

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

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ORIGINAL APPLICATION No. 060/00316/2014

**Date of filing: 07.04.2014
Order reserved on: 24.05.2016**

Chandigarh, this the 27th day of May, 2016

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**CORAM: HON'BLE MR. JUSTICE L.N. MITTAL, MEMBER (J) &
HON'BLE SMT. RAJWANT SANDHU, MEMBER (A)**

...

Hans Raj son of late Shri Mohri Ram, Ex-Serviceman, resident of VPO Chamal, Tehsil & District Sirsa.

....APPLICANT

BY ADVOCATE: SHRI SATBIR GILL

VERSUS

1. Union of India through its Secretary, Ministry of Human Resources and Development, Govt. of India, New Delhi.
2. Kendriya Vidyalaya Sangathan, 18, Institutional Area, Shaheed Jeet Singh Marg, New Delhi through its Chairman.
3. Sh. Rakesh Kumar (Ex. Men), Category OBC, Roll No. 280409101.
4. Sh. Parmeet Pal Singh, Category OBC, Roll NO. 1604090068
5. Sh. Ashok Bhansme, Category OBC, Roll NO. 13040100551
6. Sh. Om Parkash Chouksey, Category OBC, Roll No. 1404090127
7. Sh. Om Parkash Sain, Category OBC, Roll NO. 1904090427
8. Sh. Rajesh Kumar, Category OBC, Roll NO. 1904090417
9. Sh. Deepak Verma, Category OBC, Roll No. 1904090394
10. Ms. Amitha. S. Category OBC, Roll No. 2604090040
11. Sh. Kaniti Siva Prasada Rao, Category OBC, Roll NO. 1704090013.
12. Sh. Lokesh Yadav, Category OBC Roll NO. 2204090039
13. Ms. Pampy Kumari Sah, Category OBC (OH), Roll NO. 2704100132.
14. Sh. Umed Ali, Category OBC, Roll No. 1904090433
15. Sh. Chander Bhan Singh (Ex.-Men), Category OBC, Roll NO. 1904890325
16. Sh. Jai Bhagwan, Category OBC, Roll no. 1904090332

17. Sh. Parmod Kumar Walia, Category OBC, Roll NO. 2304090111
18. Sh. Aditya Kumar Singh, Category OBC, Roll No. 2804090096.
19. Sh. Ravi Shankar Gupta, Category OBC, Roll No. 1204090032.
20. Sh. Arvind Pal, Category OBC, Roll No. 1204090045
21. Sh. Manish Kumar Tarwey, Category OBC Roll No. 3304090048.
22. Ms. Neelam Pal, Category OBC, Roll NO. 1204090056.
23. Sh. Rajesh Kumar Singh, Category OBC, Roll No. 2704090060.

(Respondents at Sl. Nos. 4,5,7,8,9,11,12,14,19,20,21 & 23 were ordered to be deleted vide order dated 22.03.2016).

....RESPONDENTS

BY ADVOCATE: SHRI VINOD K. ARYA FOR RESPONDENT NO. 1
SHRI R.K. SHARMA FOR RESPONDENT NO. 2.

ORDER

HON'BLE MR. JUSTICE L.N. MITTAL, MEMBER(J):-

By filing this Original Application under Section 19 of the Administrative Tribunals Act, 1985, applicant Hans Raj has raised issue of extent or quantum of age relaxation available to ex-servicemen.

2. Case of the applicant is that he was enrolled in Indian Air Force (IAF) as Airman on 31.12.1983 and retired on 4.4.2011 after rendering service of 27 years 3 months 5 days vide discharge book (Annexure A-1) and Identity Card (Annexure A-2). Respondent no. 2 Kendriya Vidyalaya Sangathan (KVS) published advertisement (Annexure A-3) in Employment News dated 11-17 February, 2012 for officers' cadre and non-teaching posts for the year 2011-12 including post of Assistant bearing post code no. 66. The applicant applied for the post of Assistant under ex-servicemen OBC category vide

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application dated 7.3.2012 (Annexure A-4). The applicant appeared in two written tests held on 30.6.2012. After evaluation of first paper, he was placed at Sl. NO. 4 amongst OBC category candidates vide merit list (Annexure A-5). The applicant received communication dated 26.12.2012 (Annexure A-6) asking the applicant to submit certain documents for verification of his eligibility for the post. Respondent no. 2 published on-line list dated 02.8.2013 (Annexure A-7) of selected candidates for the post of Assistant which did not include the name of the applicant. The applicant obtained information under the RTI Act from the respondents which disclosed that the applicant has been found ineligible for the post being over age by 4 years 8 months 29 days as on 14.3.2012 - the 'cut-off date' (last date for submitting applications) because the post of Assistant carries Grade Pay of Rs. 4200/- and is Group-B post in KVS and there is no separate reservation for ex-servicemen belonging to OBC category in Group-B posts, except 8 years relaxation in age which was granted to the applicant.

