

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BANGALORE

ORIGINAL APPLICATION NO.170/00794/2017

DATED THIS THE 17TH DAY OF JANUARY, 2018

HON'BLE DR. K.B. SURESH, MEMBER(J)

HON'BLE SHRI P.K. PRADHAN, MEMBER(A)

Puneeth Kumar. M.R,
S/o Ramachanda,
Aged about 28 years,
Working as Electronic Engineer,
All India Institute of Speech and Hearing,
Manasagangothri, Mysore-570 006
R/o No.2112, Dhanvanthri Road,
Devaraja Mohalla,
Mysore-570 001. ...Applicant.

(By Advocate Shri Ranganatha S Jois)

Vs.

1. All India Institute of Speech and Hearing,
“Naimisham” Campus,
Manasagangothri,
Mysore-570 006
Rep. by its Director.

2. Union of India,
Represented by its Secretary,
Ministry of Health and Family Welfare,
New Delhi-110 001. ...Respondents.

(By Advocate Shri K. Ananda)

O R D E R (ORAL)

HON'BLE DR. K.B. SURESH, MEMBER(J)

We heard the matter today. Shri Ranaganatha Jois, learned counsel for the applicant has raised a valid point that even though we had held that a candidate getting age relaxation as part of reservation policy can compete only to the reserved post.

2. Today Shri Ranaganatha Jois, learned counsel for the applicant places before us a Rule which specifically stipulates that in this particular situation, age relaxation is available cutting across the board. Therefore, we were wrong in the earlier instance.

3. Learned counsel for the respondents places before us an order of the Hon'ble Apex Court in Gaurav Pradhan & ors vs. State of Rajasthan & ors in Civil Appeal No.8351/2017. Para 48 stipulates that "In view of the foregoing discussions, we are of the considered opinion that the candidates belonging to SC/ST/BC who had taken relaxation of age were not entitled to be migrated to the unreserved vacancies, the State of Rajasthan has migrated such candidates who have taken concession of age against the unreserved vacancies which resulted displacement of a large number of candidates who were entitled to be selected against the unreserved category vacancies."

4. But the fact of the case are not available with us. Learned counsel for the applicant places before us a copy of the G.I. Dept. of Per. & Trg. OM.No. 36012/13/88-Estt.(SCT) dated 22.5.1989 and OM. No.36011/1/98-Estt.(Res), dated 1.7.1998. We extract it in full:

G.I. Dept. of Per. & Trg., OM No.36012/13/88/-Estt.(SCT), dated 22-5-1989 and OM No.36011/1/98-Estt.(Res), dated 1-7-1998

Subject: Reserved vacancies to filled up by candidates lower in merit or even by relaxed standards – candidates selected on their own merits not be adjusted against reserved quota.

As part of measure to increase the representation of SC/ST in the services under the Central Government, the Government have reviewed the procedure for implementing the policy of reservation while filling up reserved share of vacancies for Scheduled Castes and Scheduled Tribes by direct recruitment. The practice presently being followed is to adjust SC/ST candidates selected for direct recruitment without relaxation of standards against the reserved share of vacancies. The position of such SC and ST candidates in the final select list, however, was determined by their relative merit as assigned to them in the selection process. When sufficient number of suitable Scheduled Caste and Scheduled Tribe

candidates were not available to fill up all the reserved share of vacancies, SC/ST candidates were selected by relaxed standards.

2. It has now been decided that in cases of direct recruitment to vacancies in posts under the Central Government, the SC and ST candidates who are selected on their own merit without relaxed standards along with candidates belonging to the other communities, will not be adjusted against the reserved share of vacancies. The reserved vacancies will be filled up separately from amongst the eligible SC and ST candidates which will thus comprise SC and ST candidates who are lower in merit than the last candidate on the merit list but otherwise found suitable for appointment even by relaxed standards, if necessary.

3. All Ministries/Departments will immediately review the various Recruitment Rules/Examinations Rules to ensure that if any provisions contrary to the decision contained in previous paragraph exist in such rules, they are immediately suitably modified or deleted.

4. These instructions shall take immediate effect in respect of direct recruitment made hereafter. These will also apply to selections where though the recruitment process has started, the results have not yet been announced unless in the Examination/Recruitment Rules or in the advertisement notified earlier there is a specific provision to the contrary and the manner in which the SC/ST vacancies could be filled has been indicated.

Clarification – The instructions contained in the above OM apply in all types of direct recruitment whether by written test alone or written test followed by interview or by interview alone.

