

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

Judgement reserved on: 16.07.2021

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Judgement pronounced on: 11.08.2021

+ **W.P.(C) 5231/2020** and CM No.18857/2020

SYED AHMAR ALI HASHMI

..... Petitioner

Through: **Mr. Setu Niket, Advocate.**

versus

UNION PUBLIC SERVICE COMMISSION & ORS Respondents

Through: **Mr. Naresh Kaushik and Mr. Anand Singh, Advs. for R-1/UPSC. Mrs. Avnish Ahlawat, Standing Counsel for (GNCTD services) with Mr. Nitesh Kumar Singh, Mrs. Tania Ahlawat and Ms. Palak Rohmetra, Advocates for R-2 and R-3.**

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE TALWANT SINGH

J U D G M E N T

TALWANT SINGH, J.:

1. The case of the petitioner is that, after acquiring the necessary qualification, he applied for the position of Junior Forensic/Assistant Chemical Examiner (Documents) with respondent nos. 2 and 3 and joined the said position on 18.04.2014 on contractual basis and still continuing in the same post.

2. On 11.06.2019, the respondent no. 2, *i.e.*, Govt. of NCT of Delhi issued an Office Memorandum (OM) by which it granted age relaxation upto 5 years to contractual employees while applying against direct recruitment in the same department. This OM was reiterated and supplemented by instructions dated 10.07.2019 and it was specifically directed that the Departments/Undertakings will inform respondent no.1/ UPSC as well as DSSSB at the time of sending the requisition for recruitment. UPSC issued an advertisement for filling certain posts on behalf of Govt. of NCT of Delhi, including 4 vacancies for the post of Senior Scientific Officer (Documents), Forensic Science Laboratory, Home Department, Government of National Capital Territory of Delhi. But no relaxation upto 5 years in age was provided to the contractual employees of the same department, which was directly against the instructions contained in OM dated 11.06.2019. The last date to apply for the said post was 13.08.2020.

3. The petitioner approached the learned Central Administrative Tribunal (CAT) by filing OA No. 975/2020 on 30.07.2020 but vide order dated 07.08.2020, learned CAT was pleased to dismiss the OA in *limine* and feeling aggrieved by the said order, the present petition has been filed by the petitioner.

4. Notice in the writ petition was issued on 19.08.2020. Respondent nos. 2 and 3 have filed counter affidavit and on behalf of respondent no.1, *i.e.*, UPSC, status report in the form of an affidavit was filed. The petitioner has filed rejoinder. Certain additional documents were also filed by the petitioner after taking leave of the Court.

5. We have heard arguments and our considered view is as under:
6. The entire case of the petitioner is based upon OM dated 11.06.2019; the said OM is reproduced hereunder:

**“GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF DELHI
SERVICES DEPARTMENT-(BRANCH IV)
7th LEVEL, B-WING, DELHI SECRETARIAT,
I.P. ESTATE, NEW DELHI-110002**

No.F.19(11)/2015-S-IV/1751-1756

Dated: 11.06.2019

OFFICE MEMORANDUM

Sub: Relaxation in upper age limit to the contractual employees working under Government of NCT of Delhi at the time of regular appointment on direct recruitment basis

The issue with regard to suitable relaxation in upper age limit to contractual employees, as a onetime measure, in Direct Recruitment has been examined in the light of various judicial pronouncements, DOPT guidelines, the opinion of Additional Solicitor General and in consultation with Finance Department and Law Department of GNCTD.

2. *The Competent Authority is pleased to order all Head of Departments to fill-up the posts as per the recruitment rules and contractual employees hired against those posts may be given age relaxation as per the following modalities to be adopted on uniform basis for in respect of contractual employees under Government of NCT of Delhi.*

- I. *The contractual employees working against teaching posts will be eligible for one time relaxation in upper age limit upto maximum period of 5 years. The quantum of age relaxation will be subject to number of years spent in the department*

on contract basis provided, they have worked for at least 120 days in a particular academic year.

