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*IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C)No.3680/2006

Date of Decision : 28th October, 2010

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KRISHAN SINGH Petitioner
Through : Mr. D.K. Sharma, Adv.

versus

UOI & ANR. Respondents
Through : Mr. B.V. Niren, CGSC.

CORAM :-
HON'BLE MS. JUSTICE GITA MITTAL
HON'BLE MR. JUSTICE J.R. MIDHA

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| 1. | Whether Reporters of Local papers may be allowed to see the Judgment? | YES |
| 2. | To be referred to the Reporter or not? | YES |
| 3. | Whether the judgment should be reported in the Digest? | YES |

GITA MITTAL, J. (Oral)

1. This writ petition has been filed by the petitioner who was a permanent Combatant Member of the Indian Air Force and was in its service in the rank of Corporal at the time of filing of the writ petition having rendered more than eleven years of satisfactory service to the force by that date.
2. The respondents had published an Examination Notice No.10/2004 dated 8th May, 2004 in the Employment News dated 8th – 14th May, 2004 for appointment to the post of Assistant Commandant (Group 'A') in the Central Police Forces ('CPF' hereafter). The CPF includes Border Security Force, Central Reserve Police Force, Indo-Tibetan Border Police; Central Industrial Security Force and the Special Services Bureau.

There is no dispute that the petitioner was possessed with all the required qualifications as were prescribed in this examination notice inviting applications from eligible candidates.

3. The entire dispute between the parties hinges on the petitioner's contention that he was entitled to the age relaxation which was permissible under the advertisement issued by the respondents which would govern the appointments whereas the respondents have taken a stand that the petitioner was not so entitled as he was not in Civilian Government Service.

4. In order to facilitate appreciation of the said issue, the applicable condition as notified by the respondents in the Examination Notice No.10/2004 deserves to be usefully extracted and reads as follows:-

“(iii) Age Limits :

(a) A candidate must have attained the age of 20 years and must not have attained the age of 25 years on 1st August, 2004, i.e. he/she must have been born not earlier than 2nd August, 1979 and not later than 1st August, 1984.

(b) The upper age limit prescribed above will be relaxable.

(i) upto a maximum of five years if a candidate belongs to a Scheduled Caste or a Scheduled Tribe.

(ii) upto a maximum of three years in the case of candidates belonging to Other Backward Classes who are eligible to avail of reservation applicable to such candidates.

(iii) upto a maximum of five years for Government Servants. Ex-servicemen will also

be eligible for this relaxation. However the total relaxation claimed on account of Government Service will be limited to 5 years.

(iv) upto a maximum of five years if a candidate had ordinarily been domiciled in the State of Jammu & Kashmir during the period from 1st January, 1980 to the 31st day of December, 1989."

5. The petitioner is stated to have been born on 8th January, 1975. He also submits that he had submitted the application in the prescribed format through proper channel which was through his employer, the Indian Air Force. The application of the petitioner was premised on his being entitled to the benefit of age relaxation of five years as provided to government servants as per the notice of the respondents.

6. The petitioner appeared in the written examination on the 3rd of October, 2004 conducted by the Union Public Service Commission-respondent No.2 before us, and qualified the same. He thereafter successfully undertook the physical efficiency test which was followed by a medical examination conducted on 17th June, 2005 by the Central Police Forces on behalf of the Ministry of Home Affairs under the overall coordination of the Indo-Tibetan Border Police which was the nodal authority nominated by the concerned ministry.

7. Respondent No.2 thereafter informed the petitioner by a communication dated 31st August, 2005 that he was required to personally appear before the Commission on the 2nd of September, 2005 for the purposes of undertaking the personality test/interview. It is noteworthy that in the letter

dated 31st August, 2005, the respondents for the first time indicated that the petitioner's candidature was provisional and was subject to the condition that he was entitled to age relaxation as "Central Government Servants as defined in CCS(CCA) Rules, 1965".

8. It has been contended by the petitioner before us that he had undertaken the personality test/interview. However, the result was not disclosed to him. The petitioner was informed by respondent No.2 vide letter dated 19th October, 2005 to the effect that since he was a member of the defence force, he was not eligible for age relaxation. The respondent No.2, therefore, was of the view that the petitioner was over age for appointment to the Central Police Forces (ACs) Examination – 2004 and had decided to cancel the petitioner's candidature.

9. The petitioner had protested against the said decision by his communication dated 23rd November, 2005. The respondents had however, in the letter dated 23rd December, 2005 reiterated the above stand.

