

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A.NO.4324 OF 2012

New Delhi, this the 19th day of February, 2016

CORAM:

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

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Lalit Mann,
s/o Sh.Shiv Kumar,
R/o A-1/116, 1st Floor,
Sector 11, Rohini, Delhi

í í Applicant

(By Advocate: Mr.M.K.Bhardwaj)

Vs.

UOI & Ors through

1. The Secretary,
DOP&T,
North Block, New Delhi

2. Staff Selection Commission,
Through its Chairman,
Block No.12, CGO Complex,
Lodhi Road, New Delhi

3. The Regional Director,
Staff Selection Commission,
Block No.12, CGO Complex,
Lodhi Road, New Delhi

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

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ORDER

Raj Vir Sharma, Member(J):

The brief facts of the applicant's case are as follows:

1.1 The notice of Combined Graduate Level Examination, 2012 (hereinafter referred to as 'CGLE-2012'), issued by the Staff Selection Commission (hereinafter referred to as 'SSC'), was published in the Employment News/*Rozgar Samachar*, dated 24.3.2012, inviting applications from eligible persons for recruitment to different posts in various Ministries/ Departments/ Organizations. In the notice of CGLE-2012, the closing date for receipt of applications was mentioned as **24.4.2012**, and the dates for Tier I of the written examination were mentioned as **1.7.2012** and **8.7.2012**.

Paragraph 5(A) of the notice of CGLE-2012 was as follows:

05(A) AGE LIMIT as on 1st January, 2012(01.01.2012)*

Category of posts	Age limit
Inspector of Income Tax/Inspector (Central Excise)/Inspector(Preventive Officer)/Inspector (Examiner)/ Inspector of Posts /Assistant Enforcement Officer/Compiler/ Divisional Accountant/ Auditors/ UDCs/ Tax Assistants/Junior Accountant & Accountant	18-27
Statistical Investigator Gr.II	Not exceeding 26 years
Assistant/Sub Inspector in CBI	20-27 years

* Govt. of India, DOPT has allowed fixing **01.01.2012** as date of reckoning of age in relation of provision/instructions contained in DOP&T OM No.AB 14017/70/87-Estt.(RR) dated **14.07.1988**, as one time measure due to change in date of reckoning of age from closing date. Commission will fix date of reckoning for next examination, as per DOP&T OM dated 14.07.1988.

Note 1: Candidate should note that 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 only be accepted by the Commission for determining the age and no subsequent request for its change will be considered or granted.ö

1.2 In response to the notice of CGLE-2012, the applicant, whose date of birth was 1.1.1985, made application as an Unreserved category candidate.

1.3 The respondent-SSC, vide its notice dated **31.5.2012 (Annexure A/3)**, intimated the applicant that his application/candidature was rejected for his not fulfilling the age criterion stipulated in the notice of CGLE-2012. That is to say, his date of birth being 1.1.1985, he was found overage as on the cut-off date, i.e., 1.1.2012.

1.4 Considering the applicant's grievance, the respondent-SSC entertained his candidature and issued him admit card to appear in Tier I and Tier II Examinations. The applicant appeared in Tiers I and II Examinations, and, on the basis of his performances therein, he was declared to have been found eligible to be called for Computer Proficiency Test (CPT) on Computer/submission & verification of documents. On the basis of the call letter dated 24.10.2012 (Annexure A/6) issued by the respondent-SSC, he reported for CPT and verification of documents on 11.11.2012. After verification of his documents, the respondent-SSC did not allow him to appear for CPT again on the ground of his being overage.

1.5 Being aggrieved thereby, the applicant filed the present O.A. on 14.12.2012, seeking the following reliefs:

“i) To direct the respondents to hold special/supplementary Computer Proficiency Test (CPT) for applicant and

consider his case for appointment on the basis of his merit in Combined Graduate Level Examination, 2012.

