

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A.NO.514 OF 2014

New Delhi, this the 28th day of October, 2016

CORAM:

**HON'BLE SHRI SUDHIR KUMAR, ADMINISTRATIVE MEMBER
AND
HON'BLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER**

.....

Prashant Tyagi,
Roll No.2201013921,
aged about 29 years,
S/o Sh.Dayanand Tyagi,
R/o 91/8, MES Colony,
Old Pinto Park,
Air Force Station Falam,
Delhi Cantt., Delhi-10 Applicant

(By Advocate: Mr.Anil Singal)

Vs.

Staff Selection Commission,
through its Chairman,
C.G.O.Complex, Lodhi Road,
New Delhi 110003 Respondent

(By Advocate: Mr.S.M.Arif)

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ORDER

Per RAJ VIR SHARMA, MEMBER(J):

In this Original Application, the applicant has prayed for the following reliefs:

01. To quash and set aside the Recruitment Advertisement, i.e., Junior Engineers Examination-2013 (Annexure A-1) to the

extent mentioned date of having acquired the minimum educational qualification as 1.1.2013 and Order dt.8.2.2014 (Annexure A-2) and

2. To direct the respondents to treat the candidature of the applicant as valid for Junior Engineers Examination-2013 and allow him to participate in the Junior Engineers Examination-2013 Exam process.
3. To consider the applicant as eligible for selection to the post of Junior Engineers in Junior Engineers Examination-2013 and appoint him to the post of Junior Engineer if he makes the grade as per his merit position.
4. To award costs in favour of the applicant and
5. To pass any order or orders which this Hon'ble Tribunal may deem just & equitable in the facts & circumstances of the case.ö

2. Brief facts of the applicant's case are as follows: The respondent-Staff Selection Commission issued notice for holding a Combined All India Open Examination on 26.5.2013 for recruitment to the posts of Junior Engineer (Civil) and Junior Engineer (Electrical) in Central Public Works Department and Department of Posts, Junior Engineer (Civil), Junior Engineer (Electrical & Mechanical), Junior Engineer (Quality Surveying & Contract) in Military Engineering Services (MES), Junior Engineer (Civil & Mechanical) in Central Water Commission (CWC) and Farakka Barrage, for which Degree or Diploma in Civil or Electrical or Mechanical Engineering from an institution recognized by Government of India or equivalent qualification was prescribed as the minimum essential educational qualification. The aforesaid notice was published in the Employment News dated 23.2.2013. The closing date for receipt of

applications was 15.3.2013. Paragraphs 4(C) and 5 of the aforesaid notice, which are relevant for the purpose of deciding the issue involved in the present case, are reproduced below:

04 (C). PROCESS OF CERTIFICATION AND FORMAT OF CERTIFICATES:

Candidates who wish to be considered against vacancies reserved or seek age-relaxation must submit requisite certificate from the competent authority, in the prescribed format whenever such certificates are sought by concerned Regional/Sub Regional Offices. Otherwise, their claim for SC/ST/ OBC/ PH/ ExS status will not be entertained and their candidature/ applications will be considered under General (UR) category. The formats of the certificates are annexed. OBC certificate with creamy layer status issued by the competent authority as prescribed by DOPT in the prescribed proforma should have been obtained within three years before the closing date of receipt of application i.e. 15.03.2013. Certificates issued up to the last tier of examination i.e. interview will also be accepted by the Commission.

NOTE I: Candidates are warned that they may be permanently debarred from the examination conducted by the Commission in case they fraudulently claim SC/ST/OBC/ExS/PH status.

5. MINIMUM ESSENTIAL EDUCATIONAL QUALIFICATIONS (As on 01-01-2013):

S.No.	Post	Educational and Other Qualification
1	Junior Engineer (Civil & Electrical), CPWD	Diploma in Civil or Electrical or Mechanical Engineering from an institution recognized by the Central Government or equivalent qualification.
2.	Junior Engineer (Civil & Electrical), Department of Posts	Three years Diploma or equivalent in Civil Engineering or Electrical Engineering from an institution recognized by the Central Government or State Government.

