

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A.NO.1097 OF 2014

New Delhi, this the 29th day of October, 2015

CORAM:

**HON'BLE SHRI SUDHIR KUMAR, ADMINISTRATIVE MEMBER
AND**

HON'BLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER

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1. Union of India,
Ministry of Personnel, Public Grievances & Pension,
through its Secretary,
North Block, Raisina Hills,
New Delhi.
2. Staff Selection Commission (NR),
through its Chairman,
Department of Personnel & Training,
Ministry of Personnel, Public Grievances & Pension,
Block No.12, CGO Complex, Lodhi Road,
New Delhi

(By Advocate: Mr.S.M.Arif for respondent no.1)

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ORDER

RAJ VIR SHARMA, MEMBER(J):

In the month of April 2012, Staff Selection Commission (hereinafter referred to as "SSC") issued a notice for holding an All India Open Competitive Examination for recruitment to the posts of Stenographer Grades "C" and Stenographer Grade "D". The said notice was published in the Employment News/Rojgar Samachar dated 28.4.2012 inviting

applications from eligible persons. The examination was scheduled to be held on 29.7.2012. Some of the important instructions to candidates, vide sl.nos.2 and 3, appearing at page 1 of the said notice, and Clauses 4(A), 4(B), 4(C), 10 of the notice are reproduced below:

Instruction No.2:

“2. The Commission will not undertake detailed scrutiny of applications for the eligibility and other aspects at the time of written examination and, therefore, the candidature is accepted only provisionally. The candidates are advised to go through the requirements of educational qualification, age etc. and satisfy themselves that they are eligible before applying. Copies of supporting documents will be sought only from those candidates who qualify for the skill test. When scrutiny is undertaken, if any claim made in the application is not found substantiated, the candidature will be cancelled and the Commission’s decision shall be final.

Instruction No.3:

“3. BEFORE APPLYING, CANDIDATES IN THEIR OWN INTEREST ARE ADVISED TO GO THROUGH THE DETAILED INSTRUCTIONS CONTAINED IN THIS NOTICE CAREFULLY. THIS NOTICE IS ALSO AVAILABLE ON THE WEBSITE OF THE COMMISSION: <http://ssc.nic.in>. Candidates are advised that skill test in stenography is mandatory and, therefore, those without knowledge of stenography shall avoid applying for the examination.”

Clauses 4(A), 4(B), 4(C) and 10:

4(A) AGE LIMIT:

18-27 years as on 01.08.2012.

Note I: Candidate should note that only the Date of Birth as recorded in the Matriculation / Secondary Examination Certificate or an equivalent certificate available on the date of submission of application will be accepted by the Commission for determining the Age eligibility and no subsequent request for its change will be considered or granted.

4.(B) Permissible relaxation of Upper age limit prescribed under para 4(A) above :

Category-Codes for claiming Age Relaxation as on the date of reckoning:

Code No.	Category	Age-Relaxation permissible beyond the Upper age limit
01	SC/ST	5 years
02	OBC	3 years
03	PH	10 years
04	PH+OBC	13 years

05	PH+SC/ST	15 years
06	<u>For Stenographer Grade C ÷</u> Ex-Servicemen (Unreserved/General)	5 years
07	Ex-Servicemen (OBC)	8 years
08	Ex-Servicemen (SC/ST)	10 years
09	<u>For Stenographer Grade ðDö</u> Ex-Servicemen (Unreserved/General)	03 years after deduction of the military service rendered from the actual age as on 01.08.2012
10	Ex-Servicemen (OBC)	06 years (3 years + 3 years) after deduction of the military service rendered from the actual age as on 01.08.2012
11	Ex-Servicemen (SC/ST)	08 years (3 years + 5 years) after deduction of the military service rendered from the actual age as on 01.08.2012.
12	<u>For Stenographer Grade ÆCø</u> Central Govt. Civilian Employees (General/Unreserved) who have rendered not less than 3 years regular and continuous service as on Closing date	Up to 35 years of age
13	Central Govt. Civilian Employees (OBC) who have rendered not less than 3 years regular and continuous service as on Closing date	Up to 38 years of age
14	Central Govt. Civilian Employees (SC/ST) who have rendered not less than 3 years regular and continuous service as on Closing date	Up to 40 years of age
15	<u>For Stenographer Grade ðDø</u> Central Govt. Civilian Employees (General/Unreserved) who have rendered not less than 3 years regular and continuous service as on Closing date	Up to 40 years of age
17	Central Govt. Civilian Employees (OBC) who have rendered not less than 3 years regular and continuous service as on Closing date	Up to 43 years of age
19	Central Govt. Civilian Employees (SC/ST) who have rendered not less than 3 years regular and continuous service as on Closing date	Up to 45 years of age
21	<u>For Stenographer Grade óÆCø & Stenographer Grade -ðDø</u> Candidates who had ordinarily been domiciled in the State of Jammu & Kashmir (Unreserved/General)	5 years
22	Candidates who had ordinarily been domiciled in the State of Jammu & Kashmir(OBC)	8 years
23	Candidates who had ordinarily been domiciled in the State of Jammu & Kashmir(SC/ST)	10 years
24	<u>For Group ÆCø post only ó</u> Post of Stenographer Grade ðDø Widows / Divorced Women / Women judicially separated and who are not remarried (Unreserved/General)	Up to 35 years of age
25	Widows / Divorced Women / Women judicially	Up to 38 years of age

