

CENTRAL ADMINISTRATIVE TRIBUNAL
JAMMU BENCH, JAMMU

Hearing through video conferencing

O.A. No. 61/998/2020

Order reserved on interim relief on 17.02.2021

Order pronounced on 22.02.2021



HON'BLE MR. RAKESH SAGAR JAIN, MEMBER (J)

HON'BLE MR. ANAND MATHUR, MEMBER (A)

Mohd Raja Khan (aged 48 years), S/o Late A.H. Khan, R/o Toiba Colony,
Humham, District Budgam-Kashmir-190021.

.....Applicant

(Advocate: Mr. Altaf Haqani, Sr. Advocate assisted by Mr. Shakir Haqani)

Versus

1. Prasar Bharati (Indias Public Service Broadcaster), Directorate General, All India Radio, Prasar Bharati, Akashwani Bhawan, Parliament Street, New Delhi-110001.
2. Deputy Director General (Administration), Prasar Bharati Directorate General, All India Radio, Akashwani Bhawan, Parliament Street New Delhi-110001.
3. Director, Doordarshan Kendra, Srinagar-190001.

.....Respondents

(Advocate: Mr. S.N. Ratanpuri and Mr. Sudesh Magotra, Deputy Advocate General)

(ORDER)

Delivered by Hon'ble Mr. Rakesh Sagar Jain, Member-J

1. Brief facts of the O.A. filed by applicant Mohd Raja Khan are that due to his vast experience of Floor Management, the respondents regularised his appointment in 1994 to the post of Floor Manager in the respondent-organisation (Prasar Bharti) by relaxing the educational qualification of Diploma in Stage Craft required from a recognised institution for the post of Floor Manager as prescribed by Recruitment Rules of 1979 for Staff Artists of Doordarshan, since he did not possess such a diploma.
2. Applicant is aggrieved of impugned memorandum No. 04/02/2020-S (B) dated 08.10.2020 whereby draft eligibility list of officials including Floor Manager has

been notified for promotion to the post of Programme Executive on 01.04.2013 and the same does not include his name. It is the case of applicant that vide order dated 29.11.2013, applicant was given insitu placement as Programme Executive which is a testimony to the fact the applicant was fully eligible for regular promotion to the post of Programme Executive (PEX). Applicant has been informed verbally regarding his exclusion from the draft list since he does not possess Bachelor's degree or equivalent diploma from a recognised University as required under the Rules. It is the case of applicant that some of his colleagues lesser qualified than the applicant have been included in draft promotion list.



3. It is the case of applicant that despite having an unblemished record of service and working in Srinagar during the peak armed turmoil when several official were killed by armed militants, applicant risking his life and that of his family worked in the Srinagar Kendra which was appreciated by the respondents. The applicant being given the relaxation in his educational qualification at the time of his initial appointment, applicant is entitled to relaxation on the same touchstone for promotion to the post of Programme Executive. The respondents have overlooked the material aspect of relaxation given to his education qualification at the time of his initial appointment and have illegally and arbitrarily excluded the applicant from the eligibility list and thereby perpetuated his state of stagnancy in service thereby violating his fundamental rights under Article 14 and 16 of the Constitution of India.
4. Hence the present O.A. seeking the following reliefs:
 - i) Call for the records of the preparation of eligibility list.
 - ii) Declare the applicant as entitled to be included in the eligibility list for purposes of his promotion to the post of Programme Executive (PEX), by virtue of having been granted relaxation on account of diploma at the time of his initial appointment in the post of Floor Manager made in the year 1994-95 and declare the action of the non-applicants regarding exclusion of the applicant from the zone of eligibility list for promotion as illegal with a further direction to the non-applicants to consider and promote the applicant to the



