as to how the above circular is applicable to the case of the applicant. The Circular provides eligibility for appointment but in the instant case the applicant was ineligible as per the rules at the time he was appointed as casual basis or even at the time when the process of appointment started. We have also gone through the decision of the Hon'ble Apex Court in the case of Amarkant Rai (supra). It is seen that appellant therein was appointed temporarily in Class IV post of Night Guard, on daily wages vide Office Order dated 04.06.1983 issued by Principal, Ramashray Baleshwar College (for short "College"), Dalsang Sarai, affiliated to Lalit Narayan Mithila University (for short "University"), Bihar. The University vide letter dated 04.07.1985 took a decision to regularize the persons who worked for more than 240 days, and as per the letter dated 30.03.1987, as per which employees who have been working for a period for more than one year need to be regularized. The Principal of the College again vide letters dated 08.01.2002 and 12.07.2004 recommended for absorption of the appellant against the two vacant posts. Hence, the Hon'ble Supreme Court directed for regularization. In the instant case, as discussed above, neither the engagement of the applicant was in accordance with the rules nor he was sponsored through employment exchange. Also, by the time the applicant was engaged on casual basis, he was overaged as also during the time of selection process even after granting necessary age relaxation. Thus, facts of both the cases being different and distinct, the decision has no application to the case in hand. Similarly, we have gone through the case of M.L.Kesari (Supra) wherein the Hon'ble Apex Court directed for consideration of the case of the applicants therein taking into consideration the observation made of the Hon'ble Apex Court in paragraph 53 of the decision in Secretary, State of Karnataka and Ors Vs Umadevi And Others, (2006) 4 SCC 1. In the instant case, the case of the applicant does not come within the parameter of observation of the Hon'ble Apex Court in paragraph 53 of the said decision as the applicant had not worked for 10 years continuous casual service. Hence, the case of M.L.Kesari cited by the applicant is also not applicable herein.

6. In view of the discussions made above, this OA sans any merit and is liable to be dismissed, which is accordingly dismissed. No costs.