

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 19th May, 2011

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W.P.(C) 3547/2010

MUKESH KUMAR

..... Petitioner

Through: Mr. Lokesh Bhola & Mr. Shohit
Chaudhary, Advocates.

Versus

GOVERNMENT OF NCT OF DELHI & ORS. Respondents

Through: Ms. Zubeda Begum, Adv. for R-1&2.
Mr. S.C. Gupta, Advocate for R-3.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | No |
| 2. | To be referred to the reporter or not? | No |
| 3. | Whether the judgment should be reported in the Digest? | No |

RAJIV SAHAI ENDLAW, J.

1. The challenge in this writ petition is to the rejection of the candidature of the petitioner for appointment for the post of Assistant Electric Fitter (AEF) in the respondent No.3 Delhi Transco Ltd. (DTL) for the reason of the petitioner being overage. Notice of the petition was

issued and the counter affidavits have been filed by the respondent No.2 Delhi Subordinate Services Selection Board (DSSSB) and by the respondent No.3 DTL and to which rejoinders have been filed by the petitioner. Vide interim order dated 4th June, 2010 which continues to be in force, appointments to the said post of AEF in the respondent No.3 DTL on the basis of the advertisement in pursuance to which the petitioner had applied were made subject to the outcome of the writ petition. The counsels for the parties have been heard.

2. The respondent No.2 DSSSB in the month of November, 2003 issued the advertisement inviting applications *inter alia* for the post aforesaid in the respondent No.3 DTL. Of the 27 vacancies in the said post, 8 were stated to be reserved for Other Backward Classes (OBC). The last date for submission of the application was 24th January, 2004. The maximum age limit prescribed for the said post was of 27 years. Though it was not so mentioned but all counsels agree that the age is to be reckoned as on the last date for making the applications. Admittedly, the petitioner with the Date of Birth of 1st January, 1975, as on 24th January, 2004 was 29

years and 24 days old. The petitioner however is an OBC and had applied in the OBC category and claims that as per policy of Government of India there was to be relaxation of three years in age for OBC candidates. The petitioner thus claims that with such relaxation, the maximum age as on 24th January, 2004 for OBC candidates was to be of 30 years and he being 29 years and 24 days old, was eligible for so applying.

3. The respondent No.2 DSSSB held a written examination on 1st August, 2004 in which the petitioner appeared. On 31st August, 2004, the respondent No.2 asked the petitioner to furnish copies of documents in support of his claim for falling under the OBC category and which documents were furnished by the petitioner.

4. No result of the aforesaid examination held on 1st August, 2004 was declared. After four years, the respondent No.2 with reference to the application aforesaid of the petitioner asked the petitioner to submit certain other documents which also were submitted by the petitioner. However, thereafter also no outcome of the selection process was disclosed.

5. On the contrary, the respondent No.2 DSSSB on 13th May, 2008 inserted “second advertisement” inviting applications, again for the post of AEF in the respondent No.3 DTL; this time showing the number of vacancies as 69 with 18 reserved for OBCs. This time around, the maximum age prescribed, according to the petitioner was of 35 years as on 10th July, 2008 with the clear stipulation of relaxation of 3 years for OBCs.

6. It is the contention of the petitioner that without announcing the result of the earlier selection process, the second advertisement commencing another selection process could not have been commenced. However, the same is not relevant for the present purpose. The petitioner again applied and was issued an admit card for the written examination scheduled on 8th March, 2009.

7. However, on 12th November, 2008, the result of the written test earlier held on 1st August, 2004 was announced and the petitioner was declared as “selected” in the OBC category. It is the case of the petitioner that having been selected, he did not appear in the written examination scheduled on 8th March, 2009 in pursuance to the second advertisement.

