

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. NO. 2102/94

New Delhi, this the 16th day of April, 1996

Hon'ble Shri S.R. Adige, Member (A)

Hon'ble Smt. Lakshmi Swaminathan, Member (J)

1. Shri Om Prakash
s/o Shri Ram Singh
r/o Vill. & P.O. Bharawash,
Teh. & Distt. Rewari (Haryana).

2. Shri R.K. Dubey
s/o Shri Raj Karan Dubey,
r/o C-433, Kidwai Nagar,
New Delhi.

.... Applicants

By Advocate: Shri S.K. Gupta

Vs.

1. Union of India
through
The Secretary,
Ministry of Personnel,
Public Grievances & Pension,
Department of Personnel & Training,
Govt. of India,
North Block,
New Delhi.

2. Staff Selection Commission,
through
The Chairman,
Block No. XII,
C.G.O. Complex,
Lodi Road,
New Delhi.

... Respondents

By Advocate: Shri E.X. Joseph, Sr. Counsel

ORDER

Hon'ble Smt. Lakshmi Swaminathan, Member(J)

This application was filed originally by two applicants. The applicant is aggrieved by the order dated 19.10.94 (Annexure A-1) passed by the respondents rejecting the application for being considered in the examination for Inspectors of Central Excise, Incometax etc. 1993 on the ground that he cannot be treated as departmental candidate in terms of para 4(e) of the Notice of Examination because he did not fulfil the condition of nexus.

2. At the time of hearing Shri S.K. Gupta, learned counsel for the applicant has submitted that he is not pressing the claim in respect of applicant No.2, but only in respect of Shri Om Prakash, Applicant No.1. Applicant No.1 who was working as Upper Division Clerk (UDC) in the office of respondent No.2 had applied for recruitment to the post of Inspector of Central Excise/Incometax etc. ¹⁸ which was advertised by the Staff Selection Commission, Respondent No.2, in the Employment News dated 10.7.93. The age limit prescribed for the post was 18 - 25 years as on 1.8.73. This was subject to the relaxation in respect of departmental

candidates as mentioned in para 4(e) of Notice
of Examination which provided as follows-

"Upper age limit is relaxable upto the
age of 40 years (45 years for Scheduled Caste/
Scheduled Tribe candidates) to the depart-
mental candidates who have rendered not
less than 3 years continuous and regular
service as on 9.8.93 provided they are
working in posts which are in the same line
or allied cadres and where a relationship
could be established that the service
rendered in the department will be useful
for the efficient discharge of duties of
posts for which the recruitment is being
made by this examination in terms of DP&AR's
O.M.No.35014/4/79-Estt(D) dated 24.10.1985,
O.M.No.15024/3/87-Estt(D) dated 7.10.1987
and O.M. No.15012/1/88-Estt(D) dated
20.5.1988.

All Group 'C' non-technical employees
with three years continuous and regular service
(in any Central Govt. office or Union
Territory) as on 9.8.93 fulfilling the nexus
will be eligible to be considered as
departmental employees for grant of age
relaxation under this sub-para".

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3. The applicant being a departmental candidate had applied for age relaxation in terms of para 4(e). He had appeared in the written examination held on 12.12.93 and he was declared successful. By letter dated 19.9.94 Respondent No.2 had called the applicant for personality test/interview. However, when the applicant came for the interview, respondent No.2 issued the impugned letter dated 19.10.94. The dispute for adjudication in this case is, therefore, restricted to the question or is of whether the applicant is not entitled to the age relaxation in terms of para 4(e) of the Notice of Examination. Shri S.K. Gupta, learned counsel for the applicant submits that in the examination held in 1991, another similarly situated person like the applicant, namely, one Shri J. Pushpraj who was then working as a Lower Division Clerk in the office of Respondent No.2 was allowed to appear in the interview/personality test and was declared successful. He states that Shri Pushp Raj was working in the same section with the applicant in the office of Respondent No.2 and was granted age relaxation in terms of para 4(e) of the Notice of Examination. He submits that the condition prevailing in the examination of 1991 is the same as that in the examination of 1993.

