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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO.1441/2002
M.A. NO.1159/2002

New Delhi this the 20th day of November, 2002.

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN

HON'BLE SHRI V.K. MAJOTRA, MEMBER (A)

1. Prem Chand(SC)
B-51, Shashi Garden,
Delhi-91
 2. Babu Lal(SC)
34/475, Himmatpuri (near Mayur Vihar-I)
Delhi-91
 3. D. J. Singh
BD-932, Sarojini Nagar,
New Delhi-23
 4. J. K. Lohchab
H.No. 1114, Sector-8,
Faridabad-121006
 5. K. Chandravali (Mrs.)
Pocket A-150C, Dilshad Garden
Delhi-95
 6. K. M. Goreela (SC)
A/434, Shakurpur Colony
Delhi-34
 7. Magan Dass (SC)
B-113, New Usmanpur,
Delhi-53
 8. Nalini Rajsekhar (Mrs.)
50-E, P-III, Mayur Vihar-I
Delhi-91
 9. S. C. Chandola
39A, Pocket-B, Dilshad Garden,
Delhi-95
 10. Shakti Dutt
D-13A, Hauz Khas
New Delhi-16
 11. S. K. Sharma
EF-652, Sarojini Nagar,
New Delhi-23
- Applicants

(By Shri G.K. Aggarwal, Advocate)

-versus-

- (1) Union of India thro' Secretary
Ministry of Human Resource Development,
Education Deptt., Shastri Bhawan,
New Delhi-1

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(2) University Grants Commission,
thro' its Secretary
Bahadurshah Zafar Marg,
New Delhi-2

.... Respondents

(By Shri Amitesh Kumar, Advocate)

O R D E R (ORAL)

Justice V.S. Aggarwal:-

MA No.1159/2002

MA No.1159/2002 for joining together in OA
No.1441/2002 is allowed.

OA No.1441/2002

The University Grants Commission (for short, "the Commission") has been constituted under the provisions of the University Grants Commission Act, 1956 (for short, "the Act") which came into force with effect from 5.11.1956. It was enacted to make provisions for the co-ordination and determination of standards in universities. The Commission has been entrusted with the duty to take steps as it may think fit for promotion and co-ordination of university education and for the determination and maintenance of standards of teaching, examination and research in universities. It has been vested with the power to recommend to any university the measures necessary for the improvement of university education. It is also authorised to perform such other functions as may be prescribed.

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Section 25 of the Act gives power to the Central Government to make Rules by notification in the Official Gazette to carry out the purposes of the Act. Section 25(2) of the Act provides that in particular and without prejudice to the generality of the foregoing power, such Rules may provide for all or any of the matters enumerated in Section 25(2) of the Act including the terms and conditions of service of employees. Section 26 gives power to the Commission to make regulations by notification.

2. These provisions come up for consideration as a result of the following facts:-

The applicants are non-graduates and are working on regular basis as Section Officers in the Commission. Regular promotion from Section Officers/Personal Assistants to the post of Under Secretary is governed by the University Grants Commission (Recruitment) Rules, 1983, (for short, "the Rules"). They have been amended from time to time. The power to make the recruitment rules is vested with the Central Government and Rule 4 of the Rules empowers the Commission to relax the age limit, qualifications for recruitment to any post in the Commission including that of the Under Secretary. Under Rule 6 of the Rules, power to relax with respect to class of persons or category of persons vests with the Central Government.

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3. It is asserted that on 27.6.1996, the Commission took a decision to relax the educational qualification of University degree for regular promotion from Section Officers/Personal Assistants to the post of Under Secretary and to substitute the educational qualification of a University degree by a qualifying test to be conducted by the Commission. A Departmental Promotion Committee meeting was stated to have been scheduled on 6.6.2002 but the applicants had been ignored because they were non-graduate.

4. By virtue of the present application, the applicants seek an order to declare that the applicants being above 55 years of age should be exempted from University degree and qualifying test for regular promotion from Section Officers/Personal Assistants to Under Secretary and in any case, the Departmental Promotion Committee meeting should be postponed because it is contended that educational qualification as such could not be prescribed and in any case under Rule 4 of the Rules, the Commission has already given the exemption to the applicants and test in this regard cannot be held.

5. Needless to state in the reply filed, the application has been contested. It has been pointed that the Commission stressed that the

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relaxation in recruitment rules for promotion to the post of Under Secretary may be considered for those who are non-Graduates but are capable and have rendered a long service. The matter as such was examined by the Government from time to time. The Government felt that it was not in favour of relaxing the eligibility criteria in accordance with the rules.

6. During the course of submissions, the learned counsel for the applicants urged:-

- (a) that under column (8) of the recruitment rules notified for the post of Under Secretary, no educational qualification has been prescribed and, therefore, such educational qualification could not be prescribed in case of recruitment by promotion; and
- (b) in any case, the Commission has already decided to relax the said educational qualification in exercise of the power conferred by it by Rule 4 of the Rules and, therefore, the applicants should not have been ignored for promotion except in accordance with the conditions prescribed by the Commission.

