

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 22715 of 2018 (O&M)

Reserved on:31.08.2022

Pronounced on : 09.09.2022

Ajay Kumar and another

---Petitioners

versus

Central Administrative Tribunal and others

---Respondents

**CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA
HON'BLE MR. JUSTICE JAGMOHAN BANSAL**

Present: Mr. S.K.Rana, Advocate
for the petitioners

Mr. Brijesh Mittal, Advocate
for the respondents

JAGMOHAN BANSAL, J.

1. The petitioners namely Ajay Kumar (petitioner No. 1) and Bhag Singh (petitioner No. 2) through instant petition under Article 226 of the Constitution of India are seeking setting aside of order dated 9.12.2016 (Annexure P-1) passed by Central Administrative Tribunal, Chandigarh Bench (for short "Tribunal") whereby learned Tribunal has rejected O.A.No. 060/00476/2015 and the order dated 30.7.2018 (annexure P-2) whereby the review application was dismissed.

2. The brief facts emerging from record and arguments of both sides are that the respondents vide Notification dated 24.9.2011 advertised 167 posts of Multi Tasking Staff (MST) in Pay Band-I (Rs. 5200-20200) and carrying Grade Pay of Rs. 1800/- in the

offices of Principal Accountant General (Audit), Punjab and U.T.Chandigarh, Accountant General (Account and Entitlement) Punjab and U.T.Chandigarh, Principal Accountant General (Audit) Haryana and Principal Accountant General (Accounts and Entitlements), Haryana and Chandigarh. The vacancies advertised were tentative and subject to increase or decrease. There were six vacancies reserved for Scheduled Castes (for short "SC") category.

3. The dispute in the present case is primarily qua age limit, thus, it is inevitable to notice age limit prescribed in the advertisement. Conditions No. 3(A) and 3(B) of the advertisement are reproduced as below:-

“3(A) AGE LIMIT

The candidate must have attained the age of 18 years and must not have attained the age of 27 years as on the closing date for receipt of applications.

3(B) The upper age limit as prescribed in Para 3A will be relaxable:

- (i) Up to a maximum of 5 years in case of candidates belonging to Scheduled Caste (SC) or Scheduled Tribe (ST) category.
- (vii) No age relaxation is allowed to SC/ST/OBC candidates against unreserved posts.
- (viii) As per orders of the Comptroller & Auditor General of India, casual workers, who have been earlier engaged at least for two years in the concerned offices of the Indian Audit & Accounts Department to which the vacancies relate, will also be eligible for age relaxation to the extent of period of their engagement as casual labourers. This relaxation would be over and above the

relaxation admissible to the SC/ST/OBC/PH/ Ex-Serviceman categories.”

4. The petitioners were already working in the office of respodnents at the time of advertisement. The respondent, in order to manage task of a large number of applications and to have uniform criteria, vide circular dated 27.8.2010 had prescribed criteria for allocation of marks and determination of merit. Paragraph No. 2 of the circular prescribes weightage which is reproduced as below:-

2. The follwoing weightage is prescribed:

A) Educational Qualification (40 Marks)

<i>EDUCATIONAL QUALIFICATION</i>	<i>MARKS</i>
8 th Class or equivalent pass and below 10 th Class (In case of casual worker in Central Government Ministries/Departments and IA & AD only)	20
10 th Class or equivalent pass and below 12 th Class	27
12 th Class or equivalent and below graduation	32
Graduate or equivalent pass and below post graduation	36
Post graduate or equivalent	40

B) Work Experience (45 Marks)

<i>WORK EXPERIENCE (IN TERMS OF ENGAGEMENT AS CASUAL WORKER</i>	<i>MARKS</i>
Up to 49 days	0
50 to 99 days	7
100 to 199 days	14
200 to 399 days	28
400 to 799 days	36
More than 800 days	45

5. The petitioners like other candidates applied for the aforesaid post under SC category. The petitioners were short-listed and invited for interview, however, their names did not appear in the

select list because cut off under SC category was 86 whereas petitioners secured marks as detailed below:-

<i>Petitioner No.</i>	<i>Name</i>	<i>Marks for Educational qualification</i>	<i>Marks for experience</i>	<i>Marks for interview</i>	<i>Total marks</i>
1	Ajay	27	14	15	56
2	Bhag Singh	27	45	13	85

6. The petitioners aggrieved from non-selection in SC or General category, by way of OA No. 060/00476/2015 approached the Tribunal. The respondent filed reply to application of the petitioners and learned Tribunal vide common order dated 9.12.2016 dismissed claim of the petitioners. The Tribunal concluded that there is no dispute qua the proposition that SC candidate is required to be considered against General category if SC candidate secures more marks than the last candidate selected under General category. However, learned Tribunal declined claim of the the petitioners finding that petitioners had availed benefit of age relaxation on account of being member of SC category, thus, they cannot be considered under General category.

7. Learned counsel for the petitioners contended that petitioner No. 1 was 27 years and 17 days old on the closing date for receipt of applications and petitioner No. 2 was 45 years. As per condition No. 3 (B)(viii), age relaxation is available to every candidate irrespective of his category, thus, petitioners were entitled to age relaxation as permitted by condition No. 3(B)(viii) of the advertisement.

