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

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W.P.(C) 8546/2014

Date of decision: 1st February, 2016

KENDRIYA VIDYALAYA SANGATHAN & ANR Petitioners
Through Mr. R.N. Singh, Advocate.

versus

DILEEP SINGH & ANR. Respondents
Through Mr. Virender Singh Kadium,
Advocate for respondent No.1.
Ms. Suparna Srivastava and Mr. Manu Dev
Sharma, Advocates for UOI.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE NAJMI WAZIRI

SANJIV KHANNA, J. (ORAL)

This writ petition filed by Kendriya Vidyalaya Sangathan and Joint Commissioner (Admn.), impugns order dated 7th May, 2014 passed by the Central Administrative Tribunal, Principal Bench, Delhi in OA No.3362/2013, holding that respondent-Dileep Singh is entitled to age relaxation in terms of paragraph 5 (i) of OM No.36034/8/88 Estt. (SCT) dated 19th May, 1988.

2. The facts are not in dispute. The petitioner-Kendriya Vidyalaya

Sangathan had issued advertisement No.4 in the Employment News dated 11th-17th February, 2012 for recruitment to different posts including posts of Assistant for year 2011-12.

3. The respondent had applied for the post of Assistant and pursuant to the scores obtained in the written test, was shortlisted at Sr.No.45 in the list of 119 general category candidates for verification of documents. Only 27 general category candidates were selected and appointed, out of the 40 posts that were advertised. The respondent's candidature was rejected on the ground of over age. As per the advertisement, the upper age limit for a candidate applying for the post of Assistant was 35 years as on 14th March, 2012. The petitioners submit that respondent was entitled to, as an ex-serviceman, age relaxation of 5 years. The respondent being 40 years, 1 month and 24 days of age on the cut-off date i.e. 14th March, 2012, was overage by 1 month and 24 days.

4. It is not in dispute that the respondent's date of birth is 19th January, 1972; he was discharged after rendering 17 years and 4 months of service in the Army and was 40 years, 1 month and 24 days of age as on 14th March, 2012. The respondent's case is that he is

entitled to addition of 3 years and exclusion of the entire period of service of 17 years and 4 months rendered in the Army.

5. The respondent is correct. The relevant portion of the advertisement No.4 dated 11th-17th February, 2012 published in the Employment News relating to the age relaxation in a case of ex-serviceman, reads as under:-

“3. Age Relaxation: Relaxation in upper age limit will be as under:-

(a) x x x x x

(b) x x x x x

(c) x x x x x

(d) x x x x x

(e) x x x x x

(f) An ex-Servicemen who has put in not less than 06 months continuous service in the Armed Forces (Army, Navy and Air Force) shall be allowed to deduct the period of such service from his actual age and if the resultant age does not exceed the maximum age limit prescribed for the post by more than 3 years he shall be deemed to satisfy the condition regarding age limit.”

A reading of sub-para (f) would show that an ex-serviceman, who has put in service of six months’ or more in the armed forces is allowed to

deduct the entire period of such service from his actual age. If the resultant age does not exceed the maximum age limit prescribed for the post by more than 3 years, he/she is deemed to satisfy the age limit so prescribed. The service rendered by the Ex-serviceman in the Army, Navy or Air Force is to be excluded or deducted from the age of the candidate on the cut-off date. Secondly, three years have to be added to the maximum age prescribed.

6. The respondent has rendered 17 years and 4 months of service and, therefore, this period in terms of the advertisement has to be excluded and period of 3 years is to be added to the maximum age i.e. 35 years. The upper age limit applicable in the case of the respondent would be 38 years after excluding 17 years and 4 months of service rendered in the Army. The petitioner does not dispute and challenge that if the upper age limit is extended by 3 years and this period of 17 years and 4 months are excluded; the respondent qualifies and would not be hit by the age limit bar. However, on strange reasoning, they believe and perceive that the respondent is entitled to age relaxation for a maximum period of 5 years and not beyond, regardless of number of years service rendered by him in the Army. We would

reject the said contention because this is not what was indicated or stated in the advertisement in sub-para (f) to para 3 relating to age relaxation.

7. Learned counsel for the petitioner has drawn our attention to OM No.39018/1/79-Estt.(C) dated 20th September, 1979 and has submitted that that the said OM is applicable only to Group C and D employees, whereas the post in question is a Group B post. We accept the said submission but the contention raised would not help the petitioner, for OM No.36034/8/88 Estt. (SCT) dated 19th May, 1988 applies to Group A and B posts/services. Relevant portion of the said OM reads as under:-

“The undersigned is directed to refer to this Department’s O.M. NO.39016/7/78-Estt. (C) dated 10-5-1979, which contained decisions of the Government on the various recommendation of the Working Group of Officers on Resettlements of ex-servicemen. The recommendations of the Working Group which related to relaxation of upper age-limit in the case of ex-servicemen and commissioned officers including ECOs/SSCOs for appointment to Group ‘A’ and Group ‘B’ posts filled by direct recruitment were still under consideration of the Government. The following decisions have now been taken on these recommendations also 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 Indian Competitive Examination held by the UPSC, 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 does not exceed the 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 in Group 'C' and Group 'D' posts vide this Department's Notification No.39016/10/79-Estt.(C), dated 15.12-1979.

(ii) For appointment to any vacancy in Group 'A' and Group 'B' services/posts filled by direct recruitment on the result of an All India Competitive Examination held by UPSC, the ex-servicemen and Commissioned Officers including ECOs/SSCOs who have rendered at least five years' military service and have been released on completion of assignment (including those assignments is due to be completed within six 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 or five years in the upper age-limit. The relaxation in upper age-limit is not available to service Commissioned Officer."

8. The aforesaid OM specifically refers to 1979 OM and the recommendations made by the Working Group in consultation with the UPSC for upper age relaxation in the case of ex-servicemen. It is

correct that under clause (ii), age relaxation of five years of the upper age limit is postulated but these are for vacancies in Group A and B services/posts to be filled by direct recruitment by all India competitive examinations held by the UPSC. In the present case, the examination was not held by the UPSC and the case would fall under clause “(i)” which applies to appointment for vacancies in Group A and B services/posts filled by direct recruitment otherwise than on a result of an open all India competitive examination held by the UPSC. In the present case, the examinations were not held by the UPSC. The clause (i) specifically stipulates that the period of Army service shall be deducted from the actual age of the applicant. Secondly, 3 years would be added to the prescribed age limit. It is, therefore, apparent that advertisement No.4 in sub-para (f) to para 3 had rightly noted the age relaxation mandate stipulated in O.M. dated 19th May, 1988.

9. In view of the aforesaid, we do not find any merit in the present petition impugning the order of the Tribunal dated 17th May, 2014. We clarify that the respondent would be considered for appointment in accordance with law and will be granted seniority according to the merit list.

10. With the aforesaid observations and findings, the writ petition is disposed of.

SANJIV KHANNA, J.

NAJMI WAZIRI, J.

FEBRUARY 01, 2016
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