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**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

OA No. 060/00604/2014

Date of decision: 24.11.2015

Coram: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)

HON'BLE MR. UDAY KUMAR VARMA, MEMBER (A)

Vijay Kumar S/o Sh. Balak Ram, Aged 29 years, R/o VPO Sardaheri, House no.251, Distt. Ambala, Tehsil Barara-133206.

-APPLICANT

By Advocate: Shri Rohit Seth

VERSUS

1. Union of India, through its Secretary, Ministry of Defence, New Delhi.
2. Director General Medical Services (Army), (Integrated HQ of MoD (Army) Adjutant Genral Branch, 'L' Block, New Delhi-110001.
3. Commanding Officer, Station Health Organization (Army), Ambala Cantt.
4. Selection Board, through its Presiding Officer, Lt. Col. JPN Singh Military Hospital, Ambala Cantt.
5. Nirmesh Kumar S/o Sh. Ashok Kumar, R/o Balmiki Basti, Shahabad, through Commanding Officer, Station Health Organization (Army), Ambala Cantt.

-RESPONDENTS

(By Advocate Shri Ram Lal Gupta)

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(Vijay Kumar v. UOI & Ors.)

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ORDER

Mr. Sanjeev Kaushik, Member (J):

Challenge in this Original Application, filed under Section 19 of the Administrative Tribunals Act, 1985, is to selection and appointment of respondent no.5 dated 10.07.2013 and also to an order dated 01.01.2013 whereby the claim of the applicant for grant of relaxation in age, being an OBC category candidate, has been declined. He further sought a direction from this Tribunal to direct the respondents to appoint him as Health Inspector (Civilian) after granting age relaxation, being an OBC category candidate, as provided by the Government of India.

2. The facts, which led to filing of the present Original Application, are that the respondent no.2 issued an advertisement in the newspaper, i.e., 'The Tribune' dated 3.8.2012 whereby notifying one post of Health Inspector (Civilian) for general (unreserved) category with last date as 27.08.2012. The applicant, who belongs to 'Saini' caste under the OBC, applied for the same. All the candidates, who applied in pursuance to the advertisement, were subjected to written test followed by interview. It is the case of the

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✓ applicant that vide communication dated 05.12.2012 the selection committee forwarded the recommendations to the competent authority for issuing appointment letter in the order of merit. He was placed at serial no.1 in the list. Later on his candidature has been rejected vide impugned order dated 01.01.2013 on the ground that no relaxation in age is permissible to reserved category candidates, except the ex-servicemen, as per Govt. of India's instructions for an unreserved post. The applicant earlier approached this Tribunal by filing OA no.880/HR/2013. However, pending OA when respondents offered appointment to respondent no.5 applicant withdrew the OA on 15.07.2014, with liberty to file fresh OA, challenging the appointment of respondent no.5. It is the case of the applicant in the OA that when the respondents issued advertisement on 3.8.2012 they have categorically stated therein that age relaxation will be given to the candidates belonging to reserved categories. Since the applicant belongs to OBC category, therefore he is entitled for grant of age relaxation benefit in terms of Government of India's OM dated 27.03.2012. Therefore, the action of the respondents in rejecting his claim for grant of age relaxation and offering appointment to respondent no.5 (unreserved

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category candidate) is illegal, arbitrary and is liable to be set aside. Hence the Original Application.

3. The respondents refuted the claim of the applicant by filing detained written statement, wherein they submitted that they had advertised single post, which was unreserved and in terms of Govt. of India's instructions applicable for grant of relaxation no relaxation can be granted to reserved category candidates, if the post is notified for unreserved category. Wrongly his application was considered by the selection committee and his name was forwarded. However, when the papers were scrutinized by the selection committee it transpired that he is over-age and, therefore, the matter was referred back to the selection committee to re-draft the select list and to forward names of the eligible persons. Consequent to that respondent no.5, who belongs to unreserved category and was higher in merit than others, was offered appointment.

