

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.3078/2014
MA No. 2945/2014

Order Reserved on: 26.08.2016
Order Pronounced on: 15.11.2016

Hon'ble Mr. Sudhir Kumar, Member (A)
Hon'ble Dr. Brahm Avtar Agrawal, Member (J)

Shri Nitish Sharma,
S/o Late Shri Ram Phal Sharma,
R/o D-109/A, Gali No.1, Burari Road,
Saroop Nagar, Delhi-110042.

(Applicant in person)

-Applicant

Versus

1. Union of India,
Through its Secretary,
Ministry of Corporate Affairs,
Vth Floor, A-Wing, Shastri Bhawan,
Dr. Rajender Prashad Road,
New Delhi-110001
2. Regional Director (N.R.),
Ministry of Corporate Affairs,
PDIL Bhawan, Indian Oil Circle,
Sector 1, NOIDA (UP)
3. The Registrar of Companies
NCT of Delhi & Haryana
4th Floor, IFCI Tower, 61,
Nehru Place, New Delhi-110049.
4. The Regional Director,
Staff Selection Commission
(Central Region),
21-23 Lowther Road, Allahabad.
5. The Regional Director,
Staff Selection Commission
(Northern Region)
Block No.12, Lodhi Road,
CGO Complex, New Delhi-110504.

6. The Regional Director,
Staff Selection Commission
(Eastern Region),
1st MSO Building (8th Floor),
Nizam Palace, 234/4, AJC Bose Road,
Kolkata-700 020.
7. The Regional Director,
Staff Selection Commission
(Western Region)
1st Floor, South Wing,
Pratishtha Bhavan, 101, MK Road,
Mumbai-400020.
8. The Regional Director,
Staff Selection Commission
(Madhya Pradesh Sub Region)
J-5, Anupam Nagar, Raipur.
9. The Secretary,
Union Public Service Commission,
Dholpur House, Shahjahan Road,
New Delhi-110069.

-Respondents

(By Advocate: Shri S.M. Arif for R-4 to R-8
 Shri H.K. Gangwani, for R-1 to R-3
 Shri R.V. Sinha for R-9)

O R D E R

Per Sudhir Kumar, Member (A):

The applicant of this OA has approached this Tribunal in person, challenging the impugned action of the respondents in having rejected his candidature for the post of Junior Technical Assistant (JTA, in short) on the ground of his being over-aged, because of which he has not been shortlisted for selection against the Advertisement dated 01.07.2013, and has been declared ineligible, though he has claimed that he was fully eligible, and has thus been deprived of his Fundamental Rights under Articles 14 and 16 of the Constitution of India. His grievance is that

while his candidature has been rejected by Respondent No.4, Respondent No.5-9 are still advertising posts of JTA, Senior Technical Assistant (STA, in short), and Company Prosecutor, from time to time, with the advertisements having the same defect while prescribing the eligibility, in gross ignorance of the Recruitment Rules (RRs, in short) concerned, and in force. He has, therefore, submitted that the following questions arise for a decision by this Tribunal:-

- “a) Which Recruitment Rules, in force at the time of occurrence of vacancies or revised Rules at the time of advertisement shall be applicable in filling up of direct recruitment vacancies by the SSC/UPSC through open competition.
- b) Whether the impugned action debarring applicant even from consideration for selection to the post of JTA though he is eligible in terms of Recruitment Rule is vitiated by arbitrariness, illegality, ultra-vires, unconstitutional and violative of Articles 14 and 16 of the Constitution of India.
- c) Whether the advertisements for selection to the posts to the posts of JTA, STA and CP prescribing different eligibilities in gross ignorance to the Recruitment Rules made under proviso of Article 309 of the Constitution of India and selection/appointment are vitiated by arbitrariness, illegality, ultra-vires, unconstitutional and violative of Articles 14 and 16 of the Constitution of India.
- d) Whether selection process initiated by other than cadre controlling authority is vitiated by arbitrariness, illegality, ultra-vires, unconstitutional and violative of Articles 14 and 16 of the Constitution of India.
- e) Whether the methodology adopted by SSC for short-listing number of candidates by way of screening test in general and not in relevant or technical subjects though aimed for recruitment for technical post is irrational, arbitrary, illegal, ultra-vires, unconstitutional and violative of Articles 14 and 16 of the Constitution of India.
- f) Whether lowering age limit in the revised Recruitment Rules for the Posts of Company Prosecutor and Senior Technical Assistant without rationality creating a class between the

persons is an invidious discrimination and liable to be strike down.

g) Whether last date of submission application to SSC taken as crucial cut off date for determination age limit irrespective of the fact that selection is being made against backlog of vacancies fallout in several vacancies years is arbitrary, illegal, unconstitutional ultravires, and violative of Articles 14 and 16 of the Constitution of India.”

2. On the point of jurisdiction, he had submitted that the Principal Bench of this Tribunal has jurisdiction because the Respondent No.R-1 in this case is at New Delhi. It may be noted here that only the Respondents R-3, R-5 & R-9 are situated at New Delhi, while Respondents R-2, R-4, R-6, R-7 and R-8 do not fall within the jurisdiction of the Principal Bench of the Tribunal.

