



**Central Administrative Tribunal
Principal Bench, New Delhi.**

**OA No.1310/2020
MA No.1641/2020**

**Reserved on: 02.12.2020
Pronounced on: 18.12.2020**

**Hon'ble Justice Mr. L. Narasimha Reddy, Chairman
Hon'ble Mr. A.K. Bishnoi, Member (A)**

Prashant Kumar (Aged about 40 years)
S/o Sh. Pramod Kumar,
R/o Tower G-7 Flat No. 1706,
Nirala Green Shrine,
Greater Noida UP-203207

...Applicant

(By Advocate: Shri S. N. Sharma)

Versus

1. Govt. of NCT of Delhi
Through its Chief Secretary,
Delhi Secretariat, IP Estate,
Delhi-110002,
Near Indira Gandhi Indoor Stadium
2. The Chairman,
Delhi Subordinate Service Selection Board,
FC-18, Institutional Area, Surya Niketan
Road, Delhi-110092
3. The Managing Director
D.T.C., Estate, New Delhi.

....Respondents

(By Advocate: Ms. Esha Mazumdar for R-1& R-2
and Shri Ajesh Luthra, for R-3)

ORDER

Hon'ble Mr. A.K. Bishnoi, Member (A):

The facts of the case in the present OA are as follows:

The applicant was appointed as Manager (Traffic) on 12.10.2011 in Delhi Transport Corporation (DTC) on a contractual basis. On 20.10.2015, an advertisement was



issued by the Delhi Subordinate Service Selection Board (DSSSB) inviting applications against certain posts in DTC. The applicant made an application for appointment to the post of Manager (Traffic) with the Post Code 25/15 in the unreserved category.

2. He appeared for the examinations whose results were announced on 13.03.2019. However, through an order dated 14.03.2019 the candidature of the applicant was rejected on the ground of being overage. He, thereafter, made some representations to the respondent-organizations and also filed an OA No. 147/2020 before this Tribunal which was disposed of on 16.01.2020 with a direction to decide on the representation dated 18.03.2019 made by the applicant.

3. DSSSB through an order dated 17.08.2020, rejected the candidature of the applicant after considering his representation and citing reasons for the same.

4. Aggrieved by the said rejection, the applicant has sought the following reliefs:-

“a) Quash the impugned order dated 17/08/2020 and also rejection notice dated 14/03/2019.

b) Direct the respondents to grant the age relaxation in accordance with the rule/policy/order dated 19/10/2015 and appoint applicant on the post.

c) Pass any other order as the court may deem fit and proper in the light of fact and circumstances of the case of favour of the applicant.”



5. It has been contended by the applicant that for the said post provision exists for relaxation of age for departmental candidates. It has also been contended that he has been working on the post which carries the same responsibility as the post advertised for. Further, it is not for DSSSB to decide whether age relaxation should be provided or not but the user department, the DTC. The DTC has specifically issued a Certificate dated 28.02.2020 stating that age relaxation may be provided to the applicant. Reference has also been made to Circular dated 19.10.2015 and the OMs dated 11.06.2019 and 10.07.2019.

6. Respondent No.2 in the counter affidavit has submitted that the eligibility has to be determined in terms of RRs supplied by the user department. In the present case the user department did not refer to any provision of the RRs through which the applicant became entitled for age relaxation. With reference to the OMs dated 11.06.2019 and 10.07.2019, it has been submitted that they were issued after the date of declaration of result and could have only prospective effect. By the time these OMs were issued, recruitment process was already closed.

7. Respondent No.3 in the counter reply has basically stated that it is for DSSSB to take a decision in view of the existing rules and that the representations made by the applicant were duly sent to DSSSB for consideration.



8. We heard Shri S.N. Sharma, learned counsel for the applicant, Ms. Esha Majumdar, learned counsel for R-1 and R-2 and Shri Ajesh Luthra, learned counsel for R-3.

9. While advancing arguments in support of the contention of the applicant, learned counsel Shri S.N. Sharma further elaborated on the contentions made in the application. It was submitted that with reference to the circulars mentioned above, the contractual employees were also entitled to the same benefit of age relaxation as were regular employees. In view of the same, it has been forcefully contended that the applicant should not have been denied the benefit of the age relaxation and his candidature should not have been cancelled.

10. Shri Ajesh Luthra, learned counsel appearing on behalf of DTC, Respondent No.3 contended that the communication dated 28.02.2020 through which it has been stated that the applicant was entitled to age relaxation was issued in view of the existing circulars and OMs in this regard. He also submitted that the requisition was sent as per Department of Personnel and Training guidelines and it was for DSSSB to consider the import of the same for the purposes of age relaxation.

11. Ms. Esha Majumdar, learned counsel appearing on behalf of R-2, i.e., DSSSB strongly contended that the DSSSB conducted the examinations as per the RRs sent along with the requisition by the user department. In the



present case, the RRs as supplied by the user department nowhere indicated that the benefit of age relaxation would also be available to the contractual employees. She also contended that the OM's referred to viz. 11.06.2019 and 10.07.2019 were issued after the results were declared and the selection process was already closed. As such, there is no case for the applicant to be given the benefit of age relaxation.

12. We have carefully gone through the pleadings on record as also the arguments advanced by the learned counsels for the applicant and the respondents.

