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

*Date of decision: 20.08.2019*

+ W.P.(C) 3946/2018 & CM APPL. 15605/2018

SUNEEL TYAGI

..... Petitioner

Through Mr.Vishwendra Verma, Adv.

versus

UNION OF INDIA AND ORS.

..... Respondents

Through Mr.Gigi C. George, Adv. with  
Mr.R.M. Tripathi, Adv. for R-1, 2 &  
4.  
Mr.Naveen Chawla, Adv. for R-3.

**CORAM:**

**HON'BLE MR. JUSTICE SURESH KUMAR KAIT**

**J U D G M E N T (O R A L)**

1. Vide the present application, the petitioner seeks direction thereby setting aside the order No. 3-IWAI/Estt/3/2015/Part dated 23.03.2018 issued by the respondent no. 3 and to treat the vacancy reserved for persons with locomotor disability. Further seeks direction thereby directing the respondents nos.1 to 3 to consider the petitioner for appointment to the post of Assistant Hydrographic Surveyor in accordance with the terms and conditions contained in the advertisement published by respondent no.3 vide

their advertisement dated 04.10.2016 and if selected, appoint him to the post.

2. Also seeks direction to respondent no.3 to withdraw their advertisement published on 13.10.2017 and not to take any action for filling up of the post in question.

3. The case of the petitioner is that the respondent no.3 invited applications for filling up of three posts of Assistant Hydrographic Surveyor by direct recruitment vide their indicative advertisement published in the New Delhi Edition of the Hindustan Times Newspaper dated 04.10.2016. Out of the three vacancies, one was reserved for SCs, one for OBCs and one vacancy was Unreserved. The said post of Assistant Hydrographic Surveyor is a Group A post in level 10 of the pay matrix of 7th Pay Commission. The upper age limit prescribed for the post in question, according to the advertisement published on 04.10.2016 was 35 years as on the closing date of receipt of applications. The petitioner is an Ex-serviceman who retired on 13.07.1996 from the Indian Navy after putting up of a total service of more than 15 years. He falls within the definition of Ex-Serviceman and is entitled to all benefits available to the Ex-Serviceman.

4. Counsel for the petitioner submits that Rule 5 of the Ex-Serviceman (Re-employment in Central Civil Services and Posts) Rules, 1979 as amended by the Ex-Serviceman (Re-employment in Central Civil Services and Posts) Amendment Rules, 2012 provides that for appointment to any vacancy in Group A and Group B services or posts filled by direct recruitment otherwise than on the results of an Open All India Competitive Examination, 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 Emergency Commissioner Officers or Short Service Commissioned Officers.

5. Counsel further submitted that the petitioner is a person with disability and is orthopaedically handicapped. The post in question is an identified post for the persons with disability suffering from orthopaedically handicapped. The respondents are bound to give reservation to persons with disabilities in accordance with the persons with disabilities Act of 1995 and the Rights of the Persons with Disabilities Act, 2016. Even if any vacancy has not been earmarked reserved for persons with disabilities, the respondents are bound to give age relaxation to orthopaedically handicapped

persons as prescribed and consider them for appointment against the post without making any discrimination on the ground of disability.

6. Counsel for the petitioner further submits that the petitioner rendered 55 years service in force, thus, he is entitled 5 years age relaxation, therefore, the respondents are bound to consider the candidature of the petitioner upto 55 years. Whereas the respondents have rejected his candidature on the ground that upper age limit for the Ex-servicemen and physically handicapped is 45 years.

7. On the other hand, learned counsel appearing on behalf of the respondents submits that the upper age limit for the said post was 35 years as on the date of closing of receipt of application. The said post was again re-advertised for two vacancies on 13.10.2017. One position was for general category and another position for the OBC's. In the second advertisement, the age limit was reduced to 30 years as on the date of closing of receipt of application, which was subsequently revised to 35 years, with uploading of Corrigendum No.2 dated 28.11.2017, in the website of IWAI. The petitioner had applied for the position for general category for which the age limit was 35 years as per advertisement dated 13.10.2017.

8. Learned counsel for the respondents further submits that the case of the petitioner is that he was eligible for the said general category post and respondent no. 3 ought to have short listed him as he qualified the required age for the said position as per Rule 5 of Ex-servicemen (Re-employment in Central Civil Services and Post) Rules 1979 as amended in October 2012 read with DoPT Office Memorandum no.15012/2/2010-ESTT (D) dated 27.03.2012. Accordingly, the petitioner is seeking combined benefit under two notifications and is clubbing both exemptions in order to get within the capping of the age limit prescribed by respondent no. 3 for the said position. Learned counsel submits that clubbing is fundamentally wrong and the petitioner cannot take benefit of two different categories which are specifically for a particular category of persons.

