

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

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ORIGINAL APPLICATION NO. 158/2007

Date of Order: 09-8-2010

CORAM:

**HON'BLE MR. JUSTICE SYED MD. MAHFOOZ ALAM, JUDICIAL MEMBER
HON'BLE MR. V.K. KAPOOR, ADMINISTRATIVE MEMBER.**

Laxman Sariyala, aged 38 years, R/o Sh. Vela Ram, by caste Meghwal, 541, Subhash Nagar, A resident of Pali, Marwar.

.... Applicant

Applicant present in person.

VERSUS

1. The Union of India through the Secretary, Ministry of Environment and Forests, Government of India, New Delhi.
2. The Additional Director, Botanical Survey of India, Arid Zone Circle, Pal Basni, Canal Link Road, P.O. Nandan Van, Jodhpur.
3. Vidhwansh Gautam, resident of 817-B Anand Nagar, P.O. Shabda Pratap Ashram, Bahodapur, Gwalior (M.P.) - 474 012.



.... Respondents.

Mr. Kuldeep Mathur, counsel for respondents No. 1 & 2.
None present for respondent no. 3.

ORDER

(Per Mr. V.K. Kapoor, Administrative Member)

Shri Laxman Sariyala has filed present O.A. in which he has sought direction to be given to the respondents to grant appointment to applicant on the post of Photographer Grade-II.

The applicant has sought the relief that are as follows:

- i. by an appropriate order and direction give the respondents and respondents may be directed to grant appointment to the applicant on the post of Photographer Gr.II on account of his selection pursuant to advertisement no. 17/2004.

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- ii. if Hon'ble Central Administrative Tribunal thinks that procedure has been completed applicant respectfully prays that Hon'ble CAT declares that the appointment of Respondent No. 3 & procedure is null and void ab initio. Thus post is vacant till today and may be directed to Respondent No. 2 to grant appointment to the applicant on the post of Photographer Gr.II.
- iii. Any other order and direction which this Hon'ble Central Administrative Tribunal considers just and proper in the facts and circumstances of this case may kindly be passed in favour of the applicant."

2. The factual matrix of the case is that an advertisement dt. 4-10 September 2004, No. 17/2004, for appointment on the post of Photographer gr-II was published in the employment news. The applicant belongs to reserve (SC) category. He was called vide letter dt. 09.11.2004 for interview on 13.12.2004. After interview, merit list was prepared in which his name was placed at Sl.-1 but he was not given appointment letter. He filed a writ petition 2712/05 before Rajasthan High Court, Jodhpur; later this writ petition was withdrawn, and O.A. was filed before this bench of Tribunal. He was eligible for the post of Photographer gr.-II. On submission of representation, his application was rejected by respondents. He stood at sl.-1. He was entitled for appointment. The denial of appointment to him and offering appointment to respondent-3 is unreasonable. No information was given to him for rejection of his case. The advertised post is technical in nature. He had wide experience as per certificate enclosed as ann. A-12 to 14. The applicant was not over-age at the time of submission of the application form. He has State level certificate in sports quota and has participated in sports. As regards calculating applicant's age, as per DOPT OM 15012/3/84-Estt. (D) dt. 12 November & OM 14034//I/91-Estt.

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(D) dt. 21 March 1991, besides other instructions, age relaxation to sports persons are to be given. Being within prescribed age limit, applicant had legal right for appointment to this post. Thus appointment of respondent-3 is unlawful and arbitrary. The present post is kept particularly for SC candidate. The applicant has prayed for a direction to be given to official respondents-1 & 2 to grant appointment to him on the post of Photographer gr-II on account of his selection pursuant to advertisement 17/2004.