13. For the purpose of clarity, the relevant portions of the impugned order are extracted as below:-

“4. Whereas, the candidate, Sh. Prashant Kumar (Roll No. 13700222) under UR category was 36 years 08 months 25 days as on the closing date of receipt of applications i.e. on 26.11.2015 being his date of birth as 01.03.1979, he was overage by 01 year 08 months 25 days. The candidate, Sh. Prashant Kumar, however, applied under UR, DGS category and claimed relaxation in age as Departmental candidate as he has working in DTC on Contract basis. The user department i.e. DTC vide letter dated 28/02/2020 has issued age relaxation certificate wherein it has been mentioned that Sh. Prashant Kumar Roll No. 13700222 is working as Manager (Mechanical/Traffic) on contract basis in this corporation w.e.f. 12.10.2011 to till date and he is accordingly allowed for extending the age relaxation for the post of Manager (Traffic), post Code-25/15 in DTC w.e.f. 12.10.2011 to 26.11.2015 (04 years 04 days) as against actual requirement 01 year 08 months 25 days i.e. cutoff date fixed for receipt applications by DSSSB in accordance to O.M. dated 11.06.2019 as well as circular dated 10.7.2019 issued by Special Secretary (Services), GNCTD in this regard being a departmental candidate.



5. The Circular dated 10/07/2019 states in para 3 (1) that “The clause of relaxation in upper age limit to the contractual employees in accordance with OM dated 11.06.2019 be invariably indicated while sending requisitions for direct recruitment quota vacancies”.

6. Whereas, the user department has not provided any provision in the recruitment rules for age relaxation to the Contractual employee, the recruitment to the post of Manager (Traffic) has been done as per provisions given in the recruitment rules for educational qualification/experience/age limit etc. The referred O.M. dated 11.06.2019 and circular dated 10.07.2019 is issued after declaration of result for the post code-25/15. The said office memorandum dated 11.06.2019 and 10.07.2019 are applicable prospectively for the vacancies to be advertised after that date. It cannot be made applicable retrospectively for the vacancies notified in 2015.

7. Further, the recruitment process for the post code-25/15 had already been closed before issuance of the O.M. dated 11.06.2019 & Circular dated 10.07.2019. The result of the above post code was declared on 13.03.2019. The statutory provisions in the RRs cannot be overruled by simple ex-post facto administrative orders and hence, the rejection made by the DSSSB is justified & correct. The user department i.e. Delhi Transport Corporation had already been informed that recruitment process for the post of Manager (Traffic) Post Code-25/15 has been closed vide closure report dated 19.03.2019.

8. Therefore, after considering the representations dated 18.03.2019 & 08.11.2019 in compliance of the directions passed by the Hon’ble CAT in O.A. No. 147/2020 dated 16.01.2020, the rejection of candidature of Sh. Prashant Kumar (Roll No. 13700222) was found in order and correct. Hence, the aforementioned representations submitted by the candidate stand disposed of accordingly.

9. This issues with the approval of Competent Authority and in compliance of the directions of Hon’ble CAT in O.A. No.147/2020”.

14. In the present case, DTC is the user department.

DSSSB is an examining body which carries out the process of selection on the basis of terms and conditions and RRs



as supplied to them by the user department. We find nothing on record to show that the user department in the present case had sent any communication to DSSSB to the effect that the benefit of age relaxation has to be provided to contractual employees also on the same terms as regular employees. Even in the submissions made by the DTC through their counter reply, as also in the submissions made by the learned counsel, it has nowhere been found that DTC at any point of time conveyed to DSSSB that age relaxation has to be provided to contractual employees also.

15. During the course of the submissions, policy guidelines dated 19.10.2015 have been referred to. The advertisement for the post was issued on 20.10.2015 but if the said policy guidelines of 19.10.2015 had any bearing on the advertisement issued on 20.10.2015, it was the responsibility of the user department, DTC in this case, to send a fresh requisition which could have led to the issuance of a fresh advertisement. There is nothing on record to show that such an action was undertaken. As regards the other OMs referred to, namely those dated 11.06.2019 and 10.07.2019, as they were issued much after the selection process was over, they obviously would not have any bearing on any decision by the DSSSB.

16. The matter relating to the certificate dated 28.02.2020 through which DTChas communicated to



DSSSB that the applicant deserves to be provided age relaxation also came up during the course of the arguments. To say the least, we find it strange that DTC chose to issue a certificate specifically for one person. If it was the intention of the DTC to convey to DSSSB that contractual employees were entitled and eligible for age relaxation on the same footing as regular employees, the same could have been conveyed through a general principle instead of confining it to just one candidate. Further, once the recruitment process has started it is generally impermissible to change the rules of the game except in the most exceptional circumstances.

17. Such a stand cannot be taken in respect of a particular individual only. If the benefit of age relaxation is to accrue to contractual employees, the same is needed to be applied across the board so that all contractual employees could be equally benefitted. Without making further comments on the issue, we are firmly of the opinion that such a communication could not have been taken into consideration for granting any benefit to the applicant and DSSSB was correct in ignoring the same.

18. In view of the discussion above, we find no merit in the present OA and hold that no benefit can be given to the applicant alone of the nature prayed for. It is, however, open to DTC, within the limits permissible by law, to start the recruitment process afresh by clearly enunciating



provisions under which the recruitment has to be carried out so that equal opportunity is provided to all candidates similarly placed. On the other hand, they may choose to accept the outcome of the recruitment which has already taken place. Needless to say, any decision will have to be made within the parameters of law.

19. The OA is accordingly disposed of.

Pending MA, if any, shall also stand disposed of.

No order as to costs.

(A.K. Bishnoi)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

cc.