3. The applicant is working as Junior Stenographer in the office of Respondent R-3, which falls under the administrative control of Respondents R-1 and R-2. The Respondent No.R-4, which is situated at Allahabad, and not within the jurisdiction of the Principal Bench of this Tribunal, and is rather situated in the jurisdiction of the Allahabad Bench of this Tribunal, had invited applications for five posts of JTAs through Advertisement No.CR-2/2013, with two posts being for unreserved category, two for OBC category, and one under SC quota. In that Advertisement, relaxation in upper age limit by five years, not exceeding 30 years, had been provided for the Central Government servants, which the applicant has stated to be in violation of the revised RRs for the said post, produced by him through Annexure A-2, by which, according to him, the age limit for Government servants had been made

relaxable upto 40 years, in accordance with the instructions or orders issued by the Central Government.

4. The applicant has, therefore, submitted that eligibility for direct recruitment for the posts of JTAs should have been fixed as per the RRs, and as per the e-mail instructions issued to all Regional Directors on behalf of Respondent R-1 through e-mail, a copy of which e-mail dated 27.02.2013 had been produced at Annexure A-3, without the applicant having shown as to how he came to be in authorized possession of such a document.

5. He has also submitted that the said Advertisement was also in violation of the clarification provided by DoP&T on 15.02.2013 to Annexure A-4, which is also a copy of the internal noting addressed by the DoP&T to the Respondent R-1, Ministry of Corporate Affairs, and the applicant has not explained as to how he came to be in lawful possession of the same.

6. The applicant has further filed a copy of the letter dated 01.07.2013 (Annexure A-5) sent by Respondent R-2, through which the eligibility enumerated in draft Advertisement had been objected to by Respondent No.2, which letter was addressed to Respondent R-4, without explaining as to how the applicant came to be in lawful possession of the said document.

7. He has alleged that Respondent R-4 had issued the impugned advertisement in gross ignorance of the RRs, and as a proof thereof he

has produced at Annexure A-6 an Advertisement brought out by Respondent R-6, published in Rozgar Samachar dated 18.01.2014, with closing date of 17.02.2014, in which the relaxation in upper age limit for Group 'C' posts in respect of Central Government employees, who have rendered not less than three years' of continuous service on regular basis as on the crucial date 17.02.2014, had been mentioned to be upto 40 years as per para-8 (iii) (b) (ii).

8. However, the applicant has claimed that knowing about the age relaxation, and in bonafide belief regarding in future issuance of a clarification in regard to the age relaxation in due course, he had applied for the said post of JTA, in response to the said impugned Advertisement. He later came to know through other candidates that the Respondent R-3 had already conducted the Screening Test on 22.05.2014 for short-listing the candidates, and came across the rejection list, wherein, in the remarks column "over-age" had been mentioned against his name, without offering him any reasonable opportunity of being heard, and thus he has claimed to have been deprived of his Fundamental Right of fair consideration for selection. He has claimed to have been deprived of his Fundamental Right based upon the Advertisement at Annexure A-6 (supra), and similar Advertisements at Annexures A-7, A-8, A-9, A-10, A-11 and A-12 issued by the UPSC-R-9.

9. He has, therefore, assailed the rejection of his candidature in view of the divergences in eligibility and in essential qualifications, desirable qualifications, upper age limit, and relaxation in upper age limit etc., in

violation of the respective RRs, which according to him has wiped out the scope and sanctity of the RRs in appointment. The applicant has also submitted that his request for issuance of a fresh certificate for his having rendered three years' regular service for age-relaxation purposes has also been withheld by the Respondents R-1 to R-3 in a *mala fide* manner.

10. The applicant has submitted that due to re-classification of the erstwhile Group 'C' post, i.e., JTA and Company Prosecutor, Group-III, into Group 'B' posts, consequent upon the implementation of the 6th Central Pay Commissions' recommendations, they fell under the Cadre control of Respondent R-1, but still the Respondent R-2 and all other Regional Directors were directed to continue with the selections, based upon the reservation roster separately maintained by them, instead of reporting vacancies for the roster to be unifiedly maintained by the Cadre Controlling Authority. Therefore, he has submitted that selection made on the basis of such illegal requisitions have also been detrimental to the interests of the candidates both of the reserved and unreserved categories, and were vitiated by *ultra vires*, and have violated the guarantee of equality enshrined under Articles 14 and 16 of the Constitution.

11. The applicant had further submitted that it is well settled in law that all selections must be in accordance with the RRs in force, and if the RRs had undergone amendment prior to the actual filling up of the advertised posts, the amended RRs would apply.

12. The applicant has further submitted that as was apparent from the e-mail dated 27.12.2013 sent out by Respondent No.1 after objections being raised by the Staff Selection Commission (SSC, in short), the DoP&T had issued a clarification, beyond its earlier clarification dated 02.12.2011, to fill up the concerned posts as per the eligibility conditions prescribed in the Rules in force at the time of occurrence of the vacancies. He has submitted that that proposition of law applies only for vacancies to be filled up by promotion, so as to ensure that officers in the feeder grade are not affected by the revision in qualifications etc. for the higher posts in the new RRs, and in the case of Direct Recruitment vacancies, through open Advertisement, only the revised RRs shall have to be followed. He has, therefore, assailed the selection process, and has assailed his having been left out from the Direct Recruitment, and having been declared ineligible, and debarred from taking part in the Screening Test, without any opportunity of being heard.

