

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.09.2015

CORAM

THE HONOURABLE Mr.JUSTICE S.MANIKUMAR
AND
THE HONOURABLE Mr. JUSTICE M.VENUGOPAL

W.P.No. 28740 of 2015
and
M.P. No.1 of 2015

N. Balaraman

.. Petitioner

Vs.

- 1 Union of India
Rep. by The Lieutenant Governor of
Puducherry Government of Puducherry
Rajnivas Puducherry
- 2 The Secretary to Government
Department of Personnel and Administrative
Reforms (Personnel Wing) Government of
Puducherry Secretariat Puducherry
- 3 The Under Secretary to
Government Department of Personnel and
Administrative Reforms (Personnel Wing)
Government of Puducherry Secretariat
Puducherry
- 4 The Deputy Secretary to
Government (Labour) Government of
Puducherry Labour Department Secretariat
Puducherry
- 5 The Director
Office of the Employment Exchange
Government of Puducherry Veema Goundan
Palayam Puducherry
- 6 The Registrar
Central Administrative
Tribunal (CAT) High
Court Campus Chennai-600 104.

.. Respondents

PRAYER: Petitions filed under Article 226 of the Constitution of India for a Writ of Certiorarified Mandamus, calling for records relating to the impugned order dated 8.9.2015 passed by the 6th respondents in O.A. No.310/ 01262/2015 on the file of Central

Administrative Tribunal Madras Bench and quash the same and consequently direct the respondent Nos.1 to 5 to consider the petitioner for the Post of Upper Division Clerk in response to the Notification vide No.A-34012/ 4/2015/DP & AR (Exam) dated 11.8.2015 by giving age relaxation by extending the benefit of G.O.Ms. No.98/83-Lab dated 24.8.1983 passed by the 4th respondent and consequently to direct the 3rd respondent to give appointment and accommodate him at suitable place if the petitioner is found otherwise eligible.

For Petitioners: Mr.Prakash Adiapadam

For Respondents : Mr.Syed Mustafa,
Additional Government Pleader
(Pondicherry)

O R D E R

(Order of the Court was made by S.MANIKUMAR, J.,)

Challenge in this Writ Petition is to the order dated 08.09.2015 in O.A. No. 310/1262/2015 by the Central Administrative Tribunal, Madras Bench, dismissing the Original Application filed under Section 19 of the Administrative Tribunals Act, 1985 seeking for a direction to the respondents, to grant age relaxation, so as to enable the petitioner to apply to the post of Upper Division Clerk.

2. Facts of the case deduced from the material on record and the order impugned in this Writ Petition are that the petitioner is a graduate in Computer Applications and he also holds a Diploma in Electrical & Electronics Engineering. The Under Secretary to Government, Department of Personnel and Administrative Reforms (Personal Wing), Government of Puducherry, Secretariat, Puducherry, the third respondent, has issued a notification on 11.08.2015, calling for applications, to the post of Upper Division Clerk, Group C, Non-Ministerial in the Department of Personnel and Administrative Reforms (Personnel Wing), Puducherry. In the said notification, besides, educational qualification for the post of Upper Division Clerk Group C in Ministerial Services, the maximum age limit prescribed for the candidates belonging to MBC/ OBC/ EBC/ BCM/ BT, it is 35 years, as on 11.09.2015, inclusive of three years [32 +3]. Clause II of the notification is re-produced hereunder :-

Category	Relaxation of Upper Age Limit
MBC/ OBC/ EBC/ BCM/ BT	3 years (32 + 3 years)
SC	5 years (32 + 5 years)

Category	Relaxation of Upper Age Limit
Ex-Servicemen (For details of Reservation and Concession to XSM refer Part -IV of General Instructions to candidates)	After deducting the military service plus 3 years from the actual age (in respect of reserved applicant, over and above the admissible relaxation of 5 years for Scheduled Caste and 3 years for MBC/ OBC/ EBC/ BCM/ BT)
Persons with Disabilities (For Physical requirements & categories of disabilities suitable for this job, refer Part-III of General Instructions to candidates)	10 years (in respect of reserved applicants, over and above the admissible relaxation of 5 years for SC and 3 years for MBC/ OBC/ EBC/ BCM/ BT).
Widows/ Divorced Women/ Women judicially separated from their husbands and who are not re-married	5 years (in respect of reserved applicants, over and above the admissible relaxation of 5 years for SC and 3 years for MBC/ OBC/ EBC/ BCM/ BT).
In-service applicant (Refer IX)	Relaxable for Government servants upto 40 years (43 for MBC/ OBC/ EBC/ BCM/ BT officials and 45 for SC officials) in accordance with the instructions or orders issued by Central Government, provided such Government servants are working for not less than 3 years in the posts which are in the same line or allied cadres and where a relationship can be established that the services rendered by them in the Department will be useful for efficient discharge of duties in the post for which selection is made.
Meritorious Sports Persons (For method of selection refer Part II of General Instructions to candidates)	5 years (in respect of reserved applicants, over and above the admissible relaxation of 5 years for SC and 3 years for MBC/ OBC/ EBC/ BCM/ BT). Applicable only for candidates applying under MSP quota and there is no written test for them.

