

Central Administrative Tribunal
Principal Bench, New Delhi.

O.A. No. 2539/90

New Delhi, this the 19th January, 1995.

HON'BLE SHRI J.P.SHARMA, MEMBER (J)
HON'BLE SHRI B.K. SINGH, MEMBER (A)

Shri Balbir Singh Katt,
S/o Shri Amrik Singh Katt,
R/o Banaras Hindu University,
Varanasi (U.P.).

Applicant

(By Shri G.D.Gupta, Advocate)

Versus

1. Delhi Administration through its Chief Secretary,
5, Sham Nath Marg,
Delhi - 110 054.
2. The Director of Technical Education,
Delhi Administration,
New Delhi.

3. The Principal,
Delhi College of Arts,
Directorate of Technical Education,
Delhi Administration,
Delhi.

4. Union Public Service Commission through its Chairman,
Dholpur House,
Sahajahan Road,
New Delhi - 110 011.

Respondents.

(By none).

JUDGEMENT

HON'BLE SHRI J.P. SHARMA, MEMBER (J)

At the relevant point of time the applicant was employed as Reader and Head of Sculpture at Banaras Hindu University, Varanasi. U.P.S.C. issued an advertisement for one post of Professor of Sculpture

(1)

in the Delhi College of Arts, Directorate of Technical Education, Delhi Administration, the applicant applied for the said post in pursuance of the aforesaid advertisement published in April, 1990. The applicant was not issued any interview letter which was held on 5th December, 1990. The applicant, therefore, filed this Application on 4th December, 1990 when the Bench granted an interim direction that U.P.S.C. will provisionally interview the applicant for the post of Professor in Sculpture in Delhi College of Arts, Directorate of Technical Education, Delhi Administration to be held on 5.12.1990. Any selection/appointment made by the U.P.S.C. including that of the applicant will be subject to outcome of the present application.

2. The applicant prayed for the grant of the reliefs that the applicant is entitled for grant of relaxation in the matter of age in the same way as is being granted to Government employees and as such the applicant is entitled to be called for interview for the post of Professor in Sculpture in Delhi College of Arts, Directorate of Technical Education. He has also sought a direction to treat the employees of the autonomous bodies like Banaras Hindu University at par with the Government employees and accordingly grant relaxation in age to the applicant.

3. A notice was issued to the respondents who contested the Application and opposed the grant of the reliefs prayed for stating that the applicant does not satisfy the maximum age retirement which is 50 years as on 3rd May, 1990 and the applicant/admittedly above 50 years on that date.

The Banaras Hindu University where the applicant is working is an autonomous body constituted under the Banaras Hindu University Act, 1915 and as such he cannot be considered as a Govt. servant and any relaxation in age cannot be allowed to the applicant as available to Govt. servant. The application, therefore, has no merit. The applicant has also filed the rejoinder reiterating the same facts as alleged in the Original Application.

4. We heard the learned counsel of both the parties at length and perused the record. The recruitment rules for the post of Professor lays down that the age limit for direct recruits would be not exceeding 50 years. This age is relaxable for Govt. servant upto 5 years in accordance with the instructions or orders issued by the Central Govt. The educational qualifications are as follows :-

"Essential: (i) High Second class MFA degree in the relevant subject from a recognised university/institution.

(ii) At least 10 years' professional and/or teaching experience at the University level in the subject concerned.

OR

(i) High Second class BFA degree or equivalent in the subject concerned from a recognised University/Institution.

(ii) At least 12 years' professional and teaching experience preferably of University level in the concerned subject.

Desirable: Doctorate degree in the concerned branch of Fine Arts.

Note: The subject in which BFA/MFA and professional and / or teaching experience is required will be indicated at the time of recruitment.

Note:1 : Qualifications are relaxable at the discretion of the UPSC in case of candidates otherwise well qualified.

Note:2: The qualification(s) regarding experience is/are relaxable at the discretion of the U.P.S.C. in the case of candidates belonging to Scheduled Castes and Scheduled Tribes if, at any stage of selection, the UPSC is of the opinion that sufficient number of candidates from these communities possessing the requisite experience are not likely to be available to fill up the vacancies reserved for them.