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He relies on Annexure 'Y' to his counter reply filed on 24.7.95 which he states is the guidelines for the examination of 1991. In sub para (iv) of the guidelines he submits that Lower Division Clerks/Upper Division Clerks/Stenographers Grade 'D' working in the cadres of CSCS/CSSS have been allowed the benefit of age relaxation under para 4(e). He also relies on the case of another person, Shri J. Ramaswamy who was working as an Assistant in the office of Respondent No.2 at Madras who applied for the examination of 1992 and was given the age relaxation as per the condition of the examination.

The learned counsel, therefore, submits that in both these cases of persons similarly situated like the applicant, the respondents have allowed age relaxation and denial of the same to him is, therefore, arbitrary, discriminatory and violative of Articles 14 and 16 of the Constitution. Shri S.K. Gupta, learned counsel submits that for the 1991 and 1992 LDCS, UDCS and Stenographers have been allowed the age relaxation in terms of para 4(e). Therefore, there was no reason why the applicant should not be given the age relaxation for the examination of 1993. He further submits that the guidelines of May 1995 cannot be relied upon by the respondents to defeat his claim as they are not applicable to this case. The learned

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counsel further argued that there has been no conscious decision by the respondents to delete LDCs, UDCs etc. from the benefit of age relaxation under para 4(e) which had been given to these persons earlier. He, therefore, submits that the respondents cannot reject his candidature on the ground that there is no nexus to the post applied for based on para 4(e) of the Notice of Examination.

4. The respondents have filed the reply urging that there is no substance in this case and the same should be dismissed. We have also heard Shri E.X. Joseph, Senior counsel. The respondents have submitted that the duties of Inspector of Central Excise/Incomtex and the duties of Upper Division Clerks (Annexure R-V) are different in nature and responsibilities and there is no nexus as required under para 4(e) of the Notice of Examination. The learned counsel has relied on the following cases (copies placed on record) -

- i) Anil Kumar and another Vs. UOI and others O.A.No.456/95 decided on 12.1.96 (CAT(PB)).
- ii) Bishwanath Baidya Vs. UOI and others O.A.No.780/93 CAT, Calcutta decided on 28.9.94.
- iii) G. Kannan Vs. UOI and another O.A.No.1219/93 CAT, Madras decided on 25.1.94

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The learned counsel submits that in these three cases the applicants who were, inter alia, working as Police Constable with Delhi Police, Lower Division Clerk under the Accountant General Office, West Bengal and Accountant in the office of Pay & Accounts Officer, Civil Aviation Department, Madras and ^{others} had claimed that they were entitled to relaxation of upper age limit as departmental candidates on the basis of nexus for selection to the post of Inspector of Central Excise and Incometax etc. have been rejected.

5. Shri E.X. Joseph, learned counsel has also submitted that in the Notice for Examination issued for the 1990 examination there was specific provision provided under para 4(e) that Grade 'C' and 'D' employees, LDCS/UDCS etc. were to be granted age relaxation. The Notice for 1991 Examination, however, laid down only the nexus criteria under para 4(e) and did not expressly allow any particular category to be granted age relaxation. The learned counsel specifically denied that Annexure 'Y' - guidelines of the year 1991 relied upon by the applicant is the guidelines for the year 1991. In the Notice for the 1992 examination, there was a specific mention of the categories of Assistants and Grade-C Stenographers who were to be allowed age relaxation. He submits

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that the Notice of 1993 Examination, with which we are concerned, did not mention any specific category of persons and only laid down the principle of nexus contained in para 4(e). He has also clarified that the same position has been continued in subsequent years after 1993.

6. The responsibility for deciding the nexus question has been given to the Staff Selection Commission, Respondent No.2 by the Department of Personnel and Training O.M. No.15034/Estt.(D) dated 7.10.87.