8. However, no appointment letter was issued to the petitioner inspite of having been declared “selected” as aforesaid. When the petitioner learnt that others selected had been issued appointment letters, he started making enquiries through the medium of Right to Information Act and was vide reply dated 20th May, 2009 of the respondent No.2 DSSSB informed as under:

- “(i) upper age limit for post code 0155 was 27 years as cut off date i.e. 24.01.2004.*
- (ii) as per the policy of Government of India, three years relaxation is given to OBC candidates.*
- (iii) Shri Mukesh Kumar, Roll No.15536339 is included in selected candidates and the list of selected candidates was forwarded to DTL.*
- (iv) DTL returned the dossiers with remarks that candidates are over aged.”*

It may be noticed that the petitioner as per the aforesaid reply also, being eligible for age relaxation, was not overage. The representations of the petitioner having not met with any success, the present writ petition was filed.

9. The respondent No.2 DSSSB has in its counter affidavit stated:

- (i) That it makes the selection of Group C and Group B posts of various departments of Government of NCT of Delhi and its autonomous / local bodies on the basis of the requisition sent by them and follows the selection procedure in accordance with the recruitment rules of the concerned posts and the relaxations and concessions as conveyed by the user department which are in accordance with the instructions issued by Government of India from time to time.
- (ii) That the respondent No.3 DTL in its requisition dated 23rd October, 2003 to the respondent No.2 DSSSB for filling up of 29 vacancies for the post of AEF had prescribed the age limit as not exceeding 25 years, relaxable by five years for government servants /SC/ST and by three years for OBCs.

In this regard, it may be stated that the respondent No.2 DSSSB did not annex the said requisition to its counter affidavit. The respondent No.2 DSSSB however filed documents under List of Documents dated 8th August, 2010 and at pages 4 to 9 whereof has purported to file the said requisition dated 17/23rd October, 2003. However, the said documents though at page 4 (running page 78 of the paper book) contains the letter with requisition for 29 vacancies for the post of AEF, at pages 5 to 9 contains the particulars for the post of Sub Station Attendant (SSA) Grade-II i.e. the other post for which requisition was sent and no particulars sent along with the requisition for the post of AEF have been furnished. The same have not been furnished by the respondent No.3 DTL also. This position was admitted by the counsels for the respondent No.2 DSSSB and the respondent No.3 DTL during the course of hearing. It is however worth noting that the maximum age limit prescribed for the post of SSA Grade-II was not exceeding 30 years, relaxable by five

years for government servants /SC/ST and three years for OBCs.

(iii) That however since the Department of Personnel and Training of the Government of India vide its Office Memorandum dated 21st December, 1998 had made provision for addition of two years in the upper age limit with effect from 1st April, 1999 in the matter of direct recruitment in civil services / posts, the respondent No.2 DSSSB while advertising the requisitioned vacancies for the post of AEF and SSA Grade-II provided the maximum age limit of 27 years instead of 25 years as per the requisition of respondent No.3 DTL for the post of AEF and of 32 years instead of 30 years as per requisition of the respondent no.3 DTL for the post of SSA-Grade-II.

(iv) That the respondent No.3 DTL vide its letter dated 10th January, 2005 to respondent No.2 DSSSB informed that as per its recruitment rules, the maximum age for the post of SSA

Grade-II was 30 years and the respondent No.2 DSSSB had wrongly advertised it as 32 years. Though the respondent No.2 DSSSB vide its reply dated 4th May, 2005 explained that the increase of two years was effected in accordance with the Office Memorandum dated 21st December, 1998 (supra) but the respondent No.3 DTL in its subsequent letter dated 20th June, 2005 insisted that since its own Recruitment Rules did not permit appointment beyond the age of 30 years in the case of SSA Grade-II, it could not appoint the overage candidates selected owing to the respondent No.2 DSSSB having itself increased the age by two years. The respondent No.2 DSSSB vide its subsequent communication dated 18th October, 2005 informed the respondent No.3 DTL that if it cancelled the candidature of selected candidates on account of age, it would be doing so at its own responsibility.

- (v) That though the petitioner was selected according to respondent No.2 DSSSB but since the respondent No.3 DTL

had informed that the maximum age for the post of AEF as per its Recruitment Rules was 25 years and even with relaxation of three years for OBCs, the petitioner was overage, accordingly he was not appointed.

