

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI

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O.A. NO. 1182/1991

DATE OF DECISION 1.11.1991

DR. JITENDER SINGH VERMA

...APPLICANT

VERSUS

EMPLOYEES' STATE INSURANCE CORP.

...RESPONDENTS

CORAM

SHRI D.K. CHAKRAVORTY, HON'BLE MEMBER (A)

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

FOR THE APPLICANT

...SHRI DINESH GOYAL

FOR THE RESPONDENTS

...SHRI G.R. NAYYAR

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?

J U D G E M E N T

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

The applicant is a doctor and working since 1.9.1990 as Registrar Paediatric, E.S.I. hospital, Basaidarapur. The applicant assailed the memo dt. 8.5.1991 issued by the Administrative Officer, Recruitment, E.S.I.C. cancelling the interview letter issued to the applicant for the post of Insurance Medical Officer (I.M.O.), Grade-II on the ground that the applicant was overaged for the post.

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2. The applicant claimed the following reliefs :-

- (i) Direct the respondent/Corporation to consider the applicant and interview him for appointment to the post of Insurance Medical Officer (Gr.II), in the pay scale of Rs.2200-4000 in the respondent corporation;
- (ii) In case selection for the said post has already been made by the respondent corporation without considering the applicant on the ground of his being over-aged then declare the said selection as null and void and direct the respondent corporation to make selection for the post of Insurance Medical Officer (Gr.II) afresh after duly considering the candidature of the applicant for the saidpost; AND
- (iii) Pass any other order(s) and/or grant any other relief to the applicant, as this Hon'ble Tribunal may deem fit and proper in the interest of justice.

2. The brief facts of the case are that the respondent corporation advertised 131 posts of IMO (Gr.II) inviting applications from eligible candidates. The upper age-limit for the said post was 30 years as on 21.1.1991 which was relaxable upto 5 years for employees of the Employees' State Insurance Corporation (E.S.I.C.) and SC/ST candidates as

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per conditions laid down in their advertisement (Annexure-B). The applicant possessed the requisite education qualification and applied for the said post. The date of birth of the applicant is 25.6.1959, but since the applicant was according to him, an employee of the E.S.I.C., he was entitled to relaxation in the upper age limit upto 5 years. So the applicant was within the prescribed age limit for the said post as per the advertisement of the respondent corporation. The applicant was also issued an interview letter dt. 24.4.1991 calling him for interview before the Selection Board on 8.5.1991. The applicant was, however, not interviewed on that date and instead was given a letter dt. 8.5.1991 cancelling his interview letter dt. 24.4.1991 on the ground that the applicant is overaged.

3. The respondents contested the application and stated that for the Insurance Medical Officers (Gr.II) in the recruitment regulation, the upper age limit is 30 years which was also mentioned in the advertisement (Annexure-B). On 21.1.1991, the last date of receipt of applications for the said post, the applicant was over 31 years old and hence not eligible to be considered. The contention of the applicant that because of his employment in the corporation, he is eligible for age relaxation of 5 years is not sustainable because the applicant has joined only as a Registrar in the

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corporation in September, 1990 and till 21.1.1991 he had not put in even five months of service. In these circumstances, the age cannot be relaxed upto maximum of 5 years. The applicant is holding only a tenure post of Registrar which has only its entire length of 3 years and the tenure of this post is renewed after every 6 months, but in no case, it can last for more than 3 years. The tenure post, according to the respondents, does not entitle the applicant for consideration of any age relaxation, much less for any period beyond 5 months. It is, therefore, said that the application be dismissed as without merit.

4. We have heard the learned counsel of the parties at length and have gone through the record of the case. In the advertisement, the photocopy of which has been filed as Annexure-B, it is clearly mentioned that upper age limit is relaxable for employees of the E.S.I.C. upto 5 years. Upto 5 years does not mean that whole 5 years of relaxation is to be given. The learned counsel for the respondents contended that in a similar case of Dr. Mrs. Vijay Dhar in OA 138/90 decided on 8.2.1991, the Principal Bench ordered relaxation of age only upto the extent, the applicant has put in service and not beyond

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that. Even the Hon'ble Supreme Court in the case of Dr.A.K. Jain Vs. UOI-1987 SCC p-497, the relaxation has been given in the upper age limit only upto the length of service already put in by the applicants. The learned counsel for the applicant only stressed that when once there is a provision for relaxation of age, then that should be done to the benefit of the person concerned. If the relaxation is done of 5 years, then the applicant is within the range of consideration as he already possesses educational and academic qualifications. However, this is not the case here. The relaxation wherein it is either age or qualification is <sup>very</sup> much within the discretion of the authorities. The authorities, however, cannot exercise discretion arbitrarily. There must be some reasonable basis of exercise of that discretion. In the case of the applicant, firstly, he is not working on a permanent post in the E.S.I.C. and even ignoring this factor, his tenure is only for 3 years renewable after every 6 months and in case his tenure is not renewed, he ceases to be in the service of the E.S.I.C. and lastly, the applicant was appointed in September, 1990 and the date for consideration of the upper age limit is till January, 1991 and by that time, the applicant has hardly put in 4 months and 21 days services. Only serving for 145 days, the applicant cannot be given an age relaxation of more than the period, he has worked in the E.S.I.C. Thus the condition in the advertisement

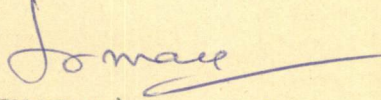
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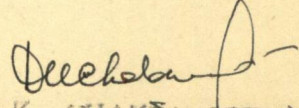


which only gives a discretion of relaxation upto 5 years ~~has~~ been correctly applied in the case of the applicant. The applicant should not have any grudge on that account.

5. If the relaxation of age is permitted irrespective of any consideration upto 5 years, then the respondents E.S.I.C. could very well have given the upper age limit as 35 years and there was no necessity to reserve a discretionary right of relaxation by them. This also goes to show that there should be some basis for applying rule of relaxation in the age and that should be uniform. The applicant has not given any specific instance where the relaxation of age has been done in excess of the period for which a person has already worked in E.S.I.C. . So there arises no question of discrimination also.

6. In view of the above discussion, we find that the application is totally devoid of merits and is dismissed <sup>at the admission stage</sup> ~~itself~~ leaving the parties to bear their own costs.

  
(J.P. SHARMA)  
MEMBER (J) 1/11/91

  
(D.K. CHAKRAVORTY)  
MEMBER (A) 1/11/91