

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

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**CWP-12071-2013 (O&M)
Date of decision:15.09.2017**

Rajinder Kumar

....Petitioner

Versus

State Bank of India and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. V.D.Sharma, Advocate for the petitioner.

Mr.Vikas Chatrath, Advocate and
Mr. Jatinder Pal Singh, and Mr. Rajanjeet Singh, Advocates
for the respondent-Bank.

P.B. BAJANTHRI, J. (ORAL)

In the instant writ petition, petitioner has prayed for quashing of impugn General Instrcution C-3 of the advertisement dated 28.09.2012 (Annexure P-1) vide which relaxation of 5 years in upper age limit has been given to Ex-serviceman which is contrary to Rule and impugn rejection letter dated 25.04.2013 (Annexure P-5) vide which the petitioner has been declared over age for the post of Assistant Manager (System). Further sought for a direction to the respondents No.1 and 2 to follow the statutory rule issued by the Government of India. Respondents advertized various posts including Assistant Manager (System) on 28.09.2012 (Annexure P-1).

2. Petitioner is a candidate under Ex-serviceman OBC category.

Written test was conducted on 02.12.2012 in which petitioner was qualified

thereafter, he was called for interview on 25.4.2013. Before interviewing the petitioner, respondents have noticed that petitioner is over age for the recruitment to the post of Assistant Manager (System) under Ex-serviceman OBC category with reference to age criteria shown in the advertisement. As per the advertisement petitioner is entitled for relaxation of 5 years since he is aged about 37 years as on the date of submission of application with reference to age criteria Clause C-3) of the advertisement. Thus, the petitioner is challenging Clause C-3) of the advertisement and further sought for direction to follow the rules called “The Ex-serviceman (Re-employment in Central Civil Services and Posts) Rules, 1979” in entirety. The respondents have extended the benefit of relaxation of age to the ex-serviceman only with reference to Sub-Rule c of Rule 5. The respondents should have given relaxation of age to the Ex-serviceman (Re-employment in Central Civil Services and Posts) Amendment Rules, 2012 (for short 'Amendment Rules, 2012') which was notified in the gazette on 04.10.2012. The applicability of the above rules is not disputed by the respondents since in their statement of objection in para 7 they have admitted. That apart, learned counsel for the petitioner submitted that insofar as similarly recruitment conducted by Bank as well as Government of India they have extended the benefit of age relaxation to the ex-serviceman with reference to Amendment Rules, 2012 which was pointed out vide Annexure P-8. IBPS have issued a corrigendum in which they have stated that “relaxation in upper age limit as per Government guidelines for reserved categories will apply”. Further relied on Annexure P-6 various posts in the Cabinet

Secretariat, Government of India notified on 17.04.2013 extended the benefit which reads as under:-

“Note-III The upper age limit is relaxable for the following categories of candidates:-

d) Ex-servicemen candidates applying for Group'B' and Group 'C' posts will be eligible for relaxation upto 3 years after decution of the military service rendered from the actual age as on the cut off date.”

3. In view of the above facts and circumstances, learned counsel for the petitioner submitted that the respondent-Bank have inadvertently, not quoted the relaxation in upper age limit to the extent of Rules 5 (b) and (c) of Amendment Rule, 2012 issued on 04.12.2012 what has been taken for the purpose of relaxation in upper age limit is Rule 5(c). If Rule 5(c) is applied in that event, petitioner's case do not fit into. Rule 5(c) is relating to short commission and other service whereas the petitioner rendered 20 years of service in the Military. Therefore, relevant clause is 5(a). When the posts are reserved for ex-serviceman, the respondents cannot restrict to relaxation of age in respect of 5(c) only. Such prescription would be discriminatory and arbitrary for the reasons Ex-servicemen consists of ECOs, SSCOs full time service (like petitioner). In other words, denying opportunity to an employee who had regularly discharged duties in the Military for decade.

4. Per contra, learned counsel for the respondents submitted that post in question is relating to Assistant Manager (System). In the respondent-Bank they have not identify or classification like Group A, B, C

and D whereas Amendment Rules, 2012 relating to re-employment in Central Services and Posts of Ex-servicemen persons speaks of only Group C, D, A and B. Since the Assistant Manager (System) has not been classified in a particular group therefore, the petitioner cannot insist that in the advertisement they should have notified with reference to Rule 5(b) and (c). It was further contended that the respondents in the affidavit filed today dated 15.09.2017 along with Annexures (Annexure R4) Government of India for the purpose of extending reservation of the Persons with Disabilities, the post of Assistant Manager (System) Item No. 241 has been identified as in Group-A. Therefore, petitioner's case cannot be considered under Rule 5(a) since Group-A falls under Rule 5(c). It was further submitted that writ petition is not maintainable on the ground of jurisdiction. Since the cause of action accrues to the petitioner at Bangalore where written examination was held or at best at Secunderabad where the interviews were held. It was further submitted that petitioner had participated in the process of selection. He cannot turn around and challenge the criteria of selection. In support of this contention, learned counsel for the respondents relied on decision passed in Civil Appeal No. 8345-46 of 2009 titled as ***D.Sarojakumari Versus R.Helen Thilakom and others***. He relied on para 6 wherein the Supreme Court while quoting the earlier decision it was held that it is not open for the candidate to challenge the selection procedure after participating in the process.