7. Mr. E.X. Joseph, learned counsel has also drawn our attention to para 23 of the Advertisement/Notice which states that there is no bar to the Commission, i.e. Respondent No.2 to verify the eligibility of the applicants after they have been allowed to provisionally appear in the written examination. He relies on the judgement in District Collector and Chairman ETC.ETC. Vs. M. Tripuranandari Devi (1990) 14 ATC 766. He, therefore, submits that since the matter of deciding nexus has been left to the discretion of Respondent No.2 such a decision is liable to be struck down only if it is arbitrary, unreasonable or illegal which has not been established

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by the applicant in this case. He relies on the following cases (1) Director, Lift Irrigation Corporation Ltd. and others Vs. Pravat Kiran and others - 1991 (2) SCC 295 and (2) G.B. Mahajan and others Vs. Jalgaon Municipal Council and others - 1991 (3) SCC 91.

8. As regards the objections raised by the applicant with regard to S/Shri S. Pushpraj and J. Ramaswamy the respondents have filed an additional affidavit dated 26.5.95 verifying the position. In the case of Shri Pushpraj the respondents have admitted that their Regional office at Bombay had committed a mistake in selecting him, as he was admittedly a LDC, which came to the notice of the Commission at a very late stage when the candidate had already been appointed. Shri E.X. Joseph, learned counsel submits that the applicant cannot base his claim on the basis of an error committed in the case of Shri S. Pushpraj, who was a LDC and who was otherwise not eligible to be given age relaxation in respect of examination held in 1991. In respect of Shri Ramaswamy who appeared for the examination in 1992, he submits that since the Notice for the examination expressly allowed Assistants to be granted age relaxation and Shri Ramaswamy was

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an Assistant, there was no deviation from the Notice of Examination in his selection. He relies on Chandigarh Administration and another Vs. Jagjit Singh - (JT 1995 (1) SC 445). The learned counsel therefore, submits that since no specific guideline was issued in respect of the 1993 examination, the requirement of nexus as provided in para 4(e) of the Notice is the only provision, which has been strictly adhered to in this case by Respondent No.2, which is the competent authority. He, therefore, submits that since the applicant did not fulfil the requirement of nexus as laid down in this provision, his claim for age relaxation has been correctly rejected and he has, therefore, prayed that the O.A. may be dismissed.

9. We have carefully examined the application, the arguments of both the learned counsel and the relevant record.

10. In para 4 of the Notice of Examination for 1993, the age limits prescribed for the posts have been given. Under para 4(e) of the Notice the upper age limit is relaxable provided the candidate is working in posts which are in the same line or allied cadres and where a relationship could be established that the

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service rendered in the department will be useful for the efficient discharge of duties of posts for which the recruitment is being made by this examination. The applicant was working as UDC in the office of Respondent

No.2. From a perusal of the duties prescribed for the posts of Inspector of Central Excise /Incometax and UDCs, we find that the nature of duties and the responsibilities of two posts are not similar, nor can it be said that the posts are in the same line or in the allied cadre as laid down in para 4(a) of the Notice of Examination. Therefore, we find that the impugned decision of Respondent No.2 that the applicant cannot be treated as a departmental candidate in terms of para 4(a) of the Notice of Examination because he did not fulfil the condition of nexus cannot be held to be either arbitrary, unreasonable or illegal which justifies any interference in the matter.

11. The learned counsel for the applicant had submitted that in the examination held in 1991 another similarly situated person, namely Shri S. Pushpraj who was then working as LDC in the office of Respondent No.2 was allowed to appear in the interview/personality test and was declared successful. He has, therefore, argued that if Shri Pushpraj could have been selected then the rejection

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of the applicant's candidature for interview for the 1993 examination is discriminatory, arbitrary and illegal. We have no reason to doubt the averments made by the respondents in their additional reply that Shri Pushpraj had been selected due to a mistake committed by the office of the Regional Director, Bombay. The Notice for the 1991 examination admittedly laid down only the criteria of nexus and did not expressly allow any particular category including LDCs/UDCs to be granted age relaxation, which is also the position in the Notice of examination for 1993. The respondents have clarified that the work of examining individual cases of departmental candidates in respect of age relaxation, under the nexus principle had been decided wrongly by the Regional office but that indeed will not give an enforceable right to the applicant to have the mistake continued in this case also, solely on the ground of discrimination. This would lead to conferring of unintended benefit, which cannot be accepted, especially when the competent authority has in this case correctly examined the matter on the basis of Notice of Examination for 1993. In respect of Shri Ramaswamy, we are satisfied that in the Notice of Examination for 1992 for which he was a candidate, the categories of Assistants and Group 'C' Stenographers were specifically included as persons who were

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eligible to get the upper age relaxation. Therefore, the applicant's plea that he has been discriminated vis-a-vis S/Shri S. Pushpraj and J. Ramaswamy is without any basis and is accordingly rejected.