4. Applicant has filed rejoinder, wherein he reiterated what has been stated in the OA.

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5. We have heard Shri Rohit Seth, learned counsel for the applicant and Shri Ram Lal Gupta, learned senior standing counsel for Union of India on behalf of the respondents.

6. Shri Seth, learned counsel appearing for the applicant vehemently argued that the action of the respondents in not extending the benefit of age relaxation to applicant is totally illegal, arbitrary and colourable exercise of power to deny appointment to applicant. To substantiate his argument, he submitted that though the post in question was unreserved but the applicant who belongs to a reserved category (OBC) cannot be stopped from applying for the said post. Once the advertisement itself says that reserved category candidates will be given relaxation as per Government Policy then the applicant being an OBC candidate is entitled for grant of three years' age relaxation. Since the respondents have not followed Govt. of India's instructions, therefore their action and consequent appointment of respondent no.5 be cancelled. To buttress his submission, he placed reliance upon a judgment of the Hon'ble Supreme Court in the case of

Jitendra Kumar Singh and Anr. v. State of U.P. and Ors.

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Commission v. B. Swapna and Ors., 2005 (2) SCT 415 and
District Collector and Chairman Vizianagaram (Social
Welfare Residential SAchool Society) v. M. Tripura
Sundari Devi, (1990) 3 SCC 655.

7. Per contra, Shri Gupta, learned senior standing counsel appearing on behalf of official respondents opposed the OA and submitted that the argument raised at the hands of the applicant cannot be accepted because the vacancy notified by the respondents was unreserved and the applicant, who belongs to reserved category, can apply for the same but at the same time he has to meet out all the parameters/eligibility conditions required from a general category candidates and he cannot be granted relaxation in age. He further submitted that the relevant recruitment rule governing the post in question does talk of grant of age relaxation to reserved category candidate to allow him to compete along with others for the post meant for unreserved category. To substantiate his argument, he placed reliance on Office Memorandum issued by Govt. of India, Department of Personnel and Training dated 25.01.1995, where they have decided to grant age relaxation by three years to OBC

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candidates for direct recruitment against a reserved vacancy. He also submitted that another Office Memorandum dated 01.07.1998 also makes it abundantly clear that if a post is advertised for unreserved category then a reserved category candidate cannot ask for relaxation in age, experience, qualification etc. to make him eligible against the unreserved post. To buttress his submission he placed reliance upon an order passed by a Full Bench of this Tribunal at Principal Bench in the matter of **Ashish Bahad v. National Council of Educational Research and Training & Anr.** (OA No.208/2007) decided on 24.07.2007 and subsequent decision in the case of **Sandeep Kumar v. Union of India & Ors.** (OA No.2596/2011) decided by the Principal Bench of this Tribunal on 11.05.2012. He also placed reliance upon a judgment passed by the Hon'ble Andhra Pradesh High Court in the case of **Boddu Satyanarayana v. Rashtriya Ispat Nigam Ltd. & Ors.**, 2012 (2) SLR 40 and decision of the Hon'ble Rajasthan High Court in the case of **Rajesh Singh & others v. State of Rajasthan & Others**, 2014 LIC 2371.

8. We have given our thoughtful consideration to the entire matter and perused the pleadings available on record with the

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able assistance of the learned counsels appearing for the parties.

9. The core question that arises for our consideration is whether a reserved category candidate can claim relaxation in age or experience when he is applying against a post notified for unreserved category?

10. Conjunctive perusal of the pleadings makes it clear that the post in question was notified for general candidate where the minimum age prescribed was 18 years and the upper age was 27 years. The applicant, who belongs to OBC category, was overage by 53 days on the last date of submission of application forms. Though it is admitted by the respondents in their written statement that wrongly his application was considered and he was also allowed to participate in the selection process but later on when it transpired that he was over-age the matter was remitted back to the selection committee to re-draft the select list and according to that respondent no.5, who belongs to general category, was offered appointment being higher in merit. As regards the short contention at the hands of the applicant, which is to be answered, as posed above, that being a reserved category

