

CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI

ORIGINAL APPLICATION No. 667/1996

Date of Decision: 2nd Nov. 96

T U Shankaran

Petitioner/s

Mr. S P Saxena

Advocate for the
Petitioner/s

V/s.

UOI & ORS.

Respondent/s

Mr. V S Masurkar

Advocate for the
Respondent/s

CORAM:

Hon'ble Shri B.S. Hegde, Member(J)

Hon'ble Shri M.R. Kolhatkar, Member(A)

(1) To be referred to the Reporter or not ?

(2) Whether it needs to be circulated to
other Benches of the Tribunal ?


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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, 'GULESTAN' BUILDING NO.6
PRESCOT ROAD, MUMBAI 400001

O.A.No. 667/96

DATED : 22nd NOVEMBER, 1996

CORAM : Hon. Shri B S Hegde, Member(J)
Hon. Shri P P Srivastava, Member(A)

T. Unni Shankaran
Range Forest Officer
working in the office of
the Deputy Conservator of
Forests,
Dadra n& Nagar Haveli,
Union Territory
Silvassa 396230
(By Adv. Mr. S.P.Saxena)

..Applicant

V/s.

1. Union of India
through the Regional Director,
Staff Selection Commission
Government of India
Ministry of Personnel
Public Grievances and Pension
Army Navy Building
2nd floor, M G Road,
Mumbai 400001

(By Adv. Mr. V S Masurkar,
Central Govt. Standing Counsel)

2. Chairman
Central Board of Excise and
Customs, North Block,
New Delhi

3. Principal Collector
Central Excise
Central Excise Building
M K Road, Mumbai 400002

..Respondents

ORDER

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[Per: B S Hegde, Member(J)]

Heard Mr. S P Saxena, counsel for the applicant and Mr.
V S Masurkar, counsel for Respondent No.1. Since the



dispute in this O.A. can be resolved at the admission stage, we admitted the O.A. and proceeded to hear the arguments of the Ld. Counsel.

2. In this O.A. the applicant is challenging the impugned order passed by the Respondents on 18.10.1995 which reads as under:

" Your results were declared provisional, pending decision of eligibility age relaxation under para 4(e) of the notice of Recruitment of Inspectors of Central Excise / Income Tax etc., 1993.

" The list of duties submitted by your Department has been examined by the Commission and after careful examination of the duties performed by you, it has been found that there is no nexus between your present post and the posts for which you have applied for in as much as there is no relationship between your duties performed in the present Department which could prove useful for the efficient discharge of duties of posts for which you have applied for. In view of the aforesaid reasons, your candidature is hereby cancelled as you are not eligible for age relaxation under para 4(e) of the notice for the recruitment of Inspectors of Central Excise/Income-Tax etc. 1993."

3. The Ld. Counsel for the applicant draws our attention to the advertisement inserted by the Respondent No.1 dated 16.7.1993 The applicant applied under age relaxation vide DP&AR's OM dated 20.5.1988 whereunder the Group C non-technical employees with three years continuous and regular service (in any Central Government

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office or Union Territory) as on 9.8.1993 fulfilling the nexus will be eligible to be considered as departmental employees for grant of age relaxation.

4. Admittedly the applicant is holding Group C non-technical post. The applicant was allowed to appear for the examination and he was selected in the examination held in 1993. Thereafter the results were declared in 1995 and the applicant's result was declared provisional. His examination number figures in the Final Result of successful candidates published under the caption 'Provisional Candidates' and the Roll No. is 5011152. The applicant's counsel submit that the applicant is working in the Union Territory of Dadra and Nagar Haveli as Range Forest Officer in the pay scale Rs.1400-2300 with effect from 1.5.1989 and he was entitled for age relaxation under para 4(e) of the notification issued by the respondent and the applicant was fully complying with the eligibility conditions as well as was entitled for age relaxation under para 4(e) and that the applicant had applied 'through proper channel' in the prescribed form and he passed the examination and he is kept in 'provisional list' subject to age relaxation. Although his name is shown in the provisional select list for appointment to the post of Inspector, Central Excise/Income Tax, no communication whatsoever has been received from the respondent's office

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and he was unable to make out why his name is kept in provisional list. Though the applicant contacted the respondents office on many occasions, he was not given any explanation by the respondent No.1 till he received the impugned order dated 18.10.1995.

5. The Respondent in the reply had not disputed about the facts averted by the applicant. So far as the fitness of the candidate and relaxation of age, it is for the Staff Selection Commission to decide. The Commission approached the Deputy Secretary (Forests) Dadra and Nagar Haveli to supply the detailed list of duties performed by the applicant. The Administration, Dadra Nagar Haveli informed the office of Respondent on 2.1.1995 the detailed list of duties performed by the applicant. In the meanwhile the matter was referred to the Head Quarter of the Commission at Delhi to issue detailed guidelines in deciding individual nexus cases and the Commission vide its letter dated 24.5.1995 gave detailed instructions and guidelines for finalizing cases of age relaxation under para 4(e) of the notice. Keeping in view the guidelines the case of the applicant came to be analyzed and after careful application of mind it was found that the applicant does not qualify for age relaxation and accordingly informed the applicant under letter dated 18.10.1995 which is impugned in the present O.A.

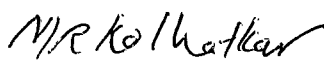


6. We have heard the arguments of both the counsel. The question for consideration is whether the subsequent guidelines issued by the respondent on 24.5.1995 would apply to the candidate who has been selected prior to the issuance of the guidelines. Since the guidelines are issued, after examination in which the applicant has passed, they will have only prospective effect and they cannot be applied retrospectively. The Ld. Counsel for the applicant relies on the judgement of Jodhpur Bench of the Tribunal in K.M.PRAJAPATI Vs. UNION OF INDIA AND OTHERS, (1994) 27 ATC 507 in this regard. The Jabalpur Bench of the Tribunal had held that the practice of the Commission to first allow the persons to appear in the examination and to scrutinize the applications afterwards is not a healthy practice. This causes inconvenience to the persons who are found ineligible and who have to incur expenditure for attending the examinations. It is also a wasteful expenditure of national exchequer that the persons are asked to appear though they are not eligible. The Commission should invite only eligible candidates to appear in the examination. It is therefore directed in the interest of justice, equity and in national interest that eligibility of a candidate should be examined prior to examination. The practice adopted by the Commission is bad in law. Keeping in view the ratio laid down by the Tribunal the Ld. Counsel for the applicant urged that the facts and circumstances of the



present case are similar and the subsequent instructions after examination and selection therefore cannot be applied in this case since the applicant has been performing similar duties in Dadra and Nagar Haveli and he was found to be suitable in the examination and interview. He further submitted that the action of the respondent in rejecting the applicant on the ground that there is no relationship between the duties performed by the applicant in his present department which could prove useful for the efficient discharge of duties of Inspector, Central Excise / Income Tax is not justified.

7. In the light of above, we hereby quash the impugned letter of respondent dated 18.10.1995 and direct the respondents to consider the appointment of the applicant after giving age relaxation under para 4(e) of advertisement and complete all other formalities within a period of two months from the date of receipt of a copy of this order. O.A. is allowed and disposed of with no order as to costs.


(M.R. Kolhatkar)

Member(A)


(B.S. Hegde)

Member(J)

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