
(2010) 07 DEL CK 0173

In the Delhi High Court

Case No : Writ Petition (C) 132 of 2004

Director General, Doordarshan

APPELLANT

Vs

Dharam Singh and Another

RESPONDENT

Date of Decision : 12-07-2010

Acts Referred:

Citation : (2010) 07 DEL CK 0173

Hon'ble Judges : Pradeep Nandrajog, J; Mool Chand Garg, J

Bench : Division Bench

Advocate : Rajiv Sharma, for the Appellant; None, for the Respondent

Judgement

Pradeep Nandrajog, J.—Vide order dated 11.4.2000, the Central Administrative Tribunal has allowed OA No. 91/1999 filed by Dharam Singh, respondent No. 1, who claimed that being born on 3.3.1964 he had to be treated as below the maximum age limit of 25 years prescribed for regularization; for the reason the applicable policy envisaged 3 years" age relaxation.

2. A perusal of the order dated 11.4.2000 shows that the Tribunal has considered 9.6.1992 as the cut off date for purposes of computing the requirement of number of days worked as envisaged under the policy for purposes of acquiring the eligibility for regularization.

3. The Tribunal has referred to its order dated 20.8.1993 allowing OA No. 380/1993 "Lalit Vikram v. Director General, Doordarshan", wherein, in para 20 of its order, the Tribunal held that having deleted para 6 of the Scheme dated 9.6.1992, as per para III of the Memorandum dated 10.6.1992, to determine the number of years by which the upper age limit has to be relaxed needed to be re-worked.

4. The petitioner thereupon filed a Review drawing attention that there existed another office memorandum dated 5.7.1994 stating that the same has not been considered by the Tribunal.

5. Said Review Application stands dismissed vide order dated 5.3.2003.

6. While dismissing the Review Application, the Tribunal has held, in para 7, as under:

I have carefully considered the rival contentions of the parties and perused the material on record. In the light of the decision in Anil Kumar Mathur's case (supra) a scheme was formulated by the respondents for regularization of casual artists. What has been done through the scheme of 1994 is modification/clarification of computation of working days. The rest of the scheme has not been changed. The Scheme of 1994 though upheld by the Apex Court, inter alia, in para 1 contends that in para 2 of the Scheme of 9.6.1992 number of days for the purpose of regularization is to be computed on the basis of the actual working days. Moreover, the aforesaid Scheme of 1994 cannot be treated as new Scheme but modification of earlier Scheme and such is to be read as part and parcel of the Scheme except modification of computation of number of working days. This is in consonance with the law laid down by the Apex Court in Grewal's case (supra) wherein it is held that explanatory or clarificatory statute or statutory rules or order is to be read and part and parcel of the main order and would operate retrospectively. There is nothing mentioned about the cut off date in the new scheme of 17.3.1994 which is only a clarification whereas in the scheme promulgated on 9.6.92 the cut off date for calculating number of days is 13.12.91 and as per the affidavit by Director referred to above, the crucial date for closing calculation was 31.12.91. In my considered view the aforesaid date is the date to decide relaxation of upper age limit on the basis of number of working days in a year and accordingly relaxing it by treating 120 days in a year as one year relaxation in age, as it is not disputed that even according to 1994 Scheme applicant is entitled for three years age relaxation having worked for more than 120 days in three years, the cut off date to ascertain the age limit is 31.12.91 as new Scheme has not changed or altered in any manner this cut off date. Applicant who was 27 years, 9 months and 21 days on the crucial date on 31.12.91, on relaxation of three years was 24 years, 9 months and 21 days, which is below maximum age limit of 25 years. As such he was eligible to be considered for regularization.

7. Having perused the application seeking review, it is apparent that with reference to the office memorandum dated 5.7.1994, which clarified the office memorandum dated 17.3.1994, referred to by the Tribunal in para 7 of the decision, vide sub para (c), it stands stipulated as under:

(c) The crucial date for the purpose of calculation of age is the same as in 1992 Scheme, i.e. 09.06.92 and there is no change in it.

8. Unfortunately, the Tribunal has not referred to para (c) of the memorandum dated 5.7.1994, though it very much stands at the forefront of the application seeking review.

9. It appears to be a case where the requirement of working out 120 days was

creating some problem as per the earlier circulars for the reason, as indicated in the Review Application, it was only after giving benefit of the differential manner of calculating the number of days worked, did the petitioner become eligible on account of having worked for more than 120 days in 3 calendar years, but unfortunately for him, applying the same Scheme, he became overage.

10. It has been highlighted in the Review Application that if the memorandum of 17.3.1994 and 5.7.1994 have to be ignored, the effect would be that the respondent would not have worked for 120 days in 3 calendar years. In other words, it was urged that sub-para (c) of the memorandum dated 5.7.1994 could not be ignored.

11. Unfortunately for us, none appears for the respondents at the hearing today.

12. But, we find that the issues raised in the Review Application and in particular para (c) of the memorandum dated 5.7.1994 has just not been discussed by the Tribunal.

13. Surely, the issue needed a more focused and a clear discussion and for said reason we are constrained to dispose of the petition by setting aside the order dated 5.3.2003 dismissing the application seeking review of the order dated 11.4.2000. We restore the Review Application No. 185/2000 with a direction to re-decide the Review Application filed by the petitioner.

14. Since the petitioner has implemented the directions issued by the Tribunal but with a note that the same is without prejudice to the outcome of the writ petition, we direct that till the Review Application is decided by the Tribunal, status quo qua the services of the respondent shall be maintained.

15. No costs.