- ii) to declare the action of respondents in treating the applicant over age as illegal and unjustified and issue appropriate directions to respondent to follow their decision whereby the candidature of the applicant was restored.
- iii) To direct the respondents to consider the candidature of applicant and recommend his case for appointment against appropriate post on the basis of his final merit in Combined Graduate Level Examination, 2012.ö

2. Opposing the O.A., a counter reply has been filed on behalf of the respondents. In the counter reply, it is, *inter alia*, stated that the applicant's date of birth being 1.1.1985, he was found overage as on 1.1.2012 and, therefore, the letter dated 31.5.2012, *ibid*, was issued by the respondent-SSC intimating the applicant about rejection of his candidature. However, subsequently, he was provisionally allowed to appear in the examination, as the matter was referred to the Department of Personnel & Training. The Department of Personnel & Training, vide its letter dated 30.7.2012, clarified that the candidates born not earlier than 2.1.1985 and not later than 1.1.1994 were eligible for CGLE-2012. In compliance with the Tribunal's order dated 20.12.2012, the applicant was allowed to appear for interview. Referring to instruction nos. 2 and 3 contained in the notice of CGLE-2012, the respondents have stated that the applicant's candidature was accepted provisionally, and that his admission at all stages of the examination was purely provisional, subject to his satisfying the prescribed eligibility conditions. Referring to paragraph 12 of the notice of CGLE-

2012, the respondents have stated that the applicant's success in examination conferred no right of appointment, as he was ineligible to appear for CGLE-2012.

3. Mr. M.K.Bhardwaj, the learned counsel appearing for the applicant, submitted that the applicant's date of birth being 1.1.1985, he was within the age limit of 18 to 27 as on the cut-off date, i.e., 1.1.2012, stipulated in the notice of CGLE-2012, and, therefore, the respondent-SSC acted illegally and arbitrarily in rejecting his candidature on the ground of his being overage. It was also submitted by Mr.M.K.Bhardwaj that the respondent-SSC, after withdrawing its notice/order dated 31.5.2012 (Annexure A/3), having allowed the applicant to appear in the written examination, and also having called him for CPT, are estopped from disallowing him to appear for CPT and interview. It was also submitted by Mr.M.K.Bhardwaj that the respondent-SSC ought not to have declared the applicant as overage on the basis of the clarification issued by the Department of Personnel & Training, vide letter dated 30.7.2012, *ibid*,

4. *Per contra*, Mr.S.M.Arif, the learned counsel appearing for the respondents, submitted that the terms and conditions of the notice of CGLE-2012 are sacrosanct and binding on all concerned, and that when in terms of the stipulation contained in the notice of CGLE-2012, the applicant was found overage, and pending receipt of clarification from the Department of Personnel & Training, the applicant was provisionally allowed to appear in the written examination, the respondent-SSC cannot be faulted for

disallowing him to appear for CPT and interview. It was also submitted by Mr.S.M.Arif that the doctrine of estoppel is not attracted in the present case, because at no point of time it was declared by the respondent-SSC that the applicant fulfilled the age criterion as stipulated in the notice of CGLE-2012, and because his admission at all stages of the recruitment examination was provisional, subject to his satisfying the eligibility conditions as stipulated in the notice of CGLE-2012.

4.1 In support of his contentions, Mr.S.M.Arif, the learned counsel appearing for the respondents, invited our attention to the O.M.No.42013/1/79-Estt.(D) dated 4.12.1979 issued by the Department of Personnel & Administrative Reforms, and the O.M. No.AB.14017/70/87-Estt.(RR), dated 14.7.1988 issued by the Department of Personnel & Training, and also relied on the judgment dated 5.12.2013 passed by the Hon'ble High Court of Delhi in W.P. (C) Nos. 6636 of 2011, and 2041 of 2012 (**Pradeep, etc. Vs. Union of India and another, etc.**).

4.2 The O.M.No.42013/1/79-Estt.(D), dated 4.12.1979 issued by the Department of Personnel & Administrative Reforms contained the decision of the Government that for competitive examinations held for recruitment by the UPSC/SSC, etc., the crucial date should be:

- o(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.

4.2 The O.M. No.AB.14017/70/87-Estt.(RR) dated 14.7.1988 was issued by the Department of Personnel & Training on the subject of crucial date for determining age limits for competitive examinations conducted in parts by the UPSC/SSC. Paragraphs 1 & 2 of the O.M. dated 14.7.1988, *ibid*, read thus:

As the Ministry of Defence, etc., are aware, according to the instructions contained in para 2 of this Department's O.M.No.42013/1//70-Estt.(D) dated 4th December, 1979, the crucial date for determining the age limits for competitive examinations held for recruitment by UPSC/SSC etc. in the first half of the year is the first day of January of the year in which the examination is held; and if the examination is held in the second half of the year, the crucial date will be the first day of August of the year in which the examination is held.