3	<p>(a) Junior Engineer (Civil), MES</p>	<p>Degree in Civil Engineering from a recognised University OR</p>
		<p>(i) Three years Diploma in Civil Engineering from a recognised institute or University or Board; and</p> <p>(ii) Two years experience in Planning, Execution and Maintenance of Civil Engineering works.</p>
	<p>(b) Junior Engineer (Electrical & Mechanical), MES</p>	<p>Degree in Electrical or Mechanical Engineering from a recognized University; OR</p> <p>(i) Three years Diploma in Electrical or Mechanical Engineering from a recognised institute or University or Board; and</p> <p>(ii) Two years experience in Planning, Execution and Maintenance of Electrical or Mechanical Engineering works.</p>
	<p>(c) Junior Engineer (QS&C) MES</p>	<p>(i) 3 years Diploma in Civil Engineering from a recognised institution/University/Board or equivalent; OR</p> <p>(ii) Passed Intermediate examination in Building and Quantity Surveying Sub Div.II of the Institute of Surveyors (India)</p>
4	<p>Junior Engineer (Civil & Mechanical)CWC and Farakka Barrage</p>	<p>Degree or Diploma in Civil or Mechanical Engineering from a recognized University or Institution.</p>

Note: Commission has decided to dispense with Work Experience for the post of JE(C, M & E) in MES in view of multiple posts and All India nature of the examination.

For list of equivalent qualifications as approved by CPWD/AICTE, refer to Annexure-X.

NOTE-I: As per Ministry of Human Resource Development Notification No. 44 dated 01.03.1995 published in Gazette of India edition dated 08.04.1995, the Degree obtained through open Universities/Distance Education Mode needs to be recognized by Distance Education Council, IGNOU. Accordingly, unless such Degrees had been recognized for the period when the candidates acquired the relevant qualification, they will not be accepted for the purpose of Educational Qualification.

NOTE-II: Candidates who have not acquired/will not acquire the educational qualification as on (01.01.2013) will not be eligible and need not apply.

NOTE-III: All candidates who are called for appearing at the Interview will be required to produce the relevant Certificates in Original such as Mark sheets, Provisional Degree/Diploma Certificate, etc. as proof of having acquired the minimum educational qualification on or before the closing date failing which the candidature of such candidate will be cancelled by the Commission.

NOTE-IV: ExS who have done various courses from Armed Forces which are certified by competent Authority to be equivalent to Diploma in Civil/Mechanical/Electrical Engineering are eligible to appear in the Examination.

2.1 In response to the above recruitment notice, the applicant made application. He appeared in the written examination, and was declared to have qualified the written examination. The SSC, vide letter dated 13.1.2014 (Annexure A-3), called him for interview on 30.1.2014. Accordingly, the applicant appeared for interview, but the SSC refused to interview him on the ground that he acquired the minimum essential

educational qualification on 9.1.2013 whereas the cut-off date for the purpose was 1.1.2013. Therefore, he made a representation requesting the SSC to take his interview. The SSC, vide Memorandum dated 8.2.2014 (Annexure A-2), informed the applicant as follows:

oSub: Junior Engineers (Civil, Mechanical, Quantity Surveying and Contract) Examination, 2013 ö representation regarding.

With reference to your candidature of above mentioned exam you are hereby informed that your representation dated 30.01.2014 was examined in the Commission and found that your result has been declared on 09.01.2013 and as per the notice of the exam the crucial date of reckoning the educational qualification is 01.01.2013. Therefore, you are not allowed to appear in the interview and your candidature is deemed to be cancelled.ö

Hence, the applicant has filed the present O.A. seeking the reliefs, as aforesaid.