3. It is the case of the petitioner that when he intended to apply to the said post through on-line, he could not open the site. Placing reliance on G.O. Ms. No.98/83-Lab, Labour Department dated 24.08.1983, in which relaxation is given to candidates sponsored to Government service, before the Central Administrative Tribunal, Madras Bench, the petitioner has submitted that he should have been given relaxation, by 20 days to become eligible for applying to the post of Upper Division Clerk. After considering the G.O stated supra and by observing, that the Writ Petitioner was over aged as on 11.09.2015 and giving age relaxation contrary to the recruitment rules, is not within the purview of the Tribunal, O.A. No.310/01262 of 2015, has been dismissed, as it does not deserve for admission.

4. Though Mr. Prakash Adiapadam, learned counsel for the writ petitioner assailed the correctness of the order of the Central Administrative Tribunal, Madras Bench, on the ground that, on the date of issuance of notification, the petitioner was fully

qualified and suitable, to the post of Upper Division Clerk and that the Tribunal had failed to consider G.O. Ms. No.98/83-Lab, Labour Department dated 24.08.1983, in proper perspective, and further contended that the Tribunal ought to have taken into consideration that at the fag end of the petitioner's life, he has made an attempt to apply for the post of Upper Division Clerk, in response to the Notification dated 11.08.2015, and thus the Tribunal has committed an error, in dismissing the Original Application, even at the threshold, this Court is not inclined to accept his contentions, for the reason that the Government, while issuing G.O. Ms. No.98/83-Lab, Labour Department dated 24.08.1983 for the purpose of giving age relaxation to certain categories, have made it clear that,

- a) Over-aged candidates upto 35 years in cases where eligible candidates within the age limit are lacking;
- b) Over-aged candidates upto 35 years who have been in the live register of Employment Exchange for more than 5 years continuously but have not been sponsored even once for any post;
- c) Over-aged candidates upto 35 years in respect of teaching/ professional/ technical posts if such candidates are having specific experience in the concerned specialty in the institutions run by the Government or recognized by the Government.

5. It is the prerogative of the Government to fix a cut off date for considering the eligibility, in the matter of educational qualifications and age. As stated supra, in the notification dated 11.08.2015, the Under Secretary to the Government, Department of Personnel and Administrative Reforms (Personal Wing), Government of Puducherry, Secretariat, Puducherry, the third respondent, has notified that the age for the post of Upper Division Clerk (Group 'C' Non-Gazetted, Ministerial), in the Department of Personnel and Administrative Reforms (Personal Wing), Puducherry, is between 18 and 32 of age.

6. Needless to state that it is the prerogative of the Government to fix a cut-off date, for any recruitment and merely because some would be affected, fixing, a cut-off date, cannot be held to be arbitrary. In this context, we deem it fit to consider the decision of the Hon'ble Apex Court.

In Dr.Amit Lal Bhat v. State of Rajasthan reported in 1997 (6) SCC 614, the Hon'ble Supreme Court, held as follows:

"4. Is such a cut off date fixed by the Rules applicable to the relevant service, arbitrary? It has been urged before us by the petitioners and/or appellants that the cut off date of 1st of January following the last date fixed for receipt of applications is arbitrary. The cut off date should only be fixed with reference to the last date of making the application in question. It is submitted before us that the date of 1st of January has no nexus with

the application in question and, therefore, must be struck down.

