

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

+ **Date of Decision: 28th August, 2017**

W.P.(C) 2165/2015

RAVINDRA SINGH Petitioner
Through Mr. M.K. Bhardwaj, Advocate

versus

GOVT. OF NCT OF DELHI & ORS Respondents
Through Mr. Satyakam, ASC for
respondents No. 1 & 2

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. The present Petition assails orders dated 17.10.14 and 18.12.14 passed by Central Administrative Tribunal, Principal Bench, New Delhi in OA No.3296/2012 and RA No.225/2014, whereby the Tribunal has dismissed both the Original Application and Review Application preferred by the Petitioner. The Original Application had been filed by the Petitioner being aggrieved by the action of the Respondents, rejecting his candidature for the post of Sub-Officer in Delhi Fire Service, on the ground of his being overage as the age limit was calculated without giving 3 years age relaxation to OBC candidates.

2. The relevant facts which emerge from the record are that in November 2009, the Respondents issued an Advertisement for appointment to the post of Sub-Officer in Delhi Fire Service which is a Group 'C' post. The age prescribed for the post of Sub-Officer was not exceeding 27 years (relaxable in upper age limit for SC/ST- 5 years). Pertinently, since in the Advertisement issued by Respondent No.2, no condition for giving age relaxation for appointment to the serving employees-upto the age of 40 years in case for General category; 45 years for SC/ST, and; 43 years for OBC candidates was mentioned, the user department i.e. Delhi Fire Service wrote a letter dated 19.11.2009 to Respondent No.2 to issue a corrigendum with regard to relaxation of age for the Departmental candidates.

3. The Petitioner who was already serving in Delhi Fire Service as a leading fireman applied for the post of Sub-officer as an OBC candidate. On the cut-off date i.e 02.12.2009, the age of the Petitioner was 42 years 3 months and 21 days. Based on the decision of the user department i.e. Delhi Fire Service, the Petitioner's candidature was initially considered and he appeared in the Written Exam held on 21.08.2011. However, on 19.07.2012 when the result of the Written Exam was declared for calling candidates for Physical Endurance Test, the Petitioner's candidature was rejected as being barred by age.

4. Through an RTI Application, the Petitioner learnt that he had secured 81 out of 200 marks, while the marks obtained by the last selected OBC candidate was 77 out of 200. Consequently, the Petitioner preferred the present Original Application. By an interim

order of the Tribunal, the Petitioner was allowed to appear in the Physical Endurance Test.

5. The main plea raised by the Petitioner before the Tribunal was that as per DOP & T's notification dated 21.12.1998, departmental candidates were eligible for relaxation upto 40 years of age for appointment to Group 'C' and Group 'D' posts. He had further contended that being an OBC candidate, he was entitled to a further relaxation of three years in accordance with OM dated 22.10.1993.

6. The Respondents, while opposing the OA contended that no corrigendum to the Advertisement having been issued, no age relaxation could be granted to the Petitioner and the selection was done strictly as per the Advertisement.

7. The Tribunal upon consideration of the submissions came to the conclusion that employees of Delhi Fire Service would be eligible for age relaxation upto 40 years, despite the fact that there was no specific mention to this effect in the Advertisement. The Tribunal further held though SC/ST candidates were eligible for a further relaxation of 5 years, there was no such provision for relaxation of 3 years for OBC candidates. Since, the Petitioner was 42 years 3 months and 21 days, the Tribunal dismissed his OA by declining to grant him relaxation of three years as an OBC candidate.

8. The Petitioner, thereafter filed a Review Application alongwith copies of subsequent Advertisements and a requisition issued in respect of the same post in Delhi Fire Service itself to show that the upper age limit for departmental candidates with 3 years continuous

service had been prescribed as 43 years and 45 years for OBC and SC/ST candidates respectively in the subsequent Advertisements.