2.2 It has been contended by the applicant that he had appeared in the B.Tech final year examination in the month of May 2012, but the result thereof, which was normally being declared by the month of September/October every year, was belatedly declared by the University on 9.1.2013. As per paragraph 5, Note III, all the candidates who were called for interview, were to produce the relevant certificates as proof of having acquired educational qualification on or before the closing date, i.e., 15.3.2013. Thus, according to the applicant, the recruitment notice stipulated two cut-off dates, i.e., (i) 1.1.2013, and (ii) 15.3.2013 in Note II and Note III respectively, for the purpose of acquisition of minimum essential educational qualifications. As he had already acquired the minimum

essential educational qualification before the closing date for receipt of applications, i.e., 15.3.2013, which was the cut-off date mentioned in Note III of paragraph 5 of the recruitment notice, the cancellation of his candidature by the respondent-SSC is in violation of Paragraph 5 Note III. It has also been contended by the applicant that his case is squarely covered by the decision of the Hon'ble High Court of Delhi in **Kanta Rani Vs. Staff Selection Commission and others**, 1989 (39) DLT 330.

3. Opposing the Original Application, the respondent-SSC has filed a counter reply. It has been stated, *inter alia*, that Note III of paragraph 5 of the recruitment notice was amended by a Corrigendum, which was not only uploaded on the SSC's website, but also published in the Employment News informing all the candidates that the words "Closing date" as appearing in Note III under Paragraph 5 may be read as crucial date, i.e., 01.01.2013. Since the applicant acquired the minimum essential educational qualification on 9.1.2013, he was ineligible to be considered for the post of Junior Engineer as on 01.01.2013. As per the recruitment notice, the applicant ought to have possessed the minimum essential educational qualification as on 01.01.2013. The crucial date/cut-off date was fixed in accordance with the guidelines issued by the Department of Personnel & Administrative Reforms, and the Department of Personnel & Training, vide their O.M.No.42013/1/79-Estt.(D) dated 4.12.1979, and O.M. No.AB.14017/70/87-Estt., dated 14.7.1988 respectively. In support of its case, the respondent-SSC has placed reliance on the decision of the Hon'ble

High Court of Delhi in **Pradeep, etc. Vs. Union of India and another**, W.P. (C) No. 6636 of 2011 and W.P.(C) No. 2041 of 2012, decided by common judgment dated 18.3.2013.

4. No rejoinder reply has been filed by the applicant refuting the stand taken by the respondent-SSC.

5. We have carefully perused the records, and have heard the learned counsel appearing for the parties.

6. Admittedly, the applicant acquired the minimum essential educational qualification on 9.1.2013 when result of the final year examination of B.Tech was declared by the University. In view of the corrigendum issued by the respondent-SSC, referred to above, we do not find any substance in the contention of the applicant that there were two cut-off dates, i.e., 1.1.2013 as per Note II, and 15.3.2013 as per Note III, of paragraph 5 of the recruitment notice, and that he had acquired the minimum educational qualification by the second cut-off date.

7. Relying on the decision of the Hon'ble High Court of Delhi in **Kanta Rani & others Vs. Staff Selection Commission and others** (supra), the applicant has contended that the cut-off date, i.e., 1.1.2013 is arbitrary and irrational, and that he having acquired the minimum essential educational qualification before the last date of making application, i.e., 15.3.2013, the respondent-SSC ought not to have cancelled his candidature.

7.1 In **Kanta Rani & others Vs. Staff Selection Commission and others** (supra), the petitioners, eleven in number, were all students of

