

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY

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T.A. No.

118/87

DATE OF DECISION 15.9.1987

Shri M.G.Kshirsagar,

Petitioner

Applicant in person

Advocate for the Petitioner(s)

Versus

Union of India & ors.

Respondent

Shri J.D.Desai (for Shri M.I.Sethna)

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. J.G.Rajadhyaksha, Member(A),

The Hon'ble Mr. M.B.Mujumdar, Member(J).

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*2. To be referred to the Reporter or not? *Yes*3. Whether their Lordships wish to see the fair copy of the Judgement? *Yes*4. Whether it needs to be circulated to other Benches of the Tribunal? *No*

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY.

Tr. Application No.118/87.

Shri M.G.Kshirsagar,
25, Ambazari Layout,
Behind Dharampeth Science College,
Nagpur.400 010.

... Applicant

v/s.

1. Union of India, through
Ministry of Rural Development,
Central Secretariat,
New Delhi.
2. Directorate of Marketing and
Inspection, National High Way
No.4, Faridabad, Haryana.
3. Union Public Service Commission,
through Secretary, Dholpur House,
Shahajan Road, New Delhi.

... Respondents.

Coram: Hon'ble Member(A), Shri J.G.Rajadhyaksha,
Hon'ble Member(J), Shri M.B.Mujumdar.

Appearances:

Applicant in person.
Mr.J.D.Desai
(for Mr.M.I.Sethna)
for the respondents.

JUDGMENT:

(Per Shri J.G.Rajadhyaksha, Member(A)) Dated: 15.9.1987.

The applicant filed a Writ Petition in the High Court of Judicature at Bombay, Nagpur Bench, Nagpur on the 23rd September, 1982 which was numbered as Writ Petition No.1975 of 1982. It has been transferred to this Tribunal for disposal in terms of the Administrative Tribunals Act, 1985.

2. The applicant who was working as Deputy Agricultural Marketing Adviser (Market Planning and Design Centre) at Nagpur makes a grievance of Recruitment Rules issued by the Government of India on 10th August, 1982 i.e. after the issue of an advertisement dt. 26.6.1982 for recruitment to the post of Joint Agricultural Marketing Adviser (MPDC) with special reference to the clause

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governing the age limit. It is the applicant's case that whereas earlier Recruitment Rules to the post of Joint Agricultural Marketing Adviser indicate the age limit of 50 years relaxable in the case of Government servants without any specified limit. both the advertisement dt. 26.6.1982 and the Recruitment Rules dt. 10.8.1982 prescribe the age limit as "not exceeding 50 years relaxable for Government servants up to 5 years". It is applicant's contention that both the revised rules and the advertisement deprived him of the chance of being considered for appointment as Joint Agricultural Marketing Adviser (MPDC) to which, but for the amendment to the rules he would have been otherwise eligible. The relief that he prayed for was that the rules as well as the advertisement should be quashed and he should be allowed by the respondents to appear for the process of selection, if otherwise qualified without application of the clause of relaxation of age limit.

3. We have on record an affidavit in reply filed by the Agricultural Marketing Adviser on the 24th February, 1983; but the respondents also filed a reply dt. 23rd April, 1987 as the earlier affidavit of Respondent No.2 was not considered to be adequate by way of a reply on behalf of all the three respondents. Both replies together suggest that in terms of the directive issued by the Ministry of Home Affairs of Government of India as far back as 26.12.1968^{where} there were no Recruitment Rules for a post and where the post is sanctioned to be filled in immediately, the recruitment was to be entrusted to the U.P.S.C. The post of Joint Agricultural Marketing Adviser (M.P.D.C.) was

created in September, 1977 and there were no rules of recruitment in existence for the said post. Therefore, it was released to the U.P.S.C. The advertisement issued by the U.P.S.C. was therefore in accordance with the normal procedure. The reply further suggests that the staff side of the national council set up under Joint Consultative Machinery in the Department of Personnel and Administrative Reforms, as well as the Committee on sub-ordinate Legislation had suggested to the said Ministry certain changes and therefore, the Ministry issued on 9.4.1981 another directive to the effect that a Government servant may on a uniform basis be allowed relaxation of a maximum of 5 years in the upper age limit for recruitment to Group 'A' or 'B' posts by advertisement through the U.P.S.C. Where therefore, the recruitment rules did not contain such provisions, the recruitment rules had to be amended suitably. Therefore, the advertisement in dispute came to be issued with the stipulation that the upper age limit is relaxable by only 5 years in the case of Government servants. As for the post in dispute the reply further states that there existed two like posts of Joint Agricultural Marketing Adviser (General) and Joint Agricultural Marketing Adviser (Planning & Research) for the recruitment to which there existed rules earlier to 10.8.1982, i.e. the date when the fresh recruitment rules for the post in question and the above mentioned two posts were notified superceding the old recruitment rules for the above mentioned two posts. The rules for recruitment to posts such as Assistant Marketing Development Officer were notified subsequently, yet provided the same relaxation