13. It was further submitted by the applicant that it has been held by the Hon'ble Supreme Court through a catena of judgments that making appointments in blatant disregard of the established Rules, framed under proviso of Article-309 of the Constitution, is patently illegal. He had submitted that appointments made as per old RRs, based on the blanket clarification of DoP&T dated 01.12.2011, in spite of the later DoP&T clarification dated 22.02.2012, making it clear that the earlier clarification was applicable only in promotion matters has opened the door to the abuses of nepotism and favouritism, and he had assailed

non-supply of information to him in this regard under the RTI Act, 2005, though this Tribunal, not having any powers under the RTI Act, is not concerned with that aspect of the matter.

14. The applicant had also assailed the process of short-listing taken up by the Respondent No.4, submitting that short-listing can be resorted to only if there are very large number of eligible candidates who have applied, and it was not possible for the recruiting authority to interview all of them, and that the methodology of short-listing must be rational and objective. He had, therefore, assailed that the respondents had adopted a wrong methodology for short-listing of candidates, through a screen test in a general subject, instead of holding skill test or screening test in the relevant subject of “Corporate Law” to be adopted for the selection to the posts concerned, which were technical in nature. He had, therefore, assailed that adopting of generalized screening test mechanically, without prior stipulation of subject area and time for preparation, had resulted in the ouster of many meritorious candidates, having in-depth knowledge and experience in the field, thus, jeopardizing the entire selection process undertaken by Respondent No.4, by generalization of a technical post, and giving unmerited advantage to those who might not have been selected if short-listing had been done objectively.

15. It was also submitted that the Respondent No.1 could have utilized the option to generalize the cadre from the very beginning, by making it Combined Graduate Level Examination, and the demand of the nature of

specialized duties to be performed could then have been met by imparting induction level training to new recruits. However, since the respondents have made their choice, and had kept technical nature of these posts, therefore, the impugned methodology of generalization was irrational, unreasonable, and defeated the very object of selection for the technical posts.

16. He had submitted that the practice of short-listing of candidates solely on the basis of percentage of marks obtained by them in essential qualifications was bad in law, especially when a variety of educational qualifications such as degrees in Economics, Commerce and Law had been prescribed, and the difference in the standard of awarding marks in each of these subjects would lead to treatment of un-equals as equals.

17. He had assailed that in a similar manner, revision of RRs for the higher posts of STA and Company Prosecutor, would also be open to challenge on similar grounds. He had further submitted that with the upgradation of the posts of Junior Technical Officer Group 'B', it carries many similarities with the posts of Senior Technical Officers, including the same set of educational qualifications, and a similar selection process of interviews by the same recruiting Agency-SSC has therefore been provided for the direct recruitments to both, though the STA draws Grade Pay of Rs.4600/-, and the feeder post of JTA draws Grade Pay of Rs.4200/-, both in the Pay Band-2.

18. He had submitted that by wrong application of the RRs, an existing Government servant, who is otherwise eligible to apply for the feeder post, has been debarred from applying for such promotion after the age of 35 years, without any reasonable nexus with the object of selection of more experienced and suitable candidates for the promotional posts being achieved. Even though he was a candidate only for the post of JTAs, the applicant has assailed the RRs for both the posts of JTAs and STAs, and has assailed the lowering of the upper age limit from 35 years to 30 years for the post of Company Prosecutors and reducing the relaxation in upper age limit for Government servants from upto 40 years, to 35 years, which was liable to be struck down.

19. It was, therefore, submitted by him that because of the inordinate delay in Advertising for appointments to the posts, the restrictions in upper age limit should be determined as applicable on the date of vacancy year, and not as applicable on the last date of submission of applications.

20. The applicant had, therefore, taken the ground that if the RRs underwent amendment prior to the actual filling up of the advertised posts, the amended Rules will apply, since it is well established law that selection must be in accordance with the law in force. He had further assailed the respondents having followed the earlier blanket clarification of DoP&T, rather than the subsequent specific clarification obtained from DoP&T, because of which his fundamental rights had been violated, and the selection process had been vitiated. It was further submitted that

the selection process was further vitiated on account of *ultra vires*, because it was initiated by an authority other than the Appointing Authority. He had also assailed the alleged perversity in identification of the posts based upon reservation roster, and repeated his contention regarding the generalized screening test being improper for the purpose of short-listing for specialized post recruitments.

21. The applicant had also assailed the lowering of the upper age limit to be without any rational nexus with the object sought to be achieved, and in negation of the well settled law that every administrative action must be hedged by reasons, and guided by public interest, otherwise it was liable to be set aside. In the result, he had prayed for the following reliefs:-

“a) to allow applicant to take part in the selection being eligible in terms of Recruitment Rules and appointed to the post assessed suitable.

b) to quash and set aside advertisements jettisoning of constitutional scheme of appointment and reservation policies along with all its consequences and appointments, if any.

c) to direct SSC/UPSC to adjust or re-adjust the criteria for shortlisting on rational and reasonable basis taking into account the evolving situation and objectively to select best candidate for such technical post either through screening test on the technical fields or on the basis of experience, etc.

d) to merge and upgrade the posts of Senior Technical Assistant and Junior Technical Assistant in the Grade Pay of Rs.4600/-.

e) to strike down the revised Recruitment Rules for the post of Senior Technical Assistant and Junior Assistant and Company Prosecutor qua upper age limit prescribed for Government Servant and provide relaxation upto the age of 40 years.

f) to protect applicant’s fundamental right for consideration for selection put end by delay in advertisement due to lackadaisical attitude or procedural flaw or revision of rules or litigation; and

g) to pass such other order or further orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case."