- post of Programme Executive as on 1-4-2013 and grant him all the benefits of pay and grade and allowances as also seniority and further promotions as would be admissible under rules.
- iii) Pass any other order or direction which the Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case may also be passed in favour of the applicant and against the non-applicants.”
5. In the objections filed by the respondents, it has been averred that, as per, the Recruitment Rules (Annexure A2 of OA), the educational qualification for promotion to the post of Programme Executive is a Bachelor's Degree or equivalent diploma from a recognised university. However, the applicant's qualification is Higher Secondary, as such, he does not hold the educational qualification for promotion to the post of Programme Executives and therefore his name rightly does not figure in the draft eligibility list.
6. It has been further averred in the objections that
- “Production Assistants, Floor Managers and Property Assistants appointed/regularized after February, 1985 by DG: Doordarshan were earlier not included in the feeder grade of Programme Executive. Several cases were filed by these categories in various Courts of law. An O.A. No. 2229/2009 and O.A. No. 242/2015 were filed by these categories in the Hon'ble CAT, PB, New Delhi for their inclusion as the feeder grade of Programme Executive for promotion.
- Hon'ble CAT, Principal Bench, New Delhi vide Order dated 24.08.2016 (Annexure R1) had disposed of O.A. No. 242/2015 and O.A. No. 2229/2009 with a direction to the Respondents:-
- ‘To issue fresh eligibility list after considering the candidates of all the feeder posts including the applicants who occupy the post of Production Assistants, Floor Managers and Property Assistants for conducting DPC for regular/ad-hoc promotion to the post of PEX.’

Ministry of I&B vide letter No. A-14012/1/2018-BAP dated 06.12.2019 (Annexure-R2) has conveyed its decision that Prasar Bharati may implement the Hon'ble CAT, Principal Bench's Order dated 24.08.2016 in O.A. No. 2229/2009 and O.A. No. 242/2015 subject to the final outcome of WP (C) No. 9553 of 2018 filed in the Hon'ble High Court of Delhi and OA No. 657 of 2005 in the Hon'ble CAT, Ernakulam.

Review DPC for promotion to the post of Programme Executive is to be conducted in compliance with the Hon'ble CAT, Principal Bench, New Delhi's order dated 24.08.2016 in OA No. 2229/2009 and OA No. 242/2015 as concurred by the Ministry of Information and Broadcasting.

Draft Eligibility list has been prepared in respect of Erstwhile Staff Artists and Production Assistants/Floor Managers/Property Assistants by DG:AIR on the basis of the Final separate seniority issued by DG: Doordarshan vide O.M. No. 06/01/2020-S.I. dated 18.08.2020 (Annexure A-8 of OA) and DG: DDN communication No. 06/01/2020-S.I dated 17.09.2020 and circulated vide OM dated 08.10.2020 (Annexure-I of OA)."

"So far as applicant's allegation that he was promoted to the post of PEX (In-Situ) vide order dated 29.11.2013 (Annexure A-9 of OA) but his name is not now placed in the draft eligibility list for promotion to the post of PEX circulated by DG:AIR vide OM dated 08.10.2020 (Annexure A-1 of OA), it is stated that in pursuant to Prasar Bharati Board's decision in its 115th Board Meeting, officials completed 12 years of regular service were recommended as PEX (In-Situ) and orders in this regard were issued by this Directorate (Annexure A-9 of OA). As applicant had completed 12 years of regular service, his name was in the order issued on 29.11.2013 (Annexure A-9 of OA).

But at the time of regular promotion i.e. Programme Executive from its feeder grades. They have to fulfil all the conditions i.e., completed 08



years of regular service in the feeder grade, Educational Qualifications etc prescribed in the Recruitment Rules (Annexure A-2 of OA).

So far as applicant's allegations that his colleagues namely Lokendra Singh and Deboranjan Bora have been included in the draft eligibility list when they were less qualified, it is stated that being Doordarshan Personnel's qualification position in r/o these two officials for removal of their names from the final eligibility list was shared with DG:DDN and the requisite information has been received from DG:DDN. Final eligibility list is yet to be approved by the competent authority but at the time of processing the list it has been noted that their names will be deleted from the final list. Applicant is not the only single person whose name is not in the eligibility list. There are many officials who have not fulfilled the educational qualification for the post of Programme Executive (Annexure A-2 of OA) and are also not in the eligibility list. That these objections are supported by an affidavit."



7. While reiterating the pleas taken by the applicant in the O.A., learned counsel for applicant submitted that the applicant was appointed as a Floor Manager for which the essential qualification was that the appointee should be (i) Matriculation or equivalent (ii) Diploma from a recognised institute in Stage Craft. Despite the fact that the applicant was not holding a Diploma, looking to the experience and knowledge of the applicant, the rule of holding a Diploma was relaxed in favour of the applicant and he was appointed as a Floor Manager, though a formal order relaxing the educational qualification was not issued in terms of Rule 12 of Recruitment Rules 1979 for Staff Artists of Doordarshan.
8. It is argued by learned counsel for the applicant that the name of applicant has not been included in the draft list (Annexure – A1) for promotion to the posts of Programme Executive and submitted that the impugned memorandum to the extent it excludes the applicant is arbitrary in nature since the requirement of Diploma from a recognised institute was relaxed while making his appointment as

