

CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH

- 1) Original Application No.350/2000.
- 2) Original Application No.384/2000.

Friday, this the 26th day of July, 2001.

Shri Justice Birendra Dikshit, Vice-Chairman,
Shri M.P.Singh, Member (A)

- 1) Original Application No.350/2000.

Rajesh Suryakant Bhosale,
Plot No.156, S.No.51,
Bhairav Nagar, Dhanori Road,
Pune - 411 015.

(By Advocate Shri S.P.Saxena)

...Applicant..

- 2) Original Application No.384/2000.

Bhimsha Hanumanta Bardee,
Behind Raja Bahadur Mill,
Private Road, Nalanda Buddha Vihar,
Pune - 411 001.

(By Advocate Shri S.P.Saxena)

v.

1. The Union of India
through the Secretary,
Ministry of Defence,
DHQ, P.O.,
New Delhi 110 011.
2. The Controller General of
Defence Accounts,
R.K.Puram,
New Delhi - 110 011.
3. The Controller of Defence Accounts,
Southern Command,
Pune - 411 001.
4. The Secretary,
Department of Personnel & training,
New Delhi - 110 011.

...Respondents in
both the OAs.

(By Advocate Shri R.R.Shetty for
Shri R.K.Shetty,)

: O R D E R (ORAL) :

Shri M.P.Singh, Member (A)

Since the facts and the relief prayed for in these two
OAs viz. O.A. NO.350/2000 and 384/2000 are identical, we are
disposing of the OAs by passing a common order.



...2.

2. The applicant in OA No. 350/2000 is seeking directions viz. (a) to direct the Respondents to appoint him to the post of Peon for which he was duly selected by the Competent Board in Feb-Mar 2000; (b) to direct the Respondents to treat the applicant on duty for all purposes from the date any of his juniors has joined and to pay all consequential benefits to the applicant. The applicant in OA No.384/2000 is seeking for directions viz. (a) to quash and set aside the impugned order dt. 26th May, 2000 and (b) to direct the Respondents to issue offer of appointment to the applicant.

3. The brief facts of the case as stated by the applicant (in OA 350/2000) are that he was born on 3rd April, 1973 and had left the school while studying in Class - IX. He then registered his name with the Regional Employment Exchange, Pune in June, 1990. He received an interview call whereby he was asked to attend the interview at the office of the R-3 for Group 'D' post on 23.2.2000.

4. The facts as stated in OA 384/2000 are that the applicant was born on 16th May, 1968 and passed 9th Standard from a Marathi Medium School. As he could not study further, he got his name registered at Regional Employment Exchange, Pune. He received an interview call letter dt. 7.2.2000, whereby he was asked to attend the interview at the O/o. Respondent No.3 on 23rd February, 2000 with all required certificates and documents. The applicants in both the OAs while appearing for the interview came to know that there are vacancies available for various posts viz. Peon, Zaduwalla, Safaiwalla, Chowkidar, Wet-Safaiwalla etc. On the basis of the interview, the applicants were informed vide letter



...3.

dt. 7.4.2000 that applicant in OA 350/20000 has been selected for the post of Peon and applicant in OA 384/2000 for the post of Chowkidar. Vide the above letters the applicants were directed to appear before the Sassoon Hospital for medical fitness. The applicants appeared for medical examination on 10.4.2000 and got fitness certificate from the hospital. Thereafter, applicants in both the OAs received a letter dt. 26.5.2000 informing the cancellation of their selection on the ground that it was due to an erroneous interpretation of the Govt. Resolution in respect of maximum age of appointment. Aggrieved by this, the applicants have filed the above OAs.

5. The Respondents have contested the case by stating that applicants had been initially selected to a Group 'D' post, and they were accordingly informed by letter dt. 7.4.2000. This letter dt. 7.4.2000 was subsequently cancelled vide order dt. 26.5.2000. According to the Respondents, the applicants are not entitled to the benefit of increase in the upper age limit for recruitment by the method of Direct Open Competitive Examination as provided in Rule 3 of the Notification dt. 21.12.1998 (Exh.A-6). As the applicants were selected on the basis of short-listing/interview, they are governed by the provisions of Note below Rule 3 of the aforesaid Notification of 21.12.1998. They have also stated that the date on which the interview was conducted, the applicants were well beyond their age of 25 years. Hence, the question of considering their case does not arise as per Rules. According to them the term 'Direct Open Competitive Examination' has been defined in the Note below para 3 of the aforesaid Notification. Any recruitment which is not covered by

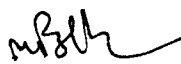
the said definition of direct open competitive examination cannot get the benefit of the increased¹ two years in the upper age limit contained in the notification dt. 21.12.1998. Apart from this, the retirement age for Group 'D' employee in other Central Govt. offices was already 60 years even before the increase in age of retirement for other employees to 60 years. Hence, the position of Group 'D' Defence Civilian employees^{is} ~~are~~ not different from Group 'D' employees in other Central Govt. Departments. The benefit of two years upper age limit contained in the notification dt. 21.12.1998 will be applicable only to recruits of direct open competitive examination and not otherwise. Similarly, in respect of Group 'D' Defence Civilian post also, this benefit will be admissible only if the recruitment made through open competitive examination and not otherwise.

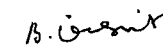
6. Heard both the Learned Counsels for the rival contestants. The learned counsel for the applicant stated that the Government vide Notification dt. 21.12.1998 has increased the upper age limit for recruitment by the method of Direct Open Competitive Examination, the same benefit should be extended to the recruitment of Group 'D' posts as the recruitment to Group 'D' post is also made through direct recruitment. On the other hand, the Ld. Counsel for the Respondents stated that recruitment to of Group 'D' posts is not made through SSC or UPSC ^{or} ~~through~~ written examination. The selection for Group 'D' post is made only by holding an interview and hence the instructions issued for the increase in upper age limit vide Notification dt. 21.12.1998 do not apply to the applicants in this case. The learned counsel for the applicant submitted that this amounts to

discrimination and violation of Article 14 and 16 of the Constitution. He also submitted that since he has not taken this as one of the grounds in the OA while challenging the order of Respondents, he be permitted to make an amendment in the OA to challenge the order on this ground.

7. After hearing both the learned counsels and perusing the record, we find that the posts have not yet been filled up and are lying vacant for more than one year due to the interim orders granted by this Tribunal. It is a settled law that the Court cannot issue directions to the Govt. for appointing a person even if he has been selected for the post. It is for the Government to consider and appoint the applicants to Group 'D' posts in accordance with the law, Rules and instructions. On the other hand, it is also not possible at this stage to grant permission to the applicant to amend the OA to challenge it on the ground of discrimination. In case, the amendment in OA is permitted at this stage, it would be inequitable and therefore, no permission can be given to the applicant to amend the OA.

8. For the reasons stated above, both the OAs are devoid of merit and are therefore dismissed accordingly. The interim relief granted in both the cases stands vacated. No costs.


(M.P. SINGH)
MEMBER(A)


(BIRENDRA DIKSHIT)
VICE-CHAIRMAN

B.