7. So far as the first contention of the applicant is concerned, our attention was drawn towards the Rules. Under column (8) with respect to the educational qualifications prescribed for direct recruitment whether it was to apply in case of promotion, it has been pointed as emphatic no. But under column (11) when the matter has to be

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considered in terms of the persons to be promoted, it provides that Section Officers (Grade 'B') with 5 years continuous regular service having a University degree are eligible. However, by virtue of the amendment effected on 26.11.1993, the said Rules have undergone a sea change. Column (8) has totally been deleted with respect to the post of Under Secretary. That being so, the applicants can take advantage, if any, with respect to what has been written in column (8). This is for the reason that the case of the applicants, if any, could only be considered if they had completed 5 years continuous regular service in the respective grades. That five years had been completed after the amendment had been effected in the year 1993 and, therefore, the applicants cannot take any advantage of the repelled aspect of the Rules.

8. It is the second submission of the applicants' learned counsel which has been pressed and in our view carries weight. In exercise of power under Section 25 of the Act as already stated above, the Central Government has framed the Rules for regulating the method of recruitment to the posts in the Commission. Rules 4 and 6 of the Rules read as under:-

"Rule 4: - The method of recruitment, the upper age limit, qualifications for recruitment and other matters relating to the said posts shall

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be as specified in columns 5 to 12 of the aforesaid Schedule.

Provided that the Commission may, for reasons to be recorded in writing, relax the provisions relating to age limit for recruitment and the qualifications for recruitment in respect of any post mentioned in the Schedule.

Rule 6. Power to relax:-Where the Central Government is of opinion that it is necessary or expedient so to do, it may, by order, for reasons to be recorded in writing, relax any of the provisions of these rules with respect to any class or category of persons."

9. A bare reading of both the rules clearly show that the Commission has been given the power to relax the provisions relating to age limit and qualifications for recruitment with respect to any of the posts mentioned in the Schedule. Under Rule 6 of the Rules, the Central Government has been given the power for reasons to be recorded in writing to relax any provision of the rules with respect to any class or category of persons. A clear distinction is, therefore, drawn with respect to relaxation of educational qualification for recruitment to any post. Such power vests in the Commission. But power to relax any provision with respect to class or category of persons vests with the Central Government. Herein the exemption granted pertains to the post of Under Secretary. However, such a power could only be exercised under Rule 4 of the Rules.

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10. The educational qualifications prescribed for the post of Under Secretary in case of promotion is:-

"Section Officer (Grade I) with five years continuous regular service in the grade and having a University degree."

The Commission had decided to grant exemption to such employees who are not Graduates and we take the opportunity in reproducing the decision in this regard in extensio except the unnecessary portions:-

"The Commission at its meeting held on 27th June 1996, decided to introduce a qualifying test for the promotion of non-graduate Section Officers/Private Secretaries to the post of Under Secretary and non-graduate Under Secretaries to the post of Deputy Secretary. The syllabus for the test which would be, as under, is circulated to the concerned employees for preparing themselves for the test.

2) There would be 3 papers of 100 marks each.

3) While the qualifying marks in each paper are 35, the aggregate marks required to be obtained in all the 3 papers are 40% of the total marks:-

- | | |
|---------------------------|-----------|
| i) General English | 100 marks |
| ii) (a) General awareness | 50 marks |
| (b) Office Procedure | 50 marks |
| iii) Higher Education | 100 marks |
| | |

(5) The non-graduate Section Officers, Private Secretaries & Under Secretaries will be given only 2 chances one after the other to qualify the said test.

The date and time of the qualifying test will be announced later."

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It clearly reveals that the decision had been taken to introduce the qualifying test for promotion of non-graduate Section Officers/Private Secretaries to the post of Under Secretary. Instead it provides for a test to be held in this regard. This is obviously an exemption being granted under Rule 4 of the Rules.

11. The learned counsel for the respondents contended that this was a one time exemption. In any case, the Commission does not have such a power.

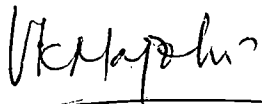
12. Both the submissions of the learned counsel for the respondents necessarily have to be rejected. Reasons are obvious. There is no mention that this exemption had been granted as one time exemption which was not to effect subsequently. When the Office Order does not say so, this Tribunal will not incorporate anything which has not been stated therein. Similarly when the language is plain and clear and this is obviously as discussed above, the Commission had the power to relax in terms of Rule 4 of the Rules referred to above. In that view of the matter, the argument of the learned counsel for the respondents so much thought of must be held to be of no avail.

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13. Resultantly, we allow the present application and direct that the Commission can hold the qualifying test with respect of non-graduates Section Officers/Private Secretaries in terms of the decision of 9.12.1996. No costs.

Announced.



(V.K. MAJOTRA)
Member (A)



(V.S. Aggarwal)
Chairman

/sns/