3 (a). The respondents 1 & 2 in reply have stated that one post of Photographer gr-II in pay scale of Rs. 4000-6000, reserved for SC category, was advertised through Central Employment Exchange in Employment News dt. 04-10 September, 2004 on all India basis, for which 48 candidates applied. After screening, based on academic, professional qualification and experience etc., 11 (out of 48) candidates were called for interview on 13 December, 2004. In selection, panel of 03 candidates was prepared and got approved through the competent authority. The applicant stood at sl.-1 in the panel, an error in calculating his age was traced. He was 35 years, 2 months and 15 days old on closing date for submission of application forms i.e. 21 Sept. 2004. Applicant's name was rejected and person no. 2 in the panel (respondent-3) was offered appointment. The respondent-3 served on the post of Photographer gr-II till 30 March 2007, this post fell vacant later. As regards sportsman quota, age relaxation can be extended when the post is reserved for this quota. The applicant's date of birth is 05.7.1969. The Tribunal in



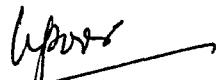
its order dated 04.4.2007 stated that "if the date of birth of the applicant is anterior to 21.09.1969, the applicant has no case".

Because of being over-age on the prescribed last date of submitting application, applicant's case was rightly rejected.

3 (b). The applicant in rejoinder made preliminary submissions thereby stated that determination of eligibility age was 30 years; above this 05 years relaxation was given for SC candidates, 10 years for sportsman. The applicant was overage on prescribed date by 2½ months; he was selected by selection committee as per his qualifications and experience, stood at sl.-1 in the panel of selection, thus letter of appointment should be given to him.



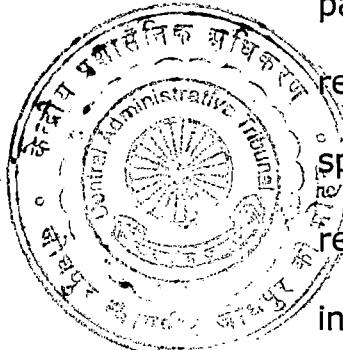
4 (a). The applicant in arguments stated that he applied for Photographer gr-II, in the pay scale of Rs. 4000-6000, as per advertisement in employment news dt 4-10 Sept. 2004, no. 17/2004. The applications were invited upto 21.9.2004 in the prescribed format. Priority was to be given to SC candidates, the prescribed age limit was 30 years, 05 years' age relaxation for SC candidate. The applicant has narrated DOPT OM 15012/6/98-Estt. (D), dt. 21 Dec., 1998 in which 02 more years of upper age limit was given, thus, he was eligible for this post upto 37 years of age. He stood at sl.-1 in the panel because of his qualification & work experience but he was treated as over-age on prescribed date 21.09.2004. Thus, appointment was given to 2nd candidate (respondent-3) but this 2nd candidate left the job on 30.3.2007. The applicant has given an additional affidavit in support of his contentions, instructions of DOPT which apply to departmental





examination for Photographer grade-II, there are other instances also in which 02 years further age relaxation was given. The applicant has requested that he be given appointment on said post as per his selection pursuant to advertisement 17/2004.

4 (b). Learned counsel for official respondent nos. 1 & 2 in arguments has drawn attention to his reply wherein as on 21.9.2004, the closing date for submission of application forms; applicant's age was 35 years, 02 months and 15 days. His date of birth is termed as 05.7.1969 (ann A-11). Thus, his upper age was more than 35 years on the prescribed date. An interview was taken in which he was selected and was at sl.-1 in the panel. No regular examination was conducted. As per respondents, no examination was taken and age relaxation for sportsmen quota would not be applied as the post was not reserved for sportsman. As per DOPT instructions 21.12.1998, increase in the upper age limit for 02 years is not applicable as the matter pertains only to interview taken. Thus, respondents have rejected his selection on the post of Photographer gr-II.



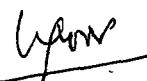
5. The applicant applied for the post of Photographer gr-II, pay scale Rs. 4000-6000, in pursuance of advertisement in Central Employment News dt. 4-10 September 2004, (no. 17/2004) in which SC candidates were called on priority basis. The upper age for general candidates was 30 years, age relaxation of 05 years was given to candidates of reserved category. The advertisement was made on all India basis, last date of receiving applications in the prescribed format was 21.09.2004. In all, 48 candidates





were applied for the post of Photographer gr-II. After screening, based on academic, professional qualifications and experiences etc., 11 out of 48 candidates were called for interview on 13 Dec., 2004. In all 09 candidates including applicant appeared for interview. A panel of 03 candidates was prepared and approved by competent authority. The applicant stood at sl.-1 in the selection, respondent-3 stood at sl.-2. Later, an error was traced as regards age of the applicant. On the prescribed date for submission of application forms i.e. 21.9.2004, the applicant was 35 years, 2 months and 15 days old meaning thereby that he was overage by 2½ years on that date. His date of birth as per his marks-sheet of Secondary School Examination, 1986 is 05.7.1969. He appeared as private candidate in this exam., on the prescribed date, i.e. 21.09.2004, he was definitely overage.