a Floor Manager. As the applicant earned the said relaxation at the time of his initial appointment, applicant was entitled to be granted the benefit of relaxation thereof on the touchstone of the same requirement prescribed by the Rules and therefore the respondents overlooked this aspect and perpetuated his state of stagnancy in service and that stagnancy in service has been deprecated by the Hon'ble Apex Court and therefore it was not open to the respondents to ignore the preferential claim of the applicant based on his record of service including the relaxation/exemption granted to the requirement of diploma at the time of his initial appointment in the year 1994-95 in consideration of his performance as a casual Floor Manager at DDK Srinagar for nearly three decades.



9. Learned counsel for applicant further argued that assuming though denying that the initial appointment of applicant on adhoc/regular basis as Floor Manager was not made by relaxation of the requirement of diploma, yet, having 27 years of experience as a Floor Manager directly associated with stage and production, he could not be excluded by denying him the benefit of such experience. The requirement of Bachelor's degree without taking into account his experience of nearly three decades is obviously ultra vires to mandate of Article 14 and 16 of the Constitution of India. It was argued by learned counsel for applicant that the draft list contains the names of number of officials who do not possess the required educational qualification and therefore the applicant is entitled to the interim relief sought by him.
10. On the other hand, learned counsel for respondent argued that a promotee must possess a Bachelor's degree or equivalent diploma from a recognised university and since the applicant does not possess the required educational requirement, he cannot be considered for promotion to the post of Programme Executive. It was also submitted by learned counsel for respondents that time and again, the Hon'ble Supreme Court held that under no circumstances a candidate can be exempted from holding the essential qualification. Accordingly, the Bachelor's degree or equivalent from a recognised University is a qualification which is

prescribed on account of the mandate contained under the Rules, and no appointments can be made in violation of the mandatory provisions of the Rules. It was also submitted by learned counsel for respondents that the applicant has not challenged the statutory rule which prescribes the educational qualification required to hold the post of Programme Executive.



11. It has been further argued by learned counsel for respondents that officials completing 12 years of regular service were recommended as PEX (Insitu) and since applicant had completed 12 years of regular service, his name was included in the order issued on 29.11.2013 (Annexure A9 of OA) and that in any case, as per, order dated 29.11.2013, the in-situ/personal upgradation was to be only as an administrative measure and does not bestow any claim for regular promotion to the post of Programme Executive. It has been submitted by learned counsel for respondents that the names of less qualified persons named by the applicant would be deleted at the time of processing the list and there are a number of officials who have not fulfilled the educational qualification for the post of Programme Executive and do not figure in the draft eligibility list and therefore, applicant is not entitled to any interim relief.
12. We have heard and considered the arguments of the learned counsels for the parties and gone through the material on record.
13. By way of notification dated 31.12.1993, All India Radio (Group 'B' Posts) Recruitment Rules, 1962 were amended whereby 'Floor Manager' was included in Column 12 of All India Radio (Group 'B' Posts) Recruitment (Amendment) Rules, 1992 (Annexure A2 to OA) (refer to as the 'Rules') for being eligible for promotion to the post of Programme Executive. The Rule of 1992 was promulgated in exercise of power conferred by the proviso to Article 309 of the Constitution prescribing that a promotee must possess a Bachelor's degree or equivalent diploma from a recognised University for promotion to the post of Programme Executive. The relevant Rule reads as under:-



Name of the Post	Whether age and educational qualifications prescribed for direct recruits apply in the case of promotees
<p>1. Programme Executive</p> <p>** This includes post designated as-</p> <p>1. Programme Executive</p> <p>2. Translator</p> <p>3. Editor (Scripts)</p> <p>4. Editor</p> <p>5. Producer</p> <p>6. Producer Grade-II</p> <p>7. Reference Officer</p>	<p>Age:No</p> <p>Education Qualifications: No but must possess a bachelor's degree of equivalent diploma from a recognised University.</p> <p>Note: The above educational qualifications will not apply to persons in the feeder grade holding the post as such on a regular basis on or before 8th May, 1991 provided they are at least matriculate or equivalent.</p>