10. The petitioner had thereafter made an inquiry by communication dated 27th December, 2005 under the Right to Information Act, 2005 of his marks and rank secured by him in the examination process. This information was also denied to the petitioner by a letter dated 6th January, 2006 on the ground that the information could not be furnished as the petitioner's candidature stood cancelled and he ceased to be a candidate for the said examination.

11. The present writ petition has been filed in this background by the petitioner assailing the order dated 19th October, 2005 cancelling his candidature. He has, inter alia, further sought issuance of a writ of mandamus directing the respondents to grant age relaxation.

12. The respondents have strongly defended their action. Mr.B.V. Niren, learned counsel appearing for the respondents has reiterated the stand of the respondents taken in the impugned orders and has placed reliance on the provisions of the Central Civil Services (Classification, Control and Appeal), Rules, 1965 ['CCS (CCA) Rules, 1965' hereafter] in support of contention that Air Force personnel are not holding civil posts and consequently are disentitled to the age relaxation admissible to central government civilian employees. Reliance in this regard has been placed on the definition of 'Government Servant' in Sub Rule 2(h) and 'Service' in Sub Rule 2(m) of CCS(CCA) Rules, 1965 which reads as follows:-

"2(h) 'Government servant' means a person who –

(i) is a member of a Service or holds a civil post under the Union, and includes any such person on foreign service or whose services are temporarily placed at the disposal of a State Government, or a local or other authority;

ii) is a member of a Service or holds a civil post under a State Government and whose services are temporarily placed at the disposal of the Central Government;

iii) is in the service of a local or other authority and whose services are temporarily placed at the disposal of the Central Government;

2(m) "Service" means a civil service of the Union."

13. Mr. Niren, learned counsel has also placed reliance on Rule 3 of the CCS(CCA) Rules, 1965 which reads as follows:-

"3. Application

(1) These rules shall apply to every Government servant including every civilian Government servant in the Defence Services, but shall not apply to -

(a) any railway servant, as defined in Rule 102 of Volume I of the Indian Railways Establishment Code,

(b) any member of the All India Services,

(c) any person in casual employment,

(d) any person subject to discharge from service on less than one month's notice,

(e) any person for whom special provision is made, in respect of matters covered by these rules, by or under any law for the time being in force or by or under any agreement entered into by or with the previous approval of the President before or after the commencement of these rules, in regard to matters covered by such special provisions.

(2) Notwithstanding anything contained in sub-rule (1), the President may by order exclude any class of Government servants from the operation of all or any of these rules.

(3) Notwithstanding anything contained in sub-rule (1), or the Indian Railways Establishment Code, these rules shall apply to every Government servant temporarily transferred to a Service or post coming within Exception (a) or (e) in sub-rule (1), to whom, but for such transfer, these rules would apply.

(3-A) Notwithstanding anything contained in these rules, where any civilian Government servant in the Defence Services is temporarily made subject to the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957), or the

Air Force Act, 1950 (45 of 1950), these rules shall continue to apply to such civilian Government servant in the Defence Services and, for the purpose of discipline, he shall be dealt with under these rules unless the appropriate authority, for reasons to be recorded in writing, is of the opinion that stern action is called for and directs that he be dealt with under the Act he is subject to.

(4) If any doubt arises, -

(a) whether these rules or any of them apply to any person, or

(b) whether any person to whom these rules apply belongs a particular Service, the matter shall be referred to the President who shall decide the same.”

14. It is contended that in this background, the decision and action of the respondents cannot be faulted. The submission is that aforesaid Rule 3 clearly stipulates that the rules shall apply to civil government servants including every civilian government servant in the defence services but shall not apply to the serving defence personnel.

15. We find that the submissions made on behalf of the respondents have already been considered and were doubted when this court recorded the following order on the 23rd of April, 2007 which reads as follows:-

“For purposes of recruitment to the Central Police Forces, the respondents have provided age relaxation to the extent of 5 years for candidates who are government servants and also for ex-servicemen. In-service candidates like the petitioner who is serving in the Indian Air Force are also eligible for appointment in terms of a clarification issued by the government but such in-service candidates are not entitled to any age relaxation. There is, thus, a classification made by the government for recruitment in as much as there are candidates who are entitled to

age relaxation just as there are others who are not so entitled to that concession. The counter affidavit filed by the respondents does not indicate the basis on which the classification has been made or the objectives sought to be achieved by the same. Ms. Monika Garg, counsel appearing for the respondents seeks two weeks time to file an additional affidavit explaining the reasons for the classification and object underlying the same. She shall do the needful within two weeks with a copy to the counsel opposite who shall file a rejoinder within one week thereafter.

Post again for admission on 21st May, 2007."