8. Per contra, learned counsel for the respondents supporting findings of the learned Tribunal contended that petitioner No. 2 was 45 years on the last date of receipt of applications and he had worked for 16 years in the office of respondents, thus, 16 years could be relaxed from his age of 45 years and after relaxation of 16 years, rest comes to 29 years whereas maximum age prescribed was 27 years for General category and 32 years for SC. He further contended that petitioners had applied under SC category and cut off under SC category was 86 marks whereas petitioners secured much lesser than cut off, thus, they could not be considered under SC category. The petitioners had availed benefit of relaxation of five years available to SC candidates thus, they could not be considered under General category.

9. We have perused the record and heard arguments of both sides. We find merit in the contention of petitioner No. 1, thus, claim of petitioner No. 1 deserves to be allowed and claim of petitioner No. 2 is bereft of merits and deserves to be declined.

10. The conceded position emerging from record and arguments of both sides is that petitioner No. 1 was 27 years and 17 days old on the last date of receipt of applications whereas petitioner No. 2 was 45 years on the said date. The petitioner No. 1 was eligible to age relaxation of three years in view of condition No. 3(B) (viii) whereas petitioner No. 2 was eligible for relaxation of 16 years i.e. number of years worked by them in the office of answering respondents. The petitioners had applied under SC category and maximum age prescribed for General category was 27 years

whereas maximum age for SC category was 32 years. The cut off under SC category was 86 whereas cut off under General category was 47. The petitioner No. 1 secured 56 marks whereas petitioner No. 2 secured 85 marks. As per advertisement, there were six posts meant for SC category which were reduced to four at the time of final selection. Both the petitioners could not achieve the cut off under SC category whereas their marks were above the marks secured by last candidate selected under General category.

11. Learned Tribunal relying upon judgment of Rajasthan High Court in **Madan Lal vs. State of Rajasthan and others, 2012 (9) SCT 356** and **Deepa vs. UOI and others, 2015 (2) SCT 328** has concluded that once a candidate has availed benefit of age relaxation available to SC candidates, he cannot claim appointment under General category even though he has secured marks more than last candidate selected under General category. The respondents neither before learned Tribunal nor this Court has disputed the fact that if a SC candidate has not availed age relaxation available to a SC candidate he deserves to be considered under General category if he secures marks more than last selected candidate under General category.

12. In the case in hand, the petitioner No. 1 was 27 years and 17 days old on the cut off date. He was entitled to relaxation of three years in view of condition No. 3 (B)(viii) of the advertisement and petitioner No. 2 was entitled to relaxation of 16 years. If number of years of experience i.e. number of years worked with respondents

as permitted by advertisement are relaxed from the age of the petitioners, rest comes to less than 27 years in case of petitioner No. 1 – Ajay Kumar even though it is more than 27 years in case of petitioner No. 2-Bhag Singh. The petitioners could not get appointment under General category because they claimed age relaxation under SC category. The maximum age prescribed for General category was 27 years whereas it was 32 years in case of SC category. The age of petitioner No. 2 after relaxation of 16 years comes to 29 years and if relaxation available to SC candidate is not extended, he does not fall within the age criteria prescribed for General category i.e. 27 years. After availing relaxation of five years available to SC candidates, he cannot be considered under General category. Thus, application of petitioner No. 2 has been rightly dismissed by learned Tribunal.

13. In case of petitioner No. 1 (Ajay Kumar), learned Tribunal has wrongly dismissed his claim because he was 27 years and 17 days old on the last date of submission of applications and he was entitled to relaxation of three years which is available to all the candidates irrespective of their category. After relaxation of three years granted to petitioner No. 1, he becomes eligible under General category without age relaxation available to SC candidates. He had secured 56 marks whereas cut off under General category was 47, thus, he was eligible to be considered under General category. It would be apt to notice here that learned Tribunal in case of petitioner No. 2 has considered his age at the time of application as well as number of years of relaxation whereas this fact has not been noticed

in the case of petitioner No. 1. On being pointed out, learned counsel for respondents expressed his inability to controvert the fact of age claimed by petitioner No. 1 and relaxation available to him in terms of advertisement. In such circumstances, petitioner No. 1 was eligible to be considered under General category.

In view of the above findings, we are of the considered opinion that the petition/claim of petitioner No. 1 deserves to be allowed and is accordingly allowed. The respondent shall consider the case of the petitioner No. 1 for appointment against the general category of Multi Tasking Staff as per the advertisement in question. He shall be entitled for all the notional benefits against the said post from the date his junior was appointed, however, he shall not be entitled for any salary for the said period on the principle of 'no work no pay'. The claim of petitioner No. 2 is not sustainable and accordingly the present petition qua petitioner No. 2 is dismissed. The order of learned Tribunal dated 9.12.2016 is set aside qua petitioner No. 1 (Ajay Kumar) whereas upheld qua petitioner No. 2 (Bhag Singh).

(G.S. SANDHAWALIA)
JUDGE

(JAGMOHAN BANSAL)
JUDGE

09.09.2022

PARAMJIT

Whether speaking/reasoned: Yes

Whether reportable : Yes