- II. The contractual employees working against all other administrative posts, will be eligible for one time relaxation in upper age limit upto maximum period of 5 years. The quantum of age relaxation will be subject to number of years spent in the department on contract basis provided, they have worked for at least 180 days in a particular year.*
- III. The contractual employees, working at the time of applying for direct recruitment, shall only be considered eligible for relaxation in upper age limit.*
- IV. The contractual employees would be considered eligible for relaxation in upper age limit only for the department in which they are working.*
- V. The contractual employees, who have already availed one time age relaxation, granted by the respective department, would not be eligible under the scheme.*
- VI. Any contractual employee, whose service was terminated due to unsatisfactory work during the contractual employment, shall be treated as ineligible for the benefit of relaxation in upper age limit.*
- VII. The contractual employees may seek “age-relaxation certificate” from the department where they are working on contract basis. The department concerned, after examination of application, in accordance with the above modalities, shall issue the certificate by clearly indicating the quantum of age relaxation, the contractual employee is eligible for. The Certificate shall be issued under the signature and seal of HoD concerned.*

3. *This issues with the approval of Competent Authority.*

(S.N.MISRA)
SPECIAL SECRETARY (SERVICES) ”

7. The spirit of the OM dated 11.06.2019 was again reiterated by Govt. of NCT of Delhi vide communication dated 10.07.2019 and modalities were framed as to how the said OM is to be implemented. Communication dated 10.07.2019 is reproduced hereunder:

**“GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF DELHI
SERVICES DEPARTMENT-(BRANCH IV)
DELHI SECRETARIAT 7th LEVEL, B-WING, ,
I.P. ESTATE, NEW DELHI-110002**

No.F.19(11)/2015-S-IV/2021-2025

Dated: 10/07/2019

OFFICE MEMORANDUM

Sub: Relaxation in upper age limit to the contractual employees working under Government of NCT of Delhi at the time of regular appointment on direct recruitment basis-regarding

Time and again all Principal Secretaries/Secretaries/HODs have been advised to take proactive measures to fill up all the vacancies, including promotional and direct recruitment quota vacancies, by holding of DPC meetings and sending requisitions to the respective recruiting agencies, like UPSC and DSSSB.

Recruitment of filling up the vacancies in a time bound manner to ensure adequate and sufficient staff against the sanctioned posts under the Government needs no further emphasis. The Services Department has recently issued policy guidelines, with the prior approval of the Competent Authority, vide OM dated 11.6.2019, to extend relaxation in upper age limit to the Contractual employees working in the Government of NCT of Delhi at the time of their regular appointments on direct recruitment basis.

All departments, Boards, Corporations, PSUs/ Autonomous Bodies etc. under the Govt. of NCT of Delhi are advised to take necessary steps accordingly, inter-alia, for extending age relaxation in upper age limit to the contractual employees while filling up the vacancies on direct recruitment basis as per the Standard Operating Procedure as mentioned below:

- 1. The clause of relaxation in upper age limit to the contractual employees in accordance with OM dated 11.06.2019 be invariably indicated while sending requisitions for direct recruitment quota vacancies.*
- 2. Further, the contents of the above referred OM dated 11.06.2019, be brought to the notice of all contractual employees working under the concerned Principal Secretaries/ Secretaries/ HODs.*
- 3. The contractual employees working against teaching posts will be eligible for one-time relaxation in upper age limit upto maximum period of 5 years. The quantum of age relaxation will be subject to number of years spent in the department on contract basis provided, they have worked for at least 120 days in a particular academic year.*
- 4. The contractual employees working against all other administrative posts, will be eligible for one-time relaxation in upper age limit upto maximum period of 5 years. The quantum of age relaxation will be subject to number of years spent in the department on contract basis provided, they have worked for at least 180 days in a particular year.*
- 5. The contractual employees, working at the time of applying for direct recruitment, shall only be considered eligible for relaxation in upper age limit.*

6. *The contractual employees would be considered eligible for relaxation in upper age limit only for the department in which they are working.*
7. *The contractual employees, who have already availed one-time age relaxation, granted by the respective department, would not be eligible under the scheme.*
8. *Any contractual employee, whose service was terminated due to unsatisfactory work during their contractual employment, shall be treated as ineligible for the benefit of relaxation in upper age limit.*
9. *The department concerned, after examination of application, in accordance with the above modalities, shall issue the certificate by clearly indicating the quantum of age relaxation, the contractual employee, the contractual employee is eligible for. The Certificate shall be issued under the signature and seal of HoD concerned.*
10. *“Age relaxation Certificates” on the application of eligible contractual employee shall be urgently and promptly issued by the HOD concerned in accordance with modalities stipulated vide OM dated 11.6.2019, to enable the contractual employee to avail the benefit of age relaxation in recruitment/regular appointment against direct recruitment quota vacancies.*

All Principal Secretaries/Secretaries/HODs are advised to ensure that functioning of the department does not suffer for want of regular employees against the sanctioned strength of posts at various level in the department.

