

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

Civil Writ Petition No.18562 of 2014
Date of Decision: February 10, 2015

Post Graduate Institute of Medical Education and
Research, ChandigarhPetitioner
versus
Central Administrative Tribunal, Chandigarh Bench and
anotherRespondents

CORAM: HON'BLE MR.JUSTICE SURYA KANT.
HON'BLE MR.JUSTICE RAJ MOHAN SINGH.

Present:Mr.Vijay Pal, Advocate, for the petitioner.

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

Surya Kant, J. (Oral)

Post Graduate Institute of Medical Education and Research, Chandigarh, impugns the order dated 01.05.2014 passed by the Central Administrative Tribunal, Chandigarh Bench, whereby the petitioner-Institute has been directed to grant the age relaxation and consider respondent No.2 for appointment to the post of Nuclear Medicine Physicist without reference to his being overage, he being No.1 in order of merit.

[2] There is hardly any controversy on facts. The second respondent joined the petitioner-Institute as a Junior Lab Technician on 15.12.1995 and he then promoted as Senior Lab Technician in the year 2001.

[3] There is a higher post of Nuclear Medicine Physicist which the petitioner-Institute decided to fill up by direct recruitment vide advertisement dated 6.2.2013. The upper age limit was 35 years though subject to relaxation as per the Government of India Rules.

[4] Since the 2nd respondent was over-age even after getting the benefit of age relaxation in terms of Government of India Rules/Instructions, though otherwise eligible for the aforesaid post, he represented the petitioner-Institute to reconsider the prescription of maximum age limited but his representation having been turned down, he approached the Central Administrative Tribunal who vide the impugned order has directed the petitioner-Institute to consider respondent No.2 for appointment to the post of Nuclear Medicine Physicist without reference to his being over-age.

[5] The Tribunal has accepted the claim of respondent No.2 primarily on the strength of two earlier decisions, one rendered by this Court in Rajinder Kumar Goel versus PGIMER, 1993(2) SCT 446 which was upheld by the Hon'ble Supreme Court and the other one in OA No.631-CH-2011 (Ashok Kumar Sharma versus PGIMER) decided on 12.09.2012, which too was upheld by this Court and has attained finality. In both the cases, the Courts held that prescription of maximum age limit in the matter of direct recruitment though is a prerogative of the employer but when it deprives the inservice candidate from promotional avenues and/or right to compete against higher post, the rule would be suffering from the vice of unreasonableness.

[6] Having heard learned counsel for the petitioner-Institute and after going through the above-cited decisions, we

find that the judgment of this Court in Rajinder Kumar Goel's case (supra) is very close on facts to the case in hand. We see no reason to have a different view and most respectfully are inclined to follow the ratio of Rajinder Kumar Goel's (supra). There, this court found that the petitioner (Rajinder Kumar Goel) was working as a Technologist in the petitioner-Institute for 19 years when he applied for the higher post of Hospital Engineer (Civil) which was advertised to fill up on direct recruitment basis. The employee (Rajinder Kumar Goel) had crossed the age of 40 years and was rendered ineligible due to prescription of upper age limit. It was in that backdrop that this Court viewed as follows:-

“....13. Even the prescription of an age limit of 40 years appears to be unreasonable. It is no doubt correct that an employer can prescribe a reasonable age limit so that a person is available for service for a reasonable period. However, keeping in view the fact that persons who have already put in long years of service, like the petitioner who has served the Institute from the year 1973 to 1992, i.e., for about 19 years and may have crossed the age limit of 40 years, would be rendered totally ineligible the action does not appear to be fair. In such a situation, it would be reasonable to hold that the persons who are already in the service of the respondent-Institute should be granted the benefit of relaxation in such a way that they are not deprived of the

chance to compete for the post. Accordingly, it is held that the provision in the Rule as also the advertisement prescribing an age limit of 40 years at least in respect of those already working in the Institute is unreasonable and persons already in the service of the Institute should be allowed to complete for the post.....”

[7] In Ashok Kumar Sharma's case (supra) also the employee was working as a Junior Technician in the X-Ray Department of the petitioner-Institute. He applied for appointment to that very post on regular basis when it was advertised. As he had crossed the age of 50 years, the petitioner-Institute declared him ineligible. The Tribunal accepted the claim of employee relying upon Rajinder Kumar Goel's case (supra).

[8] In the instant case also, the 2nd respondent is serving the petitioner-Institute since the year 1995. It is not the case of petitioner-Institute that the 2nd respondent can have any legitimate expectation for promotion before he attains the age of superannuation. His only hope to rise in the career thus depends on the relaxation of maximum age limit.

[9] The 2nd respondent was considered by the Selection Committee provisionally under the interim directions of the Tribunal. He competed alongwith all other candidates and on the basis of his overall performance, he has been placed at Sr.No.1 in order of merit. The second respondent having proved his worth for the advertised post, we are of the considered view that he deserves to be appointed notwithstanding the age limit. Consequently, we do not find

any merit in this writ petition which is accordingly dismissed.

[SURYA KANT]
JUDGE

February 10, 2015
Mohinder

[RAJ MOHAN SINGH]
JUDGE