5. This contention, in our view, is not sustainable. In the first place the fixing of a cut off date for determining the maximum or minimum of minimum age prescribed for a post of not, per se, arbitrary. Basically, the fixing of a cut off date for determining the maximum or minimum age required for a post, is in the discretion of the Rule-making Authority or the employer as the case may be. One must accept that such a cut off date cannot be fixed with an mathematical precision and in such a manner as would avoid hardship in all conceivable cases. As soon as a cut off date is fixed there will be some persons who fall on the right side of the cut off date and some persons who will fall on the wrong side of the cut off date. That cannot make the cut off date, per se, arbitrary unless the cut off date is so wide off the mark as to make it wholly unreasonable. This view was expressed by this court in Union of India and another etc. V. M/s. Parameswaran Match Works etc. (AIR 1974 S.C. 2349) and has been reiterated in subsequent cases. In the cases of A.P. Public Service Commission, Hyderabad and another v. Sharat Chandra and Ors. (1990 2 SCC 669) the relevant service rule stipulated that the candidate should not have completed the age of 26 years on the 1st day of July of the year in which the selection is made. Such a cut off date was challenged. This Court considered the various steps required in the process of selection and said,

"when such are the different steps in the process of selection the minimum age of suitability of a candidate for appointment cannot be allowed to depend upon any fluctuating or uncertain date. If the final stage of selection is delayed and more often it happens for various reasons, the candidates who are eligible on the date of application may find themselves eliminated at the final stage for no fault of theirs. The date to attain the minimum or maximum age must, therefore, be specific and determinate as on a particular date for candidates to apply and for the recruiting agency to scrutinise the applications".

This Court, therefore, held that in order to avoid uncertainty in respect of minimum or maximum age of a candidate. Which may arise if such an age is linked to the process of selection which may taken an uncertain time, it is desirable that such

a cut off date should be with reference to a fixed date. Therefore, fixing in independent cut off date, far from being arbitrary, makes for certainty in determining the maximum age.

6. In the case of Union of India and Anr. v. Sudhir Kumar Jaiswal, (1994 4 SCC 212) the date for determining the age of eligibility was fixed at 1st of August of the year in which the examination was to be held. At the time when this cut off date was fixed, there used to be only one examination for recruitment. Later on, a preliminary examination was also introduced. Yet the cut off date was not modified. The Tribunal held that after the introduction of the preliminary examination the cut off date had become arbitrary. Negativizing this view of the Tribunal and allowing the appeal. This Court Cited with approval the decision of this Court in Parmeshwar Match Works case (supra) and said that fixing of the cut off date can be considered as arbitrary only if it can be looked upon as so capricious or whimsical as to invite judicial interference. Unless the date is grossly unreasonable, the court would be reluctant to strike down such a cut off date.

7. In the present case, the cut off date has been fixed by the State of Rajasthan under its Rules relating to various services with reference to the 1st of January following the year in which the applications are invited. All service Rules are uniform on this point. Looking to the various dates on which different departments and different heads of administration may issue their advertisements for recruitment, a uniform cut off date has been fixed in respect of all such advertisements as 1st January of the year following. This is to make for certainty. Such a uniform date prescribed under all service Rules and Regulations makes it easier for the prospective candidates to understand their eligibility for applying for the post in question. Such a date is not so wide off the mark as to be construed as grossly unreasonable or arbitrary. The time gap between the advertisement and the cut off date is less than a year. It takes into account the fact that after the advertisement, time has to be allowed for receipt of applications, for their scrutiny, for calling candidates for interview, for preparing a panel of selected candidates and for actual appointment. The cut off date, therefore, cannot be considered as unreasonable. It was, however, strenuously

urged before us that the only acceptable cut off date is the last date for receipt of applications under a given advertisement. Undoubtedly, this can be a possible cut off date. But there is no basis for urging that this is the only reasonable cut off date. Even such a date is liable to question in given circumstances. In the first place, making a cut off date dependent on the last date for receiving applications, makes it more subject to vagaries of the department concerned, making it dependant on the date when each department issues an advertisement, and the date which each department concerned fixes as the last date for receiving applications. A person who may fail on the wrong side of such a cut off date may well contend that the cut off date is unfair, since the advertisement could have been issued earlier: Or in the alternative that the cut off date could have been fixed later at the point of selection or appointment. Such an argument is always open, irrespective of the cut off date fixed and the manner in which it is fixed. That is by this court has said in the case of Parameshwaran Match Works (supra) and later cases that the cut off date is valid unless it is so capricious or whimsical as to be wholly unreasonable. To say that the only cut off date can be the last date for receiving applications, appears to be without any basis. In our view the cut off date which is fixed in the present case with reference to the beginning of the Calendar year following the date of application, cannot be considered as capricious or unreasonable. On the contrary, it is less prone to vagaries and is less uncertain.