Maharishi Dayanand University, Rohtak and sat for the B.Ed. Examination in April 1988, but their results were declared only on 17th August 1988. They responded to the advertisement dated 17.9.1988 issued by the Staff Selection Commission for recruitment to the post of Primary Teachers in the Municipal Corporation of Delhi. Their applications were scrutinized, and they were issued admit cards to appear in the recruitment examination. They appeared in the written examination held on 18.12.1988 and were successful. The Staff Selection Commission directed them to produce within a week proof in support of the fact that their B.Ed. examination result had been declared earlier than 1st August, 1988. Relying on the decision of the Hon'ble High Court in **Dhull's case** (supra), dated 4th November, 1988, they filed the writ petition praying for a declaration that the cut-off date 1.8.1988 was arbitrary, and for other reliefs. The Hon'ble High Court of Delhi granted the reliefs to the petitioners solely on the basis of the order dated 4.11.1988 passed by it in Civil Writ No.2306 of 1988 (**Mr.A.K.Dhull & another Vs. Staff Selection Commission**), against which SLP(C) No.13648 of 1988 filed by Mr.A.K.Dhull & another, and SLP (C) No. 1822 of 1989 filed by the Staff Selection Commission & others were dismissed, with the observation in the order passed in SLP (C) No.1822 of 1989 that the question that the High Court could interfere with the advertisement, fixing the date of eligibility is left open.ö

7.1.1 **In Mr.A.K.Dhull & another Vs. Staff Selection Commission** (supra), the result of B.Ed. Examination, in which the petitioners had

appeared in April, 1988, was published on 17.8.1988. The Staff Selection Commission issued the advertisement on 17.8.1988 for recruitment to the post of Assistant Teacher (Primary) in MCD. The petitioners' grievance was against the following note appended to the educational qualification clause of the advertisement:

öCandidates who have yet to appear at the academic/Certificate examination or whose result has been withheld or not declared on or before 1.8.1988 are not eligible.ö

It was submitted by the petitioners that the date of 1st August 1988 fixed by the Staff Selection Commission as the educational eligibility date was arbitrary and there was no rationale behind fixation of this cut-off date especially as the last date for submitting applications was 10th October, 1988 and the written examinations were to be held on 18th December, 1988. On 4.11.1988 the Hon'ble High Court disposed of that writ petition in limine, with the following order:

"The grievance of the petitioner is that in spite of the fact that the last date for submission of application was 10.10.1988 but it was provided that the candidates must possess the qualifications prior to 1.8.1988. The petitioners have acquired qualifications after 1.8.1988 but prior to 10.10.1988. The contention of Shri V.P. Singh, the learned counsel, for the petitioner before us, is that this is contrary to recognised principles and even the Handbook of examination conducted by the UPSC. We find that the contention of Mr. Singh is perfectly correct and the date has been fixed arbitrarily. The question now arises as to whether at this stage we could exercise discretion under Article 226 of the Constitution of India to direct the respondents to re-advertise the post and invite fresh applications. It has been stated that as many as 35000 applications have been received and 1000 teachers are to be selected. The examination has to be held on 18.12.1988. In case we make the rule absolute, the result would be that the respondents will have to invite fresh applications and it would be absolutely impossible to hold the

examination on 18.12.1988 as is already fixed. The further result would be that 35000 applicants who have been waiting for a chance will be deprived of such a chance for quite some time. In these circumstances, we are not inclined to exercise our discretion in favour of the petitioners. However, in case for any reason the examinations are postponed Mr. Sat Pal learned counsel for the respondents states that posts will be advertised again and in that event we have no doubt the petitioners will be found eligible to apply for the same. With these observations, we dispose of the petition."

7.1.2 As no relief was granted by the Hon'ble High Court, Mr. Dhull and Mr. Singh filed a special leave petition before the Hon'ble Supreme Court, being Special Leave to Appeal (Civil) No. 13648 of 1988. After notice, on 2nd January, 1989 the Hon'ble Supreme Court passed the following order:

"According to the petitioners, they have appeared in the examination. No decision has been taken year in respect of the observation made by the High Court in this appeal, it is in our opinion the special leave petition at this stage is premature. The special leave petition is therefore rejected."

7.1.3 The Staff Selection Commission, the Secretary to the Government of India, Ministry of Home Affairs, and the Municipal Corporation of Delhi also filed a special leave petition, being Special Leave to Appeal (Civil) No. 1822/89. On 23rd March, 1989, the Hon'ble Supreme Court dismissed this special leave petition. The order reads :

"The Special Leave Petition is dismissed. However, the question that the High Court could interfere with the advertisement, fixing the date of eligibility is left open."