22. MA No.2945/2014 praying for Interim Relief filed separately on 24.09.2014 was allowed on 25.09.2014 to the extent that the respondents were directed to allow the applicant to participate in the interviews scheduled to be held on 30.09.2014 for the posts of JTAs, provisionally, subject to the condition that the result of the interview in respect of the applicant will not be declared till further orders are passed by the Tribunal, and that such participation of the applicant in the interview will not create any right or equity in his favour, and will not strengthen his candidature in any manner.

23. A short reply on behalf of Respondent No.9-UPSC had been filed on 23.12.2014, and it was submitted that no cause of action had accrued to the applicant to file the present OA, and it deserves to be dismissed. It was submitted that 13 posts of Company Prosecutors in the Ministry of Corporate Affairs were advertised, and the interviews for the posts were held in the UPSC from 11.08.2014 to 14.08.2014, and from 19.08.2014 to 20.08.2014, and recommendation letters in respect of 8 candidates were issued on 29.08.2014, and in respect of remaining 05 candidates such letters were issued on 28.10.2014. It was submitted that the applicant, herein, had challenged the appointment to these posts, and had prayed for grant of stay on such appointments, but the OA is bad in law, and not maintainable for non-joinder of necessary parties, inasmuch as the applicant has not impleaded as a party respondent any person

who is likely to be adversely affected in case the reliefs sought for by him in the OA are granted by this Tribunal. It was submitted that the applicant had wrongly sought stay of the ongoing selection process, as neither the applicant has a *prima-facie* case in his favour, nor balance of convenience lies in his favour, nor any irreparable injury could have been caused to him, and, therefore, it was prayed that the OA was devoid of any merit, and deserves to be dismissed with costs.

24. Respondent No. R-1 to R-3 filed their counter reply on 29.01.2015. It was submitted that as per the RRs, the applicant was not at all eligible either for the post of STA, or for the post of Company Prosecutor, and, therefore, he has no locus to file the present application in so far as for the posts of STA & Company Prosecutor are concerned. It was further submitted that by way of Interim Relief, the applicant has already been granted permission by this Tribunal to appear provisionally in the interviews for the posts of JTAs, and, therefore, no further orders are required in the matter, and the OA may be disposed of without any further orders.

25. In regard to the applicant's contention regarding RRs, it was submitted that the relaxations in age limit are made in accordance with the instructions or orders issued by the Central Government, and the RRs in respect of Company Prosecutor and STA provide for relaxation of five years to Government Servants, as per the Central Government Rules, and accordingly only the RRs for JTAs had mentioned age limit for Direct Recruits to be 30 years, and relaxable for Government Servants upto 40

years, in accordance with the instructions or orders as may have been issued by the Central Government from time to time. But, till the date of Advertisement, the Government had provided only for 05 years' age relaxation over and above the age limit of 30 years for Group-B category of posts, and since the post of JTA is a Group-B post, therefore, the age limit relaxable for Government Servant upto 35 years was correctly laid down in the requisition sent to SSC, and the contention of the applicant regarding any apparent error in the relevant column of age relaxation under RRs of JTAs, is not correct.

26. It was submitted that under the garb of invoking his Fundamental Rights under Articles 14 & 16 of the Constitution, the applicant wants to take shelter behind those aspects of law, which were not otherwise applicable to his case, or beneficial to him. It was submitted that the applicant has had chequered history in filing many applications before various *fora*, as per details given in Exhibit-A, and he was actually only working as a Company Paid Staff, appointed under Rule-308/309 of the Company Court Rules, when he was offered the post of Stenographer in the Ministry of Respondent No.1, and soon after his selection as such, complaints regarding his incompetence started being received, and even at the time of his appointment as a Stenographer, he had fled away from the Interview Board, without any justified reasons.

27. It was submitted that the respondents had never acted in a vindictive manner against anybody, or against the applicant. It was further submitted that this Tribunal has no jurisdiction to decide the

matter relating to non-disclosure of information under RTI Act, 2005, which point has already been noted and agreed to by us above. It was, therefore, prayed by the respondents that the OA may be dismissed, being devoid of any merits.

28. Through the Exhibit-A, the respondents had produced a list of 07 OAs filed by the applicant, and the OM dated 05.11.2014, clarifying the basis on which the age limit relaxation had been prescribed.

29. On 03.03.2015, another counter affidavit, on behalf of Respondents No. 4 to 8, was filed, in which after giving in detail the contents of the Advertisement Notice, it was pointed out that 2331 candidates had applied against the vacancy notice, and during preliminary scrutiny of the applications, the candidature of 163 candidates had been rejected on various grounds, and list of rejected candidates had been uploaded by the SSC on the official Website of the Central Region, Allahabad, and that such candidates were given an opportunity to represent, if they had any objections. It was submitted that as the ratio of the candidates vis-a-vis the number of vacancies was more than 200:1, therefore, as per the Guidelines of the SSC, Common Screening Test for short-listing candidates for interviews for the posts was conducted on 25.05.2015, along with the test in respect of other posts advertised by various Regional Offices of SSC, and on the basis of the marks scored by the candidates, 56 candidates were shortlisted for interviews, which were conducted in three Boards on 29.09.2014. Since this Tribunal had, through its interim order dated 29.09.2014, directed the SSC for the

applicant to be allowed to participate in the interviews scheduled to be held on 30.09.2014 for the posts of JTAs, he was so allowed to participate provisionally.