12. The applicant has relied upon Annexure 'Y' guidelines for 1991 examination in which he says that LDCs/UDCs were specified as categories of persons who are eligible for age relaxation under para 4(e). This guideline has been denied by the respondents as not applicable for the year 1991. We are of the view that even if this guideline is applicable for the year 1991 that by itself does not assist the applicant because the relevant Notice of Examination with which we are concerned is that of 1993. The 1993 Notice does not include any specific categories for the age relaxation.

13. This brings us to the last argument advanced by Shri S.K. Gupta, learned counsel for the applicant that there has been no conscious decision by the respondents to delete the category of LDCs and UDCs from receiving benefit of age relaxation as departmental candidates. In the Notice of Examination for 1993 all Group 'C' non technical employees with 3 years continuous and regular service in any Central Government office or Union Territory as on 9.8.93 fulfilling the nexus, as provided in para 4(e) were

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eligible to be considered as departmental employees for grant of age relaxation. The specific categories of LDCs/UDCs etc.

were not mentioned in the Notice of Examination of 1993.

In our view this is a policy decision and it is settled law that the same is not open to judicial review unless it is malafide, arbitrary or without discernible principle (see

Director, Lift Irrigation Corporation Ltd. and others V.

Pravat Kiran Mohanty and others L (1991) 2 SCC 295 at

page 298 J, G.B. Mahajan and others V. Jalgaon Municipal

Council and others L (1991) 3 SCC 91 J and Tata Cellular

V. UOI L (1994) 6 SCC 651 J. In the case of Indian Railway

Service of Mechanical Engineers Association and others V.

Indian Railway Traffic Service Association and another

L JT 1993(3) SC 474 J, the Supreme Court has stated that

"this court had constantly taken the view that the Court

hardly interferes with policy matters of the Government. In

this case the court quoted the judgement in Asif Hameed

V. State of Jammu and Kashmir (AIR 1989 SC 1899 at

page 1906) where it was held -

"When a State action is challenged, the function of the Court is to examine the action in accordance with law and to determine whether the legislature or the executive has acted within the powers and functions assigned under the constitution and if not, the court must strike down the action. While doing so the court must remain within its self-imposed limits. The court sits in judgement on the action

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of a coordinate branch of the Government. While exercising power of judicial review of administrative action, the court is not an appellate authority. The constitution does not permit the court to direct or advise the executive in matters of policy or to sermonize qua any matter which under the constitution lies within the sphere of legislature or executive, provided these authorities do not transgress their constitutional limits or statutory powers."

In the present case we do not see that the impugned decision/action taken by the respondents to delete the categories of LDCs/UDCs in the 1993 Notice of Examination to be either arbitrary, illegal or irrational or a decision which can be termed ^{as} unreasonable that calls for any interference in the matter. As already mentioned above, para 4(e) of the Notice permits relaxation of age for departmental candidates who are in the same line or allied cadres and who will be useful for the efficient discharge of duties for posts which are under consideration. The validity of this paragraph has already been dealt with and upheld in Jitendra Singh Vs. Staff Selection Commission and others, O.A.No. 456/95, Biswanatha Baidya Vs. UOI & ors. -(O.A.No.780/93) and G. Kannan Vs. UOI & others (O.A.No.1219/93) which was also not seriously contested by Shri S.K. Gupta, learned counsel for the applicant in this case.

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14. In the result, we do not find any merit in this application. The application, therefore, fails and is dismissed. No order as to costs.

Lakshmi Swaminathan

(SMT. LAKSHMI SWAMINATHAN)
MEMBER(J)

S.R. Adige
(S.R. ADIGE)
MEMBER(A)

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