3. The applicant has alleged that impugned selection list (Annexure A-7) is illegal and is liable to be set aside. The applicant did not seek reservation as ex-servicemen but asked for age relaxation under ex-servicemen OBC category as per para 3 (f) of advertisement (Annexure A-3) on account of his continuous service in IAF. By granting age relaxation for the period he served in IAF, he becomes eligible for the post as per age criterion. The applicant has also relied on govt. instructions issued vide O.M. dated 7.9.2008 (Annexure R-3) and amendment of Rules vide notification dated 4.10.2012 (Annexure

A-8). Reference has also been made to consolidated instructions regarding age relaxation vide O.M. dated 27.3.2012 (Annexure A-9).

4. On the aforesaid averments, the applicant has sought the following relief:

"(c) The Impugned Selection List Annexure A-7 be quashed and further directions be issued to the respondents to select/appoint the applicant on the post of Assistant post code no. 66 as per the advertisement published in Employment News 11-17 February 2012."

5. Vide order dated 16.2.2016, selected candidates of OBC category were impleaded as respondents no. 3 to 23 to the O.A. On 22.3.2016, counsel for the respondent no. 2 (KVS) stated that offer of appointment to respondents no. 4,5,7,8,9,11, 12,14,19,20,21 and 23 had since been withdrawn because they did not join. Accordingly the said respondents were deleted from the array of respondents. The remaining private respondents no. 3,6,10,13, 15 to 18 and 22 did not put in appearance inspite of service.

6. Respondent no. 1 & 2 in their written statement interalia pleaded that respondent no. 1 Union of India through Secretary, Ministry of Human Resources & Development is neither necessary nor proper party to the O.A. because KVS is a Society registered under the Societies Registration Act, 1860. Its Board of Governors (BoG) is the authority to approve the policies of KVS. Objection regarding non-impleadment of selected candidates has become non-existent due to their subsequent impleadment. It was pleaded that service condition of KVS employees are governed by the Education Code of KVS in vogue. Policy decisions are taken by the BoG. The Commissioner of KVS is its Chief Administrator and Chief Executive to implement the policies

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approved by BoG. As regards the merit of claim of the applicant, it was pleaded that the documents received from the candidates for verification of their eligibility were scrutinized by the respondents, but on scrutiny of documents of the applicant, it was found that he was over age and, therefore, he was not empanelled in the list of selected candidates for the post of Assistant. Amendment of Rules vide notification dated 4.10.2012 (Annexure A-8) is not applicable to the selection in question for which advertisement was issued in February 2012 and written examination was held on 30.06.2012 i.e. prior to the said amendment of Rules. Post of Assistant has been classified as Group-B post w.e.f. 1.1.2006 on acceptance of recommendations of the 6th Central Pay Commission, vide Govt. of India notification dated 09.04.2009 adopted by KVS as conveyed vide letter dated 16.9.2009 (Annexure R-1 collectively) because the post carries Grade Pay of Rs. 4200/- in pay band of Rs. 9300-34800. KVS follows the instructions/policies of Govt. of India in the matter of age relaxation etc. as mentioned in Recruitment Rules (Annexure R-2) for the post of Assistant. However, reference to Central Govt. Authorities/Agencies in instructions/policies of Govt. of India is to be taken as reference to the corresponding Authorities/Recruiting Agency of KVS, it being a society. As per Govt. of India policy dated 7.9.1981 (Annexure R-3), relaxation of age to ex-servicemen for Group-B posts, recruitment whereof is by Central Agency as in the present case, is admissible for 5 years only, besides further 3 years above the upper age limit and the same has been granted to the applicant, but still he was over age and, therefore, ineligible.

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7. The applicant filed replication wherein he controverted the stand of the respondents and reiterated his own version.

8. We have heard counsel for the parties and perused the case file.

9. Counsel for the applicant submitted that according to para 1(i) of instructions dated 7.9.1981 (Annexure R-3), the applicant is entitled to age relaxation by the length of military service increased by 3 years as the recruitment examination in question was not held by the Union Public Service Commission (UPSC) and, therefore, paragraph 1(ii) of the said instructions restricting the age relaxation to 5 years beyond 3 years exceeding the upper age limit is not applicable. It was emphasized that since the examination for the recruitment in question was not held by UPSC, para 1(i) of instructions (Annexure R-3) is applicable and para 1(ii) of the said instructions is not applicable and, therefore, the applicant is entitled to age relaxation equal to length of service rendered in IAF and consequently he was not over age on the 'cut-off date'.

10. On the other hand, counsel for the respondents contended that post of Assistant carrying Grade Pay of Rs. 4200/- in the Pay Band of Rs. 9300-34800/- is a Group-B post as per order dated 9.4.2009 read with letter dated 16.09.2009 (Annexure R-1 collectively). It was submitted that examination for the recruitment in question was conducted by KVS as All India Competitive Examination and, therefore, paragraph 1(ii) and not paragraph 1(i) of instructions (Annexure R-3) is applicable and on the basis thereof, age relaxation of 5 years only is admissible to the applicant and even after granting the same, the applicant was over age on the 'cut-off date'. It was pointed out that for

any recruitment in KVS, examination is not conducted by UPSC and is conducted by agency of KVS and, therefore, in instructions (Annexure R-3), recruitment agency of KVS corresponding to UPSC has to be read.