	separated and who are not remarried(OBC)	
26	Widows / Divorced Women / Women judicially separated and who are not remarried(SC/ST)	Up to 40 years of age
27	Defence Personnel disabled in operation during hostilities with any foreign country or in a disturbed area and released as a consequence thereof (Unreserved/General)	3 years
28	Defence Personnel disabled in operation during hostilities with any foreign country or in a disturbed area and released as a consequence thereof (OBC)	6 (3+3) years
29	Defence Personnel disabled in operation during hostilities with any foreign country or in a disturbed area and released as a consequence thereof (SC/ST)	8 (3+5) years
33	Service Clerks in the last year of their colour service in the Armed Forces (Unreserved/General)	Up to 45 years of age
34	Service Clerks in the last year of their colour service in the Armed Forces (OBC)	Up to 48 years of age
35	Service Clerks in the last year of their colour service in the Armed Forces (SC/ST)	Up to 50 years of age
36	For Stenographer Grade -DØ Retrenched census employees of Office of Registrar General of India (Unreserved/General) (They will be considered only for offices under RGI in their order of merit and subject to availability of vacancies)	3 years plus length of service rendered by them in connection with census, before retrenchment and weightage of past service.
37	Retrenched census employees of Office of Registrar General of India (OBC) (They will be considered only for offices under RGI in their order of merit and subject to availability of vacancies)	Do + 3 years
38	Retrenched census employees of Office of Registrar General of India (SC/ST) (They will be considered only for offices under RGI in their order of merit and subject to availability of vacancies)	Do + 5 years

NOTE-I: The date of completion of Skill Test will be treated as the date of reckoning for OBC status of the candidate and also, for assuming that the candidate does not fall in the creamy layer.

NOTE-II : Ex-servicemen who have already secured employment in civil side under Central Government in Group -CØ & -DØ posts on regular basis after availing of the benefits of reservation given to ex-servicemen for their reemployment are NOT eligible for fee concession or for claiming benefits of reservation under EXS category. They are eligible for age relaxation only.

NOTE-III : The period of "Call up Service" of an Ex-Serviceman in the Armed Forces shall also be treated as service rendered in the Armed Forces for purpose of age relaxation.

NOTE-IV : For any serviceman of the three Armed Forces of the Union to be treated as Ex-Serviceman for the purpose of securing the benefits of reservation, he must have already acquired, at the relevant time of submitting his application for the Post / Service, the status of ex-serviceman and /or is in a position to establish his acquired entitlement by documentary evidence from the competent authority that he would complete specified

term of engagement from the Armed Forces within the stipulated period of one year from the CLOSING DATE (i.e 25.05.2012).

EXPLANATION : An Ex-Serviceman means a person who has served in any rank whether as a combatant or non-combatant in the Regular Army, Navy, Air Force of the Indian Union, and (i) who retired from such service after earning his/her pension. This would also include persons who are retired/retire at their own request but after having earned their pension; or (ii) who has been released from such service on medical grounds attributable to military service/circumstances beyond his control and awarded medical or other disability pension; or (iii) who has been released, otherwise than on his own request from such service as a result of reduction in establishment; or (iv) who has been released from such service after completing the specific period of engagements, otherwise than at his own request or by way of dismissal or discharge on account of misconduct or inefficiency, and has been given a gratuity; and includes personnel of the Territorial Army of the following categories, namely:- (a) Pension holders for continuous embodied service, (b) Persons with disability attributable to military service; and (c) Gallantry award winners.

