

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH**

O.A. No. 76 of 06

Date of order : 26.2.2009

C O R A M

**Hon'ble Shri Shankar Prasad, Member (A)
Hon'ble Ms. Sadhna Srivastava, Member (J)**

1. Raj Kumar Mishra, S/o Late Mahadeo Mishra, r/o Puraniganj, P.O. Munger, P.S. Kasim Bazar, Munger.

....Applicants

By Advocate : Shri S.K. Bariyar

Vs.

1. The Union of India through the Secretary, Personnel, Public Grievances and Pension, North Block, New Delhi.
2. The Dy. Secretary [C] Staff Selection Commission, Block No. 12 CGO Complex, Lodhi Road, New Delhi.
3. The Under Secretary [C-II] Staff Selection Commission, Block No. 12 CGO Complex, Lodhi Road, New Delhi.
4. The Regional Director [CR] Staff Selection Commission, [CR] 8 A-B Bailey Road Allahabad.
5. Joint Director, National Sample Survey Organization, Ministry of Statistics & Programme Implementation, government of India, Bihar [C] Region, Shambay House, Kankerbagh Main Road, Patna.

Respondents

By Advocate : Shri A.R. Pandey, Sr. Standing counsel.

ORDER

Sadhna Srivastava M [J] :- Aggrieved by order dated 31.01.2005 of Staff Selection Commission [SSC in short] Bailey Road, Allahabad, recommending

AB

his case for appointment as Sub-Inspector, CBI, the applicant has preferred the present OA.

2. The facts lie in a narrow compass. The SSC had issued a notification dated 03/01/2003 P&P for combined Graduate Level Preliminary Examination, 2003. The last date of submission of application was 28.02.2003, and the date of examination was 11.05.2003. The main examination was likely to be held in November – December, 2003. The recruitment was likely for the categories of posts mentioned therein, including those of Inspector of Central Excise / Income Tax etc. in the scale of Rs. 5500-9000/- and Sub-Inspector in CBI in the pay scale of Rs. 5500-9000/-. The notice had the following conditions regarding relaxation of age for departmental candidates.

**"FOR THE POST OF INSPECTORS OF CENTRAL EXCISE,
INCOME TAX ETC, S.Is. 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 Government Employees who have rendered not less than 3 years continuous and regular service as on 1.6.2003.]

3. It appears that the applicant was successful in the preliminary examination and had qualified for appearing in the Main Examination. The result of this examination had been declared subject to the following conditions:-

" All results declared in this web site are provided by the Staff Selection commission. The result is provisional subject to verification of particulars of the candidate especially their category status.

The candidates are advised to verify the information regarding results from the SSC HQR/RDs office. Neither SSC



HQR/RDs office nor NIC is responsible for any inadvertent error that may have crept in the results being published on internet. The result published on the net may be treated as purely provisional. The contents are likely to change without notice. This does not constitute to be a legal documents. While all efforts have been made to make the information available on this website as authentic as possible. SSC HQR or any staff persons will not be responsible for any loss to any persons caused by any shortcoming, defect or inaccuracy in the information available on website. This is only for the immediate information."

4. After the applicant was successful in the Main Examination, he was issued a communication dated 13.08.2004 that he has provisionally qualified for being called for interview / personality test. One of the conditions of this letter dated 13.8.04 reads as under :-

" Your candidature is provisional. You must , therefore, ensure that you fulfill all the conditions of eligibility laid down in the advertisement/notice of the Examination. If at any stage it is found that you do not fulfill any of the conditions of eligibility, your candidature will be cancelled and no appeal against such cancellation will be entertained. The fact that you have been called for interview does not confer any right to be treated as eligible in all aspects for appointment or to be considered for interview. To avoid any disappointment at a later stage, you are advised to recheck whether you meet all the eligibility criteria laid down on the crucial date prescribed for the post /examination in question."

5. The final result was declared in the Employment News of dated 15-21 January, 2005 in which the name of the applicant appeared in the category of Inspector/ Central Excise in Roll No order. The said notification has the following conditions:-

" The above said lists are purely provisional and subject to the candidates recommended fulfilling all the eligibility conditions prescribed for the respective posts in the notice of Examination and also subject to thorough verification of their identity with reference



to their photograph signatures handwritings etc on the application forms, admission certificates etc."