6. The applicant has submitted good lot of sports certificates, he happened to participate in sports activities & submitted certificates to that effect. The respondents submitted details of his application as annexure R-1 and letter dt. 16.04.2007 (ann R-2) in which he sought 10 years' upper age relaxation under sports quota. It is further confirmed that this relaxation of 10 years can only be extended only when the post is reserved for sportsman quota whereas the applications were called. This relaxation under sports quota cannot be given, as the post was not advertised under sports head. The applicant has further quoted the DOPT notification 15012/6/98-Estt. (D), dated 21st Dec., 1998 which deals with upper age-limit increased by 02



years for recruitment through direct open competitive exam. The applicant has drawn attention to rule 3 of the said notification:

"3. Increase in the upper age-limit: -

The upper age-limit for recruitment by the method of Direct Open Competitive Examination to the Central Civil Services and Civil posts specified in the relevant Service/Recruitment Rules on the date of commencement of the Central Civil Services and Civil posts (Upper Age-Limit for Direct Recruitment) Rules, 1998, shall be increased by two years."

7. In **Note** it is stated that rules shall not include recruitment through limited departmental exam or through short listing or by interview or by contract or by absorption or transfer or deputation. The present case pertains to interview, not of a direct examination; thus on interview like on contract or by absorption / transfer / deputation, the age relaxation would not apply. It is not a case of direct open recruitment for the post of Photographer, gr-II. This rule 3 (chapter 15) shall not apply & shall not give relief to the applicant as regards increase in his upper age limit by 02 years. As this is a case of selection by interview, any further age relaxation cannot be given in his favour. The applicant has pointed out to order-sheet 25.11.2008, in which directions were given to file an additional affidavit as regards age relaxation to determine his age as on 04.9.2004/ 21.9.2004. An additional affidavit was filed by applicant by way of rejoinder. But suffice to say, that this is not a case of direct recruitment, the applicant and 02 others were selected by the process of interview, this being not a case of direct recruitment, the increase in age limit of applicant by 02 yet cannot be given due to riders in **note** column. In the advertisement dt 04-10 Sept., 2004, nowhere it is mentioned that this was a case of the

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departmental examination. Here, the selection of candidates for Photographer, gr-II posts was made by way of interview only. Thus, any further increased or extended period of 02 years cannot be provided to the applicant for getting advantage in this selection process. Therefore, applicant's age would be treated or taken as more than 35 years as on 21st Sept, 2004, therefore, action of the official respondents 1 & 2 would definitely be termed as just and proper. The contention of the applicant are not to be accepted on as grounds, thus no further increase of 02 years can be provided to him to get advantage in the selection process by 02 more years any further. Thus, the applicant is not entitled to get appointment on the post of Photographer gr-II due to his selection in pursuance of advertisement dt. 4-10 Sept. 2004 (no. 17/2004), being overage on prescribed date.

8. In the light of observations made above, no further age relaxation can be given to the applicant nor any increase in the upper age limit can be afforded. Therefore, no directions need be given to the respondents 1 & 2 to grant appointment to applicant on the post of Photographer grade-II on account of his selection pursuant to advertisement no. 17/2004. Accordingly, the present O.A. is hereby dismissed with no order as to costs.

V.K. Kapoor
[V.K. Kapoor]
Administrative Member

S.M.M. Alam
[Justice S.M.M. Alam]
Judicial Member

दिनांक 17/12/15 के आदेशानुसार
वैरी उपनिषद्, दिनांक 11/12/16
को अग्र-III व अग्र-IV किए गए ।

अमुमान अदित्यकारी
कैन्त्रीय प्रशासनिक अधिकारी
सोशल प्रायोगिक, जोधपुर