7.2 In the above backdrop, the Hon'ble High Court, in **Kanta Rani & others Vs. Staff Selection Commission & others** (supra), observed and held thus:

17. A Government of India circular dated 4th December, 1979 has been referred to by both sides, which fixes the crucial date for determining age limits etc. for competitive examinations held by the Union Public Service Commission/Staff Selection Commission. In the said circular, it is stated that the question as to the crucial date that should be prescribed for competitive examinations held by the Union Public Service Commission/ Staff Selection Commission etc. has been carefully considered in consultation with the Union Public Service Commission and it has been decided that the crucial date should be :

- (i) 1st day of January of the year in which the examination is held if the examination is held in the first half of the year; and
- (ii) 1st day of August of the year in which the examination is held, if the examination is held in the later half of the year.

18. Mr. V.P. Singh, learned counsel for the petitioners submits that since this circular fixes the crucial date for determining the age limit and does not fix the crucial date for eligibility regarding educational qualification criteria, the two are to be delinked, further the Union Public Service Commission in many of its examinations has delinked the crucial date with regard to the cut-off date of age and the cut-off date of educational qualifications. The contention of learned counsel for the petitioners is that the cut-off date of educational qualifications must have a nexus with the object sought to be achieved. The object in this case, being the employment of a large number of teachers and consequently the more the applicants the better the choice. He submits that the cut-off date for possessing the educational qualifications can be the date of the interview, the date of the examination, or the last date of filing the application, but certainly cannot be a date prior to the advertisement, which has no connection with any of the dates.

19. The question that the court has to examine is not whether some other date is better or more reasonable, but whether the date fixed is arbitrary.

20. The affidavit of Mr. S.C. Srivastava, Under Secretary to the Government of India affirmed on 25th April, 1989, filed with regard to the question of fixation of the cut-off date for educational qualification is pertinent. It says that the crucial date fixed for determining the possession of educational qualification in all the open competitive examination held by the Staff Selection Commission is applied uniformly and no

deviation whatsoever is made in any case. It is further stated therein that the earlier criteria by the Staff Selection Commission used to be the last date of the receipt of the applications. Many representations were received and grievances aired against this criteria. Consequently, the Commission considered the entire matter in depth and decided to follow the same criteria for determining the eligibility of educational qualification as fixed by the government for determining the age. The cut-off date as prescribed is uniformly being applied in all open competitive examinations held by the Staff Selection Commission since July, 1987. The specific reasons for arriving at the cut-off date of 1st August, 1988 have been indicated in paragraph 8 as follows :

- "(a) Generally the academic session in most of the universities begins in July and as such the results are declared before that. That being so, the crucial date of 1st August is quite in keeping with normal academic session. Keeping in view the necessity of having uniform criteria, it would be improper to deviate from the above mentioned principle of cut-off date so as to cater to stray cases, in which the results are not declared in the month of July.
- (b) The respondent no. 1, prescribe different closing dates for some special remote and inaccessible areas like the North Eastern Region and Jammu and Kashmir. The closing date for candidates from these areas in 15 days after the normal closing date. In the cases of emergent situations like riots, natural calamity, like floods, snowfall or earthquake etc. further concession in regard to the closing date is allowed. The criteria of keeping closing date as the crucial date for determining the educational qualification was changed after experiencing difficulties on this account, it is not necessary to emphasize that stipulation of two or more separate cut off dates for determining educational qualification would be impracticable, discriminatory and unconstitutional.
- (c) Most of the examinations conducted by the respondent no. 1 are held in later half of the year, but they are advertised in the first half with closing date also in the first half of the year. In that case, if the closing date is fixed as the criteria, most of the candidates whose results are due for declaration in June/July of the year would be excluded from taking the examination in that year.
- (d) The simplification of the procedure is very important for organisation like respondent no. 1 who handle more than 20

lacs. applications every year. If the crucial date for age and educational qualification is same, the procedure of scrutiny becomes simple. Moreover, this simplification of the procedure does not harm or prejudice any class or group of candidates.

