

[Reserved on 22.11.2012]

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
BENCH, ALLAHABAD**

THIS THE 13th DAY OF DECEMBER, 2012

**ORIGINAL APPLICATION NO. 312 OF 2005
U/s 19, Administrative Tribunal's Act, 1985**

Present:-

HON'BLE MR. SANJEEV KAUSHIK, MEMBER-J

HON'BLE MR. SHASHI PRAKASH, MEMBER-A

Subhash Kumar Jha S/o Late Awadh Bihari Jha, R/o S.G.T.SK Jha,
Election, 11 SQN Air Force, Harni Air Field, Vadodara-3200222 (Gujrat)

.....Applicant

Versus

1. Union of India through its Secretary, Ministry of Personnel, Public grievances & pension, New Delhi.
2. Staff Selection Commission 8A-Belly Road, Allahabad through its Secretary.
3. Regional Director (C.R.) Staff Selection Commission (CR), Department of Personnel & Training, Ministry of personnel public Grievances & Training, New Delhi.

.....Respondents

Advocate present for the applicant:-

Sri V. K. Srivastava.

Advocate present for the respondents:-

Sri Ajay Singh.

ORDER


By means of the present Original Application filed under section 19 of the Administrative Tribunals Act, 1985 applicant seeks quashing of the impugned memoranda dated 16.09.2004 and 15.02.2005 and further seeks a direction from this Tribunal to direct the respondents to issue appointment letter in favour of the applicant for the post of Inspector in the pay scale of Rs.5,500 -

9,000/- and any other order or direction which this Tribunal may deem fit and proper in the circumstances of the case.

2. The moot question which arises for our determination in this Original Application is whether the benefit of age relaxation admissible to all Central Government employees is also available to the employees of the Armed Forces or Ex-service Men or not?

3. The facts are to be noted first:-

The respondent No.2 i.e. Staff Selection Commission issued an advertisement for filling up various posts including the post of Inspector which is to be filled up through Combined Graduate Level (Mains) Examination 2003. The applicant who was working as Sergeant in the Indian Air Force being Ex-service Man applied for the post of Inspector. The applicant was allowed to appear in the Preliminary Test and after having qualified in the Written Test for the main examination he was allowed to appear in the Interview on provisional basis. He was also called for Interview. During the verification of documents before Interview it transpired that the applicant is not eligible to appear in the Interview, being overage. The applicant is claiming age relaxation being Ex-service Man in terms of the advertisement, where the upper age limit is relax-able upto 42 years to all Central Government Employees. The candidature of the applicant was rejected by impugned order dated



15.02.2005 on the pretext that the age relaxation claimed by the applicant being Central Government employee or Civil Government Servant is not admissible to the applicant as he belongs to Armed Forces and Armed Force Personnel does not come within the definition of Central/Civil Government Employee, hence this Original Application.

4. Pursuant to notice respondents appeared and resisted the claim of the applicant by filing detailed Counter Affidavit. It is averred that the applicant was allowed to appear in the Preliminary Examination as well as in the Main Examination provisionally. When later on before Interview it was found that he was overage, his candidature was rejected by the impugned order. In Counter Affidavit it is averred that Note 2 Clause III in the advertisement stipulates the age relaxation benefit to be extended to Ex-service Men. In paragraph No.9 it is averred that age relaxation provided to Central Government Employees/Servants who rendered at least 3 years continuous service is only admissible to Central Government Employees and not to an Ex-service Man who does not fall under the definition of Central Government Employee or holds a Civil post. It is further averred that in terms of Central Civil Service (upper age limit for direct recruitment) rules 1998 it has specifically been mentioned in rule 5 that the concession has been extended

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only to Central Government Employees with regard to upper age limit and benefit of upper age limit cannot be extended to Armed Force Personnel. Subsequently, by Office Memorandum dated 16.09.2004 it has been clarified by the D.O.P&T. that Armed Forces Personnel are not holder of Civil Post, therefore, age relaxation admissible for a Civil Government Servant will not be extended in case of Armed Forces Personnel.

5. The applicant has also filed Rejoinder Affidavit in which he controverted the averments made by the respondents in the Counter Affidavit.


6. We have heard Shri V. K. Srivastava, learned counsel for applicant and Shri Ajay Singh, learned counsel representing the respondents.

7. Shri Srivastava vehemently argued that the impugned order is in violation of Article 14 & 16 of the Constitution of India as the benefit available to a Central Government Employee is also available to the Armed Forces Personnel and the discrimination carved out by the respondents that it does not available to Armed Force Personnel is in violation of Article 14 of the Constitution of India, thus the impugned order is liable to be set aside. He argued that though, the applicant is an Ex-service Man but is working under the Ministry of

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Defence, Government of India, therefore, the benefit of upper age relaxation to be extended to Ex-service Man also.

