



Neutral Citation Number 2023:DHC:5147-DB

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

% Judgment delivered on: 24th July, 2023

+ W.P.(C) 8887/2023 & CM APPL. 33597/2023

MUKESH KUMAR AND ORS

..... Petitioner

versus

INDO TIBETAN BORDER POLICE FORCE AND ANR

..... Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Ajay Garg, Ms. Tripti Gola & Mr. Arvind Sardana,
Advocates

For the Respondents: Mr. Jitesh Vikram Srivastava, Senior Panel Counsel with
Mr. Deeptiman Yadav, DC/JAG & Ms. Kamlesh Rani,
DC/JAG

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE MANOJ JAIN

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioners seek a direction to the respondents to allow relaxation of upper age limit and seek grant of minimum three years age relaxation to all categories for being eligible to appear in examination/selection process for recruitment to the post of Constable (driver) in Indo-Tibetan Border Force issued vide advertisement dated 26.06.2023 and further seek a direction to the respondents to fix a cut-off-date of upper age limit as per vacancy year of 2019, 2020, 2021 & 2022.



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2. Learned counsel for the petitioners submits that respondents have issued an advertisement on 26.06.2023 inviting online applications for the post of Constable (driver). Learned counsel submits that no selection process was undertaken on account of pandemic between the period 2019 till subject advertisement and as such the petitioners who have become overage, as per the advertisement, have been deprived of an opportunity to participate in the selection process.

3. Learned counsel for petitioners submits that relaxation of age of minimum three years is liable to be granted to all categories so that an equal opportunity of participation is granted to them. Learned counsel submits that in other appointments, such relaxation of three years has been granted to the candidates on the ground of the pandemic of Covid-19.

4. Learned counsel further relies on decision of Supreme Court in *High Court of Delhi Vs. Devina Sharma (2022) 4 SCC 643* as also the decision of the Co-ordinate Bench of this Court dated 28.01.2023 in *W.P. (C) 19/2022* titled *Sachin & Others Vs. Central Reserve Police Force* wherein age relaxation of three years has been granted as a one-time measure.

5. Per contra, learned counsel for the respondents submits that respondents are seeking to appoint drivers and the Units of the respondents are mostly posted on high altitude areas, fitness of a much higher level is required from the drivers. He further submits that the



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age limit prescribed for the subject advertisement is 21 to 27 for the general category. He submits that in terms of various OMs of the Government and different statutory provisions, relaxation in age has been given to prescribed categories of individual belonging to SCT/ST & OBC, Ex-servicemen and Government Servants.

6. Learned counsel, under instructions, further submits that examination for recruitment of driver is not conducted on an annual basis but it is normally conducted after 3-4 years, depending on availability of sufficient number of vacancies as well as the number of vehicles in the respective Units.

7. He submits that intake of young drivers is necessary as the drivers have to serve in very harsh extreme climate of high altitude areas like Leh-Ladakh, Jammu & Kashmir, Uttarakhand, Sikkim, Arunachal Pradesh and Left Wing Extremism areas etc. and enhancing the upper age by three years in the rank of Constable (driver) is likely to affect the morale, physical alertness, fitness of the individual and would not be in the interest of the organization.

8. No doubt the pandemic was an issue which affected several recruitment processes and some organizations have taken a view of granting extension as a 'one-time measure' for the purposes of recruitment. However, there is no decision of the Government making an across the board extension applicable to all recruitment processes.

9. In the instant case, respondents are seeking to appoint Constable (driver) in the respondent force i.e. Indo-Tibetan Border Force. Most



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of the Units of the said force are stationed for a substantial period of time in high altitude and extreme area where fitness level is prime consideration for all individual posted there.

10. An inter-office note dated 13.07.2023 of the Recruitment Branch of the respondents has been produced and same is taken on record. DIG (Recruitment) has explained the circumstances in which the recruitment process could not take place between 2019 to 2022.

11. It is open to the recruiting authority to fix an age limit for the purposes of recruitment. In the instant case, the rational provided by the respondent that high fitness level requires that the drivers are recruited at a younger age for the serving the respondent force is a plausible rational. Drivers, who are sought to be recruited, are to serve in very harsh extreme climate and high altitude areas. Enhancing the age limit for recruitment of such a post is likely to affect the fitness and performance level of the recruited individuals.

12. It is pointed out by learned counsel for the respondents that the recruitment for the post of drivers is not an ongoing regular yearly process and advertisements are issued at a gap of 3-4 years depending on the vacancy position and availability of vehicles. Since the recruitment process for drivers is not on an annual basis and is only on the basis of availability of vehicles and vacancies, petitioners cannot be permitted to contend that they will be excluded from the recruitment process because they have become overage. In case there is no vacancy advertised or sought to be filled on an annual basis,



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there is no legitimate expectation of an individual to participate in the selection process. There is a possibility that some individuals may become overage between one advertisement and another. On that ground alone, impugned notification cannot be interfered with.

13. Merely because somebody has lost out an opportunity does not imply that the rational of the respondents in fixing the upper age should be inferred with or an opportunity should be granted to petitioners to participate simply because the respondents did not issue any advertisement for a substantial period of time.

14. Subject advertisement has been issued by the Ministry of Home Affairs, Government of India and the same Ministry has issued several other advertisements for other posts in other organisations. Some of the advertisements which have been placed on record show that the Ministry has duly considered and granted relaxation for the period of pandemic. However, for the subject post there is no such relaxation granted. Presumption has to be drawn in favour of the respondents that they have duly taken into account the pandemic position and consciously decided not to grant relaxation for the subject post of Indo- Tibetan Boarder Police Force.

15. The judgement sought to be relied on the learned counsel for the petitioner are applicable to the facts for the present case. In *Devina Sharma* (supra) the recruitment was to the Delhi Higher Judicial Services and the Supreme Court had referred to the judgements as well as the judgment in *Malik Mazhar Sultan (3) vs. UP Public*



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Services Commission (2008) 17 SCC 703 which stipulated the time schedule for conducting recruitment process for judicial posts and held that the same has to be conducted on an annual basis.

16. In the instant case, there is no annual recruitment process for the post of Constable (driver) in the ITBP as such the ratio of the said judgement in *Devina Sharma* (supra) would not be applicable to the facts of the present case.

17. The other judgment referred to by learned counsel for petitioners of the Co-ordinate Bench *Sachin* (supra) is also not applicable for the reason that the recruitment in that case was for ASI (steno), Head Constable (Ministerial) in CRPF. It is not in dispute that the Units of CRPF are posted not only in high-altitude and high-terrain areas but are also posted in soft areas as distinct from ITBP where most of the Units are posted in hard areas. There can be no comparison between the two posts and the requirement of fitness level for the said posts.

18. It may also be noticed that the last date for making an online application is 26.07.2023.

19. Accordingly, we find no ground to interfere with the decision of the respondents in not granting any relaxation for the period of pandemic.

20. We find no merits in the petition. The petition is accordingly dismissed.



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21. Order *dasti* under the signatures of the Court Master.

SANJEEV SACHDEVA, J

MANOJ JAIN, J

JULY 24, 2023/dr/swati

