

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

OA NO. 2435/2004

This the 30th day of November, 2006

HON'BLE MR. JUSTICE M.A.KHAN, VICE CHAIRMAN (J)
HON'BLE MR. V.K.AGNIHOTRI, MEMBER (A)

Subhash Chander Yadav
Working as PGT (Commerce)
In Govt. Boys Sr. Sec. School No.1,
Najafgarh, New Delhi.

(By Advocate: Sh. Yogesh Sharma)

Versus

1. NCT of Delhi through the Chief Secretary,
New Sectt. New Delhi.
2. The Director,
Directorate of Education,
Govt. of NCT of Delhi
Old Sectt., New Delhi.
3. The Secretary,
Union Public Service Commission,
Dholpur House, Shahjahan Road,
New Delhi.

(By Advocate: Mrs. Avnish Ahlawat for respondents No.1 & 2.
Sh. H.K.Gangwani for respondent No.3).

ORDER (ORAL)

Hon'ble Mr. Justice M.A.Khan, Vice Chairman (J)

Applicant has filed the present OA for quashing the advertisement issued by the UPSC for filling up the post of Principals in the schools of Govt. of NCT of Delhi wherein the maximum age limit 45 years, as on 12.8.2004, has been prescribed for the vacancies pertaining to the year 2002-2003, it being illegal, arbitrary and violative of principles of natural justice. He also seeks a direction to the respondent to consider him for the post of Principal against 19 OBC posts (Male) pertaining to the year 2002-2003.

2. Shorn of unnecessary details, briefly, the allegations of the applicant are that he was working as PGT (Commerce) in the Government school under the Directorate of Education of Govt. of NCT of Delhi since 1989. Respondent No.3, UPSC, issued an advertisement published in the Employment News of 24-30 July, 2004 (Annexure A-1) for filling up 90 posts of Principals against 50% direct recruitment quota of which 27

were reserved for male OBC candidates. According to the applicant, 19 of these posts pertained to the year 2002-2003. Earlier in the year 2000 also the UPSC had invited applications for filling up 78 posts of Principals in which all the available vacancies to be filled up from OBC quota were not notified. The applicant who appeared in the examination, as such, was deprived of an opportunity of appointment, he being lower in merit list. The maximum age prescribed in the advertisement issued in the year 2004 was 45 years which was relaxable for 5 years to SC/ST candidates and 3 years for OBC candidates and 5 years for Government servants. Applicant, as such, was entitled to relaxation for 8 years in age but the applicant did not consider his candidature being overage by one year. Applicant made a representation to the Government under the Right of Information Act and was intimated the yearwise and categorywise post to be filled up from the category of General /OBC and SC categories. It was stated that out of 27 male vacancies reserved for OBC categories, 19 vacancies pertained to the year 2002-2003 meaning thereby that there was backlog in OBC vacancies whereas there was no backlog in unreserved and SC vacancies. It is clear that during the year 2001, respondents filled up all the unreserved SC ^{and} quota vacancies but did not fill up the OBC quota in full for the reason best known to them. It is submitted that like promotion quota vacancies the direct recruitment quota should also be filled up against yearwise vacancies.

3. The UPSC in its counter pleaded that out of 90 posts of Principal, 27 posts (male) were reserved for OBC category. The prescribed age limit was not exceeding 45 years on the normal closing date. The age was relaxable up to three years in respect of other backward classes and upto 5 years was also relaxable for employees of Government of India and Govt. of NCT of Delhi. The post was advertised on 24.7.2004 with the closing date of receipt of the applicant as 12.8.2004. The closing date was crucial for determining the age, educational qualification and experience for the post of Principal as per the recruitment rules. The crucial date for determining the age limit is the closing date for the receipt of the application. Applicant should, therefore, have to be within the age limit as on 12.8.2004. Application of the applicant No.3895 was also received. It is under preliminary scrutiny. It has been denied that the maximum age prescribed is illegal and it has been fixed arbitrarily or against the rules. It is also submitted that

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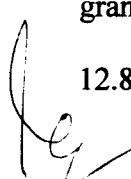
UPSC advertised the post based on the requisition of Government of NCT of Delhi. Applicant was about 50 years of age in the year 2000 and he was accordingly considered after grant of age relaxation as per the rules. Applicant does not have legal or vested right of consideration against the direct recruitment quota. He has legal right for consideration against promotion quota subject to fulfillment of certain conditions. The maximum age limit etc. was prescribed under the recruitment rules which has not been challenged by the applicant in the present proceeding. It is for the indenting department in what manner the appointments are to be made. Even the selected candidates have no indefeasible right to appointment. The applicant has no right for consideration or to be called for interview. Other allegations of the applicant were also rebutted.

4. In a separate counter reply respondent No.1 & 2 Government of NCT has also controverted the claim of the applicant made in the OA. It was stated that in the year 2000 all the vacancies available with the department were advertised. At that time 15 vacancies (male) were reserved for OBC candidate. Presently 90 vacancies of the post of Principal were notified to the UPSC to be filled up by direct recruitment and according to the applicant's own admission he is overage, even after 8 years relaxation granted to him.

5. In the rejoinder applicant has reiterated his own case and denied those of the respondents.

6. We have heard the learned counsel for the parties and have perused the record.

7. Advertisement No.3895 (Annexure A-1) was issued by the UPSC respondent No.3 for filling up 90 vacancies in the post of Principal in Government school out of which 27 vacancies were reserved for OBC candidate. The prescribed age limit on the crucial date closing date for receipt of application, was 45 years with 3 years relaxation in age available to the OBC candidate and 5 years to the Government servant. Applicant was working as PGT Commerce in a Government School and was a Government servant. He was, accordingly, granted age relaxation of 8 years; 5 years as Government servant and 3 years as OBC. The crucial date for determining the age was 12.8.2004. Admittedly, the applicant was more than 53 years of age on that date. Despite he being granted age relaxation of 8 years, he was, thus, overage on the crucial closing date of 12.8.2004 so he is ineligible for consideration in this recruitment.