EXPLANATION : The persons serving in the Armed Forces of the Union, who on retirement from service, would come under the category of 'ex-serviceman' may be permitted to apply for re-employment one year before the completion of the specified terms of engagement and avail themselves of all concessions available to ex-servicemen but shall not be permitted to leave the uniform until they complete the specified term of engagement in the Armed Forces of the Union.

NOTE- V: AGE CONCESSION IS NOT ADMISSIBLE TO SONS, DAUGHTERS AND DEPENDENTS OF EX-SERVICEMEN.

NOTE-VI: Service Clerks in the last year of their colour service in the Armed Forces, i.e. only those who are due for release from the Army during the period 26-05-2012 to 25-05-2013 are eligible for age-relaxation. Such candidates are not entitled to any concession in fee. Such candidates will be eligible to compete only for vacancies in Armed Forces Headquarters and Inter-Service Organisation, which are not reserved for Ex-servicemen, in their order of merit and subject to availability of vacancies. **Note VII:** As per Supreme Court direction dated 24.02.1995 in Appeal No.731-69 of 1994, Age relaxation will be available for the post of Stenographer Grade -DØ in the O/o RGI (Registrar General of India) for retrenched Census employees as under : (i) Age relaxation by 3 years plus length of service rendered by them in connection with census, before retrenchment , (ii) Weightage of past service.

4(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 at the time of Skill Test. Otherwise, their claim for SC/ST/OBC/PH/ExS/ Minorities status will not be entertained and their candidature/applications will be considered under General (UR) category. The formats of the certificates are annexed. Candidates claiming OBC status may note that certificate on creamy layer status should have been obtained within three years before the last date of receipt of application. Certificate issued up-to the completion of the last tier of examination i.e. skill test will also be accepted by the Commission.

NOTE I: Last date for receipt of application or the date of completion of Skill Test as the case may be, will be treated as the date of reckoning for OBC status.

NOTE II: 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.

10. MODE OF SELECTION:

Candidates will be shortlisted for the skill test on the basis of their performance in the Written Examination. Candidates who qualify in the skill test will be recommended for appointment by the Commission on the basis of their performance in the Written Examination. Nomination of candidates will be made to User Departments depending upon their merit position and option for Group -Xø and Group -Yø posts, irrespective of whether they took the stenography test in English / Hindi unless the User Department specifically seeks candidates with stenography skill in either of these languages.

Provided that SC, ST, OBC, Minorities within OBC quota and PH candidates, who are selected on their own merit without relaxed standards, along with candidates belonging to other communities, will not be adjusted against the reserved share of vacancies. Such SC, ST, OBC, Minorities and PH candidates will be accommodated against the general/unreserved vacancies as per their position in the overall Merit List. The reserved vacancies will be filled up separately from amongst the eligible SCs, STs, OBCs, Minorities and PH candidates which will, thus, comprise of SC , ST, OBC, Minorities and PH candidates who are lower in merit than the last general candidate on merit list of unreserved category but otherwise found suitable for appointment even by relaxed standard.

An Ex-Serviceman or Physically Handicapped (OH/VH) category candidate who qualifies on the basis of relaxed standards viz. age limit, experience or qualifications, permitted number of chances in written examination, extended zone of consideration, etc. is to be counted against reserved vacancies and not against general vacancies subject to fitness of such candidate for selection. Such candidates may also be recommended at the relaxed standards to the extent the number of vacancies reserved for them, to make up for the deficiency in the reserved quota, irrespective of their rank in the order of merit. In so far as cases of Ex-Serviceman are concerned, deduction of the military service rendered from the age of Ex-Servicemen is permissible against the reserved or unreserved posts and such exemption cannot be termed as relaxed standards in regard to age.

NOTE-I : Success in the examination confers no right of appointment unless government are satisfied after such enquiry as may be considered necessary that the candidate is suitable in all respects of appointment to the service/post.

