

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

Judgment reserved on: February 01, 2013
% *Judgment pronounced on: February 06, 2013*

+ **W.P.(C) 3397/2012**

DELHI SUBORDINATE SERVICES SELECTION BOARD &
ANR. Petitioner
Represented by: Ms.Zubeda Begum, Advocate
with Ms.Sana Ansari, Advocates

versus

PREETI BALAYAN & ANR. Respondents
Represented by: Ms.Maninder Acharya, Advocate
with Mr.Varun Gupta, Advocates for R-2.

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE VEENA BIRBAL

PRADEEP NANDRAJOG, J.

1. With the acceptance of the recommendations of the 6th Central Pay Commission made applicable from January 01, 2006, the undisputed position which came into existence was that posts of Assistant Teachers and Primary Teachers became Group 'B' posts as against Group 'C' posts prior thereto. The resultant effect was that the upper age limit for being appointed either as Primary Teacher or Assistant Teacher became 30 years, for the reason it is the mandate of the Government that upper age for direct recruitment to a Group 'B' post has to be 30 years.

2. The Recruitment Rules for the 2 posts framed by the Municipal Corporation of Delhi and the Government of NCT of Delhi were notified much prior to the implementation of the pay-scales recommended by the 6th Central Pay Commission. Since at the time when the Recruitment Rules

were promulgated the two posts were Group 'C' posts, the upper age limit prescribed was 27 years; being the upper age limit for direct recruitment to Group 'C' posts.

3. Any intelligent Administrative Officer could have easily spotted the requirement to amend the existing Recruitment Rules with respect to enhancing the upper age limit, for the reason this became the compulsion of law when the two posts changed category from Group 'C' posts to Group 'B' posts.

4. A stitch in time saves nine. The adage was forgotten. Indeed, facts noted hereinafter would show that the fabric got torn and requires extensive darning.

5. Proceeding to fill up 4500 vacant posts of Primary Teachers and 520 posts of Assistant Teachers under the Municipal Corporation of Delhi and the Government of National Capital Territory of Delhi respectively, the Delhi Subordinate Services Selection Board (hereinafter referred to as 'the Selection Board') issued an advertisement inviting applications from eligible candidates notifying that the cut-off date was January 15, 2010 by which applications would be received and that the crucial date pertaining to age and qualifications for purposes of eligibility would be the same, i.e. January 15, 2010. And needless to state, the upper age notified was 27 years.

6. Nobody realized that there was a very serious anomaly. The anomaly was that the two posts were Group 'B' posts, and yet in spite thereof upper age prescribed was 27 years and not 30 years, the latter being the mandate of the law. Had the Recruitment Rules been formally amended to enhance the upper age limit there would have been no problem.

7. With respect to the selection process, the Selection Board notified to the candidates that those whose names started with alphabets 'A' to 'O'

would be required to take a written examination on May 16, 2010 and those whose names started from alphabets 'P' to 'Z' would be required to take a written examination on May 23, 2010.

8. The Selection Board was likewise in the process of effecting appointments to the posts of Staff Nurses and had likewise informed the applicants that on two different dates two written examinations would be conducted for candidates whose names started from alphabets 'A' to 'O' and the alphabets 'P' to 'Z' respectively.

9. One applicant who had applied for being appointed as a Staff Nurse named Amit Singla filed O.A.No.1101/2010 questioning the candidates being subjected to a written examination with respect to two different sets of question papers. He wondered before the Tribunal as to how come a common merit list could be prepared with reference to two different sets of question papers.

10. Amit Singla succeeded. The Tribunal accepted his plea and directed that all eligible candidates be tested with respect to their merit by subjecting them to take a common written examination having the same question paper.

11. Though not relevant for our present decision, we are surprised that a simple fact could not be successfully projected by the Selection Board before the Tribunal. It is possible to evaluate the merit position of different candidates by testing their knowledge on subjecting them to write two different question papers, for the reason, it is possible to achieve same level of difficulty in two different sets of question papers. That apart, the principles of scaling and equivalence as is followed in the Central Civil Services makes it possible to even prepare a common merit list of applicants who have their knowledge tested on a variety of subjects as diverse as physics, mathematics and chemistry which are high scoring as

also history, political science and sociology which are low scoring. It is possible, applying scientific principles of rationalization, to work out equivalent scores with reference to different subjects of knowledge.

12. For future, if such an issue were to arise before the Tribunal we hope and expect that the Selection Board would be vigilant in defending its action and projecting to the Tribunal as afore-noted by us in the preceding paragraph.