9. The petitioner is taking benefit of Rule 5(b) of the Ex-servicemen (Re-employment in Central Civil Services and Post) Rules 1979 as amended in October 2012, which reads as under:

*"for appointment to any vacancy in group A and group B services or posts filed by direct recruitment otherwise than on the results of an Open All India Competitive Examination, the upper age limit shall be relaxed by the length of military service increased by 3 years in the case of ex-servicemen and commissioned officers including emergency commissioned officers or short service commissioned officers."*

10. The petitioner claims to have put in 15 years of service in the Indian Navy and thereafter retired from the services. Thus, the petitioner is seeking 18 years of benefit under Rule 5(b) of the Ex-servicemen Rules 1979 as amended in October 2012. The petitioner further claims benefit of age relaxation as provided in Clause 3 in DOPT Office Memorandum no. 15012/2/2010-ESTT (D) dated 27.03.2012, which is reproduced as under:

|                                                                          |                                                                                                                                     |          |
|--------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------|----------|
| Persons with Disabilities OM No.36035/3/2004-ESTT (res) dated 29.12.2005 | In case of direct recruitment to Group A and Group B where recruitment is made otherwise than through open competitive examination. | 5 years  |
| SC/ST persons with disabilities                                          |                                                                                                                                     | 10 years |
| OBC persons with disabilities                                            |                                                                                                                                     | 8 years  |

11. The petitioner seeks 5 years further benefit under Clause 3 which gives age relaxation to persons with disabilities. Accordingly, the petitioner is claiming a total age relaxation of 23 years i.e., 18 years under Rule 5(b) of the Ex-servicemen Rules (Re-employment in Central Civil Services and Post), 1979 as amended in October 2012 and further additional 5 years under Clause 3 of DOPT Office Memorandum dated 27.03.2012.

12. The petitioner claims to be born on 01.01.1963. The petitioner thus claims that the upper age limit in his case was 58 years as on 03.11.2016 for

the post advertised on 04.10.2016 and that the petitioner was 53 years 10 months and 2 days as on 03.11.2016. Thus he was fully qualified for the said general post of Assistant Hydrographic Surveyor.

On perusal of the impugned order passed by respondent no.3, the Ex-servicemen Rules, 1979 as amended in October 2012 and also DOPT Office Memorandum dated 27.03.2012, it is revealed that the said office memorandum has a specific clause being Clause 9 for disabled defence personnel. The said clause 9 reads as under:

|    |                                                                                                                                                |                                                                                  |                                            |
|----|------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------|--------------------------------------------|
| 9. | <b>Disabled Defence Services personnel</b><br><br>O.M. No.14/42/65-Estt. (D) dated 29.03.1966 and O.M. No.13/35/71-Estt. (C) dated 24.12.1971. | a) Group C & erstwhile D posts filled through employment exchange                | 45 years (50 years of SC/ST)               |
|    |                                                                                                                                                | <b><u>b) Group A &amp; B posts filled otherwise than through Competitive</u></b> | <b><u>45 years (50 years of SC/ST)</u></b> |

|  |                                                    |                                                      |                                                                                                                                                                                                                                                                                            |
|--|----------------------------------------------------|------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|  |                                                    | <u>Examination by</u><br><u>UPSC</u>                 |                                                                                                                                                                                                                                                                                            |
|  | O.M.No. 39016/5/1981-Estt.<br>(C) dated 21.02.1981 | c) all posts filled<br>by Competitive<br>Examination | 3 years (8 Years<br>for SC/ST)<br>subject to the<br>condition that<br>they would not<br>be allowed to<br>avail of a larger<br>number of<br>chances in<br>respect of<br>recruitment to a<br>service, or group<br>of services, than<br>the maximum<br>number of<br>chances<br>permissible to |

|  |  |  |                                                  |
|--|--|--|--------------------------------------------------|
|  |  |  | any general<br>candidate under<br>the age limit. |
|--|--|--|--------------------------------------------------|

13. The said OM clearly provided that for Disabled Defence Services personnel who have applied for Group A and B Posts which are filled otherwise than through Competitive Examination by UPSC, the age relaxation would be 45 years. No further age relaxation has been provided under the said clause. Thus, while taking the said clause 9 into consideration and also considering the OM dated 29.03.1966, the respondents came to a conclusion that the petitioner was 8 years and 10 months above the prescribed age limit of 35 years. The age of the petitioner on the closing date of application was 53 years and 10 months.

14. Since there was a specific category mentioned for Disabled Defence Personnel, in clause 9, in the DOPT Office Memorandum dated 27.03.2012, there was no reason for the petitioner for clubbing the age relaxations mentioned under two separate provisions of law. Thus, the petitioner is trying to take advantage of the two separate provisions, dehors of the fact

that the legislation was conscious even for the Disabled Defence Personnel, that it had created a special category for age relaxation for them.

Therefore, I note that at paras 4, 6 & 11 while referring to OM dated 29.03.1966, the same was erroneously typed as OM dated 29.03.2016. However, the correct position of law under the clause 9 of DOPT notification vide Office Memorandum dated 27.03.2012, the petitioner was found to be over aged , for the said position which was advertised by respondent No.3.

In view of above facts, I find no merit in the present petition and the same is, accordingly, dismissed.

15. Pending application stands disposed of.

**(SURESH KUMAR KAIT)**  
**JUDGE**

**AUGUST 20, 2019**  
**ab**