

(2011) 04 AHC CK 0044

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 56632 of 2006

Union of India (UOI) and Others

APPELLANT

Vs

Bachchan Lal

RESPONDENT

Date of Decision : 22-04-2011

Acts Referred:

Citation : (2011) 5 ADJ 114

Hon'ble Judges : Sunil Ambwani, J;K.N. Pandey, J

Bench : Division Bench

Judgement

1. We have heard Shri Satish Kumar Rai, learned Counsel for the Petitioner. Shri Anubhav Chandra appears for the Respondent No. 1.

2. The Union of India is aggrieved by the judgment of the Central Administrative Tribunal by which it has allowed the Original Application and has directed the Petitioners to appoint the Applicant to the post for which he had qualified the trade test and in relaxation of the Rules relating to age limit. The Applicant has been made entitled to notional seniority and notional fixation of pay from the date, other similarly situate selected persons were initially appointed in accordance with the merit list. The order was directed to be complied with within six months.

3. By interim order dated 12.10.2006 the operation of the order was stayed.

4. Shri Bachchan Lal-Respondent No. 1 had worked as Casual Labour for a period of 445 days spread over from 1983 to 1986. He was called for trade test for the post of Mazdoor for which call letter was issued in December, 1987. He appeared in the trade test in January, 1988. His name, however, did not figure in the list of successful persons. A few out of select list were offered appointment on various Group-D posts. The Petitioner had by that time crossed the maximum age limit for employment. His case alongwith some other persons, who were also similarly placed and were overage was forwarded for regularization. The Petitioner was not communicated with the decision taken on his application for long time. In the

meantime a general ban was imposed by the Government on employment, which was relaxed only in 1994. Thereafter, the Petitioner's case was taken up for relaxation of age and was rejected on the ground that in the meantime policy decision has been taken on 8th April, 1991 that only those Casual Workers, who were recruited before 7.6.1988 and who were in service on the date of issue of the instructions may be considered for regular appointment. Since the Petitioner was not engaged as Casual Labour after 1988, his case could not be considered and was rejected.

5. The Tribunal firstly took up the matter of condonation of delay and found that the Petitioner had admittedly approached the Respondents for his appointment. He was assured clearly that his case has been referred to the headquarters for age relaxation. He made a representation on 9.1.2001 giving full details and requested for his appointment for which he was selected long back. The representation from the Applicant did not receive any response on which he filed the Original Application. The Tribunal found that the Applicant had worked for the requisite period as provided in Office Memorandum dated 7th June, 1988 to qualify for regularization. He was called for trade test in January 1988 and was selected. He could not be given appointment as he was overage and the matter of his age relaxation was referred to the Army Headquarters. He was not informed about any decision on his age relaxation. In the meantime, there was ban on employment, which was lifted in the year 1994. In the circumstances, the Tribunal was satisfied with the reasons given for condonation of delay.

6. The Tribunal, thereafter, found that on merits the Office Memorandum dated 7.6.1988 relates to appointment of Casual Labourers and their regularization. The Petitioner's case did not fall within the ambit of the order. He was called for separate trade test and on the selection the authorities were to offer him appointment but due to ban he could not be considered. The ban was lifted in 1994 after which certain relaxation of age limit was required in a few case including that of Applicant. In some other case namely O.A. No. 1003 of 2001 the Tribunal had by order dated 20th May, 2005 allowed the application.

7. In O.A. No. 1003 of 2001 the Tribunal considering the case in which a Switch Board Attendant appointed casually had worked for 350 days and also had passed the trade test had found his candidature rejected as on 20th November, 1998. The Office Memorandum dated 7.6.1988 nowhere reflected that it applied to regular promotion in respect of those casual labourers, who had qualified trade test. The Office Memorandum dated 7.6.1988 was not applicable to such employees. The Tribunal found that engagement of the Applicant in view of the case fell on different footing than the other casual labourers governed by order dated 7.6.1988.

8. Shri S.K. Rai, learned Counsel appearing for the Petitioners submits that the Tribunal has erred in allowing the application for condonation of delay. Even if ban was lifted in 1994, the Respondent No. 1 took 7 years to make a representation, which was not received by the Petitioner. The representation was

made up only for the purposes of the case for relaxing the condonation of delay. Under Office Memorandum dated 8.4.1991 a one time opportunity was given to the employees belonging to economically weaker Sections of the society. Instead of terminating their services those casual labourers recruited before 7.6.1988, and who were in service on the date of issue of the instructions (8.4.1991) were to be considered for regular appointment on Group-D posts in terms of the general instructions. The case of the Respondent No. 1 was not different. He was casual employee and could be considered for regularization provided he was in employment on 8.4.1991.

9. We have considered the respective submissions and do not find any error of facts or law in the judgment of the Tribunal. The Tribunal considered the grounds of condonation of delay given by Respondent No. I and recorded its findings that the Applicant having worked for minimum requisite days was called to appear in the trade test. He was not given appointment as he was overage and that the matter of relaxation of age was referred to the Army Headquarters. Since he did not receive any information inspite of lifting of the ban in 1994, he gave a representation on 9.1.2001 and filed the Original Application.

10. In similar circumstances the Tribunal had allowed other applications. The Tribunal did not commit any error in exercise of its discretion in condonation of delay. Many a times the Courts are placed in a position, where they have granted relief in similar cases and the orders have become final upto the High Court. In such cases it is appropriate and consistent with equity that the persons approaching on same facts to get same relief. On the merits also we find that since there was nothing to show that the Respondent No. 1 was informed that his application for relaxation of age was rejected, and that he had made representation dated 9.1.2001, the order of condonation of delay is not unjustified.

11. So far as Office Memorandum dated 8.4.1991 is concerned, the Tribunal correctly found that one time relaxation to casual workers recruited prior to 7.6.1988 was not applicable to the Respondent No. 1, as he was called to appear in trade test and had passed the test. The relaxation of age was a different issue. The Respondent No. 1, therefore, as in the case of O.A. No. 1003 of 2001 fell in different class. The averments in both the cases that the Applicants had worked for requisite minimum days, and had passed trade test, they were entitled to be regularized in terms of the then existing policy of the Ministry of Defence in the year 1988 were the same. Their consideration was delayed only on account of forwarding of their applications for relaxation of age. The Army Headquarters should have been fair to the Applicants to inform them, if the applications for age relaxation were rejected. Instead the Army Headquarter waited for lifting of the ban and thereafter did not inform the Applicant, after the ban was lifted, with the result of the decision taken on the representations.

12. We do not find any good ground to interfere with the judgment of the Tribunal. We also record here that in similar cases namely Writ Petition No.

40713 of 2002 and Writ Petition No. 12912 of 2006, have been dismissed by this Court on 18.1.2008 and 13.5.2010 respectively.

13. The writ petition is dismissed.