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Central Administrative Tribunal, Principal Bench

Original Application No.2390 of 2002

New Delhi, this the 28th day of April, 2003

Hon'ble Mr. Justice V.S. Aggarwal, Chairman  
Hon'ble Mr. V.K. Majotra, Member (A)

Shri Krishan Yadav,  
S/o Shri Daryao Singh,  
R/o RZ-35, A-1, Dharam Pura,  
Najaf Garh, Delhi-43

.... Applicant

(By Advocate: Shri Raj Singh)

Versus

1. Union of India through:  
Secretary Home,  
Department of Personnel and Training,  
New Delhi
2. Govt. of N.C.T. of Delhi  
Through its Chief Secretary,  
Players Building,  
I.P.Estate, New Delhi.
3. The Commissioner  
Sales Tax  
Bikri Kar Bhawan, I.P.Estate,  
New Delhi.

.... Respondents

(By Advocate: Shri Vijay Pandita)

O R D E R (ORAL)

By Justice V.S. Aggarwal, Chairman

The facts in the present case are not in controversy. In fact they are admitted. The admitted facts, therefore, are being delineated.

2. The date of birth of the applicant is 12.4.54. He was declared surplus in Delhi State Mineral Development Corporation (DSMDC). He was re-deployed under the Government of National Capital Territory of Delhi as a Lower Division Clerk on 16.11.92. This Tribunal in an earlier O.A.774/2001 filed by the applicant had directed the respondents i.e. Govt. of NCT of Delhi to verify from the competent authority all the attempts made by the

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applicant to pass typing test in DSMDC and thereafter to take a final decision in accordance with DOP&T O.M. of 29.9.92. Vide the impugned order of 28.3.2002, the matter of the applicant has been considered and the exemption prayed by the applicant from passing the typing test has been rejected.

3. Learned counsel for the respondents has contended that for good administration and good Government, the claim of the applicant could not be allowed and it is the discretion of the respondents to grant the exemption or not and further that a similar matter had come up for consideration before this Tribunal in the case of Shri Rich Pal Singh & others vs. Govt. of NCT Delhi and anr. (O.A.2460/2000) decided on 21.9.2001 and the said application had been dismissed. Resultantly, learned counsel for the respondents states that the applicant has no right to seek quashing of the orders passed by the respondents declining the prayed exemption.

4. In principle we do not dispute that while granting the exemption, it is the discretion of the authorities and the exemption has to be granted taking into account the interest of good administration and quality of performance in public interest, but once the said discretion which the department intends to use is curtailed by their own instructions which in the present case is O.M.No.14020/2/91-Estt.(D) dated 29.9.92, necessarily they have to be governed by the same rather than the broad principles which are now being pressed into service. The

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said instructions shall be dealt with hereinafter and in that view of the matter, the said argument necessarily must fail.

5. As regards the judgement rendered by this Tribunal in the case of Rich Pal Singh is concerned, perusal of the same shows that this Tribunal was not concerned with the age factor of the applicant therein which is relevant in the facts of the present case. As such, the decision in the case of Rich Pal Singh must be held to be distinguishable.

6. O.M.No.14020/2/91-Estt.(D) dated 29.9.92 deals with the exemption from passing the typing test regarding Lower Division Clerks who do not belong to Central Secretariat Clerical Service. Paragraph 9 is being pressed by the respondents which reads:

"(9) Surplus Employees

In respect of surplus employees re-deployed as LDCs the provision for stopping of increment for not passing the typing test may be enforced from the date of next but one increment after re-deployment."

7. It is true that in respect of surplus employees re-deployed as LDCs, the provision of stopping increment for not passing the typing test can be enforced from the date of the next increment after re-deployment but the other instructions cannot be ignored and would be wholly applicable. Paragraph 2 of the same is important and we reproduce the same for the sake of facility. The relevant

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portion of it reads:

"(2) When exemption may be allowed

(a) If above 45 years of age on the date of their appointment may be granted exemption from the date of their appointment.

(b) If between the age of 35 years and 45 years at the time of appointment may be granted exemption on attaining the age of 45 years.

(c) If below 35 years of age on the date of appointment may be given exemption after 10 years of service as LDC provided they have made two genuine attempts to pass the typing test otherwise they may be granted exemption after attaining the age of 45 years.

(d) Those LDCs who have made two genuine attempts for passing the typing test prior to the issue of this O.M. but have not completed 8 years of service as LDC may be granted exemption from passing the typing test after completion of 8 years of service or on attaining the age of 45 years whichever is earlier."

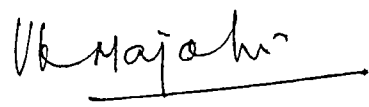
8. Learned counsel for the applicant relies upon clause (b) of the said paragraph to contend that the applicant was within the age of 35 to 45 years at the time of re-deployment and, therefore, he is entitled to the said exemption on attaining the age of 45 years. We have already mentioned above that the date of birth of the applicant is 12.4.54 and that on the date of re-deployment, he was between the age of 35 years and 45 years. Therefore, he is entitled to the exemption claimed on his attaining the age of 45 years from passing the typing test. When the language is plain and meaning is clear, there is no need to stretch law lexicon. The plain grammatical meaning must be enforced. That is so in the present case. Necessarily, therefore, it must be held that the applicant

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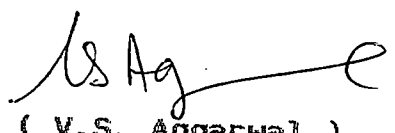
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is entitled to the exemption in terms of the instructions which both the parties rely. The impugned orders, therefore, cannot be sustained.

9. For these reasons, we allow the present O.A. and quash the impugned orders. It is directed that respondents would take necessary steps in accordance with the findings given above.



( V.K. Majotra )  
Member (A) .



( V.S. Aggarwal )  
Chairman .

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