2. Some doubts have been expressed as to what should be the crucial date for determining the age limits in respect of examinations which are held in two parts on two different dates of the year. For instance, the preliminary examination of the Civil Services Examination is normally held in the first half of the year and the Main examination is held in the second half of the year. In this case the position has been clearly indicated in the rules for this examination that the later of the two dates would be the crucial date. If, however, both parts of an examination fall in the first half of the year, the crucial date for determining the age limits will normally be the 1st of January. Similarly, if both parts of an examination fall in the second half of the year, the crucial date for determining the age limits would be the 1st of August. The position in this regard is clarified in the following illustrations:-

Illustrations

Name of Examination	Date on which first part of Exam. Held	Date on which second part of Exam. Held	Date for determining the age limits (Minimum and Maximum)
Exam.A	1-3-1988	25-8-88	As on 1-8-88
Exam.B	1-9-88	1-3-89	As on 1.1.89
Exam.C	1-3-88	1-5-88	As on 1-1-88

4.3 **In Pradeep, etc. Vs. Union of India and another, etc.** (supra), the petitioners were candidates for selection and recruitment to the post of

Constable (GD) in the Central Para Military Forces (CPMF), pursuant to the Advertisement issued by the Staff Selection Commission in February 2011.

As regards the age limits, the Advertisement stipulated thus:

34.(A) AGE LIMITS 18-23 as on 01.08.2011. Candidates should not have been born earlier than 02.08.1988 and not later than 31.07.1993.

Note I: The upper age limit is relaxable for SC, ST, OBC, Ex-Servicemen and other categories of persons in accordance with the Government orders on the subject.

Note II: Candidates 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) Category-Codes and age relaxation available to different category of eligible candidates, for claiming Age Relaxation as on the date of reckoning:

Code No.	Category	Age Relaxation permissible Beyond the upper age limit.
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01	SC/ST	5 years
02	OBC	3 years

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4.3.1 The Advertisement mentioned the tentative schedule for recruitment as follows:

ÖPST/PET	:	March to May, 2011
Written Examination	:	5 th June, 2011
Medical Examination	:	July-August, 2011
Declaration of Result:	31 st October, 2011. ö	

4.3.2 In W.P. (C) No. 6636 of 2011, the petitioner was aged about 23 years and 4 months as on 1.8.2011. The petitioner was declared successful in PST/PET and written examination. The respondent-SSC did

not call him for medical examination because of his being overage as on 1.8.2011. Therefore, he filed the writ petition seeking the following reliefs:

- ð(a) Issue an appropriate writ, order or direction declaring Clause 4 of the advertisement of the Respondent No.2 (ðage limitsð) (annexed as Annexure P-1) as arbitrary, illegal, unjust and violative of Articles 14, 16, 19 and 21 of the Constitution of India insofar as the respondent has fettered its discretion to permit relaxation in deserving an harsh or anomalous cases.ð

4.3.3 In W.P. (C) No. 2041/2012, the petitioner was born on July 31, 1985 and was aged about 26 years and 1 day as on 1.8.2011. Being an OBC candidate, he was entitled to age relaxation of 3 years in terms of the Advertisement. The petitioner was declared successful in PST/PET and written examination. The respondent-SSC did not call him for medical examination because of his being overage as on 1.8.2011. Therefore, he filed the writ petition seeking the following reliefs:

- ð(a) Issue an appropriate direction/order of writ of certiorari to the respondents to give appointment to the petitioner.
- (b) Issue an appropriate direction/order of Mandamus to respondents to make appointments to the post of Constable (GD) to the petitioner.
- (c) Issue an appropriate direction/order of Mandamus to respondents to set aside office order dated 14.02.2012 issued by the respondents.
- (d) Take the strict cognizance of partial, dishonest, discrimination, corrupt practices in appointment in ITBP, India.
- (e) Any other appropriate writ, order or directions which this Honðble Court may deem just and proper in the facts and circumstances of the case may kindly be passed in favour of the petitioner.
- (f) Writ Petition filed by the petitioner may kindly be allowed with costs.ð

4.3.4 The respondents contested the writ petitions justifying their action in rejecting the candidature of the petitioners for the sole reason that if a candidate is above age with/without relaxation, he being not eligible could not be given any appointment.

