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

+ **W.P.(C) 532/2017 & CM No. 2434/2017**

Date of Decision : 7th February, 2017

GNCT OF DELHI

..... Petitioner

Through: Mr. Sanjay Dewan with Ms. Palak
Rohmitra, Advocates

versus

NAZARUL ISLAM AND ANR

..... Respondents

Through: None

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE CHANDER SHEKHAR

SANJIV KHANNA, J. (ORAL)

On 9.9.2005, the respondent Nazarul Islam was appointed as ECG Technician on contract basis in the Babu Jagjeevan Ram Memorial Hospital.

2. In December, 2009-January, 2010, the respondent applied for regular appointment as Junior Radiographer. The respondent participated in the selection process consisting of written examination etc. and was successful. However, his dossier was not forwarded by the DSSSB to the requisitioning department i.e. the Department of Health Services, on the ground that he was overage. The advertisement for recruitment had specified the upper age limit as 27 years as on 15.1.2010. On the said date, the respondent was 30 years and 20 days old.

3. Aggrieved, the respondent had preferred OA No. 1559/2013 which has been allowed by the impugned order dated 27.5.2015 passed by the Principal Bench of the Central Administrative Tribunal (Tribunal, for short).
4. The Tribunal has relied on the letter/Notification dated 19.8.2011 issued by the Government of NCT of Delhi pertaining to age relaxation for paramedical staff working on contractual basis in Delhi Government hospitals/medical institutions for more than three years. The said letter reads as under:-

*“NATIONAL CAPITAL TERRITORY OF DELHI
HEALTH & FAMILY WELFARE DEPARTMENT*

TECHNICAL RECRUITMENT CELL

*9th Level A Wing Delhi Secretariat, New Delhi-02
No. 55 Contract/SN/TRC/H&FW/07*

To,

*The Chairman,
Delhi Subordinate Staff Selection Board,
Institutional Area,
Karkardooma, Delhi – 110 092*

Sub: Age relaxation to the contractual paramedical staff.

Sir,

I am directed to communicate the following decision of the Competent Authority of necessary action :

Age relaxation for appearing in examination for paramedical posts is granted to contractual employees who have worked for more than three years on contract basis in Delhi Government hospitals/medical institutions for a period

equivalent to the number of years they have worked on contract basis. This scheme shall be valid for a period of five years from the date of issue of this order.”

5. The contention is that this letter/notification dated 19.8.2011 is not retrospective.

6. It is an undisputed position that the application of the respondent was accepted and he was allowed to participate in the examination/selection process. The respondent was declared as selected vide office order no. 272 dated 25.5.2012. However, subsequently, the name of the respondent was not included in the final result notice dated 31.07.2012, as he was declared ineligible on account of being overage.

7. We have examined the advertisement which had stated that the candidates who were already government employees were entitled to age relaxation in accordance with instructions/orders issued by the Central Government.

8. The letter/Notification dated 19.08.2011 was issued to ameliorate and help contractual employees who had been working as paramedical staff for considerable time in hospitals/medical institutions of the Government of NCT of Delhi. These contractual employees with more than three years of service were given opportunity to compete with others as and when regular vacancies were notified, by granting age relaxation of upto 5 years. This letter/Notification was a beneficial measure undertaken to mitigate the plight of contractual government employees by allowing them age relaxation so as to be eligible to compete in selection with others. This was the little concession given to them, for their past services as contractual employees. The letter/notification does not take away a vested right, but confers a small,

yet significant benefit which was/is legitimate. It also ensures that the age relaxation is uniformly granted. It is not abnormal, and in fact routine for the courts to pass similar orders even when prayer for regularizations is rejected. The advertisement pursuant to which respondent had applied, had postulated age relaxation in accordance with instructions/orders issued by the Central Government. The selection process had itself taken a long period. In the meanwhile, the notification granting relaxation was issued.

9. Given the said facts and position, we would not like to interfere with the impugned order dated 27.5.2015, which is just, fair and equitable.

The writ petition is accordingly dismissed.

SANJIV KHANNA, J

CHANDER SHEKHAR, J

FEBRUARY 07, 2017/P