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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 13768 OF 2017

Miss Sidhida Anil Sawant

..Petitioner

Vs.

Union of India & anr.

..Respondents.

.....

Mr. Sandeep V. Marne, Advocate for the petitioner.

Mr. A.M. Sethana along with Mr. P. Khosla, Advocate for
respondent No.1 / UOI.

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**CORAM : SMT. V.K. TAHILRAMANI ACTING C.J.
AND M.S.KARNIK, J.**

RESERVED ON : 18th DECEMBER, 2017.

PRONOUNCED ON : 20th DECEMBER, 2017.

ORDER (PER : M.S. KARNIK, J.) :-

The petitioner by this petition challenges the order dated 1st August, 2017 passed by the Central Administrative Tribunal, Mumbai ("the Tribunal" for short), in O.A.No. 229 of 2016. The vacancy for the post of E.C.G. Technician was declared in the year 2012. The process for filling for said

vacancy commenced in December, 2012, as per the requisition letter addressed to Employment Exchange, Mumbai, dated 4/12/2012 and eligibility for the age of E.C.G. Technician was shown as 18 to 28 years. According to the petitioner, the eligibility as regards the age was correctly shown. Even the Then Additional Director, the appointing authority, by his requisition dated 11/1/2013 stipulated the correct age limit as 18 to 22 years. When the new Additional Director took over the charge of the post, the requisition was made to the Employment Exchange vide letter dated 1/10/2013 where the age limit was prescribed as upto 25 years. Simultaneously, the requisition was also sent to the Employment Exchange vide letter dated 1/10/2013 in which age limit upto 25 years was mentioned.

2. Learned Counsel for the petitioner submits that though the age limit for the said post was rightly stipulated as 18 to 28 years, the present Additional Director prescribed the wrong age limit as upto 25 years despite the amendment to the Recruitment Rules. Learned Counsel for the petitioner invited

our attention to the Recruitment Rules called Central Government Health Scheme, Delhi, E.C.G. Technician (Junior) Recruitment Rules. The said rules provided for the age limit between 20 to 25 years. In the submission of the learned Counsel for the petitioner, the respondents overlooked the Rules called as Central Civil Services and Civil Posts (Upper Age Limit for Direct Recruitment) Rules 1998 ("Rules of 1998" for short) applied to all central civil services and civil posts under the Central Government. Learned Counsel submits that Rule 3 provides that the upper age limit for recruitment by the method of Direct Open Competitive Examination to the Central Civil Services and Civil Posts specified in the relevant service/recruitment rules on the date of commencement of the said Rules of 1998 shall be increased by two years. In the submission of the learned Counsel for the petitioner, the said Rules of 1998 clearly override the Rules of 1981 in so far as prescribing the upper age limit is concerned. He submits that the additional benefit of two years should have been prescribed in the advertisement.

3. Learned Counsel for the respondents on the other hand submits that the petitioner is a daughter of a Senior Functionary in the office of the respondent No.2, where the recruitment has taken place dehors the rules. In his submission, the advertisement published in the Newspapers as well as requisition sent to the Employment Exchange clearly mentions the upper age limit as 25 years. In his submission, the Employment Exchange sent the name of the petitioner who was admittedly above the age of 25 years but below the age of 27 years.

4. To appreciate the contentions raised by the parties, it would be material to reproduce the relevant portion of Rule 3 of the said Rules of 1998 and the Note thereunder :-

“3. Increase in the upper age limit :-

The upper age-limit for recruitment by the method of Direct Open Competitive Examination to the Central Civil Services and Civil Posts specified in the relevant service / recruitment rules on the date of commencement of the Central Civil Services and Civil Posts (Upper age-limit for Direct Recruitment) Rules 1998, shall be increased by two years.

Note :- “Direct Open Competitive Examination” for the purpose of these rules shall mean direct recruitment by

Open Competitive Examination conducted by the Union Public Service Commission or the Staff Selection Commission or any other authority under the Central Government and it shall not include recruitment through Limited Departmental Examination or through shortlisting or by interview or by contract or by absorption or transfer or deputation.”

5. The reading of the said Rule 3 makes it abundantly clear that the upper age limit was enhanced for recruitment only in case of Direct Open Competitive Examination to the Central Civil Services and Civil Posts. The Note further clarifies that “Direct Open Competitive Examination” for the purpose of these rules shall mean direct recruitment by Open Competitive Examination conducted by the Union Public Service Commission or the Staff Selection Commission or any other authority under the Central Government and it shall not include recruitment through Limited Departmental Examination or through shortlisting or by interview or by contract or by absorption or transfer or deputation. Admittedly, the recruitment to the said post is not by “Direct Open Competitive Examination” and it is an admitted position that the recruitment was by holding

interview. The question, therefore, of the application of the Rules of 1998 does not arise to the selection process in issue. Admittedly, the petitioner was more than 25 years but below age of 27 years on the date when her candidature was considered.

6. Having gone through the order of the Tribunal, we find that the Tribunal has also taken into consideration that the Notification of advertisement and the requisition to the Employment Exchange was not challenged by the petitioner before the Tribunal. We are of the opinion that the contention of the learned Counsel for the petitioner that the Tribunal's view is unsustainable is devoid of any merit.

7. The present petition is, therefore, dismissed with no order as to costs.

(M.S.KARNIK, J.)

(ACTING CHIEF JUSTICE)