6. After issuance of the said letter, the Regional director, SSC also informed the applicant that he is required to exercise fresh option as the pay scale of Inspector, Central Excise / etc has been revised , and the post has been classified as Group B non-gazetted. The applicant submitted his revised option also.

Pursuant to the said result, the impugned memorandum was issued to the applicant informing him that his name has been forwarded for appointment as Sub-Inspector, CBI. The applicant submitted representation to the Regional Director, requesting that once the selection notification containing the clause that age was relaxable up to 42 years, the same cannot be modified , and that he is required to be recommended for the post of Inspector, Central Excise. The applicant, thereafter, preferred the present OA.

7. The case of the applicant, in brief, is that it is settled law that change in procedures / eligibility conditions will not be applicable once the selection process has commenced. The curtailment of age of relaxation from 42 to 32 years cannot , therefore, be applicable to the applicant. On account of modified action of the respondents, the applicant has suffered irreparable mental agony as well as monetary loss. None of the persons against whom malafide has been alleged has been joined by name.

8. The applicant has filed rejoinder stating therein that the corrigendum dated 16.5.03 has been issued modifying the condition of age

A handwritten signature consisting of a stylized 'A' and 'B'.

relaxation. This alteration, modification in terms and conditions mentioned in the advertisement could not have been done. The respondents in the Combined Graduate Level Examination, 1999, 2000 and 2001 have granted age relaxation up to 42 years in case of general category candidates.

9. The respondents have filed detailed reply. They have stated that that the corrigendum to the notice of Combined Graduate Level [Preliminary] Examination, 03 had been issued. The same had been published in the Employment News of 10-16 May, 2003. The following amendments have been incorporated in the case of age limit.

" 3. Under the heading age relaxation to the Departmental candidates

' the Age-Limits' for the post of Inspector [Central Excise], Inspector [Preventive Officer] and Inspector [Examiner] which are 18-27 years as mentioned in para 3 of the notice will be relaxable for Central Govt. servants upto 5 years in accordance with the instructions or orders issued by the Central Government."

10. In the notice for main examination it is clearly mentioned in para IV of Sub-para 'B' of para 4 under heading Upper Age Relaxation to Departmental Candidates that "for the post of Assistant, Inspector [Central Excise], Inspector [Preventive Officer] and Inspector [Examiner] upper age limit will be relaxable upto the age of 32 years [35 years for OBC and 37 years for SC/ST] in respect of all Central Govt. Servants with not less than 3 years continuous and regular service on 1 August, 2003. The applicant was, accordingly, sent a letter No. 8/1/2003-CR-Main Examination [GL] dated 15.7.03 in which it is clearly



mentioned that " you are, therefore, advised to carefully read the notice of the Main Examination being published in Employment News dated July, 19 2003 and return the enclosed application form for the Main Examination duly filled in along with all required Educational and Other Certificates immediately and latest by the closing date of receipt of Application form i.e. 14th August, 2003 till 5.00P.M.

11. The respondents have further stated in their reply that one Sita Ram Prasad, a similarly situated person had filed OA 108/05. The same OA has been dismissed by a Bench consisting of these Hon'ble Members only. This OA is required to be dismissed.

12. Shri Bariyar, learned counsel for the applicant has contended that it had not been urged in OA 108 of 05 before Ranchi Circuit Bench that the Staff Selection Commission had modified the eligibility criterion after the issuance of selection notification. This they could not have done. This question is, therefore, required to be considered by this Bench. It is further contended that in the notification issued in 1999, 2000 and 2001, the age relaxation was as shown in this notification.

13. Swamy's Complete Manual on Establishment and Administration refers to DOPT OM of 20th July, 1976 as amended from time to time and as finally modified vide DOPT OM 15012/1/88 – Estt.[D] dated 30.01.90 on the subject of age relaxation for departmental candidates aspiring for Group C&D posts in outsider quota. Para 2 [iii] 3 & 4 thereof are as under :-

"2 The request made by the Staff Side of the National Council [JCM] has been examined and it has been decided that -



[iii] the above concessions are subject to the condition that the direct recruitment posts in Group 'D' / Group 'C' posts/services are in the same line or allied cadres and a relationship could be established that the service rendered in the Department /posts will be useful for efficient discharge of the duties in the other categories of post.

