

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO: 402/97

Date of Decision:

13.6.97

Nitin Suhas Jangada ... Applicant

Shri S.P.Saxena ... Advocate for
Applicant.

-versus-

Union of India & 3 Ors. ... Respondent(s)

Shri R.K.Shetty ... Advocate for
Respondent(s)

CORAM:

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

The 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 ?


(B.S. HEGDE)
MEMBER (J)

abp.

CENTRAL ADMINISTRATIVE TRIBUNAL

GULESTAN BLDG. NO.6, PRESCOT RD, 4TH FLOOR.,

MUMBAI - 400 001.

ORIGINAL APPLICATION NO. 402/97.

DATED THIS 13/6 DAY OF JUNE, 97.

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

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

Nitin Suhas Jangada,
Stenographer Grade-III,
Office of Chief Engineer,
Pune Zone, PUNE - 411 001.

... Applicant.

By Advocate Shri S. P. Saxena.

V/s.

1. The Union of India,
Through The Secretary,
Ministry of Defence,
DHQ PO, New Delhi-110 011.

2. The Engineer-in-Chief,
Army Headquarters,
Kashmir House,
New Delhi - 110 011.

3. The Chief Engineer,
Southern Command,
Pune - 411 001.

4. The Chief Engineer,
Pune Zone,
Pune - 411 001.

... Respondents.

By Advocate Shri R. R. Shetty
for Shri R. K. Shetty.

X O R D E R X

X Per Shri B. S. Hegde, Member (J) X

In this Original application, the applicant has challenged the Impugned order dated 16/4/97 that Stenographers/LDCs are not allied categories of Supdt E/M Gde-II as given in their letter dated 18/4/96, hence the applicant Steno is not eligible for age relaxation. Accordingly, his case is not being considered. Earlier, the respondents have intimated vide their letter dated 31/8/95 stating that the applicant does not belong to allied category of the post of E/M Gde-II and no age

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concession can be given to him.

2. The applicant has filed this OA on 5/5/97. On the basis of the submissions made by the Learned Counsel for Applicant, ex-parte Interim Order was given to allow the applicant to appear in written examination, and that the results of the examination not to be declared, till further orders, which is extended till today, thereby, the applicant was allowed to appear for the ~~exam~~ and the result has not yet been declared. The Learned Counsel for Applicant draws our attention to the recruitment rules ~~notified on 17.11.1983~~ framed (S.R.O. 302) under article 309 of the Constitution under which the post of Superintendent Grade-II is to be filled ~~50%~~ by promotion failing which by direct recruitment and 50% by direct recruitment. Qualification prescribed for the said post is Diploma in Electrical or Mechanical or Automobile Engineering from a recognized university/Board or equivalent. Age limit is prescribed for direct recruitment as 25 years relaxable for Government Servant upto 35 years in accordance with the instructions/orders issued by Central Government.

3. The contention of the learned counsel for applicant is, though the applicant do possess the requisite qualification and come within the age limit, his application has not been processed by respondents on the grounds that the applicant does not come under the allied category and therefore his application was rejected in the year 1995. Thereafter, he made a representation in 1996 to the higher authorities seeking permission to appear for the ~~post of~~ exam to the Superintendent E/M Grade-II. No reply has been received by him. Again, he sent a reminder in the month of February, 97 for which the respondents have replied vide their letter dated 16/4/97 which is the Impugned Order of the respondents stating that the applicant's application has not been considered. Therefore, he urged that selection for the post of Superintendent Grade-II examination was being held

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and therefore he may be permitted to appear for the examination. Accordingly, permission was granted to the applicant for appearing for exam. In this connection, he draws our attention that earlier ~~one~~ Shri M.P. Khan, who was L.D.C. was allowed to appear/compete at examination for the post of Superintendent B/R Grade-II, as a Departmental Candidate and he was appointed to the post of Superintendent B/R Grade-II on 1/10/1983. The respondents have thus ~~no right to discriminate~~ the applicant ~~and~~ ~~act contrary to~~ rules. It is not the case of the respondents that the applicant is not eligible or not qualified to appear for the exam. The only contention raised by the ~~respondents~~ is that the applicant does not belong to the allied category for promotion by way of direct recruitment, being a departmental candidate. In this connection, he also draws our attention to the instructions of the respondents whereing

"A Gp 'C' employee who is holding a non-technical post which is not in direct line of promotion to a technical post, can also have exemption upto 35 years in age while competing as a direct recruitment and a UDC or B/S Cadre personnel is eligible for direct recruitment for B/R, E/M, SA or Draughtsmen cadres, if he possess the basic qualifications."