14. The contention of the applicant that there are officials figuring in the draft list who do not fulfil the educational criteria and are not qualified to be considered for promotion to the post of Programme Executive and therefore the exclusion of the applicant from the draft list is discriminatory and so, applicant is entitled to be included in the draft list. Regarding the unqualified officials, it has been argued by learned counsel for respondents that the said unqualified officials would be deleted from the final list. Looking to the statement of the learned counsel for respondents that unqualified persons would be deleted from the draft promotion list, this contention of applicant loses its force and cannot be accepted.
15. In so far as contention regarding the inclusion of unqualified officials in the draft list, even if the contention of the application is accepted, it is a settled law that wrong decision taken does not give a right to enforce the wrong decision and claim parity or equality. In other words, two wrongs never make right. J&K Institute of Management Public Administration and Rural Development v/s Renu Bala, (2013)12 SCC 600, wherein the Hon'ble Apex Court held that:

“In our opinion, it was not the function of the High Court to give any direction so as to virtually amend the Recruitment Rules. In our opinion, the learned single Judge was right when he came to the conclusion that undue favour was done to respondent No. 8 (Shri Ashok Kumar Koul) and therefore, he had quashed and set aside his selection by allowing the petition.

In our opinion, while deciding the appeal, the Division Bench of the High Court has exceeded its jurisdiction by directing the appellant to amend the Recruitment Rules and therefore, we quash and set aside the impugned judgment dated 10th March 2010.”



16. So, the plea of discrimination cannot be invoked and pressed in service to perpetuate illegality. It is a settled law that if one illegal action is taken, a person whose case is similar, cannot invoke Article 14 or 16 of constitution and demand similar relief illegally. In any case, respondents would ensure that the final list does not contain the name of officials who do not fulfil the eligibility criteria, as per, Rules. It be also noted that the Rules having statutory force cannot be bypassed or overridden by this Tribunal. It is a settled law that a court of law cannot exercise its discretionary jurisdiction de hors the statutory law. Its discretion must be exercised in terms of the existing statute.
17. Learned counsel for applicant submits that the qualification cannot be insisted, particularly since the requirement of Diploma from a recognised institute was relaxed while making his appointment as a Floor Manager and the applicant having earned the said relaxation at the time of his initial appointment is entitled to be granted the benefit thereof on the touchstone of the same requirement prescribed by the Rules.
18. It is fairly well settled that once an employer prescribes a set of qualifications for selection and appointment to a particular post, the question of permitting any candidate, who admittedly does not possess the essential qualification, to apply, does not arise. Public interest is of paramount consideration than the sympathy or stagnation towards those who could not possess the qualification. In any case,

applicant did get the insitu benefit and it is also a fact that employees of Doordarshan are entitled to MACP which is meant to cover and overcome the case of stagnation in the organization. Once it is a requirement under the Act/Rules, the individual hardships hardly matter. Another aspect is that in case the condition is relaxed in favour of the applicant, it would lead to an anomaly that the candidates who are otherwise qualified, would face competition from unqualified candidates.



19. Another factor to be taken care of is the difference in the nature of post of Floor Manager and Programme Manager. The post of Programme Manager carries a higher responsibility and therefore, there is a difference in the requirement of educational qualification for both the posts. The post of Floor Manager requires an educational qualification of Diploma from a recognised institution in stage craft whereas the post of Programme Executive requires a Bachelor's degree or equivalent diploma from a recognised University. There is a world of difference between the responsibilities and educational qualifications required for holding the two posts and in any case, it is within the exclusive domain of the respondents to relax any provision of the Recruitment Rules 1979 for Staff Artists in Doordarshan and not within the powers of this Tribunal.
20. In the present case, we find that the qualification has been prescribed in furtherance of Article 309 of the Constitution of India, which gives the power exclusively to the State to prescribe qualifications for posts to the exclusion of the Tribunal as held by the Hon'ble Supreme Court in the case of P.U.Joshi vs. Accountant General, (2003)2 SCC 632, the relevant portion of the same reads as under:

“10. We have carefully considered the submissions made on behalf of both parties. Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of Policy and within the exclusive discretion and jurisdiction of the

State, subject, of course, to the limitations or restrictions envisaged in the Constitution of India and it is not for the Statutory Tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State. Similarly, it is well open and within the competency of the State to change the rules relating to a service and alter or amend and vary by addition/subtraction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate. Likewise, the State by appropriate rules is entitled to amalgamate departments or bifurcate departments into more and constitute different categories of posts or cadres by undertaking further classification, bifurcation or amalgamation as well as reconstitute and restructure the pattern and cadres/categories of service, as may be required from time to time by abolishing existing cadres/posts and creating new cadres/posts. There is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a Government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service.”



