

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH.

Tr. Application No. 209/86

Vijaya Venkatesh Pai, now
Mrs. S.G. Puranik,
9, Amit Building,
Dixit Road,
Vile Parle(E),
Bombay - 400 057.

... Applicant
(Original Petitioner)

v/s.

1. The Union of India, through
The Secretary,
Ministry of Finance,
North Block,
New Delhi - 110 001.
2. B. Ramkumar,
Inspecting Assistant Commissioner of
Income Tax (Head Quarters),
Aayakar Bhavan,
M.K. Road,
Bombay.
3. The Secretary,
Central Board of
Direct Taxes,
Ministry of Finance,
New Delhi.

... Respondents.

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

Appearances:

1. Mr. M.A. Mahalle,
Advocate
for the applicant.
2. Mr. S.R. Atre,
Advocate for
Mr. P.M. Pradhan
for the Respondents.

JUDGMENT

(Per J.G. Rajadhyaksha, Member (A))

Date: 21 June 1987

Writ Petition No. 217/82 of the Bombay High Court stands transferred to this Tribunal and is numbered as Transferred Application No. 209/86. The High Court had granted Interim Relief on 5-2-1982 and it continues to be in operation.

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2. The short point for decision here is whether the applicant who got into the service of the Income Tax Department at Bombay is entitled to continue in service in spite of the fact that the Department discovered that she was over-aged at the time of the recruitment.

3. The facts in short are that the Staff Selection Commission advertised that they will hold a written examination on the 8th of July, 1979 named the Clerks' Grade Examination - 1979. The notice indicated the service for which the examination would be held; the number of vacancies; the educational qualifications; age limit and other details. The age limit was clearly indicated as "18 to 25 years on 1-1-1979 (Born not earlier than the 2nd January, 1954 and not later than the 1st January, 1961)". It further clarified that the upper age limit was relaxable upto 5 years for SC/ST candidates and for displaced persons, defence service personnel, BSF personnel, repatriates from Sri Lanka, Burma and Vietnam, Migrants, Ex-Servicemen, Physically Handicapped persons etc. "according to the orders in force". The applicant applied for this examination and was admitted thereto. It is her contention that she submitted with the application her Secondary School Certificate in which her birth date was clearly mentioned as 16-9-1952 and she did not conceal any facts. The Staff Selection Commission admitted her to the examination; allowed her to take it and on the 16th of August, 1980 she was informed that her name had been recommended for appointment as Lower Division Clerk to the office of the Commissioner of Income Tax. After she produced all her testimonials for inspection in the Income Tax Office in August, 1980, she joined service on 2-1-1981. On 21-12-1981, the Inspecting Assistant Commissioner of Income Tax (HQ) gave her a notice under Rule 5(1) of the Central Civil Service (Temporary Service) Rules, 1965 which was in fact a notice

of discharge simplicitor. This was a one month's notice from the date of its service on the applicant. On 18-1-1982 the applicant submitted a representation through proper channel to the Secretary, Central Board of Direct Taxes stating that she had fulfilled all the requirements and was successful in the examination. She had been at her job for over one year and six months and more, and thus she will be growing in age losing the prospects of getting any other suitable job. Her presumption was that her services were terminated for no other reason but for being averaged at the time of the appointment. She admitted that she had presumed the age limit to be 28 years and that is what she understood from the advertisement. She, however, claimed that she had not concealed any of the details in her application and in spite of that she was admitted to the examination, declared successful, recommended to the Income Tax Department and appointed by the department after thorough scrutiny of her credentials. She requested that any irregularity about the age should be relaxed or condoned and she might be continued in service. On failure to get a reply to her representation the applicant filed the present Writ Petition on the 3rd day of February, 1982 asking for reliefs viz. (1) examine the legality of the termination of her service and failure on the part of the 3rd Respondent viz. Secretary Central Board of Direct Taxes to exercise the powers to cancel or withdraw the said notice and (2) to direct the respondents to withdraw or cancel the said notice and also (3) asked for interim relief to stay the operation of the notice of termination dtd. 21-12-1981. The High Court was pleased to grant this interim relief.

4. This Bench has heard the Writ Petition on its transfer and registration as Transferred Application.

6. Mr. Atre, the learned Advocate for the respondents, produces in reply a notification in which paragraph 3 clearly prescribed the age limit and adds that there is no indication whatever in this notification that the age limit is relaxable except in the cases of SC/ST persons and other special categories. It is, therefore, his argument that the applicant has no case. He has also produced for our reference the comments of the Staff Selection Commission on applicant's application.

