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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 978/2020 & CM APPL. No. 3170/2020 (stay)

UNION OF INDIA AND ORS.

..... Petitioners

Through: Mr. G. Tushar Rao & Mr. Mayank
Sharma, Advs. with Mr. Pankaj
Kumar Sinha, Deputy Director.

versus

VIJENDER PAL

..... Respondent

Through: Mr. Rajinder Nischal & Mr. Ashish
Nischal, Advs.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

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05.02.2020

Learned counsel for the petitioners has handed-up Office Memorandum (O.M.) dated 27.03.2012, para 12 of which we reproduce below :

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12.	<i>Departmental Candidates with three years continuous service in Central Government <u>O.M. No. 15012/1/88-Esst.(D) dated 30.01.1980</u> <u>O.M. No. 15012/1/88-Esst.(D) dated 20.05.1988</u></i>	<i>For appointment to Group 'C' and erstwhile 'D' (now MTS posts) by direct recruitment which are in the same line or allied cadres.</i>	<i>Up to 40 years of age (45 years for SC/ST)</i>
	<i><u>O.M. No. 15012/8/87-Esst.(D) dated 15.10.1987</u></i>	<i>Group A and Group B posts</i>	<i>5 years (for posts</i>

	<u>O.M. No. 35014/4/79- Esst.(D) dated 24.10.1985</u>	<i>filled through UPSC (other than those filled on the basis of competitive examination) and posts which are exempted from purview of UPSC (where recruitment is made by organisation themselves.)</i>	<i>which are in the same line or allied cadres and where a relationship could be established that the service already rendered in a particular post will be useful for the efficient discharge of the duties of post.</i>
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The petitioners cite the above OM in support of their contention that the age of the respondent cannot be relaxed beyond a period of 45 years, which includes relaxation of five years for SC/ST candidates. In support of his contention that such a ground was raised in the reply, which was however not considered by the Tribunal, counsel also relies on para 2 of his reply which was filed before the Tribunal, which we reproduce below :

“ 2. That the applicant Shri Vijender Pal, as per the records, was appointed as Peon in Dr. RML Hospital. The Recruitment Rules for the post of Head Supervisor stipulates the age limit for direct recruitment as 18-25 years. The age is relaxable for departmental candidate (who have completed three years regular service in the same line or cadre) up to the age of 40 years for Unreserved Candidate and 45 years for SC in terms

of instructions dated 27.03.2012 issued by the Department of personnel and Training, Government of India. A copy of the same is annexed as Annexure-I. As per the Recruitment Rules of the post, the Educational Qualification is (i) 12th pass or equivalent qualification from a recognized Board or University, (ii) One year experience in dealing with sanitation in a recognized hospital having minimum 50 beds. The desirable qualification for appointment to the post of Head Supervisor is Diploma in Sanitary Inspector Course from a recognized Institute. The method of recruitment for the post is by promotion failing which by direct recruitment."

2. Learned counsel for the respondent however submits that in the earlier order of the Tribunal dated 10.08.2016 passed in O.A. 3930/2014 this issue has been put to rest; and the Tribunal has held that age relaxation for the entire period of service rendered in the Government should be given. Reliance is placed on para 5 of order dated 10.08.2016:-

"5. We have heard both sides and have perused the material placed on record. In our opinion, the respondents have erred by not applying the DoP&T Instructions that were specifically relevant to the instant case. The applicants herein were registered with Employment Exchange for appointment to higher post (Group-C in their case) and were therefore, entitled to age relaxation for the entire period of service rendered by them under Government of India as per the Instructions relied upon by the applicant. They chose to rely on Instructions, which were relevant to all Government servants applying for appointment to Group-C posts and not

those Instructions relevant for Government servants, who were registered with Employment Exchange."

3. We have heard learned counsel for the parties.
4. Without expressing any opinion on the merits of the matter, we are of the view that para 12 of O.M. dated 27.03.2012 requires consideration by the Tribunal. Accordingly, we dispose of this petition with the direction that if a review petition is filed by the petitioners, the Tribunal would consider and address the dispensation available in O.M. dated 27.03.2012.
5. We further make it clear that if a review application is filed within two weeks, Mr. Rajinder Nischal, learned counsel for the respondent agrees not to raise the plea of limitation.
6. All rights and contentions of both the parties are left open.
7. With the above directions, the writ petition and the pending application are disposed of.
8. Mr. Nischal also submits that till the review application is decided, he would not press contempt.
9. Order be given *dasti*.

G.S.SISTANI, J.

ANUP JAIRAM BHAMBHANI, J.

FEBRUARY 05, 2020/uj