8. Though the applicant had contended in the OA that the prescribed age limit of 45 years in the advertisement is illegal, arbitrary and against the principles of natural justice but it has not been denied that this age has been fixed under the recruitment rules of the post of Principal. Applicant being a direct candidate, could be considered as per the condition prescribed in the advertisement, Annexure A-1. The UPSC has issued the advertisement 3895 for filling up the 90 vacancies of the post of Principal against 50% direct recruitment quota which has specified the educational qualification, experience and the age limit including the relaxation in age which has been prescribed under the recruitment rules for the post of Principal. The UPSC, as such, has acted in accordance with the rules and the law. Applicant has neither challenged the recruitment rules where the age limit and the relaxation period has been prescribed nor can he do so. Applicant is aggrieved that he has not been invited to attend the interview. Since he did not fulfill the conditions laid down in the advertisement (Annexure A-1) his grievance has no merit.

9. The next contention of the applicant is that under the Delhi Right of Information Act, he has been supplied information that out of the 27 male vacancies reserved for filling up from OBC category 19 vacancies pertained to the year 2002-2003 and one vacancy pertained to the year 2003-2004. According to him, as per this information the respondents Govt. of NCT of Delhi and the UPSC had not filled up the full quota in 2000 when certain vacancies in the post of Principals were advertised and he had applied but could not be selected since he was lower down in the merit list. It is argued that out of 27 advertised vacancies in the year 2002-2003, 19 vacancies pertained to the year 2000 and since all the vacancies which were available at the time of previous selection were not filled up, he was denied an opportunity of consideration for appointment to the post of Principal. Counsel further submitted that like vacancies to be filled up against promotion quota the respondents ought to have filled up the vacancies pertaining to the direct recruitment quota also on yearwise basis and if it was done the applicant would be eligible agewise for consideration against the vacancies pertaining to the year 2002-2003 and 2003-2004. The argument is devoid of any substance. The advertisement against which the applicant has submitted his application is for direct recruitment to the post of Principal. Applicant is one of the many candidates who have applied for the post from open market. It is for the Government to decide when and how many posts of principals

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are to be filled up by direct recruitment and a candidate, who had applied against the advertised post has only right of consideration of his candidature strictly in accordance with the conditions of that advertisement. There is no rule or law that the Government should filled up all the vacancies in direct recruitment quota available yearwise basis. The yearwise basis vacancies are to be filled up in promotion quota where the eligible Government employee has a right for consideration for promotion if he fulfilled eligibility conditions under recruitment Rules.

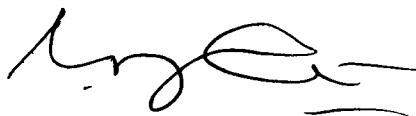
11. The contention of the applicant is that the respondent should have advertised the vacancies yearwise is devoid of any merit. Lucknow Bench of this Tribunal in OA-947/93 and in OA-1000/93 in the case titled D.P.Singh and another vs. Union of India and others has made the following observation:-

“On a consideration of the conspectus of the case, we do not find any merit in the claim of the applicants for age relaxation beyond five years which has already been permitted which means that government servants upto the age of 40 years as against outsiders upto 35 years could compete for direct recruitment. If the claim of the applicants was to be allowed in respect of direct recruitment vacancies which arose in 1979, they would have to be allowed a relaxation of 14 years upto 1993 and varying relaxation for vacancies of different years. Such a course would obviously require holding separately the recruitment for vacancies of each year because only those who could not succeed in the earlier examination would be required to appear in the examination for the vacancies which arose subsequently. Moreover, holding separate examination in 1993 for vacancies which arose in 1979/other years without taking into account upto date cumulative vacancies is also susceptible to attack on the grounds of discrimination under Articles 14 and 16 of the Constitution of India. Because in case varying age relaxation is to be allowed to government servants for backlog vacancies, there would be no cogent ground to deny the same to the outsiders, which obviously is not workable or feasible at this point of time. The outsiders who were 35 years or below and therefore eligible for direct recruitment as Assistant Directors in 1979 or in 1982 when the recruitment rules were notified would be upto 49 years of age in 1993 and similar problems would arise in granting them varying age relaxation. Obviously, such persons who were outsiders at that time, might have in some cases become government servants or joined some other avocations and such persons being allowed now to appear for direct recruitment will have little utility. The age relaxation of five years granted by the respondents for government servants for direct recruitment to the post of Assistant Directors in our considered view is quite reasonable and therefore, cannot be assailed either on the ground of being arbitrary or discriminatory....”

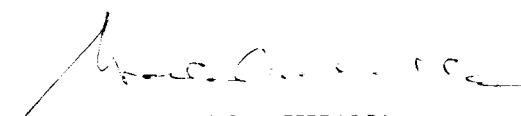
12. This Tribunal in the above order has rejected a similar contention that direct recruitment should be for yearwise vacancies. The applicant being a candidate in direct recruitment has no indefeasible right to be appointed against vacancies pertaining to a particular year. The UPSC was bound by the requisition sent by the Government of NCT of Delhi to fill up the vacancies notified to it as per the recruitment rules. The advertisement Annexure A-1 does not suffer from any legal flaw or infirmity.

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13. OA does not have any merit. It is dismissed.



(V.K.AGNIHOTRI)
Member (A)



(M.A. KHAN)
Vice Chairman (J)

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