11. We have carefully considered the matter. In view of order dated 9.4.2009 read with letter dated 16.9.2009 (Annexure R-1 collectively), it is undisputed that post of Assistant carrying Grade Pay of Rs. 4200/- in Pay Band- II of Rs. 9300-34800/- is a Group-B post. Consequently, instructions contained in paragraph-1 of O.M. dated 7.9.1981 (Annexure R-3) are applicable. The fate of the O.A. hinges on the interpretation of said instructions. Consequently sub-paragraphs (i) and (ii) of paragraph 1 of O.M. dated 7.9.1981 (Annexure R-3) are reproduced hereunder:

(i) The upper age-limit shall be relaxed by the length of military service increased by three years in the case of ex-servicemen and commissioned officers including ECOs/SSCOs for appointment to any vacancy in Group A and Group B services/posts filled by direct recruitment otherwise than on the result of an open All India Competitive Examination held by UPSC, subject to the condition that (i) the continuous service rendered in the Armed Forces by an ex-serviceman is not less than six months after attestation and (ii) that age does not exceed the prescribed age limit by more than three years and also subject to usual conditions which have been prescribed in respect of appointment of ex-servicemen in Group C and Group D posts vide the Notification No. 39016/1079-Estt. (C) dated 15.12.1979.

(ii) For appointment to any vacancy in Group A and Group B services/posts filled by direct recruitment on the results of an All India Competitive Examination held by UPSC, the ex-servicemen and Commissioned Officers including ECOs/SSCOs who have rendered at least five years military service and have been released on completion of assignment (including those whose assignment is due to be completed within six months) otherwise than by way of dismissal or discharge on account of misconduct or inefficiency, or on account of physical disability attributable to military service or on invalidment shall be allowed maximum relaxation of five years in the upper age-limit."

12. It is undisputed that in the instant case, the recruitment was made on the basis of All India Competitive Examination which was, however, held by recruitment agency of KVS and not by UPSC. KVS is a Society registered under the Societies Registration Act and, therefore, recruitment of officers/employees for KVS is not done by UPSC. The said recruitment is done by recruiting agency of KVS. Recruitment to the post in question was admittedly made on the basis of All India Competitive Examination conducted by recruitment agency of KVS. Consequently in our considered view, paragraph 1(ii) of O.M. dated 7.9.1981 extracted herein above and not paragraph 1(i) thereof is applicable to the instant case. The mere fact that the examination in question was not held by UPSC would not make paragraph 1(ii) ibid to be inapplicable to the instant case. There are judgments of Hon'ble High Courts and Supreme Court to the effect that where authority prescribed for imposing penalty of 'cut in pension' is President of India, in the case of KVS, the corresponding authority shall be deemed to be President or BoG of KVS. On the same analogy, in the instant case, for the purpose of paragraph 1 of O.M. dated 7.9.1981, recruitment agency of KVS shall be deemed to be corresponding to UPSC and, therefore, paragraph 1(ii) of O.M. dated 7.9.1981 is fully applicable to the instant case. In view thereof, the applicant was entitled to age relaxation of 5 years only. By granting the same, the applicant was still over age. His date of birth is 15.6.1964. His age as on 14.3.2012- the 'cut-off date' was, therefore, 47 years 8 months 29 days and he was thus over age by 4 years 8 months 29 days as averred by the respondents and, therefore, he was ineligible for the post of Assistant.

13. It may be mentioned that the applicant in the O.A. has alleged and it was also submitted during the course of hearing that the applicant has retired from IAF on 4.4.2011. However, perusal of his discharge certificate (Annexure A-1) reveals that he had not retired from IAF but was discharged from IAF on 4.4.2011 on his own request.

14. Counsel for the applicant also tried to take advantage of Rule 5(a) as amended by Amendment of Rules dated 4.10.2012 (Annexure A-8) to claim age relaxation for the entire length of his military service whereas counsel for respondents referred to Rule 5(c) as amended by Annexure A-8 wherein reference to UPSC has been omitted. However, Amendment of Rules (Annexure A-8) is not applicable to the instant case because the said amendment was notified on 4.10.2012 whereas advertisement (Annexure A-3) had been issued on 11-17 February, 2012 and even written examination had been held on 30.06.2012 i.e. prior to the said amendment of the Rules. In view thereof, during the course of hearing, itself, counsel for the parties conceded that the said Amendment of Rules (Annexure A-8) is not applicable to the instant case.

15. For the reasons aforesaid, we find that the applicant has been rightly held ineligible for the post of Assistant being over age. The O.A. is, therefore, dismissed with no order as to costs.

(JUSTICE L.N. MITTAL)
MEMBER (J)

(RAJWANT SANDHU)
MEMBER (A)

Dated: 27.05.2016
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