3. The question of determining the same line or allied cadres [referred to in (iii) above] is, however, left to be decided by each Ministry/Department. The Staff Selection Commission makes recruitment to all Group 'C' non-technical posts. With a view to reducing delays in processing of application submitted by departmental candidates with reference to advertisements issued by the SSC, it has been decided that it will be entirely within the discretion of the Staff Selection Commission to take a view whether the nexus principle is satisfied or not in individual cases. Wherever the duties of the posts concerned are not clear, the Commission may consult the organizations in which the posts in question are located.

4. The existing age concessions available to Group D. employees for appointment to Group 'C' posts and to Clerks for appointment as Stenographer in the Central Secretariat Stenographers Service and any other existing concession shall continue.

14. The Central Government vide GSR 758 [E] have notified CCS & Civil Posts [Upper Age limit for Direct Recruitment] Rules 1998. These came into force with effect from 01.04.99. DOPT OM dated 01.02.99 quoted below the said rule in Swamy's complete Manual on Establishment & Administration quotes at Sr. [xi] as under:-

1	2	3
Category or persons to whom age concession is admissible	Category of posts to which the age concession is admissible.	Extent of age concession.



1	2	3
[xi] Departmental candidates with three years continuous service.	For appointment to Group C&D by direct recruitment which are in the same line or allowed cadres	Swamy's Comments requires revision consequent to the increasing of the age-limit by two years for general category.

15. [a] Swamy's Complete Manual also quotes from DP & AR OM No. 4/4/74-Estt [D] dated 9.4.81 regarding age relaxation to government employees for direct recruitment to Group A & B posts. It provides that where examinations are conducted by UPSC, no age relaxation shall be granted if the examinations are conducted by UPSC unless the same was specifically provided in the scheme of examination approved in consultation with the UPSC. In other cases when recruitment is made through advertisements made by UPSC 5 years relaxation can be granted if employees were working in posts which are in same line or allied cadres and it could be established that the same will be useful in efficient discharge of duties. DOPT OM 15012/8/87-Estt [D] dated 15.10.87 clarified that this benefit was also available when the recruitment is made by organization themselves.

[b] This later circular is as under:-

"It was not, however, made clear in the above instructions that this concession is available to departmental candidates for recruitment to Groups 'A' and 'B' posts which are exempted from the purview of the UPSC and, therefore, recruitment to which is made by the Organizations themselves. For example, Groups 'A' and 'B' posts in paramilitary forces and scientific/technical posts in scientific departments fall in this category. As it was not the intention to deny this concession in the cases of this type, it is hereby clarified that the provisions of the above mentioned OM are also applicable to departmental candidates for Groups 'A' and 'B' posts to which



recruitment is made by a body other than UPSC. The Administrative Department concerned would be competent to take a decision in regard to the question whether there is a nexus between the duties of the post held by the government servant and those of the post for which recruitment is being made."

16. We are aware that a major restructuring of the Customs and Central Excise Department took place in 2001. Letter No. F.No. A – 11019/72/99 Ad IV dated 19.07.01 of Department of Revenue, Ministry of finance issued pursuant to Cabinet Secretariat Notification No. 28/CM/2001(i) dated 16.07.01 refers. The department notified draft recruitment rules for the post of Inspector Central Excise and some other posts. The rules framed under proviso to Article 309 of the Constitution were finally published in the case of Inspectors vide GSR 494 dated 29.11.02. They came into force on the date of publication in official Gazette Column 6 of the Schedule to the recruitment rules reads as under:-

" Between 18 to 27 years (Relaxable for government servants upto 5 years in accordance with the instructions or orders issued by the Central Govt.)

[documents filed in OA 609/02 before Ahmedabad Bench refers]

17. The recruitment rules are statutory rules framed in exercise of powers conferred by proviso to Article 309 of the Constitution. It is well settled that executive instructions can supplement a statutory rule or cover areas to which the rule does not extend but cannot run contrary to statutory provisions or whittle down their effect. [State of M.P vs. G.S. Dall and Flour Mills , AIR 1991 SC 772; UOI vs. Rajiv Kr. Gupta 1995 Supp [2] SCC 607].