7. A letter addressed by the Under Secretary, Central Board of Direct Taxes to the Chief Commissioner of Income Tax, Bombay, encloses these comments. The Staff Selection Commission has explained the procedure which they follow. Briefly, they said that in view of the fact that a very large number of candidates appear in the competitive examination every year, and because of constraints of manpower and time, the Commission allows as a matter of procedure admission to all the candidates who apply for the examination. The admission is provisional. The candidate is informed that the admission is subject to the conditions of eligibility being fulfilled, and further that if it is found later that he does not fulfil any of the condition of the eligibility, his candidature (emphasis ours) will be cancelled. It, therefore, becomes necessary for the candidate to carefully check and satisfy himself that he fulfils all conditions. The final eligibility of the candidate is verified by the Commission before (emphasis ours) he is nominated or recommended for appointment to an employing department, after the results of candidate whose performance is found to be upto the mark in the examination are declared, though on a provisional basis. It is at this stage that the application of qualified candidates are thoroughly scrutinised in order to determine their eligibility for admission to the examination and for nomination. If any candidate is found at that stage as not to have fulfilled the condition of age

eligibility regarding age, qualification etc. he is not nominated. Where a candidate is nominated after due pre-nomination scrutiny of his eligibility for appointment, it is further provided as a precautionary measure in the letter with which his or her name is forwarded to a user office for appointment that his/her eligibility should also be checked thoroughly by the appointing authority with reference to the original certificate of age, qualification, caste etc. before actually appointing him or her to a post. The Commission further states that there is no doubt that the petitioner was recommended by the Regional Director of the Staff Selection Commission at Bombay by his letter dated 16th August, 1980 for appointment to the post of clerk in the Office of the Commissioner of Income Tax, Bombay, but the Regional Director had duly informed the employing department that the upper age limit of the applicant and others was to be checked with reference to the crucial date viz. 1-1-1979 as specified in the notice of examination. He had also called upon the employing department to check the relevant particulars of the candidates with reference to original certificate regarding age, educational qualification etc., wherever applicant before appointing them. If any discrepancy was to be found the Commission were to be informed before the candidate was appointed. Further the comments also say that there is no doubt that the ^{fact} the petitioner was overaged should have been detected in the pre-nomination scrutiny of eligibility of the candidate for nomination. Then the Commission tries to lay the blame at the petitioner's door by saying that she could not prove that there was a lapse on the part of the Commission and that she has created undue work for all concerned by not having read the conditions of eligibility.

and by not having satisfied herself before applying for the examination that she was overaged and was not eligible to appear at the examination.

8. If these comments and the written statement of the respondents are read together we feel convinced that the application of the applicant was subjected to thorough scrutiny at least before her nomination for appointment was sent to the Income Tax Department. There again the Commission had advised the Department to scrutinise the details before actually appointing the applicant. The alternative was that if any discrepancy was found the department was to inform the Staff Selection Commission about it. It does not appear anywhere that the department had taken any pains either to scrutinise the details thoroughly or to inform the Commission that there were any discrepancies in the particulars given by the applicant in her application and the details furnished by her later. It has also not been possible for Mr. Atre the learned advocate to explain how the applicant was appointed in spite of all these checks prescribed by the Staff Selection Commission or by the appointing department viz., the Commissioner of Income Tax Bombay. It is further not possible for him to enlighten us as to why the applicant was allowed to take an examination for Upper Division Clerk i.e. for promotion in the department. Mr. Atre suggests that this could have happened as a routine matter.

9. Rules for the examination as notified by the Department of Personnel etc. on 24th February, 1979 have been produced for our perusal by Mr. Atre, the learned counsel for the respondents. True, they do not contain

any clause regarding relaxation of age limits.

10. In the written reply of the respondents they rely upon the fact that all candidates at the examination were required to give an undertaking or declaration at the end of the application form which reads as follows:

"I hereby declare(a) that I have carefully read the conditions of eligibility for admission to the examination mentioned in the notice of the examination and that I satisfy these conditions".

It is therefore suggested that the applicant knew that she was not within the qualifying age limit and therefore her declaration was bad.