(e) In such matters respondent no. 1 is required to draw line somewhere and if some candidates are left out and are not admitted to the examination in a year, they can apply in the next year's examination. Most of the competitive examinations held by the Commission are conducted every year."

But the moot question before us is, can we examine all these factors and come to a conclusion that the cut-off date fixed for possessing the educational qualification is not whimsical and/or arbitrary, in view of the order of this court dated 4th November, 1988 and of the Supreme Court dated 23rd March, 1989.

21. The order of this court dated 4th November, 1988, set out above, disposing of Mr. Dhull's case in liming, holding that the cut-off date is arbitrary, is not a non speaking order. The court has indicated its reasons, albeit briefly, in coming to this conclusion. The court noticed that Mr. Dhull and Mr. Singh had "acquired qualifications after 1.8.1988 but prior to 10.10.1988", the last date for submission of applications, and accepted the contention of Mr. V.P. Singh that requiring the candidates to possess the qualification prior to 1st August, 1988 "is contrary to recognized principles and even the Hand-book of examination conducted by the UPSC".

22. The Supreme Court by its order dated 23rd March, 1989, as above set out, has not set aside this finding of the Delhi High Court that the cut-off date of 1st August, 1988 is arbitrary and in fact has dismissed the special leave petition of the respondents, who challenged this finding. It is no doubt correct that while dismissing the petition, the following observations have been made: "The question that the High Court could interfere with the advertisement fixing the date of eligibility is left open".

23. We have referred to our dilemma at the beginning of this judgment and consequently heard the matter fully. But on a careful reading of the order of the Supreme Court dated 23rd March, 1989, and in the background of the facts of Mr. Dhull's case and the two special leave petitions filed in the Supreme Court and their dismissal, it would appear to us that it is not open for this court to decide the question of arbitrariness of the cut off date afresh. That question, it would appear to us, is left

open in the Supreme Court which alone can decide whether the High Court could interfere with the advertisement fixing the date of eligibility.

24. In Dhull's case, as above noticed, though this court had held the cut-off date for possession of educational qualification to be arbitrary, it had not granted the consequential relief basically on the ground that it would disturb the schedule of the examination already fixed. But the observations were clear that if the examinations were postponed and advertised afresh, there is no doubt that the petitioners would "be found eligible to apply".

25. The Supreme Court by its order dated 2nd January, 1989, observed while dismissing Dhull's special leave petition that it was premature as no decision had been taken in respect of the observations made by the High Court.

26. In the background, as above indicated, it would appear to us that in the present case the petitioners are entitled to the consequential relief. The petitioners replied to the advertisement dated 17th September, 1988 and applied before the prescribed date of 10th October, 1988. They were given roll numbers, though their B.Ed. results had not been declared on or before 1st August, 1988, to sit for the examination to be held on 18th December, 1988. The petitioners sat for the examination and were declared successful. When they received the letters dated 21st February, 1989 to furnish proof, within a week, of the fact that their B.Ed. examination result had been declared earlier than 1st August, 1988, they moved this court. By virtue of the orders of the court, the petitioners were called for interviews. It is only those petitioners who were successful in the interviews, who are now before us.

27. Consequently, they are entitled to the benefit flowing from the fact that the cut-off date of 1st August, 1988 has been held to be arbitrary by the order of this court dated 4th November, 1988.

28. We, therefore, direct the respondents to consider the petitioners for appointment to the post of Assistant Teacher (Primary) in the Municipal Corporation of Delhi in accordance with their respective positions on the merit list.