18. The Apex Court in Rajasthan Public Service Commission vs. Kaila



Kumar Paliwala and Anr [2008] SCC [L&S] 492 has held as follows:-

" Recruitment to a post must be made strictly in terms of the rules operating in the field. Essential qualification must be possessed by a person as on the date of issuance of the notification or as specified in the rules and only in absence thereof, the qualification acquired till the last date of filing of the application would be relevant date."

19. In the instant case new Recruitment Rules superseding earlier Rules have been published vide GSR 494 dated 29.11.02. The age limit is prescribed for direct recruits, including department candidates. It shows that it is relaxable by 5 years only. Hence the executive instructions of 1999 have to give way as per the above decisions.

20. There is yet another aspect. During the period of recruitment the pay scale of the post is revised upwards and the post has become Group B non-gazetted post. Even if it is argued that decision for Group A & B posts is applicable relaxation is five years only. Fresh opinions were called for and given.

21. The appellants in Rajasthan Public Service Commission vs. Chaman Ram 1998 SCC [L&S] 1075 had issued a notification for 23 vacancies of Assistant Directors by 31.12.1993. The Rajasthan Government asked the Public Service Commission on 28.12.93 not to proceed with the selection as recruitment rules were being amended. The recruitment rules were amended on 19.4.95 and fresh notification as per new eligibility conditions for 26 posts, including 23 posts were issued. The respondents preferred a writ petition which was summarily dismissed. The Division Bench based on the decision of Apex Court in Y.V. Ranaiah vs. J. Sreenivas Rao 1983 SCC [L&S] 356, P.



Ganeshwar Rao vs. State of A.P 1989 SCC [L&S] 123 and P. Mahendran vs. State of Karnataka 1990 SCC [L&S] 163 held that earlier posts were to be filled up as per the old rules. The Apex Court formulated four questions , namely, [a] whether old posts were abolished and new posts of Marketing Officer [b] If yes whether the old advertisement survives any further after the amendment [c] If the answer to [b] is in negative whether any fault can be found with fresh process & [d] what final orders. The Apex Court distinguished these decisions and placed reliance on the three judge Bench decision in Jai Singh Dalal vs. State of Haryana 1993 SCC [L&S] 846 to hold that old notification did not survive. It held:-

“ Even if the earlier advertisement had been proceeded with, it would have resulted in an exercise in futility. No appointment could have been given to the selected candidates to the posts of Assistant Director [Junior] after 1995 amendment of the rules because there were no such posts in the hierarchy of State services. It has therefore to be held that on account of the amendments to the recruitment rules, the earlier advertisement became infructuous and otiose.

It is true that the old vacancies were carried forward and got merged along with three more vacancies and became 26 vacancies for the newly created posts of Marketing Officers, but that does not mean that still the earlier 23 vacancies remained existing under the rules for appointing eligible persons to the 23 erstwhile vacant posts of Assistant Directors [Junior]. There were no such posts after April, 1995 in the cadre. Those vacancies were carried forward and got merged with the future vacancies in the newly created posts of Marketing officers but all the 26 vacancies therefore, after April 1995 had to be treated to be vacancies in the newly created posts of Marketing officers and these vacancies had to be filled in necessarily as per Rule 17 by issuing fresh advertisement for filling up these newly created 26 posts of Marketing Officers and that is precisely what was done by the appellant -Commission by issuing a fresh advertisement.”



22. Coming to the facts of this case we find that the posts were placed in higher pay scale. The post of Inspector, Central Excise became a Group B non Gazetted post. The relaxation of age for Group A & B posts even before the amendment of Recruitment Rules followed a different policy. It provides for five years relaxation only. The SSC continued under the existing process and invited fresh options. The applicant submitted his option. The SSC was thus not continuing for selection for posts in lower pay scale, and it went ahead with selection in higher pay scale subject to recruitment rules of post in higher pay scale. The above decision in para 21 applies.

23. We have, in the paragraphs 13 to 22 above independent of our observations in OA 108/05, considered the contention of the learned counsel for the applicant that the applicant was entitled to age relaxation as mentioned in notice. However, in view of what has been discussed above, this plea has to be rejected.

24. Thus, the learned counsel for the applicant has failed in his efforts to persuade us to take a view different from the one we had taken in OA 108/05. We are, therefore, bound by the said decision which had been given in respect of this very notification.

25. Resultantly, the OA is dismissed without any order as to costs.


[Sadhna Srivastava]
Member [J]

/cbs/


[Shankar Prasad]
Member [A]