

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10/2/2020

C O R A M

THE HON'BLE MR.A.P.SAHI, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

Writ Petition No.3545 of 2018

GSN Rao
Sub-Inspector - Executive
CISF No.034330085
CISF Unit
CH PT Chennai
Chennai.

.... Petitioner

Vs

1. The Union of India
rep. By its Secretary to Government
Ministry of Home Affairs
New Delhi 110 001.
2. The Chairman
Union Public Service Commission (UPSC)
New Delhi.
3. The Director General
Central Industrial Security Force
C.G.O Complex
Lodhi Road
New Delhi.
4. The Inspector General
South Sector (SS) Hqrs, CISF
Chennai.
5. The Deputy Inspector General
South Zone (SZ) Hqrs, CISF
Chennai.

6. The Senior Commandant
CISF Unit Ch PT
Chennai.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of declaration to the first respondent to declare the necessary amendments in existing Central Industrial Security Force, Assistant Commandant (Executive) Recruitment Rules, 2009, Sub-Clause (i) (ii) of Column (12) (LDCE) in the Schedule and Rule 3 and 4 of Notification No.45013/9/2009 PERS-I dated 6/12/2017 framed by the first respondent is null and void, illegal, unconstitutional.

For petitioner ... Mr.R.Thiyagarajan

For respondents ... Mr.Venkataswamy Babu
SPC for R.R.1, 3 to 6
No appearance for R.2.

O R D E R

SUBRAMONIUM PRASAD, J

In the instant writ petition, the prayer is one for a writ of declaration to declare the amendments in Central Industrial Security Force, Assistant Commandant (Executive) Recruitment Rules, 2009, and more particularly, Rule 3 and 4 in Notification No.45013/9/2009 PERS - I, dated 6/12/2017 as null and void, illegal and unconstitutional.

2. Rule 3 and 4 of the Notification, dated 6/12/2017, which are under challenge read as under:-

Rule 3: The candidates should have completed 04 years of regular service as on 1st January 2018 in the rank of Sub-Inspector (GD)/Inspector (GD) including the period of basic training and should have clean record of service till issue of offer of appointment.

Rule 4: A candidates must not have attained the age of 35 years on the 1st August 2018, i.e., he/she must have been born nor earlier than 2nd August 1983. However, the upper age limit prescribed above shall be relaxable up to a maximum of five years if a candidate belongs to a schedule caste or scheduled

tribe."

3. Material on record shows that the petitioner was appointed as Constable (GD) in the year 2003 in CISF Organisation. He was promoted as Sub-Inspector (Executive) through limited departmental competitive examination in the year 2008. In 2012, he took the limited Departmental Competitive Examinations, for the promotion to the post of Assistant Commandant (GD), but failed.

4. Before he could take his third attempt, there was an amendment in the Rules, on 6/12/2017 by which it was stipulated that for participating in the limited departmental competitive examination for filling up the vacancy of Commandant, a candidate must not have attained the age of 35 on 1/8/2018 i.e., he should not have been born earlier than 2/8/1983. The upper age limit prescribed was relaxable upto a maximum of five years for persons belong to Schedule Caste or a Scheduled Tribe. By virtue of this amendment, the petitioner could not avail the opportunity of taking the examination for promotion to the post of Deputy Commandant. The petitioner challenges the amendment as unconstitutional and arbitrary.

5. According to the petitioner, since the examination is a limited departmental competitive examination which is a mode of getting promotion and is available only to "in service candidates" and is not a open market recruitment, fixing of a maximum age limit is completely unjust and arbitrary. It is contended that there is no justification in fixing the upper age of 35 and amended the Recruitment Rules, which is completely arbitrary and without any rational. It is also contended in the writ petition that the said Rules only permit candidates in the rank of Inspector and Sub-Inspector but excludes Assistant Sub-Inspectors and other lower posts and is therefore, discriminatory in nature.

6. This Court issued notice on 19/2/2018.

7. Heard Mr.R.Thiyagarajan, learned counsel for the petitioner and Mr.Venkataswamy Babu, SPC for R.R.1, 3 to 6.

8. Learned counsel for the petitioner vehemently submits that the petitioner on joining as a Constable was promoted as Sub-Inspector. He states that in a limited departmental competitive examination, there cannot be any justification for fixing a maximum age limit. He submits that this is only a mode for getting promotion through Fast Track and therefore, there is

no rational or necessity for fixing the upper age.

9. The petitioner also challenges Rule 3, stating that the expression "should have clean record of service" is completely arbitrary and it excludes a person who has been awarded a minor penalty. He further submits that persons who have suffered minor punishments and even if their appeals are pending they are denied of the opportunity to take the examinations to get an early promotion. He would state that Rule 3 also requires to be struck off is being manifestly arbitrary.

10. On the other hand, learned counsel appearing for the respondents 1, 2 and 3 would state that the petitioner having appeared twice before and having been unsuccessful in his endeavor cannot be permitted to be turn around and challenge the Recruitment Rules. He would state that the Recruitment Rules which are legislative in nature, cannot be struck down unless shown to be completely arbitrary which the petitioner has not shown.

11. Petitioner is working as Sub-Inspector. On completing four years in the cadre of Sub-Inspector, petitioner was eligible to take part in the limited departmental competitive examination, which took part but was unsuccessful. Union of India issued a Notification, on 6/12/2017 amending the eligibility requirements for the purpose of filling up of vacancies of Assistant Commandant/Executive.

