

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 07.05.2012

+ **W.P.(C) 2669/2012**

**DELHI SUBORDINATE SERVICES SELECTION
BOARD THROUGH ITS SECRETARY**

... Petitioner

versus

ANAND KUMAR TYAGI AND ANR

... Respondent

Advocates who appeared in this case:

For the Petitioner : Ms Zubeda Begum with Ms Sana Ansari

For the Respondent No.1 : Mr S.K. Tyagi

For the Respondent No.2 : Mr H. S. Sachdeva

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE V.K. JAIN

JUDGMENT

BADAR DURREZ AHMED, J (ORAL)

CAV 464/2012

The caveat stands discharged inasmuch as the learned counsel for the caveator/ respondent No.1 is present.

CM 5740/2012

Allowed subject to all just exceptions.

WP(C) 2669/2012 & CM 5739/2012

1. This writ petition is directed against the order dated 03.01.2012 passed by the Central Administrative Tribunal, Principal Bench, New Delhi

in OA 1497/2011. The respondent No.1 had approached the Tribunal by way of the said Original Application inasmuch as he was aggrieved by the fact that his name had not been included in the select list issued by the Delhi Subordinate Services Selection Board (DSSSB) as he had not been considered as an 'Ex-Serviceman'.

2. We may point out, at the outset, that while the issue before the Tribunal centered around the question of whether the respondent No.1 would be covered by the expression 'Ex-Servicemen' or not, that aspect of the matter is not being agitated by the learned counsel for the petitioner before us. On the other hand, the learned counsel for the petitioner has raised another issue with regard to her submission that the respondent No.1 does not fall within the age limit prescribed for the post of Group – B Trained Graduate Teacher (English) – Male with the Directorate of Education, Delhi despite the fact that the respondent is an 'ex-serviceman'.

3. The relevant facts are that the DSSSB had, on 29.01.2010 and 20.02.2010, advertised 414 vacancies for the said post of TGT (English) – Male, out of which, 284 had been earmarked for the general category. The

age limit prescribed for the post of TGT (English) under post code 01-10 was as under:-

“Age Limit: Below 32 years (relaxable in case of Govt. Servants of Delhi Admn. upto 40 years {45 years for SC/ST employees) and upto 42 years in case of female candidates.) Upper Age limit Relaxable for: SC/ST-5 years, OBC-3 years, PH- 05 years, PH & SC/ST-10 years, PH& OBC-08 years”

4. Clause 6 of the said advertisement provided for age relaxation in the following manner:-

“(6) AGE RELAXATION”

Candidates belonging to SC/ST category are eligible for age relaxation up to a maximum of 5 years and candidates belonging to OBC up to a maximum of 3 years. Candidates belonging to categories such as Ex-Servicemen, Physically Handicapped, Government Employees and other special categories are eligible for age relaxation as per the orders of the Government of India issued from time to time. Applicants claiming age relaxation should enclose photo copies of necessary documents in support of such claim duly attested by a Gazetted Officer.”

(underlining added)

5. From the above, it is abundantly clear that insofar as an Ex-Serviceman is concerned, the age relaxation, which was applicable to him, would be as per the orders of the Government of India issued from time to time. Consequently, the respondent No.1 had to fit into the age limitation

of 32 years, as extended by any age relaxation granted to an Ex-Serviceman in terms of the orders of the Government of India issued from time to time.

6. In this context, the Government of India issued an office memorandum dated 07.09.1981 on the subject of relaxation of upper age limit to the ex-servicemen commissioned officers including ECOs/SSCOs for appointment to Group A and Group B posts filled by direct recruitment. The following decision had been taken, as indicated in the said OM, in consultation with the UPSC:-

“(i) The upper age limit shall be relaxed by the length of military service increased by three years in the case of Ex-servicemen and commissioned officers including ECOs/SSCOs for appointment to any vacancy in Group A and Group B services/posts filled by direct recruitment otherwise than on the results of an open All India Competitive Examination held by the U.P.S.C. subject to the condition that (i) The continuous service rendered in the Armed forces by an Ex- serviceman is not less than six months after attestation and (ii) That resultant age after deducting his period of service from his actual age does not exceed the prescribed age limit by more than three years and also subject to usual conditions which, have been prescribed age limit by more than three years and also subject to usual conditions which have been prescribed in respect of appointment of Ex-servicemen to Group C and Group D posts vide this Department's Notifications No. 39016/10/79 -Estt.(C) dated 15.02.1979.

(ii) For appointment to any vacancy in Group A and Group B services/posts filled by direct recruitment on the results of an

All India Competitive Examination held by U.P.S.C. the Ex-servicemen and Commissioned Officers including ECO/SSCo who have rendered at least 5 years military service and have been released on completion of assignment (including those whose assignment is due to be completed within 6 months) otherwise than by way of dismissal or discharge on account of misconduct or inefficiency, or on account of physical disability attributable to military service or on invalidment, shall be allowed maximum relaxation of five years in the upper age limit.”

7. We note that clause (i) applies to Group A and Group B posts filled by direct recruitment otherwise than on the result of an open All India Competitive Examination held by the UPSC. However, clause (ii) applies to Group A and Group B posts filled by direct recruitment on the results of an All India Competitive Examination held by the UPSC. It is an admitted position that the posts with which we are concerned in the present writ petition were not to be filled by direct recruitment on the basis of an examination held by the UPSC. Consequently, it is clause (i) which would be applicable and not clause (ii).

8. The learned counsel for the petitioner has attempted to place reliance on clause (ii) of the said OM. But, we have already pointed out that the said clause (ii) would have no applicability in the facts and circumstances of the present case. The learned counsel for the petitioner had submitted

that only an age relaxation of five years could be granted and since the respondent was 37 years 8 months and 15 days old on the cut-off date, that is, on 15.03.2010, even if the maximum relaxation of five years is granted, the respondent would be beyond the age limit of 37 years (32 years plus five years). Unfortunately, this argument is not tenable because, as we have already pointed out above, the same rests on clause (ii) of the said OM dated 07.09.1981 which, in the facts of the present case, is not applicable.

9. We have to see the eligibility of the respondent in the backdrop of clause (i) of the said OM dated 07.09.1981. The said OM specifically prescribes that the upper age limit shall be relaxed by the length of military service increased by three years in the case of ex-servicemen and commissioned officers for appointment to any vacancy in Group A and Group B service/ posts. In the present case, the respondent's length of military service is, admittedly, 20 years. Thus, the upper age limit of 32 years has to be relaxed by the said 20 years and that also is to be increased by a further period of three years. In other words, the upper age limit is to be relaxed up to 55 years in the cases of ex-servicemen, such as the respondent No.1.

10. This is, however, subject to the condition that the resultant age, after deducting the respondent No.1's period of service from his actual age, does not exceed the prescribed age limit by more than three years. The actual age of the respondent, on the cut-off date, was 37 years 8 months and 15 days. If we deduct the period of service from his actual age, the resultant age would be 17 years 8 months and 15 days. This clearly does not exceed the prescribed age limit of 32 years and, therefore, the extended clause of adding another three years and, thereby taking it to 35 years, does not even come into play. As such, this condition is fully satisfied in the case of the respondent No.1. There are no other impediments which would come in the way of the respondent No.1 insofar as the age limit is concerned. Consequently, the plea taken by the learned counsel for the petitioner even before us is not supported by the office memorandum dated 07.09.1981 itself.

11. In view of the foregoing, there is no merit in this writ petition. The same is dismissed. There shall, however, be no order as to costs.

BADAR DURREZ AHMED, J

V.K. JAIN, J

MAY 07, 2012/SR