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In our view this kind of an interpretation cannot be given to a rule for relaxation of age. The power of relaxation is required to be exercised in public interest in a given case; as for example, if other suitable candidates are not available for the post, and the only candidate who is suitable has crossed the maximum age limit; or to mitigate hardship in a given case. Such a relaxation in special circumstances of a given case is to be exercised by the administration after referring that case to the Rajasthan Public Service Commission. There cannot be any wholesale relaxation because the advertisement is delayed or because the vacancy occurred earlier especially when there is no allegation of any mala fides in connection with any delay in issuing an

advertisement. This kind of power of wholesale relaxation would make for total uncertainty in determining the maximum age of a candidate. It might be unfair to a large number of candidates who might be similarly situated, but who may not apply, thinking that they are age barred. We fail to see how the power of relaxation can be exercised in the manner contended."

In *Bhupinderpal Singh v. State of Punjab* reported in 2000 (5) SCC 262, at Paragraphs 12 and 13, it is held as follows:

"12. All the appeals and the writ petitions have been taken up for hearing analogously. The only question arising for decision in this case is by reference to which date the eligibility of the several candidates is to be judged and the consequences flowing from failure to satisfy the eligibility test in the facts and circumstances of the case.

13. Placing reliance on the decisions of this Court in *Ashok Kumar Sharma Vs. Chander Shekhar & Anr.* JT 1997 (4) SC 99; *A.P. Public Service Commission Vs. B. Sarat Chandra & Ors.* 1990 (4) SLR 235; *The Distt. Collector and Chairman, Vizianagaram (Social Welfare Residential School Society) Vizianagaram and Anr. Vs. M. Tripura Sundari Devi* 1990 (4) SLR 237; *Mrs. Rekha Chaturvedi Vs. University of Rajasthan & Ors.* JT 1993 (1) SC 220; *Dr. M.V. Nair Vs. Union of India & Ors.* 1993 (2) SCC 429; and *U.P. Public Service Commission, U.P., Allahabad & Anr. Vs. Alpana* JT 1994 (1) SC 94, the High Court has held (i) that the cut off date by reference to which the eligibility requirement must be satisfied by the candidate seeking a public employment is the date appointed by the relevant service rules and if there be no cut off date appointed by the rules then such date as may be appointed for the purpose in the advertisement calling for applications; ii) that if there be no such date appointed then the eligibility criteria shall be applied by reference to the last date appointed by which the applications have to be received by the competent authority. The view taken by the High Court is supported by several decisions of this Court and is therefore well settled and hence cannot be found fault with. However, there are certain special features of this case which need to be taken care of and justice done by invoking the jurisdiction under Article 142 of the Constitution vested in this Court so as to advance the cause of justice.

13. In view of several decisions of this Court relied on by the High Court and referred to herein above, it was expected of the State Government notifying the vacancies to have clearly laid down and stated the cut off date by reference to which the applicants were required to satisfy their eligibility. This was not done. It was pointed out on behalf of the several appellants/petitioners before this Court that the practice prevalent in Punjab has been to determine the eligibility by reference to the date of interview and there are innumerable cases wherein such candidates have been seeking employment as were not eligible on the date of making the applications or the last date appointed for receipt of the applications but were in the process of acquiring eligibility qualifications and did acquire the same by the time they were called for and appeared at the interview. Several such persons have been appointed but no one has challenged their appointments and they have continued to be in public employment. Such a loose practice, though prevalent, cannot be allowed to be continued and must be treated to have been put to an end. The reason is apparent. The applications made by such candidates as were not qualified but were in the process of acquiring eligibility qualifications would be difficult to be scrutinised and subjected to the process of approval or elimination and would only result in creating confusion and uncertainty. Many would be such applicants who would be called to face interview but shall have to be returned blank if they failed to acquire requisite eligibility qualifications by the time of interview. In our opinion the authorities of the State should be tied down to the principles governing the cut off date for testing the eligibility qualifications on the principles deducible from decided cases of this Court and stated herein above which have now to be treated as the settled service jurisprudence.