12. It is well settled that a mere chance of promotion is not a vested right. Only a right to be considered for promotion is a fundamental right. Fixing an eligibility is the prerogative of the Government. The Hon'ble Supreme Court in HIRANDRA KUMAR Vs. HIGH COURT OF JUDICATURE AT ALLAHABAD AND ANOTHER {(2019) SCC ONLINE SC 254}, has held that in order to declare a cut off is arbitrary and ultra vires it must be of such a nature to lead to a conclusion that has been fixed without rational basis. Paragraph 23 of the said judgment reads as under:-

" The legal principles which govern the determination of a cut-off date are well settled. The power to fix a cut-off date or age limit is incidental to the regulatory control which an authority exercises over the selection process. A certain degree of arbitrariness may appear on the face of any cut-off or age limit which is prescribed, since a candidate on the wrong side of the line may stand excluded as a consequence. That, however, is no

reason to hold that the cut-off which is prescribed, is arbitrary. In order to declare that a cut-off is arbitrary and ultra vires, it must be of such a nature as to lead to the conclusion that it has been fixed without any rational basis whatsoever or is manifestly unreasonable so as to lead to a conclusion of a violation of Article 14 of the Constitution.

13. The above mentioned judgment also placed reliance on DR.AMI LAL BHAT Vs. STATE OF RAJASTHAN {(1997) 6 SCC - 614}, wherein the Hon'ble Supreme Court in paragraph 5, observed as under:-

"..... In the first place the fixing of a cut-off date for determining the maximum or minimum age prescribed for a post is not, per se, arbitrary. Basically, the fixing of a cut-off date for determining the maximum or minimum age required for a post, is in the discretion of the rule-making authority or the employer as the case may be. One must accept that such a cut-off date cannot be fixed with any mathematical precision and in such a manner as would avoid hardship in all conceivable cases. As soon as a cut-off date is fixed there will be some persons who fall on the right side of the cut-off date and some persons who will fall on the wrong side of the cut-off date. That cannot make the cut-off date, per se, arbitrary unless the cut-off date is so wide off the mark as to make it wholly unreasonable. "

14. Similarly, UNION OF INDIA AND OTHERS Vs. SHIVBACHAN RAI {(2001) 9 SUPREME COURT CASES 356}, the Hon'ble Supreme Court observed as under:-

"6. The only question that we are required to consider is whether the Rules framed under the proviso to Article 309 of the Constitution and dated 29-3-1985 whereby age relaxation up to 5 years is permitted in the case of government servants can be considered as arbitrary or unreasonable. Prescribing of any age limit for a given post, as also deciding the extent to which any relaxation can be given if an age limit is prescribed, are essentially matters of policy. It is, therefore, open to the Government while framing rules under the proviso to Article 309 of the Constitution to prescribe such age limits or

to prescribe the extent to which any relaxation can be given. Prescription of such limit or the extent of relaxation to be given, cannot be termed as arbitrary or unreasonable. The only basis on which the respondent moved the Central Administrative Tribunal was the earlier Rules of 1976 under which, though an age limit was prescribed, a limit had not been placed on the extent of relaxation which could be granted. If at all any charge of arbitrariness can be levied in such cases, not prescribing any basis for granting relaxation when no limit is placed on the extent of relaxation, might lead to arbitrariness in the exercise of power of relaxation. In any case, the Rules of 1976 have been replaced by the Rules of 1985 which govern direct recruitment to the post of Assistant Director in the present case. One has, therefore, to look to the Rules of 1985 in order to decide the eligibility of the respondent for the post of Assistant Director. We, therefore, do not agree with the finding of the Tribunal that the Rules of 1985 insofar as they prescribe the extent of relaxation of age limit, are arbitrary or unreasonable. This is also not a case where promotional avenues are being closed partially or fully. The post in question was to be filled by direct recruitment and not by promotion. Therefore, there could be no grievance on that score by the respondent."

15. In view of the abovesaid judgments, it is a settled law that the Courts must be slow in exercising judicial review while striking off Rules which prescribe a maximum upper age. Just because the said amendment has curtailed the chance of the petitioner to take part in the examination, cannot lead to an inference that Rule must be struck down.

16. The next submission of the petitioner challenging Rule 3 on the ground that a person who suffered a minor penalty is also prohibited from taking part in the examination because his service record cannot be said to be clean also cannot be accepted. CISF is a disciplined force, which was formed for protection and security of industrial undertakings owned by the Central Government and other industrial undertakings. The post of a Commandant is an extremely important post. The decision of the Government to restrict only such of those employees who have a squeaky-clean record to be entitled to take the limited

departmental competitive examination cannot be found fault with nor can it be termed to be arbitrary.

17. In view of the above, there is no merit in the writ petition and accordingly, the same is dismissed. No costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

mvs.

TO:

1. The Secretary to Government,
Union of India
Ministry of Home Affairs
New Delhi 110 001.
2. The Chairman
Union Public Service Commission (UPSC)
New Delhi.
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Central Industrial Security Force
C.G.O Complex
Lodhi Road
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Chennai.
6. The Senior Commandant
CISF Unit Ch PT
Chennai.

+1cc to M/s.Venkataswamy Babu, Advocate sr.10522
+1cc to M/s.R.Thiyagarajan, Advocate sr.10148

Writ Petition No.3545 of 2018

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Page 7 of 13