13. Back to where we were to proceed ahead.

14. Faced with defeat in the Original Application filed by Amit Singla and accepting the defeat, the Selection Board instructed itself to scrap the two examinations proposed to be held on May 16, 2010 and May 23, 2010 for the posts of Primary Teachers and Assistant Teachers and notified a common date; that all candidates would be subjected to the same question paper. The Selection Board did so fearing a repetition of the defeat if somebody were to challenge the proposed selection procedure by relying upon the decision in Amit Singla's case.

15. In the meanwhile an Original Application was filed before the Tribunal by some persons who could not apply as advertised because they were above the age of 27 years but were below the age of 30 years. They pointed out that the two posts were Group 'B' posts and that it was impermissible to restrict the upper age to 27 years. It was pointed out that with the implementation of the recommendations of the 6th Central Pay Commission, the two posts were placed in pay-bands requiring them to be treated as Group 'B' posts for which the upper age limit was 30 years.

16. The challenge succeeded. The Tribunal directed that the Municipal Corporation of Delhi and the Government of NCT of Delhi to suitably amend the Recruitment Rules so as to bring them into conformity with the

law keeping in view the fact that the 2 posts were Group 'B' posts.

17. Taking corrective action, amended Recruitment Rules were notified by the Municipal Corporation of Delhi on September 06, 2011 and by the Government of NCT of Delhi on a date which neither counsel could inform us and which we could not locate in the pleadings or the annexures filed with the writ petition.

18. The Selection Board thereafter issued a corrigendum correcting the advertisement issued inviting applications by October 17, 2011 by prescribing that the upper age was 30 years, but retained the cut-off date being January 15, 2010. The result was that persons who had acquired eligibility in the interregnum approached the Central Administrative Tribunal resulting in impugned order dated March 30, 2012 being passed by the Tribunal declaring corrigendum dated September 13, 2011 retaining January 15, 2010 as the crucial date for eligibility as arbitrary with a direction that the cut-off date for eligibility should be shifted to October 17, 2011 being the last date by which the applicants could submit their applications.

19. Now, the effect of the direction issued by the Tribunal is that those who turned 30 years of age as of January 15, 2010 would become ineligible and that those who were less than 27 years of age as of January 15, 2010 but would be 27 years of age as of October 17, 2011 would become eligible. In other words, rights of some candidates with respect to the upper age in the context of the shifting of the cut-off date would get adversely affected.

20. Indeed, if only the Government of NCT Delhi and the Municipal Corporation of Delhi had put a stitch in time this problem would not have arisen.

21. There is a conflict between the rights of those who were eligible as of

January 15, 2010 and lose the eligibility by becoming overage if the date is shifted to October 17, 2011 and those who were not eligible being less than 27 years is as of January 15, 2010 but became eligible with reference to the cut-off date October 17, 2011. Neither set of candidates is at fault. The entire fault is of the MCD and the Government of NCT Delhi. Indeed, such kinds of situations confront the Court with the problem of neither there being a law on the subject nor a precedent.

22. What should a Court do?

23. In our opinion navigate the journey using the ancient mariner's compass. In other words, the Court should be guided by the reason of the law and seek direction from the reason of the law.

24. The first reason of the law which acts as our compass is that ordinarily vacancies have to be filled up from amongst the eligible candidates pertaining to the year of the vacancy and if for some reasons the selection process is postponed, only those who were eligible in the year of the vacancy should be considered. The second reason of the law which acts as our compass is that wherever in an ongoing process a derailment takes place at a particular point, the rail should be put back at the point where it derailed after removing the cause of derailment and letting the train chug along.

25. Guided by the aforesaid two reasons of law we unhesitatingly reach the conclusion that the only corrective action which could be directed to be taken was, as was directed by the Tribunal when the Original Applications filed by candidates who pointed out a hiatus between retaining the upper age limit of 27 years and the classification of the post was decided with a direction to amend the Recruitment Rule and issue a corrigendum making eligible candidates up to the age of 30 years; requiring the cut-off date

January 15, 2010 to be retained. The subsequent decision mandating that the eligibility cut-off date should be shifted to October 17, 2011 would amount to modifying the track and as a result making ineligible many candidates who cross the age of 30 years as of January 15, 2010. It must be also remembered that the vacancies pertained to the vacancy year 2010 and this explains the cut-off date being January 15, 2010.

26. Accordingly, we dispose of the writ petition setting aside the impugned judgment and order dated March 30, 2012 leaving the parties to bear their own costs.

(PRADEEP NANDRAJOG)
JUDGE

(VEENA BIRBAL)
JUDGE

FEBRUARY 06, 2013
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