

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 241/2000

Jabalpur, this the 17th day of February, 2004

HON'BLE SHRI M.P.SINGH, VICE CHAIRMAN
HON'BLE SHRI G. SHANTHAPPA, MEMBER(J)

Sudhakar s/o late Sh. Motiramji,
Bhose, Refrigerator Mechanic(SK)
R/o Q.No. T/83/3, M.E.S. Colony,
Ranjhi, Jabalpur (MP).

...Applicant

(By Advocate: Shri S.Paul)

-versus-

1. Union of India through
Secretary,
Ministry of Defence,
New Delhi.

2. Chief Engineer,
Central Command,
Lucknow Cantt.

3. Chief Engineer,
Jabalpur Zone,
M.E.S., Bhagat Marg,
P.B. No. 84,
Jabalpur (MP).

...Respondents

(By Advocate: Shri S.A.Dharmadhikari)

ORDER (ORAL)

By G. Shanthappa, Member (J) -

By filing this O.A. the applicant has sought the following main reliefs:-

- i) To set aside the order dated 28.1.2000 (A/1);
- ii) to command the respondents to permit the applicant to appear in the Selection Procedure for the post of Superintendent Engineer (E/M) Junior Engineer (E/M) pursuant to Notification dated 29.11.1999.
- iii) Consequent upon considering the applicant for promotion, if he is found fit he be promoted from the date other candidates/ contemporaries are promoted pursuant to the notification dated 29.11.1999.
- iv) Consequent upon the applicant's promotion he be given all consequential benefits including seniority, arrears of pay etc.

2. The brief facts of the case are that the applicant was initially appointed as Motor Pump Attendant on 4.6.1973. Subsequently, he was promoted as Refrigerator Mechanic (SK) on 30.10.1979. The respondent no. 1 has framed rules regarding recruitment called as M.E.S. Superintendent (E/M) Grade-I and II Recruitment Rules, 1983. The said rules were amended in the year 1991. The said rules were framed under Article 309 of the Constitution of India.

2.1 The promotional post of Refrigerator Mechanic (SK) is Superintendent Engineer (E/M) Grade-II now re-designated as Junior Engineer (E/M). The recruitment rules provides that the promotional post is to be filled up 50% by direct recruitment and 50% by promotion. The applicant submitted his application under the said recruitment rules for consideration to the post of Superintendent (E/M) / Junior Engineer (E/M) under 50% promotion quota. The applicant was permitted to appear for selection to the post of Superintendent (E/M) but the result of the selection was not declared. Pursuant to the notification dated 29.11.1999, the applicant was in a hope to get a movement order for selection. The respondents have issued the impugned order dated 28.1.2000 informing that the candidature of the applicant has been rejected on the ground that the applicant has attained the age of 40 years as on 16.3.1991. On two occasions, after attaining the age of 40 years, the applicant was permitted to undergo the selection procedure for Superintendent Engineer (E/M) Grade-II. The Lucknow zone also gave a call letter dated 15.9.1997 permitting the applicant for selection procedure for the post of Superintendent Engineer (E/M). In absence of any bar in the promotional quota, the impugned order is bad in law. The applicant has produced a copy of Notification dated 28.10.91, column 9 of which, speaks about the age - "No". When there is no prescribed age is mentioned in the rules, the applicant

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was qualified for selection. Since the respondents have denied the selection of the applicant, the action of the respondents is illegal and the applicant is entitled for the reliefs, as prayed for in the O.A.

3. The respondents have filed their reply denying the averments made in the O.A. Their specific case is that the case of the applicant for the post of Superintendent Engineer (E/M) cannot be considered since he is age barred. The applicant has wrongly rely on the recruitment rules. As per the ~~existing~~ Government Policy, the upper age limit for departmental candidates belonging to general category is 40 years. Admittedly the applicant belongs to general category. The applicant has been allowed to appear for the test/interview on earlier occasions through an inadvertence and overlooking the fact of his being overage. Merely because he has been permitted to appear in the selection on earlier occasion being his overage does not mean that the department should repeat the mistake committed by it earlier. Infact on scrutiny of age factor when it was found that the applicant has been over age, his candidature has been correctly rejected at the discretion of the department. There is no illegality or irregularity committed by the respondents but they have strictly acted within the rules framed for the purpose. The respondents have produced office Memo dated 20.5.1988 (R/3) which makes it clear that candidates from the open market upto the age of 40 years for Group 'C' post in the case of general candidates. Hence, the case of the applicant has no merit and is liable to be dismissed.

4. We have heard the learned counsel for the parties and perused the pleadings and other material available on record.

5. The question involved in this case is whether the applicant is age barred for the post of Superintendent Engineer (E/M) under promotion quota. The applicant is relying

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on the rules at Annexure A-2 according to which under column no. 9, there is no age bar. Hence, he was qualified for the said post under the respondents. The applicant himself has produced the wrong notification and he has suppressed the amended notification. The respondents have replied to the legal notice issued by the applicant taking the stand that the applicant is over age. The prescribed age limit for the post of Superintendent Engineer (E/M) in promotion quota is 40 years. The respondents have produced Annexure R-3 dated 20.5.1998 which clearly speaks about the relaxation of upper age limit for departmental candidates to Group 'C' posts. The said document is the correct document to apply the age criteria for group 'C' posts under the respondents.

6. Considering the facts of the case and documents including recruitment rules, we find that the applicant is over age for the selection as Superintendent Engineer (E/M) under the promotion quota. Hence the applicant is not qualified for the said post under the said rules and the applicant has failed to prove his case. The O.A. is accordingly dismissed. No costs.

G. Shanthappa
(G. Shanthappa)
Judicial Member

m.p.singh
(M.P.Singh)
Vice Chairman

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