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

% **Date of decision: 1st March, 2021.**

+ **W.P.(C) 205/2021**

KAMAL KANT **Petitioner**

Through: Petitioner-in-person.

Versus

UNION OF INDIA & ORS. **Respondents**

Through: Mr. Arun Bhardwaj, Adv. for UOI.
Mr. Naresh Kaushik, Adv. for UPSC.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MR. JUSTICE AMIT BANSAL

[VIA VIDEO CONFERENCING]

RAJIV SAHAI ENDLAW, J.

CM No.558/2021 (for exemption)

1. Allowed, subject to just exceptions and as per extant rules.
2. The application is disposed of.

W.P.(C) 205/2021 & CMs No.556/2021 (for filing additional documents)
& 557/2021 (for interim relief)

3. The question for consideration in this writ petition is, the meaning to be assigned to the words "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" as found in Rule 5 of the Ex-servicemen (Re-employment in Central Civil Services and Posts) Rules, 1979.

4. First, the facts in which the aforesaid question arises. The petitioner, an ex-serviceman i.e. a Naib Subedar from the Indian Army, applied for the post of Assistant Director in the Ministry of Tourism advertised by the respondent Union Public Service Commission (UPSC). UPSC, by the said advertisement, invited online applications for recruitment by selection, to the said post. The application of the petitioner was however rejected, for the reason of the petitioner being over-age, and impugning which rejection, the petitioner preferred OA No.1973/2020 before the Central Administrative Tribunal (CAT), Principal Bench, New Delhi and which OA has been dismissed vide impugned order dated 3rd December, 2020.

5. The petitioner, at the time of making the application, was 42 years of age. The maximum age prescribed for the post was 30 years. While the contention of the petitioner before CAT was that as per the Rules aforesaid, he was entitled to age relaxation to the extent of length of his service in the Indian Army, between 2003 to 2019 plus 3 years and applying the said relaxation, he met the maximum age criteria, it was the contention of the respondent UPSC that the petitioner was entitled to age relaxation of only 5 years and after giving of which also, the petitioner did not meet the maximum age criteria of 30 years.

6. Rule 5 of the Rules aforesaid is as under:

"(5) (a) For appointment to vacancies in Group B(Non-Gazetted), Group C or Group D posts in Central Government, an ex-serviceman shall be allowed to deduct the period of actual military service from his actual age and if the resultant age does not exceed the maximum age limit prescribed for the post for which he is seeking appointment by more than three years, he shall be deemed to satisfy the condition regarding age limit.

(b) 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 Commissioned Officers or Short Service Commissioned Officers.

(c) For appointment to any vacancy in Group A and Group B services or posts filled by direct recruitment on the results of an All India Competitive Examination, the ex-servicemen and Commissioned Officers including Emergency commissioned Officers or Short Service Commissioned Officers who have rendered atleast five years military services and have been released-

(i) on completion of assignment (including those whose assignment is due to be completed within one year) otherwise than by way of dismissal or discharge on account of misconduct or inefficiency; or

(ii) on account of physical disability attributable to military service or on invalidment,

shall be allowed maximum relaxation of five years in the upper age limit."

7. Notice may also be taken of OM dated 8th April, 2013 of the Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training on the subject as under:

"No.36034/2/2013-Estt.(Res.)

Government of India

Ministry of Personnel, Public Grievances and Pensions

Department of Personnel and Training

North Block, New Delhi.

Dated 8th April, 2013

OFFICE MEMORANDUM

Subject: Recruitment on all India basis by open competition and otherwise than by open competition - Clarification regarding.

The undersigned is directed to say that the Ex-servicemen (Re-employment in Central Civil Services and Posts) Amendment Rules, 2012, inter-alia provides as follows:-

*"5 (b) 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 Commissioned Officers or Short Service Commissioned Officers.*

*(c) For appointment to any vacancy in Group A and Group B service or posts filled by direct recruitment **on the***

results of an All India Competitive Examination, the ex-servicemen and Commissioned Officers who have rendered at least five years military services and have been released:-

- (i) on completion of assignment (including those whose assignment is due to be completed within one year) otherwise than by way of dismissal or discharge on account of misconduct or inefficiency; or*
- (ii) on account of physically disability attributable to military service or on invalidment, shall be allowed maximum relaxation of five years in the upper age limit."*

2. This Department has been receiving representations and RTI applications to clarify the meaning of the phrases "recruitment otherwise than on the results of an Open All India Competitive Examination" and "posts filled by direct recruitment on the results of an All India Competitive Examination" mentioned in the above paragraph.

