

**CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH: CALCUTTA
(Circuit at Port Blair)**

OA No. 350/00083/2015

Date of order: 12.04.2016

Present:

The Hon'ble Mr. Justice V.C.Gupta, Judicial Member
The Hon'ble Ms. Jaya Das Gupta, Administrative Member

K.GOPAL
V/S
FISHERIES

For the Applicants :Mr.G.B.Kumar, Counsel
For the Respondents :Md.Tabraiz, Counsel

O R D E R (Oral)

JUSTICE V.C.GUPTA, JM:

Heard the learned counsel for both sides and
perused the records.

2. The short question for consideration in this matter is
as to whether this Tribunal can direct the competent authority to
grant the age relaxation in derogation of the provision made in
the Recruitment Rules; especially when the competent authority
after considering the question of age relaxation declined to do
so.

3. The facts, in brief, are that the applicant was
appointed as Sub Inspector of Fisheries under the Respondent



No.7. He wants that he should be permitted to participate in the selection for the post of Assistant Fisheries Development Officer by way of direct recruitment. As per the amended recruitment rule dated 15.10.1987, the post of Assistant Fisheries Development Officer was to be filled up 50% by way of promotion and 50% by way of direct recruitment and the necessary educational qualification for direct recruitment was M.Sc in Marine Biology from a recognized University. According to the applicant, considering the existing rules, he had applied for higher study which was required for the post in question. He was allowed study leave. When he proceeded on leave, the Recruitment Rules were once again amended on 13.12.2005 in which the requirement of M.Sc Marine Biology as essential educational qualification under the direct recruitment quota was omitted. An advertisement was published on 10/03/2006 to fill up the said post of Assistant Fisheries Development Officer. However, he could not apply for the post in the year 2006. He made a representation for not filling up the post. When his representation was not disposed of, he approached this Tribunal by way of OA No. 108/AN/2007 unsuccessfully. The Applicant also sought relief from the Hon'ble High Court as against the order of this Tribunal. But the Hon'ble High Court



declined to interfere in the order of the Tribunal. However, while dismissing the Writ Petition, the Hon'ble High Court of Calcutta made the following observation:

"However, it appears from the fact that the petitioner enhanced his qualifications after considering the educational qualifications prevailing at that point of time, so that the petitioner can be considered by the respondent authorities for the next higher post, in our opinion, the respondents authorities shall consider the case of the petitioner sympathetically any occasion if so arises."

4. The post in question was again advertised on 03/03/201. The applicant applied as a candidate for direct recruitment as he had already completed the course but by that time he became over aged by 9 months and 15 days. He made a representation to relax the age limit but the same was not acceded to by the authorities concerned. Again in the year 2013 fresh advertisement was made to fill up two more posts of Assistant Fisheries Development Officer. The applicant applied for relaxation of age. The Lt. Governor, in exercise of the power conferred under Rule 5 of the Recruitment Rules rejected the representation of the applicant which is quoted hereunder:

" Port Blair dated 15th September, 2014

MEMORANDUM:

With reference to your representations dated 15/34/2011, 12/5/2011, 19/02/2013 and 25/09/2013 regarding relaxation of upper age limit to enable to him to apply for the post of AFDO under the direct recruitment and to inform that your representation



was examined by the competent authority of this Administration and your request could not be considered as per the extant rules. This issue has also approval of the Directorate of Fisheries."

" Port Blair dated the 23rd April, 2015.

MEMORANDUM

Refer to your representation dt. 18/02/2015 regarding relaxation of upper age limit enabling to apply for the post of AFDO under direct recruitment. It is to inform that your representation was examined in several occasions by the competent authority of this Administration and their option is still holds good."

5. Now the question arises whether in terms of the order of the Hon'ble High Court this Tribunal can direct the Lt. Governor to consider relaxation of upper age ignoring the order dated 15.09.2014 and 123.04.2015. We are of the considered view that power conferred under Section 5 is discretionary one and, as such, we refrain from interfering with the discretionary power of the Lt. Governor of the A&N Island in absence any averment and concrete evidence that such exercise of power is against the judicial norms or arbitrarily exercised. On examination, we do not find any such contingency in the matter.

6. For the discussions made above, we hold that this OA sans of any merit and is accordingly dismissed. No costs.

(Ms. Jaya Das Gupta)
Admn. Member

(Justice V.C. Gupta)
Judicial Member