

Central Administrative Tribunal
Principal Bench

RA No.151/2012

OA No. 3065/2011

New Delhi this the 29th day of April, 2014

Hon[↑]ble Mr. Justice Syed Rafat Alam, Chairman

Hon[↑]ble Dr. B.K. Sinha, Member (A)

1. Union of India,
Through Secretary,
Ministry of Home Affairs,
Central Sect., North Block,
New Delhi

2. Secretary,
Department of Personal & Training,
Govt. of India, North Block,
New Delhi

3. The Director,
Intelligence Bureau,
Ministry of Home Affairs,
35, SP Marg, New Delhi

-Review Applicants

(By Advocate: Shri R.N. Singh)

-V E R S U S-

1. Shri Deepak Vital Bhandari,
S/o Late Shri V.Bhndari,
Aged about 43 years,
Working as TS Employee
R/o 88-C Aram Bagh, New Delhi

-Respondent

(By Advocate: Shri Lalta Prasad)

O R D E R (Oral)

Justice Syed Rafat Alam:

This Review Application is preferred by the respondents to the Original Application (hereinafter referred to as respondent-applicants) seeking review/recall of order of the Tribunal dated 22.12.2011 in OA No.3065/2011.

2. We have heard Sh. R. N. Singh, learned counsel for the respondent-applicants and Sh. Lalta Prasad, learned counsel appearing for the applicant of the OA (hereinafter referred to as applicant-respondent).

3. It appears that the applicant-respondent has invoked the jurisdiction of the Tribunal under Section 19 of the Administrative Tribunals Act, 1985 by moving OA No.3065/2011 seeking the following reliefs:—

!!8. In view of the facts and circumstances mentioned in above paras, it is, therefore, most respectfully prayed that the Hon[↑]ble Tribunal may be graciously pleased to pass an order:-

a) Direct the respondents to grant the age relaxation and consider for the post of Driver to the applicant on the basis of Naresh Bagri[↑]s case.

b) Pass a such order which deems fit & proper in view of the Hon[↑]ble Tribunal Orders in Shivender Pal & Naresh Bagri cases and allowing the OA of the applicant with all other consequential benefits and cost.

c) Any other fit and proper relief may also be granted.¶

4. Notices were issued to the respondents in the OA. They appeared and filed their reply, to which rejoinder was also filed by the applicant. The matter was thereafter taken up for final disposal on 22.12.2011. During the course of arguments, it could not be disputed that the controversy is covered by the judgment of this Tribunal rendered in Shivender Pal Vs. Union of India & Ors. (OA No. 2740/2004 decided on 14.07.2005) and Naresh Bagri Vs. Union of India & Ors. (OA No. 3056/2010 with MA No. 2747/2010 decided on 12.11.2010) and, therefore, by a short order it was disposed of in terms of the aforesaid judgments. However, the respondents by the instant application have sought review of the aforesaid order on the ground inter alia that the applicant has not placed the correct fact before the Tribunal and, therefore, the Tribunal fell in error in disposing of the matter in terms of the judgment rendered in the matters of Shivender Pal vs. UOI & Ors. (supra) and Naresh Bagri vs. UOI & Ors. (supra). The case of the respondent-applicants is that the applicant-respondent is not similarly placed as Shivender Pal and Naresh Bagri (supra) and, therefore, the aforesaid judgments have no application in the case of the applicant-respondent.

5. Sh. R. N. Singh, learned counsel for the respondent-applicants drew our attention to the averments made in the review application and pointed out that the applicant was working as casual worker with temporary status, whereas Shivendra Pal, the applicant in OA No. 2740/2004, was working as Driver on ◀no work no wages↑ basis. He further drew our attention to the averments made in para 1 of the Original Application and pointed out that the applicant has claimed in this para that he had applied for the post of driver pursuant to advertisement dated 10.07.2009, which is factually incorrect, as he had never applied against the aforesaid post. He further submitted that the applicant can also not claim for regularization to the post of driver, which is a Group ◀C↑ post and in terms of DOP&T OM No.51016/2/90-Estt.(C) dated 10.09.1993, a casual worker with temporary status can be given appointment against Group ◀D↑ post as per procedure laid down in para 8 of the aforesaid OM. He further submitted that in normal course, a casual worker is always given age relaxation in terms of aforesaid OM, whereunder the period spent as casual worker would be counted for purpose of giving relaxation, but in any event, he cannot be considered for grant of appointment/regularization against Group ◀C↑ post.

6. On the other hand, Sh. Lalta Prasad, learned counsel for the applicant-respondent while opposing the prayer, sought to argue that there is no error apparent in the order of the Tribunal and thus the review Application cannot be allowed. However, he could not place any material showing that the applicant was working as a driver on casual basis, nor the averment made to that effect in the review application is controverted in the rejoinder affidavit.

7. We have considered the submissions. In our view, error is apparent in the order of the Tribunal, as the status of the applicant-respondent has not been the same as that of Shivendra Pal or Naresh Bagri. They were working as driver, which is a Group ◀C↑ post on ◀no work no wages↑ basis; whereas the applicant-respondent was working as a casual worker with temporary status. It is a matter of common knowledge that appointment as casual worker is made against Group ◀D↑ post. Besides, it is also not mentioned in the order of the Tribunal that the applicant had ever applied for the post of Driver. Thus, the applicant not having worked on the post of Driver on casual basis cannot claim benefit of age relaxation or other relaxation which has been extended to Shivender Pal and Naresh Bagri in terms of the order of the Tribunal.

8. In view of the above, in our view, the Review Application deserves to be allowed. It is accordingly allowed. The order of the Tribunal dated 22.12.2011 is hereby recalled and the OA is restored to its original number. Let the OA itself be listed for final disposal on 29.5.2014.

(Dr. B.K. Sinha)

(Syed Rafat Alam)

Member (A)

Chairman