*3. It is hereby clarified that instructions on the subject already exist that the expression '**direct recruitment on the results of an All India Competitive Examination**' means (i) all recruitment by UPSC whether through written examination or by interview or both and; (ii) recruitment made by other authorities including Staff Selection Commission or any other appointment authority through written competitive examination or tests (but not by interview only). The expression '**direct recruitment otherwise than by open competition means**' (i) any recruitment not made by the UPSC or (ii) recruitment not made through written competitive tests held by any other authority.*

4. All the Ministries/Departments are requested to bring it to the notice of all establishments under their control.

Sd.
(Sharad Kumar Srivastava)
Under Secretary to the Govt. of India
Telefax : 23092110"

8. It is the contention of the respondents before us, that in the aforesaid clarification, the words "direct recruitment on the basis of All India Competitive Examination" means all recruitment by UPSC, whether through written examination or by interview or both.

9. The advertisement, in pursuance to which the petitioner applied, *inter alia* provided that in the event the number of applications are large, UPSC will adopt the criteria of short-listing of the applicants to restrict the number of candidates to be called for interview to a reasonable number, either on the basis of desirable qualification or on the basis of higher educational qualification or on the basis of higher experience in the relevant field or by counting experience before or after the acquisition of essential qualification or by holding a recruitment test.

10. The contention of the petitioner before CAT and which has not been accepted is that since the selection for the post for which he had applied, was only by interview, the same did not qualify as an All India Competitive Examination and was a case of direct recruitment within the meaning of Rule 5(b) supra and not a case of recruitment through an All India Competitive Examination and thus he was entitled to relaxation in age of 16 years, being the length of his service in the Indian Army between 2003 to

2019, plus 3 years i.e. of 19 years and he thus met the age criteria of 30 years.

11. The CAT however reasoned that since, in the event of the number of applicants being large, the criteria prescribed was of holding a recruitment test, the petitioner could not say that the recruitment was only by interview.

12. The contention of the counsel for the respondent UPSC, to which notice even was not issued by CAT, as the application of the petitioner was dismissed *in limine*, is that irrespective of whether the recruitment in the present case was/is through recruitment test or only by interview, since the applications have been invited by the UPSC, the aforesaid recruitment falls in Rule 5(c) of the Rule aforesaid and not in Rule 5(b) and the petitioner is entitled to relaxation in age of only 5 years and giving benefit of which also, the petitioner was beyond the prescribed age.

13. Though there undoubtedly was/is some ambiguity in the Rule aforesaid and we, during the hearing also, have not been able to get a clear answer, as to which recruitments would fall in the category of direct recruitment otherwise than on an All India Competitive Examination basis and which recruitments would fall in the category of *direct recruitment on the results of an All India Competitive Examination* but since to remove this ambiguity, OM dated 8th April, 2013 was issued and vires of which OM is not challenged in this petition, we are unable to find in favour of the petitioner.

14. We may however notice that the petitioner has drawn our attention to the contention of the counsel for UPSC, recorded in the judgment of this

Court in *Union Public Service Commission Vs. R.A. Khan* MANU/DE/3415/2019, to the effect that the OM dated 8th April, 2013 was ultra-vires the Rules. However the counsel for the respondent UPSC clarifies that the reference therein was to the Central Civil Services and Civil Posts (Upper Age-limit for Direct Recruitment) Rules, 1998 and not to the upper age limit Rules supra, subject matter of this writ petition.

15. As long as the O.M. dated 8th April, 2013 stands and is not struck down, the same binds the respondents as well as the petitioner and in accordance therewith it is not in doubt that the service/post for which the applications had been invited by UPSC and for which the petitioner had applied, was a service/post, to be filled by direct recruitment on the results of an All India Competitive Examination and the petitioner was entitled to age relaxation of 5 years only and was overage in spite of said relaxation.

16. No merit is thus found in the petition.

Dismissed.

RAJIV SAHAI ENDLAW, J.

AMIT BANSAL, J.

MARCH 1, 2021

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