30. Coming to the specific facts of the case of the applicant, it was submitted that since his date of birth was 31.03.1977, he was found overage on the crucial date, which was the closing date of receipt of the applications, and his candidature was rejected on the ground of his being overage as per the provisions of the Advertisement Notice for the posts concerned. It was further submitted that as per the instructions of the Govt. of India dated 15.10.1987 and 24.10.1985, age relaxation of only five years is available to the Central Government Civilian Employees, for appointment to Group 'A' and 'B' posts, and, accordingly only the candidature of various candidates was examined, and the list of rejected candidates was uploaded on the Website, with the permission to file any objections. Since the applicant did not make any representation against such rejection list, his candidature was ultimately rejected, and he was not issued a Call Letter, but he had rushed to file this OA, raising a number of issues (a to g), as already reproduced by us above. It was submitted that the points (b) and (e) are directly applicable to the Respondent-SSC, and (a) and (g) are only partially related to SSC, and the points (c), (d) & (f) wholly relate to the Respondent No.1, and the Requisitioning Authority, i.e., Regional Director-Respondent No.2.

31. It was pointed out that though in the Schedule of RRs for the posts of JTAs forwarded by the Requisitioning Authority, the entry in the

Column-7 indicated that the age limit of 30 years for direct recruits was relaxable for Government Servants upto 40, years in accordance with the orders and instructions issued from time to time by the Central Government, since there are existing blanket instructions in respect of the posts in categories of Group 'A' and Group 'B', only five years' age relaxation can be provided, and the same had been taken to have been permitted and prescribed in accordance with the instructions issued by the Central Government, within the permissible maximum age limit of 40 years, and that there was nothing wrong with the respondents having adopted five years' age relaxation for the upper age limit for the concerned Group 'B' posts.

32. They had stoutly defended the methodology for short-listing the candidates for interview, and submitted that as a specialized Recruiting Agency, SSC has very methodically devised the method and manner of selection in all matters, relating to acceptance or rejection of the applications, and the mode of selection and interviews, which are final and binding on all the candidates. It was submitted that before the Screening Test is conducted for various categories of posts, for the purpose of screening the candidate for short-listing for interviews, the marks obtained by them in such screening test had not been used later on, and that the final selection is made only on the basis of marks obtained by them in the interview, where all the laid down aspects of qualifications, experience and suitability of the candidates are taken into consideration.

33. It was submitted that the Respondent-SSC has acted strictly on the basis of the Government clarifications and instructions, including the DoP&T instructions dated 22.02.2013 forwarded to Respondent No.1, in which it was clarified that for direct recruitment vacancies, only the revised RRs for appointments shall apply.

34. It was pointed out that since, in the instant case, appointments in the case of JTAs were being made as per the selection method other than a Competitive Examination, the closing date for receipt of applications has been taken as the crucial date for determining the age of the candidates, as per the procedure prescribed in this regard, and which is perfectly in tune with the instructions of the Government of India. It was submitted that on points (c), (d) & (f) raised by the applicant, the SSC has no comments to offer on these issues, but since the applicant has no case, his OA is liable to be rejected.

35. The applicant had filed his rejoinder to these counter replies thereafter on 04.02.2016, more or less reiterating his contentions, but in very great detail. He had submitted that both the posts of STA and CP are Group 'B', posts with almost similar functions, and even the same set of essential qualifications. He had reiterated his objection that a Government servant eligible for applying for the feeder post had been debarred from applying for promotional post after the age of 35 years, and he had, therefore, once again assailed the impugned RRs for the posts of STAs, and the respondents' decision of lowering the upper age

limit for the post of C.P. from 35 years to 30 years, which had resulted in reducing the relaxation in upper age limit for Government servants from up to 40 years to 35 years.

36. It was further submitted by him that the respondents had not disputed the interim order of this Tribunal dated 25.09.2014, allowing the applicant to provisionally appear at the Interview, and, therefore, by raising no such objection, they had actually substantiated his claim. He had submitted that the controversy had arisen only because the Advertisement for the post of JTAs was on the basis of the old RRs, overlooking the DoP&T instructions that the revised RRs in vogue at the time of Advertisement shall have to be followed.

37. His contention once again was that once the post of JTAs was re-classified as Group 'B' post, for which only Respondent No.1 is the Appointing Authority, and, therefore, Respondent No.2 lacks inherent jurisdiction. He had reiterated his contention that respondents have played a fraud upon the reservation policy by resorting to the fraudulent recruitment process. Admitting that his past service was as a Company Paid Staff, he reiterated that the respondents were denying him the benefits of that past service, and he had been dragged into avoidable litigation. He had even alleged that the respondents had made all submissions on oath, committing a perjury.