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candidate, in terms of OM dated 25.01.1995 he is entitled for grant of three years age relaxation, we must say that the submission at the hands of the applicant is misplaced and cannot be accepted for the simple reason that the OM talks of grant of relaxation of age to OBC candidates, enabling them to compete for a vacancy reserved for them by granting three years relaxation but that does not mean that if OBC or reserved category candidates apply against an unreserved/general post then the same very relaxation is admissible to them. The OM dated 01.07.1998 is complete answer to the argument advanced at the hands of the applicant where in para-3 the Govt. of India have categorically clarified that only such SC/ST/OBC candidates who are selected on the same standards, as applied to general candidates, shall not be adjusted against reserved vacancies. For better appreciation para-3 reads as under:

"3. In this connection, it is clarified that only such SC/ST/OBC candidates who are selected on the same standard as applied to general candidates shall not be adjusted against reserved vacancies. In other words, when a relaxed standard is applied in selecting an SC/ST/OBC candidates, for example in the age limit, experience qualification, permitted number of chances in

written examination, extended zone of consideration larger than what is provided for general category candidates etc., the SC/ST/OBC candidates are to be counted against reserved vacancies. Such candidates would be deemed as unavailable for consideration against unreserved vacancies."

11. In the light of the above, we are in agreement with the submission made at the hands of the respondents that the applicant cannot be granted relaxation in age. He can otherwise compete against general category post if he falls within the age and qualification prescribed therein.

12. Now, dealing with judgment heavily relied upon by the applicant in the case of Jitendra Kumar Singh (supra). Perusal of the same makes it clear that the same is not applicable to the facts and circumstances of the present case because their Lordships have considered the provisions of U.P. Public Service (Reservation for Scheduled Castes and Scheduled Tribes) Act, 1993, which was replaced by another Act known as U.P. Public Service (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Ordinance, 1994 and came to the conclusion after considering various judgments on reservation, that once the State

✓ Government have enacted a special provision by enactment of the Act, whereby granting relaxation in age to reserved category candidates while competing with general seats. Therefore, their Lordships have approved in that case that the age relaxation is to be extended to reserved category candidates while competing for unreserved vacancies. Here the judgment cannot be applied because the rules and the instructions issued by the Govt. of India are entirely different. As reproduced above, OM dated 1.7.1998 clarifies the position that a reserved category candidate if granted relaxation cannot be allowed to adjust against an unreserved post. Therefore, this judgment will be of no help to applicant. Our view also stands fortified by the observations made by the Hon'ble Andhra Pradesh High Court in the case of Boddu Satyanarayana (supra) and a subsequent decision of the Hon'ble Rajasthan High Court in the case of Rajesh Singh & others (supra). Even a Full Bench of this Tribunal in the case of Ashish Bahad (supra) had an occasion to consider a similar controversy, where, after analyzing the OM issued by the Govt. of India on the subject, held as follows:

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"6. The application was filed claiming that a relaxation with respect to the age limit, in respect of OBC candidates should have found a place in the employment notification. He also incorporated a challenge that the relaxation in favour of NCERT candidates alone was illegal and the benefit of such exemption should have gone to him as well, he being an officer on deputation. The principal question as arising out of the reference order is whether as an OBC candidate, he was entitled to relaxation, which was admissible to such candidates in matters of selection. In other words, whether it would have been possible for a candidate, who was entitled to reservation benefits to claim benefit of relaxation of age when he was competing for a post notified as one for general merit candidates."

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"11. We hold that there is no merit in the claim of the applicant, as urged by him, as the legal position would be that in respect of general vacancies as are proposed to be filled by direct recruitment, persons otherwise entitled to reservations will have to compete with general candidates and will not be entitled to claim any relaxation in the matter of qualification, attainments of prescription regarding the age stipulations. Whatever minimum requirements to be satisfied by a general candidate will have to be possessed by a candidate who might be entitled to reservation benefits otherwise."

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The aforesaid view of the Full Bench was also subsequently reiterated by this Tribunal in the case of Sandeep Kumar (supra).

13. In the light of the above, we are left with no option but to dismiss the OA, being devoid of merit.

14. No order as to costs.