29. For the reasons outlined above, the rule is made absolute, but in the circumstances of the case, we make no order as to costs.ö

8. On the other hand, Mr.S.M.Arif, the learned counsel appearing for the respondent-SSC, relied on the decision of the Hon'ble High Court of Delhi in **Pradeep, etc. Vs. Union of India and another, etc.**, W.P. (C) No. 6636 of 2011, and W.P.(C) No. 2041 of 2012, to contend that since the fixation of the cut-off date is primarily for the executive to determine, and since the applicant has failed to demonstrate as to how fixation of the cut-off date, i.e., 1.1.2013 for acquisition of the minimum essential educational qualification is in any way discriminatory and arbitrary, the Tribunal should not interfere with the fixation of the said cut-off date.

8.1 In **Pradeep, etc. Vs. Union of India and another, etc.** (supra), the brief facts of the case were that in the month of February, 2011, an advertisement was issued by the respondent-SSC inviting applications for recruitment to the post of Constables (GD) in Central Para Military Forces (CPMF) for the year 2011-12 by holding an open competitive examination on All India basis. The cut-off date for determining the age of the candidates with/without relaxation was 1.8.2011. The cut-off date for determining the essential qualification was 4.3.2011, i.e., the closing date for receipt of applications. The challenge was to the fixation of the cut-off date 1.8.2011 for determining the age of the candidates with/without relaxation. After the petitioners qualified in the PET and PST, and cleared the written examination, it was detected by the SSC that the petitioners were overage as on the cut-off date, i.e., 1.8.2011 and, therefore, the petitioners were not called for medical examination. The representations filed by them having

been rejected, the petitioners filed writ petitions before the Hon'ble High Court of Delhi. It was, inter alia, contended by the petitioners that in the absence of any justification for prescribing 1.8.2011 as the cut-off date for age limit, the same was arbitrary and liable to be quashed. In support of their contention, the petitioners referred to the O.M. dated 4.12.1979 issued by the Department of Personnel & Administrative Reforms, and O.M. dated 14.7.1988 issued by the Department of Personnel & Training, *ibid*. They also relied on the judgments reported as (1997) 9 SCC 527, **Raj Kumar & Ors Vs. Shakti Raj & ors**, and 39(1989) DLT 330, **Kanta Rani & others Vs. Staff Selection Commission & ors**. After taking note of the O.Ms. dated 4.12.1979 and 14.7.1988(*ibid*), and after referring to the decisions of the Hon'ble Supreme Court reported as AIR 1967 SC 1301, **D.R.Nim Vs. Union of India and others**; (1997) 6 SCC 614, **Dr. Ami Lal Bhat Vs. State of Rajasthan**; (2008) 14 SCC 702, **Government of A.P. Vs. N.Subbarayudu**; (2011) 3 SCC 238, **National Council for Teacher Education & Ors Vs. Shri Shyam Shiksha Prashikshan Sansthan & Ors**, (2011) 8 SCC 269, **Orissa Power Transmission Corporation Ltd. Vs. Khageswar Sundaray**, the Hon'ble High Court of Delhi held that the cut-off date of August 01st fixed by the respondents for determining the age could not be interfered with as fixing of the cut-off date is primarily for the executive to determine, and Court should not normally interfere unless the fixation of such a cut-off date is blatantly discriminatory and arbitrary. In paragraph 26 of the judgment, the Hon'ble High Court observed that in the

judgment of **Kanta Rani & others Vs. Staff Selection Commission & ors**

(supra) the question of arbitrariness of the cut-off date had not been gone into for the reason that in an earlier litigation before it, the Hon'ble Supreme Court had left the question, as to whether the High Court could interfere with the advertisement fixing the date of eligibility, as open, and the High Court observed that it was the Supreme Court which alone could decide whether the High Court could interfere with the advertisement fixing the date of eligibility. In view of this, the judgment in **Kanta Rani & others Vs. Staff Selection Commission & ors.** (supra) is of no help to the case of the applicant in the present O.A..