5. Heard learned counsel for the parties.

6. Question for consideration in the present petition is whether the

petitioner is entitled to age relaxation as an ex-serviceman and be allowed to take the period of actual military service from his actual age and resultant age does not exceed the maximum age limit prescribed for the post for which he is seeking appointment or not? The respondents while advertising the post of Assistant Manager (System) may be inadvertently, prescribed Rule 5(c) of the Amendment Rules, 2012. The posts were ear-marked for ex-serviceman in respect of Assistant Manager (System) does not distinguish whether ex-serviceman is from short commission services or otherwise so as to prescribe relaxation in upper age limit only to class of persons like short commission officers of ex-serviceman. Even though, the post is ear-marked for ex-serviceman and ex-serviceman in short commission. Thus, it is evident that complete Rule 5 of the Amendment Rules, 2012 has not been given effect for the purpose of giving age relaxation to ex-serviceman with reference to various posts advertised.

7. In view of these facts and circumstances, Clause C-3) of the advertisement is to be read down and it is to be read as Rule 5 (b) and (c) of Amendment Rules, 2012 notified on 04.10.2012 so as to cover each and every ex-serviceman irrespective of short commission or otherwise. Learned counsel for the respondents raised a preliminary issue relating to jurisdiction of this court. Perusal of the advertisement it is crystal clear that it is all over India recruitment and post of Assistant Manager (System) is for various sister concern banks of the State bank of India like SBBJ, SBH, SBP, SBM and SBT. That apart the written examination was conducted insofar as petitioner is concerned in Bangalore and interviews were held at

Secunderabad. These are the materials to show that jurisdiction is all over India. Therefore, preliminary issue relating to maintainability of the writ petition by the respondent is liable to be rejected. The contention of the respondents that petitioner had participated in the process of selection therefore, he cannot turn around and challenge the process of selection and in support of said contention he relied on the decision of ***D.Sarojakumari's case (Supra)*** is concerned, such preliminary issue is not attracted in the present case for the reasons that respondents while issuing advertisement insofar as relaxation in upper age limit is concerned they have taken material only from Rule 5(c) instead of Rule 5(b) and (c) of Amendment Rules, 2012 which relates to age relaxation to what extent for the Ex-serviceman (Re-employment in Central Civil Services and Posts) Amendment Rules, 2012. That apart definition 'Ex-serviceman' is also to be taken into consideration, since recruitment to post of Assistant Manager (System) provides for age relaxation to Ex-serviceman and definition do not distinguish as a combatant or as a non-combatant in the Regular Army, Navy and Air Force of the Indian union so as to restrict age relaxation to only class of persons like commissioned officers including Emergency Commissioned Officers and Short Service Commissioned Officers.

8. In view of these facts and circumstances, letter dated 25.04.2013 (Annexure P-5) is set aside. Sub-clause C-3) of the advertisement insofar as relaxation in upper age limit to the ex-servicemen is concerned, is read down and it has to be read as Rule 5 of the Amendment Rules, 2012 i.e. Rules 5(b) and (c). Thus, the respondents are hereby directed to hold

interview of the petitioner and consider his name for the purpose of selection and appointment to the post of Assistant Manager (System) within a period of 4 months from today.

9. Learned counsel for the respondents submitted that there is no interim order therefore, if the petitioner's name is required to be considered for the purpose of selection and appointment, the last candidate is required to be impleaded as a party. Hence, petitioner is not entitled for the relief sought. It is to be noted that petitioner had prayed for interim relief that he be permitted to appear in interview provisionally subject to final disposal of the petition. As such final result has not been declared as on that date. Having regard to the facts and circumstances, the respondent-Bank who are recruiting for various sister concerns, therefore, they are hereby directed to consider petitioner being ex-servicemen and he is seeking for re-employment in the Central services including Bank. It is to be noted that there is no fault on the part of petitioner. On the other hand, there is fault on the part of respondent-Bank to the extent of not prescribing Sub-Rule b and c of Rule 5 of the Amendment Rules, 2012 for the purpose of recruitment. Therefore, petitioner is entitled for the relief.

10. This decision is not a precedent for others in respect of advertisement dated 28.09.2012 (Annexure P1).

15.09.2017

pooja saini

**(P.B.BAJANTHRI)
JUDGE**

Whether speaking/reasons

Yes/No

Whether Reportable:

Yes/No