

CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

OA 250/2005

WEDNESDAY THIS THE 7th DAY OF MARCH, 2007

C O R A M

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

HON'BLE DR. K.B.S. RAJAN, JUDICIAL MEMBER

D.Rajendran C/o V. Damodaran

Gr-D Mazdoor

O/o Assistant Garrison Engineer (Electrical and
Mechanical)C/o Garrison Engineering Fort Kochi
residing at DAD Residential Complex, Palluruthy
Kochi-6

Applicant

By Advocate R. Sreeraj

Vs

1 Union of India represented by its Secretary
to Government of India
Ministry of Defence, New Delhi.

2 The Commander Works Engineer (AF)
South Bellary Road, J.C. Nagar Post
Bangalore-560 006

3 The Chief Engineer
Military Engineer Services, Headquarters
Southern Command, Pune

4 The Chief Engineer (NAVAG-Naval Academy)
Kochi-4

Respondents

By Advocate Mr. TPM Ibrahim Khan, SCGSC

ORDER

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

This Application is filed against the non-consideration of the applicant for appointment as Junior Engineer (Civil). The applicant is a Gr.D Mazdoor working in the office of the Garrison Engineer (Electrical & Mechanical) under the Garrison Engineer, Fort Kochi. He belongs to OBC category. The applicant submits that as per the Junior Engineer (Civil) Recruitment Rule, there is a 3% quota by direct recruitment from amongst Department employees with five years continuous service and possession of the minimum educational qualifications as prescribed. Column 8 of the Recruitment Rules prescribes the minimum educational qualifications to be considered for direct recruitment to the post of Junior Engineer as Matriculation or equivalent and 3 years Diploma in Civil Engineering from a recognized Institution/University/Board or equivalent. The age for direct recruitment is 18-25 years. However this age limit is relaxable for Government servants and also for SCs/STs/OBC and certain other categories as notified by Central Government from time to time. It is further submitted that in consonance with the Recruitment Rules, a relaxed age limit is prescribed for departmental candidates for selection to Gr. C posts and the same is 43 years (40 years in the case of General candidates and 45 years in the case of SC/ST candidates) on the strength of DOPT OM NO 4303/2/95 Estt (Sct) dated 25th January, 1995 and No AB/14017/12/ST Estt (RR) dated 29th August

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1995. This can be gathered from the Engineer in Chief's Branch Army Headquarters, New Delhi, Standard Operating Procedure, Recruitment to Gr. C & D employees, extracts of the relevant portions at pages 13 & 14 are produced at Annexure A6. The 2nd respondent initiated action for filling up 40 vacancies by notification dated 14th September 2004 and in the said letter one vacancy was set apart for departmental candidates. The applicant accordingly applied against the 3% quota within the time limit prescribed, he also applied to Bareilly and Shillong zones against similar letters calling for applications. The Bareilly and Shillong zones called the applicant for written examination but there was no response from the 2nd respondent. A list of empanelled candidate was published by the 2nd respondent in the Employment News dated 8-14 Jan 2005. The applicant then submitted representations but no reply was given to him but he was told that he was not considered for selection as he was over-aged. Since he was already in the Department, the applicant is entitled to get concession in age limit up to the service already rendered over and above the maximum age limit of 43 years for OBCs. The applicant therefore contends that the rightful claim of the applicant has been overlooked and the selection process conducted is violative of Articles 14 and 16 of the Constitution.

2 The respondents have denied the averments of the applicant. All the applications including that of the applicant were considered by the Board of officers constituted for the purpose and it was found that the applicant was not meeting the age criteria for

direct recruitment and accordingly he was not called for interview. The rules regarding age as produced at A7 by the applicant are not applicable. The relevant instructions for direct recruitment in the same department against outsider's quota contained in para 48 of standard Operating Procedure- Recruitment for Gr. C & D Employees issued by Engineer in Chief has been produced as Annexure R-2. It has been further clarified that Government of India vide GSR 758 (E) have framed rules regarding upper age limit for direct recruitment to Central Civil Services and Civil posts at Annexure R3. Clause (xi) of Table under para 5.1 at page 125 is applicable here viz: 40 +2 years i.e. 42 years (only 2 years additional for general category as per note given below on page No125), the vacancy being general category. The applicant is 44 years and hence clearly over-aged. The respondents have also denied that Degree holders were given more weightage than Diploma holders and there has been any excessive recruitment of Ex-servicemen. The respondents have further pointed out that the list published in Employment News is only the list of persons called for interview and not a panel of selected candidates as mentioned by the applicant. The recruitment action was taken by the 2nd respondent located at Bangalore and the 4th respondent is in no way connected with the action of recruitment and hence the cause of action does not lie in the jurisdiction of this tribunal.