This issues with approval of Competent Authority.

*(S.N.MISRA)
SPL.SECRETARY (SERVICES)”*

8. It is not in dispute that the petitioner is a contractual employee of respondent no. 3, *i.e.*, Forensic Science Laboratory and he is overage as per the advertisement issued by UPSC for the post of Senior Scientific Officer (Documents) in the same department but if relaxation of 5 years is granted to him as per OM dated 11.06.2019, his candidature can be considered. The OM dated 11.06.2019 provides that, the contractual workers working against all administrative posts will be eligible for one time relaxation upto 5 years and they shall be considered for the said relaxation only in the department in which they are working. In the communication dated 10.07.2019, Govt. of NCT of Delhi has directed that while sending requisitions to the respective recruiting agencies like UPSC and DSSSB, the relaxation in upper age limit for contractual employees as per OM dated 11.06.2019 is to be indicated.

9. In the counter affidavit filed on behalf of respondents no.2 and 3, *i.e.*, Govt. of NCT of Delhi, the stand of the said respondents is that the said OM dated 11.06.2019 is applicable only to the contractual employees working as teachers and for contractual employees working against all other administrative posts (which are group “B” and “C” posts), whereas the post in question, *i.e.*, Senior Scientific Officer (Documents), is a purely scientific/technical Gazetted Group “A” post and the same is governed only by recruitment rules.

10. The second objection of the Respondents 2 & 3 is that petitioner is not working on contractual basis on the post of Senior Scientific Officer (Documents) and the OM dated 11.06.2019 provides that the contractual employees working against the same posts, which is to be filled through

direct recruitment, may be granted age relaxation upto 5 years; hence the petitioner is not entitled for age relaxation.

11. In rejoinder, the petitioner has submitted that he is working as Junior Forensic /Assistant Chemical Examiner (Documents) against the sanctioned post of Senior Scientific Officer (Documents) and he has enclosed his pay slips from November 2017 to October, 2020 as well as Form No.16, issued by the Income Tax Department to him for the assessment years 2018-2019, 2019-2020 and 2020-2021 giving description of his post as “Senior Scientific Officer”. Apart from this, his submission is that as per Rule 5 of the Recruitment Rules, age relaxation can be granted by the order of the Competent Authority even for the post of Senior Scientific Officer and in this case the said relaxation was granted by OM dated 11.06.2019 by the Competent Authority, *i.e.*, Hon’ble the Lt. Governor.

12. Further case of the Petitioner is that the OM dated 11.06.2019 makes it clear that the contractual employees would be considered for relaxation in upper age limit only for the department in which they are working and the “same department” cannot be read as “same post”. It has been further submitted that in the said OM, there is no distinction created between different Groups of posts and while filing the counter affidavit, the said distinction cannot be brought in. While advertising the post of Senior Scientific Assistant (Documents) through DSSSB, the relaxation has been granted in age by Govt. of NCT of Delhi to the persons working on contract basis in the same department and not confining it to persons only working on contract against the post of Senior Scientific Assistant (Documents). It is also submitted that the OM’s issued by the approval of the Competent

Authority are binding on the recruitment agency and the petitioner has been wrongly denied the benefit of the said OMs.

13. The UPSC in its affidavit has clarified that against the advertisement issued in 2020, the preliminary scrutiny of the applications is underway for shortlisting the candidates to be called for interview.

14. Let us take all grounds of objections raised by the contesting respondents one by one.

15. The first ground of objection taken by respondents no.2 and 3 is that the post in question is a Group “A” Gazetted post, so the OM dated 11.06.2019 granted 5 years’ age relaxation to the contractual employees is not applicable. After going through the said OM dated 11.06.2019, we have come to the conclusion that there is no such distinction being carved out between the Group “A” posts and Group “B”/Group “C” posts. The communication/instructions dated 10.07.2019 makes it clear that while sending the requisition to UPSC and DSSSB, attention is to be drawn to circular dated 11.06.2019. If the intention of the Government while issuing the said circular was that the same is applicable only to Group “B” and Group “C” posts, then there was no occasion to omit the same; rather it should have been explicitly mentioned it in the OM itself but the same was not done. Similarly, there was no occasion to mention that the attention of the UPSC, apart from DSSSB be drawn to the said circular when sending the requisitions for filling the vacancies, if it was not to be applicable to Group “A” posts. Hence, the plain reading of the circular dated 11.06.2019, read with directions dated 10.07.2019, makes it very clear that no distinction has been drawn between Group “A” posts on one side and Group “B” and

“C” posts on the other side and it has not been mentioned that the age relaxation for contractual employees is to be granted only in case of Group “B” and Group “C” posts.