4. The respondents in their reply submitted that the applicant is serving as Stenographer Gde III in MES in the Office of Chief Engineer, Pune. Stenographer Gde. III is a non-technical Gp 'C' post. While in service during the year 1991, the applicant secured an Engineering Qualification which is considered equivalent to Diploma in Mechanical Engineering. In the year 1995, some vacancies of Supdt E/M Gde II fell vacant for recruitment and the applicant has made an application for the same. The respondents have rejected the application of the applicant on the ground that he is serving in a



non-technical post which is not an allied category for the post of Supdt. E/M Gde II and as such no age concession could be given. So far as Khan's case is concerned, the contention of the respondents is that in the year 1983, E-in-C's Branch, Army HQ letter dated 18/4/86 was non-existent. After having identified the allied category to the post of E/M Gde II, the applicant cannot be allowed to appear for recruitment as he is serving in the non-allied category of stenographer.

5. Further, it is submitted, that they do not find it possible to appoint the applicant to the post of Supdt. E/M Gde. II, if selected, in violation of the guidelines issued by Government of India to the effect that an employee can be considered as the Departmental candidate and accordingly age relaxed/only if the cadre in which he is serving is allied to the post for which the employee wished to be considered. In this connection, the Learned Counsel for respondents draws our attention to the office memorandum dated 20/5/88, wherein it states

"Departmental candidates may be allowed to compete alongwith candidates from the open market up to the age of 40 years for Group 'C' posts in the case of general candidates and 45 years in the case of Scheduled Castes and Scheduled Tribes. This concession will be subject to the usual condition that the direct recruitment posts in Group 'C' posts are in the same line or allied cadres and a relationship could be established that service rendered in the posts will be useful for efficient discharge of the duties in the other categories of posts."

6. As per the instruction of E-in-C's Branch letter dated 18/4/86 the allied category for Supdt. E/M Gde. II is

 "Sub-Overser and the posts below in the B/R Cadre who have the requisite qualification of Diploma in Elect/Mech/Automobile Engineer from the recognised institute, prescribed for direct recruitment. Charge Mech/ Charge Elect/Charge Mech Refg and posts below who have the requisite qualifications of diploma

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in Elect/Mech./Automobile Engineering
from the recognised Institute"
are eligible to be considered.

7. The contention of the learned counsel for applicant is that, any instructions issued by department from time to time cannot go against rules/S.R.O. of the recruitment framed under article 309 of the Constitution. The respondents cannot refuse the applicant from appearing for the said exam. He is otherwise duly qualified and has come within the age limit. Therefore, under any circumstances, the rejection of his application cannot be considered as valid.

8. We are inclined to accept the contention of the respondents that so far as Khan's case is concerned, there cannot be said to be any discrimination because at the time of decision of Khan's case, Army Headquarters letter dated 18.04.1986 had not been issued. The main question required to be considered by us is whether exhibit A-12, on which the applicant has relied, has a statutory backing or whether the departmental circular dated 18.04.1986 can be said to be valid. So far as exhibit A-12 is concerned, it is stated to be an extract from AID MEMOIR for recruitment of basic categories in M.E.S. The authority for this AID MEMOIR i.e. the circular under which it has been issued, or the authority for individual paragraphs forming part thereof, is not clear. We are therefore, required to assume that the AID MEMOIR is just in the nature of administrative instructions without any statutory force.

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9. So far as Army Headquarters instructions dated 18.04.1986 are concerned, the S.R.O. under column 6 - "Age limit for direct recruit" prescribes as below :-

"Not exceeding 25 years (relaxable for Government servants upto 35 years in accordance with the instructions or orders issued by the Central Government)."