in age limit in pursuance of the decision dt.9.4.1981. It is contended that such relaxation is available only to those Government servants who are working in the posts which are in the same line or allied cadres and where the relationship could be established with a service already rendered in a particular post will be useful for efficient discharge of duties of the post, recruitment to which is at a given point of time advertised. The relaxation is restricted not only to Group 'A' and Group 'B' posts, but is further restricted to posts to be filled by direct recruitment by advertisement through the U.P.S.C. Therefore, the notification of recruitment rules on 10.8.1982 contain this particular clause regarding relaxation in age limit. It is further stated that the qualification as to age does not however, apply in case of departmental candidates to be appointed by selection method against promotion quota posts. It is further averred in the reply that rules were notified and came into force on 28.8.1982 and could not therefore have any bearing on the advertisement published on 26.6.1982 at which time there were no rules in existence and, therefore, the UPSC was justified in issuing the advertisement in the form in which it was released. The applicant did not and could not fulfil the condition as to age as appearing in the advertisement and therefore, he could not be considered. If the applicant accepted the advertisement as it was then, he would now be estopped from contesting its contents and, if at all, he should have challenged the advertisement itself at the relevant time. It was not as if the government singled out this particular post for any

different treatment. In conclusion, it is also contended that for a person in service, when the advertisement threw open direct recruitment the applicant's claim that he could have been considered by selection for promotion is mis-conceived as he seems to be mixing up the concepts of direct recruitment and of selection.

4. We have heard the applicant in person. It is his claim that on 26.6.1982 i.e. the date of the advertisement he was eligible to apply as the upper age limit was 50 years relaxable in the case of Government servants. His main thrust is on two points. Firstly, the Respondents claim that rules did not exist on the date of advertisement is false and incorrect. Secondly, he argues that the respondents claim that rules made later than the advertisement have no bearing on the advertisement is also incorrect. Thirdly, he refers to Annexure 'D' to the reply which says that in the absence of recruitment rules, the normal procedure should be that the post is filled up by competitive selection through the Commission. He argues that under these directives, he should have been considered eligible for appointment as Joint Agricultural Marketing Adviser. On the first point he argues that there were rules in existence, the existing rules merely provided for the upper age limit of 50 years with the note that it was relaxable in the case of Government servant. There was no specific number of years mentioned by which the upper age limit could be relaxed. Therefore, applicant feels that even at the age of 56 he could have been permitted to apply for the job and his application should not have

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been summarily omitted from consideration as being age barred in terms of the revised recruitment rules or in terms of the advertisement. To this the reply of the respondents is that while the rules were general rules for the post of Joint Agricultural Marketing Adviser amended in keeping with directives issued by the Government of India, the advertisement was for a specific post viz. Joint Agricultural Marketing Adviser (M.P.D.C.) and they maintain that there were no recruitment rules for this post. They, therefore, contend that it was perfectly open for the UPSC to advertise the post with the upper age limit of 50 years relaxable by 5 years. On this point therefore, hypothetically if applicant's contention is accepted, it should be possible for a person in Government Service to apply for the post of Joint Agricultural Marketing Adviser, even at the age of 58 years i.e. on the eve of his retirement even though his services might not remain available for any reasonable length of time. It could also be argued that if a person could be recruited to the post at 55 years of age after relaxation of the upper age limit of 50 years there is no reason why a person who is 57 or 58 years of age could not be so considered. The other side of the coin of course is that when such a senior post is to be filled, the person should be available to work in the post at least for a period of 3 years and therefore, the upper age limit being relaxed by a specific period of 5 years beyond 50 years stands to reason.

5. On the second point, that the rules have been amended subsequent to the advertisement and it is

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not possible to let government amend rules retrospectively, it is the applicant's contention that there are several authorities viz. A.I.R. 1987 S.C. Weekly in the case of Aggarwal v. State of U.P. as well as 1983 S.L.R. 199 the case of Sudarshan Singh v. Government of India which lay down that rules cannot be made retrospective in effect and application. To this, the respondents reply, of course, is that the government has the power to make rules even retrospectively effective as laid down by the Supreme Court and it is now well established law that the rules made by the Government i.e. the Administration made by way of sub-ordinate legislation with the approval of the subordinate legislation committee of the Parliament can be retrospective if the legislation on that aspect permits such making of rules. Maxwell on the "intrepretation of statutes" has also clarified that rule making power can be retrospectively used in certain cases. We will have to accept the contention of the respondents that retrospectively effective rules can be made by the government, within their powers, and these cannot be challenged.