38. He had denied the applicability of Para-6 of the RRs, and the OMs dated 15.10.1987 and 24.10.1985, providing for only 5 years of age

relaxation to Government servants in respect of the Group 'B' posts, as being against the decision of the Constitution Bench of the Hon'ble Supreme Court in **B.S. Yadav & Ors. Etc. vs. State of Haryana & Ors.**

Etc., [1981] 1 SCR 1024. He had also alleged that the respondents had wrongly rejected his application against another Advertisement of Western Region No. WR/1/2014 on the ground of his being 'overage', submitting that it was his right to be considered for selection, on equitable and fair basis, as had been held by Hon'ble Apex Court in **Delhi Jal Board vs. Mohinder Singh 2000 (7) SCC 210**, claiming that he was an eminently suitable person. He had relied further upon the Hon'ble Apex Court judgment in **Sahkari Ganna Vikas Samiti Ltd. Vs. Mahabir Sugar Mills (P) Ltd., (1981) 4 SCC 149**, in which it was held that the object of any process of selection for entry into a public service is to secure the best and the most suitable person for the job, and the object of selection ought to select best suitable candidates.

39. Relying upon his experience, and claiming it to be able to overcome the age limit criteria, he had sought shelter behind the Hon'ble Apex Court judgment in **Prabha Devi vs. Govt. of India** in Civil Appeal No.2040/1987 decided on 08.03.1988, in which it was held that academic brilliance and excellent performance by themselves cannot wholly substitute experience, and he had again mentioned the judgment in the case of **Bhagwati Prasad and Ors. vs. Delhi State Mineral Development Corporation AIR 1990 SC 371.** He had alleged that the respondents have only made evasive denial to his averments, and in

such an event they should be taken to being admissions, covered under the law that admission itself being proof, no other proof is necessary, as had been held by the Hon'ble Apex Court in **Badat and Co. Vs. East India Trading Co., AIR 1964 SC 538.**

40. Without explaining as to how those judgments were applicable, in reply to the respondents' para-wise replies in respect of Para-5.2 to 5.28, he had cited numerous case laws, without actually being able to demonstrate appropriately as to how those case laws covered and supported his contentions in the instant case. Since these comments were of a very sweeping nature, and the cited judgments run into hundreds of them, without showing their relevance to the applicant's case, we need not discuss the relevance of those judgments in the instant case here.

41. In the end, it was once again prayed by him that this Tribunal may direct the respondents to declare his result against the Advertisement No. CR-2/2013, and if he is found to be selected, he may be appointed to the post of JTA, by adjusting and re-adjusting the criteria for short-listing on rational and reasonable basis, taking into account the evolving situation, and to objectively select the best candidate for such a technical post. He had further sought directions to merge and upgrade the posts of STAs and JTAs, and to strike down the revised RRs for the post of STAs and C.P. etc., which prayers were in the nature of multiplicity of reliefs prayed for.

42. After the arguments had been concluded, the applicant had on 02.09.2016 submitted detailed written submissions also. In these submissions, rather than making submissions on any points of law, he had made allegations about the manner in which the learned counsel for the respondents had argued the case, and had submitted that the judgment of the Hon'ble Supreme Court, in the case of **P.U. Joshi & Ors. vs. The Accountant General, Ahmedabad & Ors., 2003 (2) SCC 632**, which was mentioned in the open Court, could not be re-capitulated, and re-called by him. He had thereafter submitted that law should bend before justice, which is a virtue, which transcends all barriers and the Rules of procedure, and in this context he had cited the judgments in the following cases, in his own words, as follows:-

- “i) In the case of **S. Nagaraj and Others vs. State of Karnataka and Another 1993 (4) Supp 595**, the Hon'ble Supreme Court held that justice is a virtue which transcends all barriers. Neither the Rules of procedure nor technicalities of law can stand in its way. The order of the Court should not be prejudicial to anyone. Rule of *stare decisis* is adhered for consistency but it is not as inflexible in Administrative Law as in Public Law. Even the law bends before justice.
- ii) The Hon'ble Apex Court in **Lily Thomas and Ors. vs. Union of India & Ors. (2000) 6 SCC 224** held that law has to bend before justice which is a virtue which transcends all barriers and the rules of procedure and technicalities of law cannot stand in the way of administration of justice.
- iii) The Hon'ble Supreme Court in **State of Bihar vs. Kameshwar Prasad Singh, (2000) 9 SCC 94**, held that

technicalities of law cannot be a ground to ignore substantial justice and undo illegalities.

- iv) In **Special Land Acquisition Officer vs. Karigowda & others, (2010) 5 SCC 708**, the Hon'ble Apex Court had cast a duty upon the Court to bring litigation to an end.
- v) The Hon'ble Apex Court in **Zenit Mataplast P. Ltd. V. State of Maharashtra AIR 2009 SC (Supp) 2364** held that when the applicant approaches the Court complaining against the Statutory Authority alleging arbitrariness, bias or favouritism, the Court, being custodian of law, must examine the averments made in the application to form a tentative opinion as to whether there is any substance in those allegations.
- vi) The Hon'ble Apex Court in **Ajaib Singh vs. Sirhind 1993 (3) JT 38**, held that instead of dismissing the petition merely on the ground of delay, the Tribunal could appropriately be moulded the relief.
- vii) The applicant had thereafter cited the separate orders of the then Hon'ble Member (J) of this Tribunal in the order dated 27.01.2012 in **Smt. Krishan Chhikara vs. MCD** in TA No.154/2009 concerning plural remedies, and also cited portions from that orders passed by this Tribunal in OA No. 154/2009.
- viii) The applicant had again cited the Tribunal's order dated 21.08.2012 in **Dr. Neelam Bhalla & Ors. vs. Union of India & Ors.** in OA No.4328/2010, order dated 03.05.2011 in **Shri P.K. Gupta vs. Union of India** in OA No.1303/2003, order dated 29.07.2010 in **J.P.S. Rana vs. Govt. of NCT of Delhi** in OA NO.1181/2009, order dated 19.04.2008 in **Shri S.K. Khanna vs. Union of India** in OA No.1065/2006, in OA No.