11. Further it is contended in the written statement that the certificate of admission was provisional and it made clear that if it was found later that the applicant did not fulfil any of the condition of the eligibility laid down in the notices of examination the candidature (emphasis supplied) will be cancelled and no appeal against such cancellation will be entertained. To avoid frustration later on the candidates were advised to check carefully and satisfy themselves that they fulfil all the conditions of eligibility.

12. It is Mr. Mahalle's contention that the candidature at the examination was liable to be cancelled and not an appointment given by the department after satisfying itself that the applicant was successful at the Examination and had *prima-facie* fulfilled all conditions.

13. The respondents have also contended that there was no basis for the applicant to believe that the respondents had relaxed the age limit while issuing

the letter of appointment. The letter of appointment clearly states that the appointment was provisional, purely temporary and liable to be terminated at any time. It is further contended that in the circumstances the discharge simpliciter is perfectly justified and there was no case for the High Court and, therefore, the Tribunal now to interfere.

14. Mr. Mahalle has cited several rulings of various authorities in support of his contention that the doctrine of promissory estoppel is attracted in this case. He argues further that even if the rules did not provide for relaxation of age limit it was always within the powers of the Government to order such relaxation in any particular hard case and the present one is such a hard case. In particular Mr. Mahalle cites 1986 Vol. II SLJ(CAT) page 253 where a decision given by the New Delhi Bench of the Central Administrative Tribunal on 30-5-1986 has been reported. In short, Mr. Mahalle, points out that the applicant in that case had applied under a misunderstanding about age qualification and the Administrative Tribunal had held that applicant had acquired a vested right under Article 311 of the Constitution.

15. Mr. Atre's reply here was that there was provision for relaxation in that particular case and that wherever the rules permitted relaxation, the doctrine of promissory estoppel could be invoked if the department had in fact appointed someone without first ordering relaxation of rules and continued that person in service for a long time.

16. Considering all these aspects we feel that though the recruitment rules did not contain a clause for relaxation of age limit, the circumstances have shown that

there has been failure on the part of both the Staff Selection Commission and the Income Tax Department in the matter of applying thorough scrutiny to the particulars given by the applicant at the time of applying for the examination. It is true that some declaration was required to be signed. But if the service commission and the department could not apply their scrutiny thoroughly, it would be too much to expect a candidate who is in need of a job to read the application form really carefully and sign the declaration that the candidate had read it thoroughly and satisfied himself or herself that all conditions of eligibility are fulfilled. We, therefore, feel that the benefit of the lapse of the Staff Selection Commission and the department must, in equity, go to the Applicant. Particularly, what further prompts us to take a more sympathetic view is the fact that not only the successful applicant was recommended to the department, appointed by the department, allowed to take the UDC's examination, but further when the High Court was pleased to grant Interim Relief by staying the operation of the order of termination, the department has chosen to take almost four years to submit their affidavit in reply to the writ petition/application. It is seen that such affidavit is dated 15th January, 1986 and filed before this Tribunal. It is, therefore, clear that if the department was really serious about opposing the petition/application and getting the stay vacated, it would have been more vigilant and at least submitted an application for vacating the stay granted by the High Court. Actually, the department has rendered the applicant further ineligible age-wise for an alternate job by delaying their reply by four years. Even though she was overaged at the time of her application and appointment, it might have been possible for

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her to seek alternate employment if the matter was decided on the reply of the respondents in 1982 itself. It is not, therefore, now possible for the department to take the stand that the appointment of this applicant was illegal and void ab initio, and that her services were properly terminated under Rule 5(1) of the CCS(Temporary Service) Rules, 1965.

17. In the peculiar circumstances of the case, we, therefore, allow the application and pass the following orders:

O R D E R S

- (1) The applicant succeeds and the application is allowed.
- (2) The order of termination issued by the department on 21-12-1982, Exhibit 'D' in the compilation, is hereby quashed and set aside.
- (3) The applicant shall be treated to have been in continuous employment of the department from 2-1-1981.
- (4) The applicant will be entitled to have appropriate benefits of seniority in LDC's cadre, consideration for Quasi Permanency, or Confirmation; and even promotion as UDC as and when due on the basis of her being qualified in the UDC's examination along with other candidates similarly placed.

Again in the peculiar circumstances of the case we pass no order as to costs and let the parties bear their own cost.

(S.G.RAJADHYAKSHA)
Member(A)

(M.B.MUJUMDAR)
Member(J)

(S.B.M.J.S.)
Member(T)

1987