6. The third question which is raised by the applicant is that in terms of government directives at Annexure 'D' to the reply where it is not possible, for want of recruitment rules to lay down a definite mode of recruitment, other than competitive selection through the UPSC, the normal procedure should be that the post is filled up by competitive selection through the Commission. The dispute appears to be based on some mis-conception. The recruitment rules of 1982 indicate

that the post can be filled by promotion, failing which by direct recruitment. If these rules were not in existence when the advertisement was released, then the conditions laid down in the advertisement would be applicable. There is no clear indication as to whether the advertisement was released because there was no Officer within the zone of consideration for promotion by selection and therefore advertisement had to be given through the UPSC to attract qualified persons through direct recruitment, or even qualified junior officers within the department to apply for direct recruitment. However, our view is that since the advertisement is for a specific post and it has not been demonstrated by the applicant even by reference to the Civil Lists of 1980 and 1983 which he has produced for our perusal, that the post that was advertised was already available, we will have to accept the contention that the post of Joint Agricultural Marketing Adviser (M.P.D.C.) was a newly created post for which there were no recruitment rules. Even the Civil List shows that "recruitment will be through promotion, failing which by direct recruitment". This necessarily contemplates promotion of a qualified person who is within the age limit and if such is not available, then it is open to Government to advertise the post and attract applications. The applicant has relied upon the fact that ad hoc appointments have been made to the posts created in 1979 and 1980 to the post of Joint Agricultural Marketing Adviser (General). He also admits that one person mentioned in the civil list was selected by the UPSC and regularised w.e.f. 13.8.1979. It is the respondent's contention that if someone

was already appointed, subject to the pending petition, then there was really no vacancy for which the applicant could be considered in spite of his age. The respondents again relied upon their contentions in the affidavit in reply that an advertisement was released as there were no recruitment rules, that the applicant responded to the advertisement accepting the terms and conditions that was laid down in the advertisement and therefore, he is estopped from challenging that advertisement at this stage. He was already 56 years of age in 1982 and with 5 years relaxation i.e. the admissible age being 55 years he could have been considered as qualified for the post. Since the applicant did not contest the advertisement in 1982 itself he cannot now contest it at this late stage.

7. Considering all aspects of the matter we are of the view that Government were within their right in asking the UPSC to advertise the post as there were no recruitment rules for this specific post of Joint Agricultural Marketing Adviser (M.P.D.C.). We also hold that there is nothing which could bar government from promulgating recruitment rules, retrospectively effective, and therefore, we cannot find fault with the recruitment rules notified in 1982, either. We accept the respondents contention that these are rules for general recruitment and not for any specific post as such.

8. The authorities cited by the applicant cannot assist him in establishing his claim as those decisions were clearly based on the facts of each case and they cannot possibly be meant to overrule the general principle that governments' rule making power extends to retrospective rule making also. In the circumstances

we hold that applicant was over 56 years of age on the date of the advertisement and was not therefore entitled to respond to the advertisement and be considered, and therefore, if his application has been summarily omitted from consideration, he being age barred, the UPSC cannot be blamed. We also hold that since the rules can be made retrospectively effective the respondent's contention that rules did not have a bearing on the advertisement which was issued for the post for which there were no recruitment rules is also acceptable.

9. In the result we hold that the applicant has not made out any case for his being retrospectively considered after retirement for any of these posts or the post that was advertised. So far as the claim for compensation for non-appointment which he makes in the course of his argument is concerned we find that there is no specific prayer to that effect in the (Original Petition) the application before us and the vague prayer clause "any other relief" cannot possibly cover any claim for compensation as such. In the result we are unable to accept the applicant's claim for being considered for promotion and for compensation for non-appointment. We therefore, pass the following orders.

O R D E R

1. The application No. Tr.118/87 being Original Writ Petition No. 1975 of 1982 is hereby dismissed.

10. In the circumstances of the case however, we pass no order as to costs.

(J.G.RATADHYAKSHA)
MEMBER(A)

(M.B.MUJUMDAR)
MEMBER(J).

Delivered in Open Court
today 15.9.98.