657/2006 **Shri Om Prakash vs. Union of India**, and in the case of **R.P. Mishra vs. Union of India & Others, 1988 (5) SLR 667.**"

43. The consolidated orders in respect of age relaxation allowed to various categories of Government servants was issued through OM No. 15012/2/2010-Estt.(D) dated 27.03.2012, in which it had been clearly prescribed as to the categories of posts for which the age concessions are admissible. Some of the concessions are eligible to all categories of posts filled up by Direct Recruitment, some in the case of posts filled otherwise than through UPSC, and some in respect of posts recruitment to which is made through the Employment Exchange etc. It is seen that the contents of those consolidated orders of DoP&T also do not provide any age concession for Group 'B' posts, like that of JTA, for which the applicant was a candidate.

44. It was, however, submitted by the applicant that reliefs as prayed for in respect of STA/CP are not being pressed by him, and he had prayed for being permitted to modify the reliefs as prayed for by him accordingly.

45. The applicant had reiterated his contention that selection must be made in accordance with the Rules in force at the time of the recruitment, and if the RRs had undergone any amendment prior to the actual filling up of the advertised posts, the amended Rules will apply, as had been held in **N.T. Devin Katti Etc. vs. Karnataka Public Service Commission & Ors. (AIR 1990 SC 1233)**, and **State of Orissa & Ors.**

vs. Titachur Paper Mills Co. Ltd. & Anr. (1985 (Supp) SCC 280.

Relying upon **B.S. Yadav & Ors. Etc. vs. State of Haryana & Ors. Etc.**

(supra), and citing **Raj Kumar vs. Union of India, AIR 1975 SC 1116**,

he had prayed that since the powers exercised under the proviso to

Article 309 of the Constitution are legislative in character, therefore, they

can be given effect to retrospectively.

46. He had further submitted that in **Sureksha Luthra vs. The Registrar General, Delhi High Court & Ors. (2011 (11) AD Delhi)**, it

had been held that if there is a conflict between the executive instructions and the Rules made under proviso to Article 309, the latter

would prevail, and in **T.N. Housing Board vs. N. Balasubramanium (2004) 6 SCC 85**, the Hon'ble Apex Court had also held that Executive

instructions cannot supersede the Recruitment Rules, which aspect was reiterated in **General Manager, Uttarakhand Jal Sansthan vs. Laxmi Devi & Others [AISLJ 2010 (1) 43 SC]**, and had been propounded in

Indra Sawhney & Ors. etc. vs. Union of India & Ors. etc. JT 1992 (6) 273 also. He had also cited **Dr. Rajinder Singh vs. State of Punjab and Others (2001) 5 SCC 482**, in which case the Hon'ble Apex Court had

struck down the Notification issued with the approval of the President of India on the ground that it was contrary to the Recruitment Rules, and

had submitted that in **Punjab State Electricity Board Ltd. Vs. Zora Singh and Others, (2005) 6 SCC 776**, it was held that a note cannot

dilute the rigour of the main provision. It was submitted by the applicant that the Hon'ble Apex Court had in **Duddilla Srinivasa Sharma & Ors.**

v. V. Chrysolite, (2013) 16 SCC 702 quashed the appointments made *de hors* the Recruitment Rules, and had wondered as to how a person who fulfils the eligibility conditions as per the Recruitment Rules can be excluded even from appearing in the qualifying written examination. He had further submitted that the Hon'ble Supreme Court had in **District Collector & Chairman, Vizianagaram Social Welfare Residential School Society, Vizianagaram v. M. Tripura Sundari Devi, (1990) 3 SCC 655** held that appointments made in disregard of the qualifications mentioned is a fraud, and no Court should be party to perpetuation of such fraudulent practices, and had submitted that in **Dr. Krushan Chandra Sahu & Ors. v. State of Orissa & Ors. (JT 1995 (7) SC 137)**, it was held that it is settled position of law that the selection process or method of recruitment is prescribed only in the Recruitment Rules, and cannot be evolved by the recruiting agency.

47. It was further submitted by the applicant that the Hon'ble Supreme Court had in **V. Sreenivasa Reddy vs. Govt. of Andhra Pradesh 1995 Supp (1) SCC 572: 1995 SCC (L&S) 579**, and **Ashok Kumar Sonkar vs. Union of India and Others (2007 (4) SCC 54)** deprecated the uncertainty in respect of eligibility, which would flood ineligible candidates.

48. Heard. We have given our anxious consideration to the facts of the case, and the law laid down in the cases cited by the applicant in support of his contentions, which are well known judgments upon on the aspects of law covered by them. However, it is clear that they do not

come to the aid and assistance of the applicant before us, who was a Company Paid Staff employee for a long time, and has built up his entire case on the basis of that period of his company paid employee relationship being taken into account as his employer-employee relationship with the Union of India, for the purpose of reckoning his eligibility, and at the same time providing him age relaxation, as applicable to the Central Government's Group-C staff, while he was an applicant for a Group 'B' post.