In *Jasbir Rani v. State of Punjab* reported in 2002 (1) SCC 124, at Paragraph 11, the Hon'ble Supreme Court held as follows:

"11. No doubt, the Rule does not provide a cut-off date by which an applicant is to satisfy the prescribed eligibility qualification pertaining to age. In the absence of a statutory provision in that regard the date has to be fixed at the time of issuing the advertisement. This is necessary not merely to enable the appointing authority to sort out the applications of the eligible candidates from those candidates who do not fulfil the prescribed qualification, but also to avoid criticism of a favoritism and nepotism against the authority. In the first advertisement issued in the case on 18th September, 1997 the cut-off date was fixed as 1st September, 1997 i.e.

about two weeks prior to the advertisement. In the second advertisement which was issued one year after the first one ordinarily the appointing authority could have similarly fixed a date a few days prior to the date of issue of the advertisement; but as noted earlier, in the first advertisement the applications were invited from male candidates only; perhaps realising that there was no reasonable basis for confining the recruitment to male candidates only it was decided to throw open the recruitment to eligible female candidates also and in pursuance of the said decision the second advertisement was issued on 19th September, 1998. In such circumstances the appointing authority while issuing the second advertisement fixed the same cut-off date as in the first. If this had not been done then there would have been a difference in date by which the eligibility qualification pertaining to age was to be complied by male and female candidates. Such action would have exposed the authorities to criticism of discrimination. In the circumstances no exception can be taken to the action of the authority fixing the same cut-off date in both the advertisements."

7. Reverting to the case on hand, the Government of Puducherry have also notified relaxation of age, for persons falling under MBC/ OBC/ EBC/ BCM/ BT/ SC, Ex-Servicemen, Persons with Disabilities, Widows/ Divorced Women/ Women judicially separated from their husbands and who are not re-married, In-service applicant and Meritorious Sports Persons. In respect of MBC/ OBC/ EBC/ BCM/ BT/ SC candidates, relaxation of upper age limit of three years, is permissible [32 + 3 years].

8. The outer limit or the last date for submission of the application is 11.09.2015. Eligibility as to age is fixed with reference to the date fixed in the notification and not on the date of notification. Therefore, the petitioner, who seeks for selection to the post notified should satisfy that he was well within the age, 35 years, subject to the relaxable period of three years. Admittedly, as on 11.09.2015, the date fixed for determining the eligibility, as to the age applicable to the post i.e. 35 years, with three years relaxation, the petitioner had crossed 35 years of age. The Government Order speaks about relaxation of age to be given to certain categories of persons only upto 35 years and not beyond that. Already, the petitioner had the benefit of age relaxation, as per the above government order. Though the petitioner has contended that he was well within the age of 35 years, on the date of issuance of notification, and therefore, his case ought to be considered by the respondents, the said contention cannot be accepted for the reason, that the age is computed with reference to the date mentioned in the notification dated 11.09.2015. Knowing fully well that he had crossed the age

of 35 years, he has sought for a direction from the Central Administrative Tribunal, Madras Bench. Age computed on the basis of the date fixed in the notification, cannot be said to be erroneous. Thus, on 11.09.2015, the date fixed, the petitioner was clearly over aged by 20 days. Relaxation of upper age limit for MBC candidates, is only upto a period of three years, i.e. 35 years. A combined reading of the notification dated 11.08.2015 and Government Order in G.O. Ms. No.98/83-Lab, Labour Department dated 24.08.1983, makes it clear that only upto 35 years, relaxation can be given by the Government. As rightly observed by the Central Administrative Tribunal, Madras Bench, Courts cannot issue any directions to the Appointing Authority, to grant any relaxation of age, contrary to Recruitment Rules, in which maximum age is prescribed.

9. For the reasons stated supra, we do not find fault with the order of the Central Administrative Tribunal, Madras Bench, refusing to entertain the O.A. No.310/ 01262/2015, filed under Section 19 of the Central Administrative Tribunals Act, 1985, which has been dismissed at the admission stage itself. Consequently, the connected M.P. is closed. No costs.

Sd/-

Assistant Registrar(Records)

//True Copy//

Sub Assistant Registrar

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To

- 1 The Lieutenant Governor of Union of India
Puducherry Government of Puducherry
Rajnivas Puducherry
- 2 The Secretary to Government
Department of Personnel and Administrative
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+ 1 cc to M/s. Prakash, Advocate Sr.50312

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RSK(CO)
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