

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No. 28117 of 2013

Dhyan Ranjan Panda

.....

Petitioner

Mr. K.P.Mishra, Sr. Advocate.

Vs.

Union of India & others

.....

Opposite Parties

Mr.B.Dash, Sr. Panel Counsel,

Govt. of India for O.P. No.1

Mr.G.K.Acharya, Sr. Advocate

for O.P. Nos. 2 & 3

CORAM:

DR. JUSTICE B.R. SARANGI

MR. JUSTICE G. SATAPATHY

ORDER

21.09.2022

Order No.

25.

This matter is taken up through hybrid mode.

2. Heard Mr. K.P. Mishra, learned Senior Counsel appearing along with Mr. L.P. Dwivedy, learned counsel for the petitioner; Mr. B. Dash, learned Senior Panel Counsel, Govt. of India appearing for O.P. No.1; and Mr. G.C. Acharya, learned Senior Counsel appearing for opposite party Nos. 2 and 3.

3. The petitioner has filed this writ petition seeking to quash the order dated 21.08.2013 passed by Central Administrative Tribunal, Cuttack Bench, Cuttack in O.A. No. 850 of 2011 under Annexure-7 and to hold that the over age of two months and nineteen days should not be a ground to debar the petitioner from regularization in service.

3. Mr. K.P. Mishra, learned Senior Counsel appearing along with Mr. L.P. Dwivedy, learned counsel for the petitioner contended that the petitioner had been rendering service and also gained experience of more than five years. While he was in service, an advertisement was issued for casual labourers for

regularization. But because of his overage for a period of two months and nineteen days, his name could not be included in the list to get regular appointment. Thus it is contended that taking into consideration of his past service, there should be condonation of overage of two months nineteen days, so that the petitioner could come within the list for regularization. Non-inclusion of his name for regularization, is arbitrary, unreasonable and contrary to the provisions of law. More so, the tribunal has committed gross error apparent on the face of the record by not issuing direction for condonation of overage of two months nineteen days in order to include the name of the petitioner in the list of regularization.

4. Mr. B. Dash, learned Senior Panel Counsel, Govt. of India appearing for O.P. No.1 contended that as a matter of principle regularization of the candidates, who are in railway services in different organizations has been done. If somebody is overaged and that has not been considered, even though power of relaxation is there, it is contended that condoning the overage depends the facts and circumstances and availability of vacancies.

5. Mr. G.C. Acharya, learned Senior Counsel appearing for opposite party Nos. 2 and 3 contended that eligibility criteria has been prescribed and, as such, the same has to be adhered to. If the petitioner is not satisfying the requirement of eligibility criteria as per the advertisement, his case cannot be considered bringing him into the list of regularization. As such, the authority is well justified in denying the benefit to the petitioner. It is contended that relaxation of overage of two months nineteen days in respect of the petitioner also requires a policy decision, as because similarly situated employees are there whose age has to be

condoned, in the event it is decided to condone the overage of the petitioner. Thereby, the claim of the petitioner cannot have any justification and, as such, the tribunal is well justified in passing the order impugned, which does not require any interference of this Court.

6. Having heard learned counsel for the parties and after going through the records, this Court finds that the Principal Accountant General (Civil Audit), Odisha, Bhubaneswar invited applications in the employment news dated 24-30 July 2010 from the eligible candidates for direct recruitment to the post in Pay Band-1. The last date of receipt of such application was fixed as 23.08.2010. Though the petitioner applied for the same, but because of his overage of two months nineteen days, his candidature was rejected. Therefore, the petitioner approached the tribunal by filing O.A. No. 850 of 2011. The tribunal by holding that the selection process has already been completed and the final result of the select list is yet to be published, dismissed the original application, vide order dated 21.08.2013. As it appears, the advertisement was open for all candidates who had attended the age of 18 years but had not attended the age of 27 years as on the closing date of receipt of applications. As per the terms and conditions of the advertisement, Departmental Casual Workers were allowed relaxation in upper age limit to the extent to their engagement. Such relaxation was over and above the usual relaxation as admissible for candidates from reserved category. The relaxation of age was given only to those casual workers who had completed at least two years, and as such, in any of the office under Comptroller and Auditor General of India, Bhubaneswar in

Railway. After allowing the relaxation of five years to the prescribed upper age limit of 27 years, the age of the petitioner on the last date of receipt of the application was 32 years 02 months and 19 days and, as such, he was found overaged by two months and nineteen days. As because the petitioner had already availed the benefit of relaxation of overage, thereby, further relaxation of overage of two months and nineteen days is not admissible. Thus, the tribunal is well justified in passing the order impugned, which does not warrant any interference of this Court.

7. Accordingly, the writ petition merits no consideration and the same is hereby dismissed.

(DR. B.R. SARANGI)
JUDGE

(G. SATAPATHY)
JUDGE

Ashok/Kishore