16. The second contention of Respondents no.2 and 3 is that the age relaxation is to be granted only to the candidates who are working against the same posts for which direct recruitment process has been initiated. This stand is negated on the basis of advertisement for the post of Senior Scientific Assistant (Documents) having post Code 57/20, issued by DSSSB, where the following has been mentioned regarding age relaxation for contractual employees:

Post Code:-	57/20	Name of the Post:-	Senior Scientific Assistant (Documents)
			Forensic Science Laboratory
Number of vacancies:-		(Total -04)-(UR-03 & OBC-01)	
Educational qualification:-		Essential :-	Master's Degree in Physics or Chemistry or Forensic Science or Computer Science with Physics or Chemistry or Forensic Science or Computer Science as one of the subject at B.Sc. level from a recognized university or equivalent. OR B.E/B.Tech. in

		<i>Computer Engineering or MCA/M.Sc. in Computer Science from a recognized university or equivalent</i>
	<i>Desirable :-</i>	<i>Doctorate degree in concerned discipline from a recognized university or equivalent</i>
<i>Experience:-</i>	<i>Essential:-</i> -	<i>Two years experience of analytical methods/research therein in the relevant field.</i>
	<i>Desirable :-</i>	<i>Nil</i>
<i>Pay Scale:-</i>	<i>Rs. 9300-34800+Grade Pay 4200/- Group 'B'</i>	
<i>Age limit:-</i>	<i>Not exceeding 30 years, Age Relaxation will be given as per the table at para 6.</i> <i>Contractual Employee of the same Department – Relaxation in upper age as a onetime measure up to the actual time spent as contractual employee of the same department, subject to a maximum of 5 years provided they have worked for at least 180 working days in that particular year as per Services Department letter/circular No. F.19(11)/2015-S-IV/1751-1756 dated 11/06/2019.</i>	

17. The above advertisement provides for age relaxation for the contractual employees who are working in the “same department” and not to the contractual employees who are working only against the “same post” of Senior Scientific Assistant (Documents). The similar analogy is to be applied to the present post and even the OM dated 11.06.2019 talks about

the age relaxation to be given to the contractual employees only in respect of the post arising in the “same department” and not otherwise. Hence, the second objection of Govt. of NCT of Delhi that the petitioner ought to have worked against the same post of Senior Scientific Officer (Documents) and only then he would be eligible for age relaxation, is without any basis. Moreover, no response has been received from respondents no. 2 and 3 to the contention of the petitioner that he was working as Junior Forensic Assistant /Chemical Examiner (Documents) against the post of Senior Scientific Officer (Documents) as evident from his pay slips and Form no.16 for the last many years, which itself shows that he was being considered by respondents no.2 and 3 as working against the post of Senior Scientific Officer (Documents).

18. It is interesting to note that the OA filed by the petitioner was dismissed in *limine* by order dated 07.08.2020. The relevant paragraphs of the said impugned order are reproduced hereunder:

“7. It is not in dispute that the applicant has crossed the age limit which is stipulated for the post in the impugned notification. He claims that under the OM dated 11.06.2019, the Government had taken a decision to extend the age limit by 5 years for the persons working on contractual basis and that he is also entitled for the same.

8. It is true that the Government of NCT of Delhi has taken a policy decision, vide memo dated 11.06.2019, providing for relaxation of maximum age limit for 5 years in favour of persons working on contractual basis against those very posts. Thins would have been different had it been a case where the posts are not governed by the Recruitment Rules. Admittedly, the Recruitment Rules are framed for the posts in question. There also exists a provision for relaxation under the

recruitment rules in favour of employees of Central Government and Union Territories. No relaxation is provided under the Recruitment rules in favour of persons working on contractual basis.

