

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDER SHEET

ORDERS OF THE TRIBUNAL

4.8.2008

OA 286/2008

Mr.B.B.L.Sharma, counsel for applicant.

Heard learned counsel for the applicant.
The OA stands dismissed at admission stage itself
by a separate order.


(B.L.KHATRI)
MEMBER (A)


(M.L.CHAUHAN)
MEMBER (J)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

Jaipur, the 4th day of August, 2008

ORIGINAL APPLICATION NO.286/2008

CORAM :

HON'BLE MR.M.L.CHAUHAN, JUDICIAL MEMBER
HON'BLE MR.B.L.KHATRI, ADMINISTRATIVE MEMBER

Dr.Chaitanya Dev Mishra,
Assistant Chemist Grade-I,
Geological Survey of India,
Jaipur.

... Applicant

(By Advocate : Shri B.B.L.Sharma)

Versus

1. Union of India through
Secretary to the Govt.,
Ministry of Mines,
New Delhi.
2. Director General,
Geological Survey of India,
27, JLN Road,
Kolkata.
3. Chairman,
UPSC,
New Delhi.
4. Deputy Director General/Sr.Adm.Officer,
Geological Survey of India,
15-16, Jhalana Doongri Institutional Area,
Jaipur.

... Respondents

(By Advocate : - - -)

ORDER (ORAL)

PER HON'BLE MR.M.L.CHAUHAN

[Signature]

The applicant has filed this OA thereby praying for the following relief :

"It is, therefore, prayed that in view of the facts and grounds mentioned above, the Original Application may kindly be allowed and the respondents may be directed to allow the applicant to participate in the selection process for the post of Chemist (Junior) in the respondent department in pursuance of the advertisement issued by the UPSC in the year 2005 after giving age relaxation. The respondents may further be directed to allow the applicant to participate in the selection process for the above said post and if he is found eligible and entitled he may be appointed on the post of Chemist (Junior) in Geological Survey of India in pursuance of advertisement issued by the UPSC in the year 2005."

2. Briefly stated, facts of the case are that the respondents issued an advertisement for the post of Chemist (Junior) vide Ann.A/3, in which one of the eligibility criteria for filling the said post was that a person should be of the age of 35 years as on 27.10.2005. As per the averment made by the applicant, age relaxation of five years was admissible for in-service candidates. The said post was to be filled-in by way of direct recruitment. Admittedly, the applicant was above 40 years of age as on 27.10.2005 rather he had completed about 43 years of age on the relevant date. It is after a lapse of about more than two years thereafter that the applicant has filed this OA thereby praying for the aforesaid relief.

3. The applicant in para-3 of the OA has pleaded that this application is within the period of limitation. It is not understood how the applicant has made this averment in the OA when the post was advertised in the year 2005 and the applicant has filed this OA on 31.7.2008, whereas under Section-21 of the Administrative Tribunals Act, 1985 such an application has to be filed within a period of one year when the cause of action has arisen. Be that as it may, even on merit the applicant has got no case. Neither any appointment can be given to overaged

candidates nor the court can issue any mandamus against the rules. The law on the point is well settled. The Apex Court in the case of **Tirumala Tirupati Devasthanams v. Jotheeswara Pillai (D) & Ors.**, 2008 (1) SLJ 22, has categorically held that no mandamus can be issued to the authorities to relax the age where the age for fulfilling the post has been prescribed under the statutory rules. Same is the case here. It is well settled that mandamus can be issued only when there is legal right. It may also be stated here that in the aforesaid case before the Apex Court the plea for relaxation of age was taken on the ground that the respondents had, in the past, given relaxation in two cases, as such, relaxation should also be given in the case of the appellant therein and it is case of discrimination. It was in that context the Apex Court had held that even if some relaxation has been given by the respondents in respect of some employees in the past cannot be a ground to grant relief to the writ petitioner and no mandamus can be issued unless there are some legal right. The case in hand is admittedly on weaker footing than the case before the Apex Court (supra) as in this OA the applicant has not pleaded case of invidious discrimination. As such, we are of the view that the present case requires dismissal in limine, which is accordingly dismissed, at admission stage itself, with no order as to costs.


(B.L.KHATRI)
MEMBER (A)


(M.L.CHAUHAN)
MEMBER (J)

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