16. Pursuant to the said directions, it appears that the respondents had filed an affidavit dated 7th January, 2008 by an officer serving in the office of Director General of the Indo-Tibetan Border Police, which was the nodal agency in the appointment process. Reliance has been placed on the stipulated condition which informed the petitioner that his candidature was being treated as "purely provisional". The affidavit has further submitted that in view of the issue raised by the petitioner and three other candidates, a clarification dated 8th September, 2005 had been received from the Ministry of Home Affairs stating that age relaxation for competing in direct recruit post is admissible only to civilian central government employees subject to fulfillment of the other relevant conditions and that members of the other defence forces are not eligible for such age relaxation.

17. We find that in the affidavit dated 5th January, 2008, the respondents have stated that the petitioner and three other candidates who were similarly placed were also interviewed.

However, it was held that these persons were not entitled to age relaxation and their provisional candidature stood cancelled.

18. It is obvious from the above narration that the respondents have failed to comply with the directions made on 23rd April, 2007. This court also so held in the order dated 11th July, 2008 observing that the purport of the earlier order was clearly to seek a justification from the respondents with regard to the rationale behind excluding the serving personnel from age relaxation while giving the same to civilian government servants and retired defence personnel. The respondents were given an opportunity to file another additional affidavit dealing with this issue and also to keep available relevant records.

19. Mr. B.V. Niren, learned counsel submits that pursuant to the said directions, additional affidavit dated 19th September, 2008 was filed. In this affidavit, a completely untenable stand was taken to the effect that the Government had “not categorically advertised that serving defence personnel are not entitled for any age relaxation”. It was further stated that this was a policy decision of the Government and that the petitioner was not entitled to age relaxation by GIDP & AR OM No.4/4/74/Estt(D) dated 9th April, 1981. The stand taken in the earlier communications was reiterated and reliance was also placed on a clarification dated 18th December, 2007 obtained from the Department of Personnel and Training of the Ministry of Personnel, Public Grievances and Pension.

20. It is apparent from the above that the respondents had failed to comply with the specific directions made by the court on 23rd April, 2007 and 11th July, 2008. The stand taken by the respondents also completely fails to consider the stipulation in the advertisement with regard to the age relaxation.

21. We may also refer to the Office Memorandum bearing G.I.,D.P.&A.R.,O.M. No.4/4/74/Estt.(D) dated 9th April, 1981 relevant extract whereof reads as follows:-

“6. Upper age relaxation admissible to Government employees for direct recruitment to Groups ‘A’ and ‘B’ posts.- 1. The following decisions have been taken in consultation with the Union Public Services Commission:-

(ii) Government servants may be allowed, on a uniform basis, relaxation of a maximum of 5 years in the upper age-limit for recruitment to other Group ‘A’ or Group ‘B’ posts by advertisements through the Commission. The age relaxation will be admissible to such of the Government servants as are working in posts which are in the same line or allied cadres and where a relationship could be established that the service already rendered in a particular post will be useful for the efficient discharge of the duties of the post(s) recruitment to which has been advertised. Decision in this regard will rest with the Commission.”

22. The above extract shows that relaxation of a maximum five years in the upper age limit for recruitment to Group ‘A’ post by advertisement from the respondent No.2 was admissible to all government servants on a uniform basis without their categorization into civilian or defence personnel employees.

23. We may notice that the view dated 18th December, 2007 taken by the Department of Personnel and Training of the

Ministry of Personnel, Public Grievances and Pension has restricted the consideration of the eligibility of the age relaxation only to Central Government Civilian Employees without taking into consideration the stipulation contained in the Examination Notice No.10/2004. It also does not take into consideration the nature of the force or the duties attached to the post to which appointment was to be effected.

24. The respondents have also overlooked the specific relaxation in favour of Ex-servicemen.

It is also obvious that this clarification has been obtained by the respondents after having taken a stand in the writ petition and during its pendency.

25. Further affidavits dated 6th January, 2010 and 6th March, 2010 have also reiterated the same stand of the respondents noticed above. On 29th January, 2010, the respondents had prayed for a last opportunity to comply with the specific directions made in the earlier order noticed hereinabove, which was also granted to them. Despite this opportunity, we find that the affidavit dated 6th March, 2010 also reiterates the same stand as was taken earlier.

26. There is no dispute at all with the public notice inviting applications is concerned. The same declared the eligibility conditions. It also provided for age relaxation in the prescribed age limit to certain specified categories. Amongst these categories noticed hereinabove, the respondents had provided age relaxation up to a maximum of five years for "Government

Servants” without restricting the same to civilian or defence personnel. There was also no specification of central or state government servants.