3 We heard Sri R. Sreeraj, learned counsel for the applicant and Learned SCGSC for the respondents. The Learned counsel for the applicant pointed out that the applicant fulfills all the eligibility

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criteria for being considered for appointment as junior Engineer. He has got more than 5 years as service a-s a Gr D under the department. Since he belongs to OBC, the maximum age limit for being considered for appointment is 43 years. Since he is already in the department and his registration with employment Exchange is current, the applicant is entitled to get concession in age limit upto the service already rendered by him in the Department. This being the position there is no justification for the respondents in not considering the applicant for appointment on the plea that he is overaged. The applicant had been considered both at Bareilly and Shillong zones of the Military Engineering Services and there cannot be any different yardstick for the 2nd respondent's office. It was also contended that the respondents have diluted the Recruitment Rule for offering the appointment to Sri N.P. Muralidharan as he has got only a 2 year diploma in Civil Engineering from the College of Military Engineering, Pune.

4 On the direction of the court, the SGCSC produced the full text of the Standard Operating Procedure for recruitment to Gr. C&D employees, an extract of which has been produced by the applicant at Annexure A6. On verification it was found to be an old copy and on the date of hearing, an updated copy was produced by the applicant which was confirmed by the Counsel for the respondents also.

5 Though some grounds like preference given for degree

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holders, over recruitment of ex servicemen etc have been taken by the applicant these have been effectively countered by the respondent. The main reason for not considering the applicant in the selection was that he was over-aged and hence the only question arising for our consideration is whether this contention of the respondents is correct in terms of the extant rules.

6 The respondents have admitted in their reply that the relevant instructions in this regard are codified at para 48 of Standard Recruitment Procedure for Group C&D employees issued by the Engineer in Chief, Army headquarters as in Annexure R-2. This is the same instruction relied upon by the applicant also at A6. It reads as under:-

48. Departmental candidates

Regarding selection of departmental candidates following points have to be kept in view:-

(a) The names of the departmental candidates need not be sponsored by the employment exchange but all such candidates should have registered their names with the Employment Exchange.

(b) The Departmental candidates shall be treated as par with the outsiders in all respects except age relaxation as per orders /instructions issued from time to time. The relaxation in upper age limit for departmental candidates for Gr D and Group c is as under:-

i) 40 years for General candidates.

ii) 45 years for SC/ST candidates (Authority DOPT OM No 15012/1/88-Estt(D) dated 30 Jan 1990

iii) 43 years for OBC candidates (Authority DOPT OM No 43013/2/95-Estt(sct) dated 25 Jan 1995 and No AB/14017/12/87- Estt(RR) dated 29th August 1995)

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© the departmental candidates to be considered for selection shall be only those who have rendered not less than 3 years continuous service in the organisation in the same line or allied cadres and where a relationship could be established that service rendered in the department will be useful for the efficient discharge of duties in their new post.

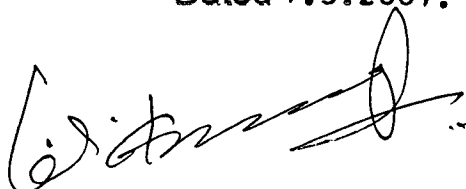
7 Thus it is evident that the age limit for OBCs was fixed at 43 years and the matter was governed by the instructions and orders of the Govt of India issued from time^{to time}/as per clause (b) xxxxxxxxxxxx
xxxxxxxxxxxx above. Government of India vide GSR-758 (E) has framed Rules which is enclosed as Annexure R3. These rules stipulate that the upper age limit for general category for direct recruitment shall be increased for all categories by 2 years. In the same rules in para 5.1 the concessions in force were enumerated in a tabular form and item xi) thereof is applicable to the departmental candidates like the applicant. OBCs are not shown there as they are covered separately under para 10. As per the note given below item xi) two years additionally has to be given for general category. The respondents have interpreted this to apply only for general category. But the increase in the age limit for direct recruitment given in GSR 758 applies not only to the general category but to all categories. The table given in para 5.1 and the 3 years concessions given in para 10 thereof refer to existing concessions in force at the time of issue of the said Rule and the increase of two years granted in the notification dated 21st December, 1998 is not incorporated in the Rule itself but was to be done by amending the various rules in force. Hence R-3 needs to be updated as only instructions issued up to 1995 appear to

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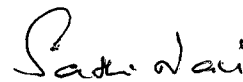
have been taken into account. The age limit for OBC candidates therefore appears to be 45 years (43+2) and not 40 +2 42 years as calculated by the respondents. The applicant has therefore to be considered for selection as he falls within the age limit for his category.

8 The respondents have submitted that the list said to have been published by them is only call list for interview and not a select panel. If so, the candidate Sri N.P Muralidharan mentioned by the applicant is not selected yet and the selection process has not reached a finality. Hence the respondents will not have any difficulty in considering the applicant also as per the prescribed procedure. Accordingly we direct the 2nd respondent to consider the candidature of the applicant for selection and appointment as Junior Engineer (Civil) against the departmental quota by subjecting him to a written test and interview along with the other eligible hands in accordance with rules and needless to say if found suitable he shall be appointed to the post. The O.A is allowed. No costs.

Dated 7.3.2007.



DR. K.B.S RAJAN
JUDICIAL MEMBER



SATHI NAIR
VICE CHAIRMAN

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