21. It be also noted that for any selection, it is the eligibility rules that are required to be honoured and to be prescribed by the State and not by the judicial forum. In this regard, reference may be made to *Zahoor Ahmad Rather v/s Sheikh Imtiyaz Ahmad*, (2019) 1 SCC (L&S) 353 wherein the Hon'ble Apex Court held that:

“The prescription of qualifications for a post is a matter of recruitment policy. The state as the employer is entitled to prescribe the qualifications as a condition of eligibility. It is no part of the role or function of judicial review to expand upon the ambit of the prescribed qualifications. Similarly, equivalence of a qualification is not a matter which can be determined in exercise of the power of judicial review. Whether a particular qualification should or should not be regarded as equivalent is a matter for the state, as the recruiting authority, to determine. The decision in *Jyoti KK* turned on a specific statutory rule under which the holding of a higher qualification could presuppose the acquisition of a lower qualification. The absence of such a rule in the present case makes a crucial difference to the ultimate outcome. In this view of the matter, the Division Bench of the High Court

was justified in reversing the judgment of the learned Single Judge and in coming to the conclusion that the appellants did not meet the prescribed qualifications. We find no error in the decision of the Division Bench.

23. While prescribing the qualifications for a post, the State, as employer, may legitimately bear in mind several features including the nature of the job, the aptitudes requisite for the efficient discharge of duties, the functionality of a qualification and the content of the course of studies which leads up to the acquisition of a qualification. The state is entrusted with the authority to assess the needs of its public services. Exigencies of administration, it is trite law, fall within the domain of administrative decision making. The state as a public employer may well take into account social perspectives that require the creation of job opportunities across the societal structure. All these are essentially matters of policy. Judicial review must tread warily.”



22. We may also refer to *Shamsu Suhara Beevi v. G. Alex*, 2004 8 SCC 569 wherein the Hon'ble Apex Court observed that “11. ... Grant of such a relief in the teeth of express provisions of the statute to the contrary is not permissible. On equitable considerations court cannot ignore or overlook the provisions of the statute. Equity must yield to law.”
23. It was further argued by learned counsel for respondents that in absence of challenge to the of notification dated 31.12.1993, All India Radio (Group 'B' Posts) Recruitment Rules, 1962 amended whereby 'Floor Manager' was included in Column 12 of All India Radio (Group 'B' Posts) Recruitment (Amendment) Rules, 1992 (Annexure A2 to OA), applicant is not entitled to any relief.
24. In regard to contention of respondents regarding challenge to the Rule, reference may be made to *State of J&K v/s Ajay Dogra*, AIR 2011 SC 1830, it was held by the Hon'ble Apex Court that:

“11. The aforesaid decision rendered by the High Court is contrary to and inconsistent with the law laid down by this Court in *V.K Majotra vs Union of India* 2003 8 SCC 40. In the said decision also what was urged before this Court was neither raised in the pleadings nor was it urged before the High

Court by any of the parties to the writ petition. In the said case, the issue was as to whether a person not having judicial experience could be appointed as Vice-Chairman of the Central Administrative Tribunal. This Court found that the aforesaid issue was not raised in the writ petition and similarly, vires of the section was also not challenged. This Court in the aforesaid context, held as follows: (SCC p. 45, para 8)

“8. ... It is also correct that vires of **Sections 6(2)(b), (bb)** and (c) of the Act were not challenged in the writ petition. The effect of the direction issued by the High Court that henceforth the appointment to the post of Vice-Chairman be made only from amongst the sitting or retired High Court Judge or an advocate qualified to be appointed as a Judge of the High Court would be that **Sections 6(2)(b), (bb)** and (c) of the Act providing for recruitment to the post of Vice-Chairman from amongst the administrative services have been put to naught/obliterated from the statute book without striking them down as no appointment from amongst the categories mentioned in clauses (b), (bb) and (c) could now be made. So long as **Sections 6(2)(b), (bb)** and (c) remain on the statute book such a direction could not be issued by the High Court.”

13. Similarly, in *Secy. to the Govt. vs. M. Senthil Kumar* 2005 3 SCC 451, this Court in the context of there being no challenge to the constitutional validity of the policy providing 10% special quota to the children/wards of serving/retired/deceased personnel of police and like forces held that since there was no challenge to the policy decision contained in the two government orders, it was not proper for the High Court to uphold the challenge to the policy decision and to hold that the policy decision was unconstitutional and that also overlooking the fact that the applicants were seeking relief under the policy decision.