NOTE-II : The candidates applying for the examination should ensure that they fulfill all the eligibility conditions for admission to the examination. Their admission at all the stages of examination will be purely provisional, subject to their satisfying the prescribed eligibility conditions. If, on verification, at any time before or after the written examination and skill test, it is found that they do not fulfill any of the eligibility conditions, their candidature for the examination will be cancelled by the Commission.ö

2. It is the case of the applicant that in response to the aforesaid recruitment notice, he made application as an OBC candidate. In the application, he correctly mentioned his date of birth as 10.1.1982. On the basis of admission certificates issued by SSC, he appeared in the written

examination on 29.7.2012. He was declared successful in the written examination. SSC, vide its letter dated 14.9.2012, called upon him to appear for the skill test on 1.11.2012, when he was also required to fill in and submit Attestation Form. Accordingly, he filled in and submitted the Attestation Form and appeared in the skill test on 1.11.2012. As per the result of the skill test declared on 7.12.2012, he was declared successful for appointment to the post of Stenographer Grade -Dø and his name found place at Sl.No.542 of the list of candidates recommended for appointment to the post of Stenographer Grade -Dø. In the said list, the applicant was shown to have been allocated to the State of Rajasthan. Thereafter, SSC, vide its letter dated 18.4.2013, required him to report to it, along with the identity proof and two photographs for verification, and NOC from the erstwhile Department, within seven days. On 25.4.2013, he appeared and produced the requisite documents, except the NOC, before the Assistant Director (ND-II), SSC. He wrote a letter dated 25.4.2013 to the said Assistant Director (ND-II) mentioning his date of birth as 10.1.1982 and clarifying that he was not a departmental candidate. Thereafter, SSC, vide its letter dated 8.5.2013, informed him as follows:

õWith reference to his candidature for the above said examination he is hereby informed that he was overaged as OBC candidate as per the Notice of Examination.

In view of above, his candidature for the post of Stenographer Grade øDö in office of the Chief Commissioner, Central Excise (Jaipur Zone), Jaipur is hereby cancelled. No further correspondence in this regard will be entertained.ö

Thereafter, the applicant made a representation, dated 5.11.2013, to His Excellency the President of India. The said representation was forwarded to the Department of Personnel & Training, but to no effect. Hence, he filed the present Original Application on 24.3.2014 seeking the following reliefs:

- õ(a) Quash the decision dated 08.05.2013 of Respondent No.2 and direct the respondents Nos.1 and 2 to offer appointment to the applicant to the post of Stenographer Grade -D; or
- (b) Direct the respondents to consider the claim of the applicant for relaxation of the age criteria and issue the appointment letter for the post of Stenographer Grade -D, and
- (c) any other relief as this Honøble Tribunal may deem fit in the facts and circumstances of the case.ö

3. Respondent No.1-Union of India has neither appeared nor filed counter reply in the case.

4. In its counter reply, respondent No.2-SSC has, *inter alia*, stated that the age limit prescribed for the recruitment examination was 18 ó 27 years as on 1.8.2012. The age relaxation permissible beyond the upper age limit for OBC candidates was 3 years as on the cutoff date, i.e., 1.8.2012. The applicant applied for the recruitment examination as an OBC candidate. The applicant's date of birth being 10.1.1982, he was found overage by more than 6 months as on the cutoff date, i.e., 1.8.2012. He was, however, inadvertently considered for selection and nominated to the office of the Chief Commissioner, Central Excise, Jaipur (Rajasthan). Later on, when it was found that he was overage, his nomination was withdrawn, and his candidature was cancelled. Referring to instruction nos. 2 and 3, and Notes I and II of Clause 10 of the notice of examination, it is submitted by the

respondent-SSC that success of the applicant in the examination conferred on him no right to appointment when it was found that he was overage as on the cutoff date, and that there is no infirmity in the decision cancelling the candidature of the applicant for the recruitment examination.

5. Mr.Rakesh Dahiya, learned counsel appearing for the applicant, submitted that the applicant correctly mentioned his date of birth as 10.1.1982 at all the relevant stages of the recruitment process, and never made false information or misrepresentation about his date of birth. The applicant's original certificates, including the matriculation certificate showing his date of birth as 10.1.1982, were also duly verified by SSC at the time of skill test. Having waived and/or relaxed the upper age limit in the case of the applicant, and further having finally selected and nominated the applicant for appointment to the post of Stenographer Grade -D, SSC is estopped from cancelling his candidature at a later stage. Therefore, the impugned decision is wholly unreasonable, arbitrary, and unsustainable in the eyes of law. It was also submitted by Mr.Rakesh Dahiya that on the facts and in the circumstances of the case, the respondents ought to have considered the case of the applicant for relaxation of the age criterion and for issuance of appointment letter in his favour.