9. In the instant case, it has been asserted by the respondent-SSC that the crucial date/cut-off date, i.e., 1.1.2013 was fixed in accordance with the guidelines issued by the Department of Personnel & Administrative Reforms, and the Department of Personnel & Training, vide their O.Ms. dated 4.12.1979 and 14.7.1988 (*ibid*), according to which if the examination is held in the first half of the year, 1st day of January of the year in which the examination is held should be the crucial date/cut-off date. In the recruitment notice, it was notified that the examination was to be held on 26.5.2013, i.e., during the first half of the year 2013. Thus, the fixation of the cut-off date, i.e., 1.1.2013, for acquisition of the minimum essential qualification by the candidates was in accordance with the O.Ms. dated 4.12.1979 and 14.7.1988 (*ibid*). In the above view of the matter, and in view of the fact that the applicant has failed to demonstrate as to how the fixation

of the cut-off date, i.e., 1.1.2013, is discriminatory and arbitrary, we are not inclined to interfere in the matter.

10. In the case of **State of Rajasthan vs. Hitendra Kumar Bhatt**, JT 1997 (7) SC 287, the Hon'ble Apex Court has held that a cut-off date by which all the requirements relating to qualifications have to be met, cannot be ignored in an individual case. There may be other persons who would have applied had they known that the date of acquiring qualifications was flexible. They might not have applied because of their not possessing the requisite qualification on the prescribed date. Relaxing the prescribed requirements in the case of one individual may, therefore, cause injustice to others.

11. Having applied in response to the recruitment notice prescribing the cut-off date 1.1.2013 for the purpose of the minimum essential educational qualification, the applicant cannot be allowed to challenge the fixation of the said cut-off date when he was found to have not acquired the minimum essential educational qualification as on the cut-off date. The terms and conditions of the recruitment notice being binding on the respondent-SSC and the candidates as well, there was nothing wrong on the part of the respondent-SSC to reject the applicant's candidature and/or to refuse to interview him, because he acquired the minimum essential educational qualification on 9.1.2013, i.e., after the cut-off date, and was, thus, ineligible to apply for the recruitment examination. Had the respondent-SSC accepted the applicant's request to treat 15.3.2013 as the

cut-off date for acquisition of minimum essential educational qualification, the respondent-SSC would not only have relaxed and/or acted contrary to the terms and conditions of the recruitment notice, but also their action would have been violative of Articles 14 and 16 of the Constitution of India. There might be some other candidates, like the applicant in the present case, whose candidatures might have been rejected by the respondent-SSC. Non-grant of similar opportunity to those candidates would have been discriminatory. A process of selection and appointment to a public office should be absolutely transparent, and there should be no deviation from the terms and conditions contained in the Advertisement issued by the recruiting agency during the recruitment process and the rules applicable to the recruitment process in any manner whatsoever, for a deviation in the case of a particular candidate amounts to gross injustice to the other candidates not knowing the fact of deviation benefitting only one or a few. The procedure should be same for all the candidates. In this regard, we would like to refer to the decision of the Hon'ble Supreme Court in **Ashok Kumar Sharma & others Vs. Chander Shekhar & another**, (1997) 4 JT (SC) 99, where it has been held that an advertisement or notification issued/published calling for applications constitutes a representation to the public, and the authority issuing it is bound by such representation and cannot act contrary to it. We would also like to refer to the decision of the Hon'ble Supreme Court in **Bedanga Talukdar Vs. Saifudaullah Khan**, (2011)12 SCC 85, where it has been held that there cannot be any relaxation in the terms and conditions of the

advertisement unless such a power is specifically reserved. Such a power could be reserved in the relevant statutory rules. Even if power of relaxation is provided in the rules, it must still be mentioned in the advertisement. The Hon'ble Supreme Court has further held that the relaxation of any condition in advertisement without due publication would be contrary to the mandate of equality contained in Articles 14 and 16 of the Constitution of India.

12. In the light of our above discussions, we have no hesitation in holding that the O.A. is devoid of merit and liable to be dismissed. Accordingly, the O.A. is dismissed. The interim orders stand vacated. No costs.

**(RAJ VIR SHARMA)
JUDICIAL MEMBER**

**(SUDHIR KUMAR)
ADMINISTRATIVE MEMBER**

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