27. It is noteworthy that the only clarification which was provided in the permissible relaxation was that it was also made available to Ex-servicemen who were declared to be eligible for this relaxation. It is, therefore, also evident from the scheme of the prescriptions that the expression “Government Servants” included such personnel who were still serving with the Government. This clarification in fact clearly supports the stand of the petitioner. It is evident from this stipulation that the serving servicemen were clearly included within the meaning of the expression ‘government servants’ who were entitled to the age relaxation in terms of the conditions notified in the examination notice.

28. The petitioner has also rendered another explanation as to why serving personnel were also eligible for appointment to the post of Assistant Commandant. It has been pointed out that the post of Assistant Commandant is a combatant post of the Central Police Forces. The petitioner is a combatant member of the Indian Air Force as he was serving with the Indian Air Force in the rank of Corporal. This submission has not been contested by the respondents.

29. It has also been pointed out that in terms of para 11 of the examination notice No.10/2004, the petitioner was considered as in-service Government servant and was required

to submit his application form through proper channel. In this background, the petitioner was permitted by the Indian Air Force to undertake the examination and the respondents had accepted his candidature as an in-service candidate for appointment without any reservation or objection.

30. We may notice a material admission on the part of the respondents. In para 9 of the counter affidavit, the respondents clearly accepts that Indian Air Force personnel are “Central Government servants”.

31. The objection that the air force personnel do not fall in the category of “central government civilian employees” under rule 2(h) of CCS(CCA) Rules, 1965 or under rule 2 (m) defining the expression “government servant” is, therefore, meaningless. It is noteworthy that the definitions contained in Rule 2(h) and 2(m) are only for the purposes of Central Civil Services (Classification, Conduct and Appeal) Rules, 1965. So far as the appointment to the post of Assistant Commandant is concerned, the conditions thereof have been provided in the Examination Notice No.10/2004. The respondents have accepted the candidature of the petitioner as a serving personnel of the Indian Air Force. He has been denied the age relaxation admissible to serving government servants by reading in a stipulation which has not been provided in the advertisement.

32. We find despite repeated opportunities, the respondents have been unable to even remotely indicate the basis on which

the classification has been made by the respondents not to grant age relaxation to serving personnel in the Indian Air Force even though it is admitted that they are government servants. As observed in the orders dated 23rd April, 2007 and 11th July, 2008, there is clearly no rationale behind the decision to exclude serving personnel from entitlement to age relaxation while granting the same to civilian government servants as well as retired defence personnel. The spirit, intendment and object of the prescription in the advertisement is evident from the fact that Ex-servicemen are specifically stipulated which manifests that in-service defence personnel are clearly covered under the expression “government servants” who were entitled to be considered for the age relaxation as was notified.

33. The petitioner has been denied appointment on this totally erroneous and misconceived stand which is taken by the respondents. The respondents have not taken a stand before us that all vacancies for which the process of selection undertaken pursuant to the Examination Notice No.10/2004 stand filled.

34. The decision to reject the petitioner’s candidature on the ground of his being over age without considering the case of the petitioner for age relaxation; communication dated 19th October, 2005; the communication dated 6th September, 2005 from the Ministry of Home Affairs as well as communication dated 18th December, 2007 have failed to take into

consideration the aforenoticed relevant material and in fact disclose no rationale or basis for the classification which has been effected. It has to be held that the action of the respondents is therefore arbitrary, unjustified, unreasonable and not legally sustainable.

In view of the above, we direct as follows:-

- (i) The order dated 19th October, 2005 holding that the petitioner is disentitled to age relaxation and, therefore, is over age for the appointment to the post of Assistant Commandant pursuant to the Central Police Forces Examination -2004 is hereby set aside and quashed.
- (ii) The respondents are directed to process the case of the petitioner for consideration of age relaxation and also to declare the result and rank of the petitioner in terms of the examination and interview which was held pursuant to the Examination Notice dated 10/2004.
- (iii) In case the petitioner is found meritorious based on his marks and rank, the respondents shall proceed to effect his appointment in the post, subject to fulfillment of requisite medical fitness in the matter, with all consequential benefits.
- (iv) So far as the pecuniary benefits, if any, are concerned, the respondents shall be entitled to adjust the amount which the petitioner has drawn

from his employment with the Indian Air Force towards the amount which may be admissible to the petitioner.

(iv) The respondents shall ensure compliance with the above directions within a period of eight weeks from today and communicate the decision taken to the petitioner.

(v) The petitioner is entitled to the costs which are quantified at ₹10,000/-.

This writ petition is allowed in the above terms.

GITA MITTAL, J

J.R. MIDHA, J

OCTOBER 28, 2010

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