4.3.5 After referring to the O.M.No.42013/1/79-Estt.(D) dated 4.12.1979 issued by the Department of Personnel & Administrative Reforms, and the O.M. No.AB.14017/70/87-Estt.(RR) dated 14.7.1988 issued by the Department of Personnel & Training, and following the decisions of the Hon'ble Supreme Court in **D.R.Nim Vs. Union of India & Others**, AIR 1967 SC 1301; **Government of A.P. Vs. N.Subbarayudu**, (2008) 14 SCC 702; **National Council for Teacher Education & Ors Vs. Shri Shyam Shiksha Prashikshan Sansthan & Ors**, (2011)3 SCC 238; **Orissa Power Transmission Corporation Ltd. Vs. Khageswar Sundaray**, (2011) 8 SCC 269, the Hon'ble High Court of Delhi held thus:

ð28. In view of the legal position narrated above, we are of the view that the cut-off date of August 01 fixed by the respondents for determining the age cannot 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. Nothing has been shown to us that the fixing of the cut-off date as August 01st is discriminatory and arbitrary.ö

Accordingly, the Hon'ble High Court dismissed both the writ petitions.

5. In the present case, the applicant has not challenged the fixation of the crucial/cut-off date, i.e., 1.1.2012, for determining the age of candidates belonging to different categories, as stipulated in the notice of CGLE-2012. In the letter dated 30.7.2012, *ibid*, the Department of

Personnel & Training only clarified that the candidates born not earlier than 02.01.1985 and not later than 01.01.1994 were eligible for CGLE-2012. Thus, it cannot be said that the Department of Personnel & Training, vide its letter dated 30.7.2012, *ibid*, introduced/fixed a new crucial/cut-off date for determining the age of the candidates.

6. It is, therefore, to be seen as to whether the applicant, whose date of birth was 1.1.1985, was within the age limit of 18 & 27 years as on the crucial/cut-off date, i.e., 1.1.2012, as stipulated in the notice of CGLE-2012. The applicant, having attained and/or completed 27 years of age on 31.12.2011, can by no stretch of imagination be said to be within the maximum age limit of 27 years on 1.1.2012. Thus, there was no infirmity in the notice/order dated 31.5.2012, *ibid*, issued by the respondent-SSC rejecting the applicant's application/candidature on the ground of his being overage.

7. The applicant has not produced before this Tribunal any decision taken by the respondent-SSC withdrawing its letter/notice dated 31.5.2012, *ibid*. But it appears from the letter dated 30.7.2012, *ibid*, that the respondent-SSC, vide its letter dated 6.7.2012, raised certain doubts and sought for clarification from the Department of Personnel & Training about the calculation of minimum and maximum age limits of candidates for CGLE-2012. Therefore, awaiting receipt of clarification from the Department of Personnel & Training, the respondent-SSC issued admit card to the applicant to appear in Tier I examination on 8.7.2012 and declared the

result of the applicant therein. On the basis of the applicant's result of Tier I examination, the respondent-SSC also issued admit card to him to appear in Tier II examination on 15.9.2012, and also declared the result of the applicant therein. Again on the basis of the applicant's result of Tier I and Tier II examinations, the respondent-SSC also issued call letter to the applicant for CPT on 11.11.2012. On 11.11.2012, the respondent-SSC disallowed the applicant to appear in CPT on the ground of his being overage. As per the terms and conditions of the notice of CGLE-2012, the applicant's admission at all stages of the recruitment examination was provisional, subject to his satisfying the eligibility conditions. When the applicant was found overage and ineligible for CGLE-2012, when his admission at all stages of the recruitment examination was provisional and his candidature was liable to be rejected at any stage of the recruitment examination, and when there was no provision in the notice of CGLE-2012 that once a candidate was provisionally allowed by the respondent-SSC to participate in the recruitment examination, his/her candidature could not subsequently be rejected even if he/she did not fulfill the eligibility conditions laid down therein, the doctrine of estoppel cannot be said to be attracted in the present case.

8. After having given our anxious consideration to the facts and circumstances of the case, and the rival contentions, we have found no substance in any of the contentions raised by the applicant. Therefore, the O.A. being devoid of merit is liable to be dismissed.

9. Resultantly, the O.A. is dismissed. The interim order passed by the Tribunal stands vacated. No costs.

(RAJ VIR SHARMA)
JUDICIAL MEMBER

(SUDHIR KUMAR)
ADMINISTRATIVE MEMBER

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