9. *The UPSC would simply go by the Recruitment Rules and hardly does it recognize the administrative or executive orders. Once the post is governed by the Recruitment rules, it is only the conditions contained therein, that are stipulated, and not others. The mere fact that the DSSSB had extended the benefit under OM dated 11.06.2019, does not become a ground for us to compel the UPS to do the same thing as long as the rules are not amended.*

10. *We do not find any merit in the OA. The OA is accordingly dismissed. No order as to costs."*

19. The premises on the basis of which learned CAT has reached to the conclusion that UPSC is not bound by the relaxation in age granted to contractual employees and UPSC is required to recruit the candidates on the basis of Recruitment Rules is directly in the teeth of stand taken by respondents no.2 and 3 in OA No. 255/2021 titled *Arun Kumar Mavi vs. Govt. of NCT of Delhi* and OA No. 256/2021 titled *Surender Kumar & Ors. vs. GNCTD* wherein case of recruitment to the post of Assistant Public Prosecutors, the Govt. of NCT of Delhi had forwarded the same OM dated 11.06.2019 to the UPSC with the request to grant age relaxation to the contractual APPs for recruitment against permanent vacancies. Letter in this regard was sent on 05.02.2021 and copy of the same was filed with an early hearing application, being CM No.7125/2021. The said letter is reproduced hereunder:

**“GOVT. OF NCT OF DELHI
HOME DEPARTMENT /DOP BRANCH**

*5TH LEVEL C-WING, DELHI SECRETARIAT
I.P. ESTATE, NEW DELHI*

F.11/12/14/DOP/HP-1/601

Dated:05/02/21

To,

*The Under Secretary (R-II),
Union Public Service Commission,
Dholpur House, Shahjahan Road,
New Delhi.*

*Sub: Recruitment to 80 posts of Assistant Public Prosecutors
in Pay Band-2 in the Pay Scale of Rs.9300-34800 with grade
pay Rs.4800/- in 7th CPC pay fixed in 8th Level*

Sir,

*Kindly refer to this office earlier letter of even no. dated
05.10.2020 vide which a proposal for recruitment of 80 posts of
Assistant Public Prosecutors in Pay Band-2 in the Pay Scale of
Rs. 9300-34800 with grade pay Rs. 4800/- in 7th CPC pay fixed
in 8th level was submitted to UPSC in Single Window System.
The said post has been advertised by UPSC vide Advt. No.
02/2021.*

*It is to mention here that the Assistant Public Prosecutors
working on contract basis in Directorate of Prosecution has
filed OAs before the Hon'ble CAT for relaxation in upper age
limit to the contractual employees working in the GNCT of
Delhi.*

*In view of the above I am directed to forward herewith a
copy of the OM No. F.19(11) 2015/S-IV/1751-1756 dated
11.06.2019 issued by the Services Department, GNCT of Delhi
wherein relaxation in upper age limit to the contractual
employees working under GNCT of Delhi at the time of regular
appointment on direct recruitment basis has been allowed. It is
requested to consider the applications of such contractual*

employees applying for the post of Assistant Public Prosecutors under UPSC Advt. No. 02/2021.

This issues with the prior approval of Principal Secretary Home.

Yours faithfully,

(L.K. Gautam)

DY. SECRETARY (HOME)”

20. In view of the above, it is clear that respondents no.2 and 3, i.e., Govt. of NCT had issued the OM dated 11.06.2019 along with directions for implementation, via order dated 10.07.2019 for providing age relaxation upto 5 years to the contractual employees of the same department where direct recruitment is to take place and there is no classification of the posts in Group “A”/Group “B” or Group “C” in the said OM dated 11.06.2019 and this age relaxation has been provided across the board in recruitment through DSSSB as well as UPSC, which is evident from recruitment advertisement to the post of Senior Scientific Assistant (Documents) issued by DSSSB and the letter dated 05.02.2021 written by Govt. of NCT of Delhi to UPSC in respect of recruitment to the post of Assistant Public Prosecutors.

21. In view of the above, the order dated 07.08.2020 passed in OA No. 975/2020 is hereby set aside. Respondent no.1 is directed to extend the benefit of relaxation in age limit upto 5 years to the petitioner while considering his application for the post of Senior Scientific Officer (Documents) vide advertisement no. 07/2020, issued through UPSC, and he

be allowed to participate in the selection process, subject to fulfillment of other conditions laid down qua the subject post.

22. The writ petition is disposed of with these directions. Consequently, pending application shall also stand closed.

**(TALWANT SINGH)
JUDGE**

**(RAJIV SHAKDHER)
JUDGE**

JULY 11, 2021/nk

Click here to check corrigendum, if any