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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

O.A.NO. 211 of 1987

Date of Order: 19/03/1990

B.Ashirvadam

.....Applicant

Versus

1. Employees State Insurance Corporation,
ESTC Building, Kotla Road, New Delhi,
represented by its Director General.
2. Union Public Service Commission, Government
of India, New Delhi, represented by
its Secretary

.....Respondents

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For Applicant: K.Satyanarayana Rao, Advocate

For Respondents: Mr.G.Parameshwar Rao, Counsel
For the Respondents

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C O R A M:

HON'BLE SHRI B.N.JAYASIMHA: VICE CHAIRMAN

HON'BLE SHRI D.SURYA RAO: MEMBER (JUDICIAL)

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(Judgment delivered by Hon'ble Shri D.Surya Rao, Member (J)

1. The Applicant herein is working as Manager Grade-I, in the Employees State Insurance Corporation at Hyderabad. It is his case that on 6-4-1985, 2nd respondent issued an advertisement inviting applications for 31 posts of Regional Director Gr.IV/Dy.Directors etc. Age limit prescribed was 40 years as on 6-5-1985, relaxable for Government Servants and employees of the

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ESI Corporation upto five years. The applicant states that he possess the educational qualification and was ^{he was 41½ years} ~~is~~ also within the age limit prescribed ~~i.e.~~ 41½ years- ^{and} much below the maximum age prescribed for ESI Corporation. He took the written test on 24-12-85 and also appeared for interview on 3-6-1986 at UPSC office, New Delhi. He, however, received no further communications. The applicant states that he understands that the selections are being finalised and only candidates below the age of 40 years were selected by the UPSC. He states that rejection of the candidates on the ground of age i.e. they crossed 40 years of age is irrational and discriminatory.

2. The applicant thereafter filed an additional affidavit at the stage of admission alleging that despite the applicant having secured higher marks than most of the candidates, he had been eliminated on the ground that persons below 40 years only were being considered. He alleged that selecting candidates below the age group of 40 years is contrary to the norms prescribed. ^{It is} ~~It is~~ further alleged that allocating ^{marks} 50%/for the written test and 50% marks for the oral interview is arbitrary and constrary to the law as laid down by the Supreme Court.

3. On behalf of the respondents 1 and 2, sepearate counters have been filed. Both the respondents have denied that the applicant was eliminated merely on the ground that he had crossed 40 years of age. The 2nd respondent has specifically averred that the contention that the candidates below age of 40 years alone have ^{and selected} been considered/is totally false. It is a fact that

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that the selected candidates in the instant case happened to be below 40 years of age ^{but} and it is a sheer coincidence. The contention that the applicant secured more marks in comparison to those who have been selected is also denied. In so far as the plea that allocation of 50% of total marks for Written test is contrary to the decision of the Supreme Court, it is contended that it is a vague statement. The respondents relied upon the decision of the Supreme Court in AIR 1981 SC 1777 (Liladhar Vs. State of Rajasthan), wherein it has been held that prescribing higher percentage of marks would depend upon the facts of each case and would not violate Article 14 of the Constitution as in the instant case.

4. We have heard the learned counsel for the applicant and Shri Parameshwar Rao, counsel representing the respondents.

5. The first contention of the learned counsel for the applicant is that the applicant had been eliminated merely on the ground that he was above 40 years of age despite his having secured higher marks. This contention is specifically denied in the counter by the respondents. We, ^atherefore, see no reason to disbelieve the statement of the respondents and it is rejected.

6. The second contention raised is allocation of 50% of the total marks for written test and 50% for interview is excessive and is contrary to the law laid down by the Supreme Court. The post for which recruitment is being made is Deputy Regional Director of ESI which is at higher level and also the persons who are

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being considered are the experienced employees..

Therefore, applying the ratio in Laladhar's case cited above, it cannot be said to be excessive.

7. The third point which the learned applicant's counsel seeks to raise by way of reply affidavit, which was not raised originally is as follows:

".....The respondent has clearly conceded in their counter that minimum marks were fixed in the oral test. Since no mention of fixing minimum marks for the oral interview had ever been made either in the Advertisement, instructions, to the candidates or in the hand out detailing the salient information in respect of the post advertised for introducing the concept of minimum marks at a later stage in the selection process, is arbitrary and illegal."

When the learned counsel for the applicant was confronted with the fact that this specific allegation/plea has not been raised either in the original affidavit filed on 10-3-87 or in the better affidavit filed on 27-3-1987, he seeks to contend that he has raised this plea at para 6(vii) of the original application. All that is stated in the original application at para 6(vii) is as follows:

".....the selections made by the UPSC is not fair and according to the norms laid down by the Supreme Court and other High Courts and the same is liable to be held bad in law."

This averment cannot be read to mean that it is synonymous with the present plea raised ^{in reply and in} arguments namely that rejecting certain candidates on the ground that they had not secured certain minimum marks in the viva-voce is ultra-vires. In the absence of a specific plea in

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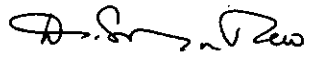
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the application no opportunity was available to the respondents to rebut the same and it cannot be said with any definiteness whether in fact such a minimum was prescribed. This contention is accordingly rejected.

8. For the reasons given above, we see no merit in this application and it is accordingly dismissed. No costs.


(B.N. JAYASIMHA)
VICE CHAIRMAN


(D. SURYA RAO)
MEMBER (JUDL.)

Dictated in open court
Dt. 19th March, 1990


For DEPUTY REGISTRAR(J)

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1. The Director General, Employees State Insurance Corporation, ESTC Building, Kotla Road, New Delhi.
2. The Secretary, Union Public Service Commission, Government of India, New Delhi.
3. One copy to Mr. K. Satyanarayana Rao, Advocate, 3-6-498, Himayatnagar, Hyderabad-500 029.
4. One copy to Mr. G. Parameswar Rao, Counsel for department, CAT., Hyderabad.
5. One spare copy.

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