49. It was submitted by him that the respondents had taken a stand that any selection against old vacancies occurring before the Notification of the revised RRs on the basis of educational qualifications as given in the new RRs, and vice-versa, would be invalid, and then again he had changed his stand in his letter to SSC, and requested for selection on the basis of old RRs.

50. According to our understanding, the OA must fail because of the following reasons:-

- i) Because of plurality of reliefs sought for in a single OA, because of which it is hit by Rule 10 of the Central Administrative Tribunal (Procedure) Rules, 1987;
- ii) The OA also is hit by the law relating to non-joinder of necessary parties, as it is clear that the selected persons have already been appointed, and 13 persons have already since joined as Company Prosecutor, and the applicant has failed to

name even one of them as a party respondent in representative capacity to defend their case. Therefore, the OA must fail on the ground of non-joinder of necessary parties.

iii) It is clear that even though as regards the maximum age limit prescribed for relaxation, in Column-7 of the RRs, it was mentioned that age limit for direct recruits for 30 years was relaxable for Government Servants upto 40 years, but that was with the rider that it would be subject to the instructions issued by the Central Government from time to time in this regard. When there is a blanket instruction that in the category of Group 'A' and Group 'B' posts, including both Group 'B' Gazetted and Group 'B' Non-Gazetted, only five years' age relaxation can be provided to serving Government servants, after they have completed three years of regular service, the applicant cannot be allowed to plead that the maximum permissible relaxable age limit of 40 years must necessarily have been operated, which would not have been possible for the posts concerned, which had since been converted from Group 'C' posts to Group 'B' posts. If the posts concerned had continued to be Group 'C' posts, perhaps the contention of the applicant that maximum age limit of 40 years should be operated, may have deserved sympathetic consideration. But since it is his own averment, and all parties are *ad idem*, that the post of JTAs has since become a

Group 'B' Non-Gazetted post, the General Standing Instructions of the Central Government providing for not more than 5 years of age relaxation for any Group 'A' and Group 'B' posts to be provided to any serving Government servant, in the case of direct recruitment process, would become squarely attracted and applicable to the instant case. Therefore, there is no merit in the OA, and the OA is, therefore, liable to be rejected on this ground also.

- iv) Further, it is trite law that the applicant was well aware that in the instant case, for a Group 'B' post, maximum age limit of 5 years' relaxation could have been provided. Still, knowing fully well, he had moved this OA, and was hoping that the benefit of the relaxable maximum age limit of 40 years, as applicable at the time when the post concerned was a Group 'C' post, would still be extended to him. Fully having knowledge of the same, he did not even file a protest petition when his application was listed among the list of rejected applications by Respondent No.4 on their Website. Having failed to object to the source order, through which his candidature was rejected, the applicant has now rushed to file the OA before this Tribunal, and has taken resort to a lot of legalities, and legal arguments, in order to be able to buttress his claim that he ought to have been provided age relaxation upto 40 years, which was denied to 162 more people, apart from him, out of the 2331 total candidates who

had applied against the vacancy notice. Granting any relief to the applicant at this stage would be unfair to those 162 other candidates, whose candidatures were also rejected on various grounds, and who had failed to raise any objection to the rejection of their candidature within time. It is trite law, as has been held by the Hon'ble Apex Court in numerous cases, that once one participates in the process of any selection, when knowing fully well the rules thereof, merely because he was unsuccessful, he cannot assail the process of selection afterwards. In this case, the applicant's candidature was rejected through the list of 163 candidates announced by the respondents. He, therefore, cannot now be allowed to assail the process of selection as undertaken by the respondents, in view of the law as laid down in the following cases:-

- “i) **Madan Lal vs. State of J&K: AIR 1995 SC 1088;**
- ii) **Dhananjay Malik & Ors. vs. State of Uttaranchal & Ors.: AIR 2008 SC 1913: (2008) 4 SCC 171;**
- iii) **National Institute of Mental Health & Neuro Sciences vs. Dr. K.Kalyana Raman & Ors. AIR 1992 SC 1806;**
- iv) **Osmania University Represented by its Registrar, Hyderabad, Andhra Pradesh vs. Abdul Rayees Khan: (1997) 3 SCC 124;**
- v) **K.H. Siraj vs. High Court of Kerala & Ors. (2006) 6 SCC 395;**
- vi) **University of Cochin Rep., by its Registrar vs. N. S. Kanjoonjamma and Others, AIR 1997 SC 2083;**

- vii) **K.A. Nagamani vs. Indian Airlines & Ors., (2009) 5 SCC 515;**
- viii) **Amlan Jyoti Borooah vs. State of Assam & Ors., (2009) 3 SCC 227;**
- ix) **Manish Kumar Shashi vs. State of Bihar & Ors. (2010) 12 SCC 576;**
- x) **Chandra Prakash Tiwari & Ors. vs. Shakuntala Shukla & Ors., (2002) 6 SCC 127: 2002 SCC (L&S) 830;**
- xi) **Union of India & Another vs. N. Chandrasekharan & Ors. (1998) 3 SCC 694.”**

51. Therefore, there is no merit in the present OA, and the OA is, therefore, dismissed, but there shall be no order as to costs.

(Dr.Brahm Avtar Agrawal)
Member (J)

(Sudhir Kumar)
Member (A)

CC.