The contention of the respondents is that, in view of the specific cross reference to the government instructions, Government instructions are required to be considered as having a statutory force. These government instructions provide that the concession will be subject to the usual condition that the direct recruitment posts in Group 'C' posts are in the same line or allied cadres and a relationship could be established that service rendered in the posts will be useful for efficient discharge of the duties in the other categories of posts. The contention of the counsel for the applicant is however, that the instructions could only cover the extent of relaxation i.e. 35 years, 40 years, 45 years, etc. and instructions relating to the posts being in the same or allied cadre are required to be treated as of an administrative nature and are required to be ignored as not being in consonance with the S.R.O. We are unable to accept this contention. The S.R.O. does not contain any such distinction. The relaxation of the age limit is required to be read as to the posts held by the persons in respect of whom the relaxation is to be operated and therefore, the Army Headquarters instructions dated 18.04.1986 are required to be held as filling

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the gap in the S.R.O. and therefore, having the statutory backing, the same cannot however be said of the aid MEMOIR relied upon by the applicant.

10. We are, therefore, of the view that although the applicant may be fulfilling the academic qualification, he is a Stenographer and therefore, cannot be said to be holding the post in the same or allied cadre, as the post for which the recruitment is contemplated. The communication dated 16.04.1997, therefore, relying on Army Headquarters instructions, refusing the applicant the permission to compete for the post of Supdt. E/M Grade-II is in consonance with the Army Headquarters instructions based on S.R.O. and therefore, valid. The O.A., therefore, has no merit and the same is therefore dismissed with no order as to cost. The interim relief was granted permitting the applicant to appear in the exam and not to publish the result of the exam without specific approval of the Tribunal. In view of the order being passed by us, the results of the applicant should be cancelled.

M. R. Kolhatkar

(M. R. KOLHATKAR)

MEMBER (A).

B. S. Hegde

(B. S. HEGDE)

MEMBER (J).

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dt 13.6.97
Order/Judgement despatched
to Applicant/Respondent (s)
on 20.6.

MR
23.6

R.P. No 61/97
Filed by applicant
put up 2 orders
by circulation rd.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GULESTAN BLDG. NO. 6, PRESCOT RD, 4TH FLR.

FORT, MUMBAI-400 001.

REVIEW PETITION NO:61/97 in O.A.No.402/97.

DATED THIS 10TH DAY OF JULY, 1997.

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

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

Nitin Suhas Jangada
Stenographer Grade-III,
Office of Chief Engineer,
Pune Zone, Pune-411 001.

... Review Petitioner.

v/s.

Union of India and others.

... Respondents.

I O R D E R X (By circulation)

I Per Shri B. S. Hegde, Member (J) X

Applicant has filed this review petition seeking review of judgement dated 13/6/97 in OA No.402/97.

On perusal of the review petition, we find that the applicant has again reiterated same facts which were stated in the OA and one Shri Khan Musa Papa who was an L.D.C. and who was also not holding the post in the same ~~as~~ allied cadre, as the post of Superintendent B/R Grade-II, for which recruitment was made in 1983, he was allowed to appear for the direct recruitment to the post of Superintendent B/R Grade-II and was selected to the said post. Therefore, the applicant should be considered.

It is made crystal clear in our judgement so far as Khan's case is concerned, there is no discrimination because at that time Army Headquarters letter dated 18/4/96 had not been issued. After having identified the allied cadre, the post of Superintendent E/M Grade-II, the applicant cannot be allowed to appear from different channel of promotion. Although the applicant is having the required academic qualification, he is a Stenographer and does not fall under the allied cadre of recruitment.

(Signature)

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In the result we do not find that any new facts have been brought to our notice, therefore since the O.A. was dismissed on merits, and thus the review petition is dismissed by circulation.

M.R. Kolhatkar

(M.R. Kolhatkar)
Member (A)

B.S. Hegde

(B.S. Hegde)
Member (J)

order/Judgement despatched
on 22.10.1997
to Applicant/Respondent (s)
on 22.10.1997
24.10.1997