9. The Tribunal dismissed the Review Application, leading to the filing of the present Petition.

10. Before us, counsels for both parties have reiterated the same submissions as made before the Tribunal. Having perused the impugned order and the record we find that the Tribunal has agreed with the contention of the Petitioner that departmental candidates are eligible for age relaxation upto 40 years, but has dismissed the OA as the Tribunal did not agree with the submission of the Petitioner that he should be granted 3 years relaxation being an OBC candidate.

11. The only question which, therefore, needs to be addressed is as to whether OBC departmental candidates like the Petitioner were entitled to be granted 3 years relaxation, over and above the relaxation granted to them by virtue of being departmental candidates, for which the upper age limit is 40 years.

12. During arguments, our attention has been drawn to OM's dated 22.10.1993 and 25.01.1995 and we find that these OM's specifically grant 3 year relaxation in respect of candidate belonging to other backward classes. The currency of these OM's has not been disputed by the Respondents. It would be apt to reproduce hereinbelow, the OM dated 25.01.1995:-

**“No.443013/2/95-Estt.(SCT
Govt. of India
Department of Personnel & Training**

New Delhi the 25th Jan, 1995

OFFICE MEMORANDUM

Subject: Reservation for other Backward Classes.

The undersigned is directed to refer to paragraph 4 of this Department's OM No.36012/92/93-Estt.(SCT) dated 28.10.1993 and to say that representations were received for the grant of age relaxation to other backward classes to enable them to compete for the vacancies reserved for them. The issue was considered and it has been decided that the upper age-limit prescribed for direct recruitment shall be relaxed by three years in respect of candidates belonging to other backward classes.

Sd/-

Under Secretary to the Govt. of India”

13. It is also noticed from the record that a similar OM granting 5 years age relaxation has been issued in respect of SC/ST candidates. It is an admitted case of the parties that the 5 years age relaxation envisaged by the OM dated 28.05.1998 is being consistently granted to SC/ST departmental candidates, meaning thereby that for departmental candidates belonging to SC/ST, the upper age limit is 45 years. We are, therefore unable to see any justification or rationale as to why the 3 years age relaxation provided for vide OMs dated 22.10.1993 and 25.01.1995 is not being extended to departmental OBC candidates.

14. We are of the view, that once there is a specific OM granting 3 years age relaxation to OBC candidates, the same ought to have been taken into consideration while calculating the upper age limit for OBC candidates. Once this three years age relaxation is granted to the

Petitioner, he would obviously be within the prescribed age limit and, having secured more marks than the last selected OBC candidate, he would be entitled for consideration for appointment on basis of his performance in the selection process.

15. Another undisputed fact which emerges from the record, is that in the subsequent notifications and advertisements including requisition for the same post of Sub-Officer in the same department, it has been clearly stated that the age limit for departmental candidates would be 43 years for OBC and 45 years for SC/ST. It is thus evident that this relaxed age limit is based on the same OMs dated 22.10.1993 and 25.01.1995 and, therefore, we are unable to appreciate as to why the said relaxation was not included in the advertisement in question published in November 2009, pursuant whereunto the Petitioner had applied for the post.

16. We find merit in the submission of learned counsel for the Petitioner, that once there was a specific OM for granting relaxation to OBC candidates, the same could not be ignored by the Respondents. The Tribunal has failed to appreciate that the OMs providing for grant of relaxation to OBC candidates and to SC/ST candidates were equally binding on the Respondents. The action of the Respondents in not extending the benefit of age relaxation to OBC candidates, was clearly discriminatory and arbitrary.

17. For all the aforementioned reasons, we are of the view that the impugned orders passed by the Tribunal are unsustainable and are, therefore, set aside.

18. We direct that the Petitioner be considered for appointment as a Sub Officer on basis of his performance in the selection process already undertaken by him. In case the marks obtained by him are more than the last selected OBC candidate, he would be granted appointment as a Sub-Officer and granted all notional benefits. He will, however, not be entitled to any back wages.

19. The Writ Petition is allowed in the above terms with no order as to costs.

REKHA PALLI, J

VIPIN SANGHI, J

AUGUST 28, 2017/saurabh