

7

O.A.Nos.453 & 458 OF 2009

ORDER DATED: 23-10-2009

Since the factual matrix is the same and similar, both the above mentioned Original Applications are taken up together on the question of admission. For the sake of convenience, the facts as set out in O.A.No.453/09 are being dealt.

2. In this Application, applicant, Chandiprasad Sahani has prayed for the following relief:

“Admit the Original Application and after hearing the counsel for the parties be further pleased to relax the age limits of the candidates in respect of vacancies of different years, i.e., 2001-2005 corresponding to the respective recruitment years for recruitment to the posts of Postal Assistants/Sorting Assistants as has been done in recruitment in all other All India and State State Services by quashing the advertisement under Annexure-A/3 and the prospectus under Annexure-A/4 to the extent of age limit only prescribed therein, and to declare the paragraph 6(a) of the prospectus under Annexure-A/4 and paragraph 18 of the Revised Recruitment Procedure under Annexure-A/2 as ultra vires the Rule 2002 and violative of Article 16 of the Constitution with further direction to the respondents to prepare the list of the candidates to

be called for to appear at the aptitude test on centralized basis instead of division-wise so that more eligible and meritorious candidates under Orissa Circle will get opportunity to appear at the aptitude test for recruitment to the posts of Postal Assistant/Sorting Assistant and accordingly the applicant may be allowed to appear at the ensuing aptitude test to be held for recruitment to the posts of Postal Assistants/Sorting Assistants as per the advertisement under Annexure-A/3 and the prospectus under Annexure-A/4".

3. The interim relief sought is as under:

In the circumstances, the Hon'ble Tribunal as an interim measure may kingly be graciously pleased to direct the Departmental Respondents to allow the applicant to appear at the aptitude test for recruitment to the post of Postal Assistant/Sorting Assistant on provisional basis pending final adjudication of the issues involved in the present Original Application and/or pass such other interim order/orders as may be deemed just and proper to protect the interest of the applicant.

4. This matter came up on 22.09.2009, when this Tribunal, as an interim measure, issued the following direction:

"Having heard both the counsel and keeping in view the urgency of the matter, at this point of time, as an interim measure, the Respondents are directed to allow the applicant to appear at the aptitude test scheduled to be held on 4.10.2009 and the matter may be listed before the Division Bench for considering the question of admission on 08.10.2009.



9

However, it is made clear that the result of the aptitude test of the applicant shall not be published without the leave of this Tribunal and his appearing in the aptitude test by the interim order of this Tribunal, shall not confer on him any right to claim equity in the matter of appointment to the post of Postal Assistant/Sorting Assistant in question".

5. In the above background, the matter is taken up on the question of admission. It is the case of the applicant that in pursuance of notification at Annexure-A/3 inviting applications for filling up the post of Postal/Sorting Assistants for the vacancies of 2001-05, the applicant has submitted his application. However, during the course of short-listing, the application of the applicant has been rejected on the ground that for filling up of 50% vacancies earmarked for Direct Recruitment, the age limit has been prescribed from 18 to 25. In the above circumstances, the applicant has prayed for the relief as referred to earlier.

6. We have considered the case set up by the applicant in extenso and also heard the learned counsel appearing for the Respondents, who has received copy of the O.A.

98

7. The main contention of the learned counsel for the applicant is that since the vacancies to be filled up through Direct Recruitment pertain to the year 2001-05 and as those vacancies have been clubbed together, the applicants and similarly placed persons have been deprived of from being considered being age barred as the age limit prescribed in that behalf is from 18 to 25 years at the time of filing application for the post in question. It is the further contention of the learned counsel that had the Department taken step to fill up the vacancies as and when occurred on year-wise, the applicant could have been within the prescribed age limit and as the Department did not take any action for filling up those vacancies on year-wise, the present injustice has been meted out to the applicant depriving thereby his right to apply for the post. It is the further contention of the learned counsel that as per Clause-7 of Annexure-A/1 notification, there is a provision for relaxation, which reads as under:

Power to Relax – Where the Central Government is of the opinion that it is necessary or expedient so to do, it may, by order, and for reasons to be recorded in writing, relax any of the provisions of

OB

11  
these rules with respect to any class or category of persons".

Based on this, the learned counsel contends that in the instant case the applicant is entitled to age relaxation. In this connection, the applicant has brought to the notice of this Tribunal Annexure-A/5, an Advertisement bearing No.8 of 2006-07 issued by the Orissa Public Service Commission for different categories of posts under its jurisdiction, wherein with regard to age limit it has been stated that those who were within the prescribed age limit as on the 1<sup>st</sup> August, 2001, 1<sup>st</sup> August, 2002, 1<sup>st</sup> August, 2003, 1<sup>st</sup> August, 2004 and 1<sup>st</sup> August, 2005 shall also be eligible to appear at the examination. In the above backdrop, it has been submitted by the learned counsel that the above age relaxation in respect of vacancies pertaining to the years 2001-2005 as has been extended by the Orissa Public Service Commission should also be extended in case of the applicant herein in exercise of powers conferred in Clasue-7 of the notification under Annexure-A/1.

8. We have heard the learned counsel for the parties at great length and considered the submissions made.

22

9. As regards the prayer of the applicant for quashing Annexure-A/3 which is an advertisement for recruitment for unfilled Postal Assistants/Sorting Assistants promotional quota Vacancies called as Residual Vacancies which remained unfilled by the GDS of the Recruiting Units by Direct Recruitment of Other Open Market candidate pertaining to the year 2001-2005 in Orissa Circle, the applicant has not stated anything as to how the same is impugned and similarly, the prospectus and application form at Annexure-A/4. But what it reveals from the perusal of the pleadings, Annexure-A/4 does not contain any provision, i.e., Power to Relax like that of the one at Annexure-A/1, although in the matter of relaxation of age special provision has been laid down in case of SC/ST, OBC, Physically Handicapped Persons and ex-Servicemen etc. Be that as it may, the applicant, as indicated above, has also cited Annexure-A/5 Advertisement issued by the Orissa Public Service Commission wherein relaxation of age has been granted to persons in respect of vacancies to be filled in the year 2006 though arose in between 2001 to 2005 as the main stay of authority. We have considered



this aspect of the matter. In this respect we would say that even if any lacuna is there by the legislation it can be considered only on violation of Article 14 of the Constitution which is not the case herein. Besides, the applicant has also not produced any document to show that he has an indefeasible right to age relaxation. As regards the submission of the applicant that had the examination been conducted according to year-wise vacancies he would have had a chance for being considered, it is not expected of the Tribunal to monitor the affairs of the Department nor the applicant being a candidate from the open market can agitate, such a grievance before the Tribunal on the garb of violation of any of his service conditions.

10. Having regard to what has been discussed above, we are of the view that the applicant has not made out any *prima facie* case for admission. Accordingly, both the O.As are rejected at the very threshold and in effect, if the interim directions issued by this Tribunal on 22.9.2009 and 25.9.2009 in O.A.Nos.453/09 and 458/2009, respectively, have been carried out by the Respondent-

OB

Department, no further follow up action shall be taken. In other words, if the applicants have been allowed to take the examination, the result thereof shall be kept in a state of impasse.

11. Copies of this order be made over to the parties.

Chak  
(C.R.MOHAPATRA)  
ADMINISTRATIVE MEMBER

Thankappan  
(K.THANKAPPAN)  
JUDICIAL MEMBER