8. On the other hand, Shri Ajay Singh who represents the respondents started, from where the applicant stopped. He argued that it has been clarified in the advertisement notice that the upper age relaxation is only admissible to Central Government employees who hold the Civil Post. He urged that the benefit of age relaxation has already been extended to Ex-service Man, therefore, the applicant cannot have the dual benefit of age relaxation. He argued that since the applicant knew this fact that he became overage for the post in question and he had applied for the post in terms of the advertisement which clearly stipulates that the benefit of upper age limit will only be extended to Central Government Employees, then at the later stage the applicant cannot be turned up and question the advertisement pursuance to which he has applied with open eye and, therefore, in terms of principle of estoppel also the OA deserves to be dismissed. He further pointed out that it has already been clarified by the nodal agency of Government of India i.e. D.O.P.&T. that since the Armed Forces Personnel are not the holder of Civil Post and as such relaxation admissible to Central Government Employees is not admissible to them. To buttress his argument he placed reliance upon a Full Bench Judgment of Principal Bench of



this Tribunal in the case of Satyendra Kumar Pandey Vs. Union of India & Ors. O.A. No.2478/1991 reported in 1991-93 A.T. Full Bench Judgments page 10. Lastly he argued that this petition be dismissed with costs.

9. We have considered the arguments advanced by the learned counsel for respective parties and have gone through the judgment cited by them with their able assistance.

10. For better appreciation firstly the conditions stipulated in the advertisement is relevant to be reproduced:-

"3. Age limit

(i)(a). 20-27 years as on 1.8.2003 for the posts of Assistants Grade and Sis in CBI (i.e.) born not earlier than 2.8.76 and not later than 1.8.83).

(b). 18 to 27 years as on 1.8.2003 for Inspectors of CE/IT and Divisional Accountants/Auditors/UDCs, etc (i.e. born not earlier than 2.8.76 and later than 1.8.85).

(c). 20 to 25 years as on 1.8.2003 for Sis in Delhi Police (i.e. born not earlier than 2.8.78 and later than 1.8.83).

NOTE : Candidates should note that only the date of birth as recorded in the matriculation/secondary examination certificate or an equivalent certificate on the date of submission of application form will be accepted by the commission and no subsequent request for its change will be considered or granted.

(b). The upper age limit as prescribed above will be relaxable :

(a). Upto a maximum of five years if a candidate belongs to a Scheduled Caste or a Scheduled Tribe category.

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(b). Upto a maximum of 3 years if a candidate belongs to OBC category.

(c). Age concession for Ex-S for the post other than Assistants will be allowed in accordance with the orders issued by the Government from time to time and they will allow to deduct military service from their actual age and such resultant age should not exceed the prescribed age limit by more than three years.

(d). Upto a maximum of five years (8 years for OBC & 10 years for SC/ST) for the post of Assistants for Ex-servicemen & Commissioned Officers including ECOs/SSCOs who have rendered at least 5 years Military Services as on 1.8.2003 and have been released – (i) on completion of assignment (including those whose assignment is due to be completed within six months) otherwise than by way of dismissal or discharge on account of misconduct or inefficiency; or (ii) on account of physical disability attributable to military service; or (ii) on invalidment and in whose case Ministry of Defence issues a certificate that they can apply for civil employment and will be released on 3 months notice on selection from the date of receipt of offer of appointment.

Age relaxation to departmental candidates:

(i) For Assistant Grade

The upper age limit will be relaxable upto the age of 32 years (37 years for SC/ST and 35 years for OBC) in respect of all Central Govt. Services with not less than 3 years continuous and regular service as on 1st August, 2003 in the various Departments/Offices of the Govt. of India including those under the Union Territories Administration or in the office of the Election Commission and the Central Vigilance Commission or in the Lok Sabha/Rajya Sabha Secretariat.

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NOTE: *Departmental candidates applying under this sub para would be required to submit a certificate from their office, in case they qualify to appear in the main examination.*

FOR THE POST OF INSPECTORS OF CENTRAL
EXCISE, INCOME TAX ETC.

Sis in CBI, Accountants/Auditors/UDCs ETC.

Upper age limit is relaxable upto the age of 42 years (47 years for SC/ST, 45 years for OBCs) to all central Govt. Employees who have rendered not less than 3 years continuous service and regular service as on 1.8.2003."