14. In *State of Maharashtra vs. Jalgaon Municipal Council* 2003 9 SCC 731 this Court has observed that in absence of any challenge, the constitutional validity of the amendment cannot be gone into.

15. We may also appropriately refer to the decision of this Court in *Sanjay Kumar vs. Narinder Verma* 2006 6 SCC 467 wherein also it was contended before this Court that in absence of any challenge to the relevant rules, it was impermissible for the High Court to depart from such recruitment rules. It was also submitted that it is not open to the High Court to ignore the recruitment rules and to introduce a criterion which is not even contemplated by the applicable rules. This Court while upholding the



aforesaid contentions held in para 16 thus: (Sanjay Kumar case, SCC pp. 473-74)

“16. Having heard the learned counsel on both sides for the different contending parties, we are of the view that the impugned judgment of the High Court needs to be interfered with. As already observed, there was no challenge to the Rules in the writ petition. The learned Single Judge was, therefore, justified in applying the Rules and upholding the selection process made by the State authorities. It was wholly unjustified on the part of the Division Bench to have interfered with the selection process on the basis of the criteria which were not laid down in the Rules and that too on an erroneous appreciation of the Rules. The High Court failed to see that the Rules made no distinction, whatsoever, between degree-holders and diploma-holders at the stage of recruitment for the purpose of minimum qualifications. In other words, no distinction was made between the two categories at the stage of recruitment, but a greater weightage was given to the degree-holders in the post-recruitment period in the form of a higher starting pay and also lesser number of years of service requirement for qualifying for promotion to the higher post. We agree with the contention expressed by the learned counsel for the appellants that there was sufficient inbuilt balance maintained between the two categories of candidates and the impugned judgment of the High Court completely throws the Rules out of balance. What the executive did not think fit to do by prescription in the Rules, could not have been done by a judicial fiat.”

16. The qualifications to be possessed by the applicants have been prescribed in the Rules and also in the advertisement for the reason that some of them are required to be posted at high altitude and therefore they are required to have proper physique so as to be able to be posted to those places.

17. In our considered opinion, the ratio of the aforesaid decisions of this Court is squarely applicable to the facts of the present case. There was no challenge to the constitutional validity of **Rule 176 of the Police Rules** so far as it relates to prescribing physical conditions regarding the height and the chest. The stipulations in the advertisement regarding standard of physical conditions was also not challenged in the writ petition. The High Court was not justified in going into the validity of the aforesaid criterion in absence of any such challenge. The High Court also has not specifically declared the Rule prescribing minimum height standard and chest standard ultra vires and, therefore, so long as that Rule exists in the statute book, no such direction as issued by the High Court could be issued. Consequently,



the directions issued by the High Court in the present case are required to be set aside.”



25. The contention of respondents has force and to be accepted. In the present case, it has not been challenged that the qualification prescribed in the Rule is illegal or invalid. The constitutional validity of the aforesaid Rule has not been challenged in the present petition. Without the Rule being declared null and void, this Tribunal cannot go beyond the scope of the Rule to give the relief sought by the applicant. The High Court, however, without there being any pleading in that regard went beyond the pleadings and held that such physical conditions laid down are bad and arbitrary as what has been prescribed have no nexus with the object sought to be achieved.

26. Learned counsel for the respondents also placed on record the judgement of Hon'ble High Court of Madras dated 14.02.2019 in WP No. 7267 of 2018 titled M.Sundararaj vs. The Principal Secretary, wherein their Lordships observed that:-

“17. In view of the above legal principles, relaxation can never be claimed as a matter of right so also the competent authority/Government cannot grant relaxation in a routine manner. By granting relaxation, the competent authorities are creating inequality and causing discrimination amongst the employees. When the power of relaxation is granted based on the whims and fancies of the competent authorities, the same causes frustration in the minds of the employees who all are similarly placed. Thus, the power of relaxation is to be used sparingly and only when there is a gross injustice and when no eligible candidates are available for promotion to the higher post. The eligible candidates alone are to be granted and in this regard. This Court is of an undoubted opinion that following of the rules are mandatory and grant of relaxation is only an exception.”

27. In view of the arguments raised by both parties as well as the facts of the case and the settled law, we are of the opinion that there is no merit in the case of the applicant. Accordingly, the O.A. is dismissed. No costs.

(ANAND MATHUR)
MEMBER (A)

(RAKESH SAGAR JAIN)
MEMBER (J)

Arun/-