6. *Per contra*, Mr. S.M.Arif, learned counsel appearing for respondent-SSC, submitted that there is no provision in the recruitment notice enabling SSC to grant age relaxation in upper age limit in favour of any category of candidates over and above what has been laid down in the

recruitment notice, and, therefore, there is no infirmity in the decision cancelling the applicant's candidature. It was also submitted by Mr.S.M.Arif that the Tribunal should not issue any direction to the respondents to grant relaxation of the age criterion in the case of the applicant by contravening the terms and conditions of the recruitment notice, and to issue offer of appointment to the applicant who was ineligible to appear in the recruitment examination. Mr.S.M.Arif invited our attention to instruction nos. 2 and 3, appearing at page 1 of the recruitment notice, and Notes I and II, appearing below Clause 10 of the recruitment notice, and submitted that as the applicant was ineligible to appear in the recruitment examination, as being overage, his success in the examination conferred no right on him to claim appointment, and his candidature was rightly cancelled. In support of his contentions, Mr.S.M.Arif placed reliance on the decision of the Honøble High Court of Delhi in **Pradeep, etc. v. Union of India and others, etc.**, W.P. (C) No. 6636 of 2011 and W.P. (C) No. 2041 of 2012, decided on 5.12.2013.

7. After having given our anxious consideration to the facts and circumstances of the case, and the rival contentions, we have found no substance in the contentions of Mr.Rakesh Dahiya, learned counsel appearing for the applicant. It is the admitted case of the applicant that his date of birth is 10.1.1982. He applied for appearing in the recruitment examination as an OBC candidate. As per Clauses 4(A) and 4(B) of the recruitment notice, which have been reproduced in paragraph 1 of this order,

the age limit was 18 ó 27 years as on 1.8.2012, and OBC candidates were entitled to age relaxation of 3 years beyond the upper age limit. That is to say, the upper age limit for OBC candidates was 30 years as on 1.8.2012. Thus, the applicant's age being 30 years, 6 months and 21 days as on 1.8.2012, i.e., the cutoff date, he was overage and ineligible to appear in the recruitment examination. Inadvertently, SSC allowed the applicant to appear in the written examination and skill test. Even at the time of verification of the documents, SSC could not detect the fact that the applicant was overage as on 1.8.2012. The recruitment notice contained clear instructions to the candidates that SSC would not undertake detailed scrutiny of applications for the eligibility and other aspects at the time of written examination. Note I, appearing below Clause 10 of the recruitment notice, clearly stipulated that success in the examination conferred no right of appointment unless it was satisfied after such enquiry that the candidate was suitable in all respects for appointment to the post. Note II, appearing below Clause 10 of the recruitment notice, also stipulated that the candidates applying for the examination should ensure that they fulfilled all the eligibility conditions for admission to the examination, and therefore, their candidatures were accepted provisionally. Their admission at all the stages of examination would be provisional subject to their satisfying the prescribed eligibility conditions. If, on verification, at any time before or after the written examination and skill test, it was found that they did not fulfill any of the eligibility conditions, their candidatures for the examination would be

cancelled by SSC. Therefore, the doctrine of estoppel is not attracted in the present case. Furthermore, after going through the recruitment notice, we find no provision in the recruitment notice enabling SSC to grant relaxation of the age criterion over and above what has been laid down in the recruitment notice. The applicant has also not placed before us any other rule, instruction, or order issued by the Government of India in support of his claim to get further age relaxation. The terms and conditions of the recruitment notice being binding on all candidates and SSC, there is no infirmity in the decision cancelling the candidature of the applicant. The Tribunal has no competence to issue a direction to the respondents to consider the claim of the applicant for relaxation of the age criterion and issue the appointment letter for the post of Stenographer Grade -DØ inasmuch as any such direction would amount to directing the authorities concerned to violate the terms and conditions of the recruitment notice. The Tribunal is required to enforce rule of law, and not to pass order or direction which is contrary to what has been injected by law.

8. 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. No costs.

(RAJ VIR SHARMA)
JUDICIAL MEMBER

(SUDHIR KUMAR)
ADMINISTRATIVE MEMBER