(A)

5. It is, therefore, obvious that the applicant has crossed the age of 50 years on the relevant date and hence, according to the recruitment rules, he is not eligible to be called for interview. The stress of the learned counsel for the applicant is that like other Government employees/servants the applicant should have also been granted the benefit of 5 years relaxation in age. This concession has only been given to the Govt. servants and not to the employees of the autonomous bodies or of the Universities. Now the points argued by the learned counsel for the applicant is that Universities' teachers should be treated at par with the Govt. servant because the Banaras Hindu University is a central University and all rules & regulations are at par with the Central Government which applies to the employees of the University. However, this fact will not equate the applicant with the Govt. servants. To be a government servant it needs a certain status which is derived from the particular contact of service laid down in the recruitment rules. The rules framed by Central Government or by Delhi Administration are applicable to its employees. By no stretch of imagination the rules can be applied to the employees of the autonomous bodies. It may be that the autonomous bodies may have parallel rules with the Central Govt. to attract better brains or to have a basis to show that the rules framed by them are also invoked in the Central Govt. Departments e.g. the University professors have got a particular age of retirement and that age of retirement is not available to the employees of the Central Govt. The Central Government forms a class, by this any particular benefit made available to them exclusively is a benefit to a particular class distinct

Le

....5..

(20)

from another class i.e. employees of the autonomous bodies.

Further, there is a reason in making the post attractive for Govt. servant of equal calibre in as much as the benefits they will continue to draw and the terms & conditions will almost be the same to which they had already been subjected.

If the maximum age for employee of autonomous bodies is relaxed for five years say in the case of the applicant who will join the age of 55 and his previous service cannot be counted for any benefit which can be counted in the case of any incumbent join from a job he had already held under the Government. There is no reasonableness in this clarification.

6. The other contention of the learned counsel is that in the public interest the better brains should be attracted and if relaxation of age is given, it may also be given to others. It is the policy of the Government which gives a guideline for framing the rules for recruitment of a servant and if the recruitment rules provide any relaxation of age and that is not arbitrary or unjust then the relaxation of age in such cases cannot be said to be discriminatory.

7. We are in respectful agreement with the decision of the Hon'ble Supreme Court in the case of State of Orissa and Others V/s. Sudhir Kumar Biswal and Others reported in (1994) 28 Administrative Tribunals Cases page 353. In that case a challenge was made for the Orissa States Tribunal to some portion of proviso to rule 5(1) of the Orissa District Revenue Service (Method of Recruitment and Conditions of Services) Rules, 1983. Rule 5(1) deals with the eligibility conditions of direct recruitment and has, inter alia, provided

....5..

that the candidate must be below 28 years. There is a proviso that the maximum age limit may be relaxed by 5 years in the case of candidates belonging to Scheduled Castes/Scheduled Tribes and upto 5 years in case of candidates having actual work experience in Settlement/Consolidation, and to such extent in case of candidates of such other categories as Government may, by general or special order, specify from time to time. The challenge was to the underlined portion of this proviso. As to this the Tribunal has stated that the same has conferred unbridled power "there being no guidelines for invoking this power". The Supreme Court of India, however, held that the challenged portion of the proviso does contain such guidelines. The first is that the categories in relation to which the power can be invoked has to be analogous to the two categories specifically mentioned in the rule. It was, therefore, held that the clear intention as in the first part of the proviso mention has been made to some categories and so, "other categories" have to be akin to them, like other backward classes. This apart, as the power has been conferred on the Govt. and can be exercised only by issuing general or special order, a presumption of invoking the power in appropriate cases only permissible to be drawn. Further the extent to which maximum age limit is relaxed cannot be un-limited, as in the case of candidates belonging to Scheduled Castes/Scheduled Tribes, as well as for other categories of candidates mentioned in the first part of the proviso, the limit is of 5 years. In the present case also the recruitment rules which have not been challenged lays down that the age limit of direct recruits will be relaxable in the case of Scheduled Castes/Scheduled Tribes candidates and other specific categories of persons in accordance with the general order issued from time to time by the Central

Government. Further this age limit not exceeding 50 years is relaxable for Govt. servants upto 5 years in accordance with the instructions or orders issued by the Central Government. Thus, recruitment rules laid down a particular provision of relaxation of age in the category of Govt. servant. The applicant is not a Govt. servant and is an employee of autonomous body i.e. of the University, he cannot claim that relaxation. When he has not exceeded 50 years earlier he was also called for interview for the said post. Thus, there is no discrimination made out to the applicant.

The application, therefore, is devoid of merits and dismissed leaving the parties to bear their own costs. The stay order is vacated.

(B.K.SINGH)
MEMBER(A)

(J.P.SHARMA)
MEMBER(J)

nka