- (vi) It is denied that in the second advertisement inserted on 13th May, 2008, the maximum age prescribed for the post of AEF was 35 years and it is reiterated that the same was 25 years only.

Again neither the respondent No.2 DSSSB nor the respondent No.3 DTL have filed any copy of the advertisement dated 13th May, 2008. The petitioner has filed copies of advertisement published in English as well as in Hindi newspapers on 13th May, 2008. While as per the advertisement in Hindi, the maximum age prescribed is of 35 years, as per the advertisement in English, the maximum age prescribed is of 25 years. In view of the statement in the affidavit of respondent No.2 DSSSB, it appears that there is a printing

error in the Hindi advertisement. However, the counsels for the respondent No.2 DSSSB and the respondent No.3 DTL proceeded on the basis as if the maximum age prescribed in the second advertisement is of 35 years only and could not explain as to why and how the age was enhanced from the earlier stated of 25 years to 35 years.

10. The respondent No.3 DTL in its counter affidavit has pleaded that the maximum age as per its recruitment rules for the post of AEF was 25 years; was wrongly advertised by the respondent No.2 DSSSB as 27 years and the petitioner even with the relaxation of three years for OBCs, was overage.

11. I have enquired from the counsels as to why the respondent No.3 DTL is not bound by the Office Memorandum dated 21st December, 1998 increasing the upper age limit for direct recruitment by two years. No plausible answer has been forthcoming.

12. Similarly, I have enquired from the counsels as to why, when the mistake even if committed by the respondent No.2 DSSSB in, in accordance with the Office Memorandum dated 21st December, 1998 enhancing the age limit by two years than that requisitioned by the respondent No.3 DTL, corrective measure were not taken and the matter allowed to linger on till 2008. Again no answer has been forthcoming.

13. Another disturbing feature of the present case is the long time taken by the respondents in the selection process. The selection process remained pending from 2003 when the advertisement inviting applications was published till 2009 i.e. for nearly six years. The respondents having kept candidates in a lurch / pending for such long span of time cannot now be heard to squabble about the petitioner being over age by about one year, even if the version of the respondent No.3 DTL is to be accepted.

14. Moreover, the respondent No.3 DTL as the requisitioning department owed a duty to the prospective applicants to immediately after the date of the advertisement contact the respondent No.2 DSSSB and to notify it of the mistake if any made by it in enhancing the maximum age by

two years. There is no explanation whatsoever as to why the respondent No.3 DTL maintained absolute quietus in the matter. Had the respondent No.3 DTL objected immediately at that time, the respondent No.2 DSSB could have published a corrigendum and applicants such as the petitioner would have been warned and would not have awaited the result of the selection process and it is well nigh possible that they would have taken up opportunities elsewhere. Else, just like the petitioner, upon being informed of the selection chose not to appear in the examination in pursuance to the second advertisement and of which he had been issued the admit card, the petitioner could reasonably be expected to have missed out on other opportunities also.

15. In my opinion, the respondent No.3 DTL is not only bound by the Notification of 21st December, 1998 but is also bound by the action of respondent No.2 DSSSB of, notwithstanding the requisition letter of October, 2003, having enhanced the age and the petitioner cannot be prejudiced by their said action. Thus, looked at either way, the conclusion

is inescapable that the petitioner inspite of selection could not have been rejected as overage.

16. The petition is therefore allowed, the rejection by the respondent no.3 DTL of the candidature of the petitioner for appointment to the post of AEF is quashed/set aside. The respondent no.3 DTL is directed to, on or before 31st July, 2011 issue a letter of appointment to the petitioner. Even though the petitioner would also have been entitled to emoluments from the date of appointment onwards but since no arguments were addressed on that part, I refrain from issuing any directions for the same. The petitioner is however awarded cost of this petition of ₹20,000/- payable before 31st July, 2011 as aforesaid.

**RAJIV SAHAI ENDLAW
(JUDGE)**

MAY 19, 2011

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(corrected and released on 17th June, 2011).