11. From perusal of the above it is clear that the age relaxation benefit has already been extended to the Ex-service Man. The arguments advance by the applicant that he be also given upper age relaxation upto to age of 42 years as admissible to Central Government Employees as stipulated in the advertisement cannot be accepted for the reason that because it has been clarified by the respondents that the benefit of upper age relaxation is only admissible to Central Government Employees and the applicant being an Ex-service man and belongs to Armed Force of the Union of India cannot be termed as a Central Government Employee as he does not hold a civil post, therefore, this benefit which is only admissible to the Central Government Employees is not admissible to him.

12. This has further been clarified by the nodal agency of the Government of India i.e. D.O.P&T vide Office Memorandum dated

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16.09.2004 where they categorically held that the Armed Force Personnel are not the holder of Civil Posts which reads as under:-

"No.24012/26/2004-Estt (B) *New Delhi, 16th September, 2004*

To,

*The Secretary,
Staff Selection Commission,
CGO Complex,
New Delhi*

(Attention:- Shri U. K. Tiwary, Under Secretary, P&P-I)

Subject:-Combined Graduate Level Exam, 2004 – Clarification regarding.

Sir,

*I am directed to refer to your letter No.3/2/2004-P&P-I dated 21/6/2004 on the above subject and to say that the matter was referred to our Estt (RR) Division. It has been observed by them that they have not issued any guidelines clarifying the status of Armed Forces Personnel as "Government Servant". The stand taken is that Armed Forces Personnel are not holders of civil post and as such they are not eligible to be considered when a civil post is to be filled up by deputation. As a matter of fact, separate instructions exist that Armed Forces Personnel can be appointed to civil posts on deputation/re-employment basis only, and that too where the relevant RRs have an enabling provisions to this effect. This Department's guidelines provide that in the case of Group A and B Posts required to be filled up only by deputation of officers belonging to more than once Service, lateral induction of Armed Forces Personnel can also be prescribed in the RRs, where it is expected that eligible candidates will be available in the Armed Forces. In view of the above, **age relaxation admissible for civil Government servants will not apply in the case of Armed Forces Personnel.***

2. *The commission is accordingly advised to take appropriate action in the matter*

Yours faithfully

Sd/-

(Chandra Prakash)

Under Secretary to the Government of India"

13. Therefore, in terms of 1998 Rules the benefit of upper age limit cannot be extended to the Armed Force Personnel.

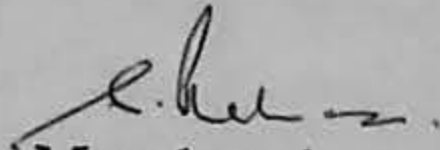
14. The expression 'civil post', as occurring in Articles 310 and 311 of the Constitution of India, has not been denned. This connotation, however, has been subject to scrutiny by the Supreme Court as well as other High Courts on several occasions. The expression 'civil post', prima facie, means, an appointment or office on the civil side of the administration as distinguished from, a post under the Defence Forces. The only persons, who are excluded from the purview of Article 311(1) {which is in the nature of an exception to the general provisions under Article 310(1) are--(a) members of the Defence Services, and (b) persons holding any post connected with defence. All persons, excepting the above two classes, who hold any post under the Union or a State, hold a 'civil post'. There are broadly two tests for determining the question whether a person holds a 'civil post'-- (1) whether the person is employed to perform duties and functions which fall within the sphere of activities, duties and functions of the State and (2) whether the person claiming to be the holder of a 'civil post' is under the employment and administrative control of the State, as regards his appointment and other terms of employment, as well as his work and conduct. It is immaterial whether the employee is a member of


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any of the Civil Service or whether the Civil Services Rules are applicable to him or not. Moreover, What is a civil post was considered by the Hon'ble Supreme Court in Mohammad Matteen Qidwai v. Governor-General in Council, AIR 1953 All 17. Hon'ble Sapru, J., said there that the word was left undefined in the Constitution because services were rapidly expanding. He further said that the term was flexible and was used to contradistinguish a service from defence service. At p. 21, Bhargava, J. said:] that all posts held by any public servant, if the posts did not belong to the Military Department or the Defence Forces, must be deemed to be 'a civil post under the Crown.'" This decision was given with reference to Section 240 of the Government of India Act, 1935 which also used the word 'civil post'. This aspect of the matter has been elaborately discussed in Nagendra v. Commissioner, AIR 1955 Cal 56 and Brij Nandan v. State of Bihar, AIR 1955 Pat 353. Similarly, whether remuneration is paid or not, is immaterial as has been held in Jayanti Prasad v. State of U. P., AIR 1951 All 793 and Rems v. Province of Bengal 1953 (57) WM 767. provided the person has been employed by the Union or State to a post for the discharge of public duties, not connected with defence.

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15. In view of the above we see no reasons to interfere with the impugned order which is a well reasoned order, accordingly O.A. fails and is dismissed. No costs.


Member-A


Member-J

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