2. The above OM and the O.M No.36012/2/96-Estt.(Res), dated 2-7-1997 provide that in cases of direct recruitment, the SC/ST/OBC candidates who are selected on their own merit will not be adjusted against reserved vacancies.

3. In this connection, it is clarified that only such SC/ST/OBC candidates who are selected on the same standard as applied to general candidates shall not be adjusted against reserved vacancies. In other words, when a relaxed standard is applied in selecting an SC/ST/OBC candidates, for example in the age-limit, experience, qualification, permitted number of chances in written examination, extended zone of consideration larger than what is provided for general category candidates, etc., the SC/ST/OBC candidates are to be counted against reserved vacancies. Such candidates would be deemed as unavailable for consideration against unreserved vacancies.”

5. Therefore, we find that there is valid contention raised by Shri Ranagantha Jois. But then in Swamy's Hand Book, 1999 a different version is also given.

6. Be that as it may, we had granted interim order, so that the applicant can also take part in the Skill Test. Whether the applicant is given age relaxation or not, the selection will be decided on the performance in the Skill Test. Therefore, we had gone through the select list. The applicant has got only 59.47 marks and several others have

secured much more than him. List of candidates qualified in the Skill Test for the post of Technician is reproduced below:

**LIST OF CANDIDATES QUALIFIED IN THE SKILL TEST FOR THE POST OF
TECHNICIAN**

Sl. No	Name	Qualification Reckoned	Experience in years	Percentage in Essential Qualification	Roll No	Remarks
1	Mr. Pranesh V.M	DECE		83	T-02	
2	Mr. Vikram. A	DECE		81.31	T-03	
3	Mr. Naveen Kumar N.C	DECE		70.65	T-09	
4	Mr. Anil Kumar L	ITI	3Y 9M 7D	68.14	T-10	
5	Mr. Madhusudana B.K	ITI	3Y 3M	78.42	T-13	
6	Mr. Puneeth Kumar M.R	DEE		59.47	T-19	
7	Mr. Ramu. K	DECE		71.47	T-20	

7. Therefore, *prima-facie* the applicant has no right for employment. But at the same time, since the applicant has not got the mark list, he is granted liberty to challenge it at that appropriate time if he so chooses. OA will not lie. The question of equal pay for equal work and other reliefs cannot be filed in this case. He may seek other methodology.

8. OA dismissed. No costs.

(P.K. PRADHAN)
MEMBER(A)

(DR. K.B. SURESH)
MEMBER(J)

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Annexures referred to by the applicant in OA No.170/00794/2017

Annexure A1: Copy of the Notification dated 14.10.2010

Annexure A2: Copy of the reported for duty on 07.1.2011.

Annexure A3: Copy of the Appointment order dated 20.1.2012.

Annexure A4: Copy of the Appointment order dated 24.1.2013.

Annexure A5: Copy of the Appointment order dated 29.7.2013.

Annexure A6: Copy of the Appointment order dated 3.2.2014.

Annexure A7: Copy of the Appointment order dated 7.8.2014.

Annexure A8: Copy of the Appointment order dated 10.7.2015.

Annexure A9: Copy of the Appointment order dated 15.06.2016

Annexure A10: Copy of the order of duty report dated 18.5.2017.

Annexure A11: Copy of the Service certificate dated 7.2.2017.

Annexure A12: Copy of the Service certificate dated 9.2.2017.

Annexure A13: Copy of the Statement of allocation of duty.

Annexure A14: Copy of the O.M. Dated 22.4.2016.

Annexure A15: Copy of the letter dated 10.8.2016.

Annexure A16: Copy of the Advertisement.

Annexure A17: Copy of the objective test marks card.

Annexure A18: Copy of the Notification dated 23.5.2017.

Annexure A19: Copy of the OBC certificate.

Annexure A20: Copy of the application submitted on line on 5.6.2017.

Annexure A21: Copy of the Representation dated 1.6.2017.

Annexure A22: Copy of the Notification dated 24.11.2017 appearing for skill test.

Annexure referred to by the respondents.

Annexure R-1: Copy of the Contract Basis Appointment order dated 18.5.2017.

Annexure R-2: Copy of the Online Application and its enclosures uploaded by the applicant.

Annexure R-3: Copy of the OM dated 1.7.1998 issued by Government of India.

Annexure R-4: Copy of the clarification dated 3.8.2001 issued by the Council of Scientific & Industrial Research (CSIR) New Delhi.

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