

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
(CIRCUIT AT PORT BLAIR)

Original Application No. 351/00216/2015

Present : Hon'ble Justice Shri Vishnu Chandra Gupta, Judicial Member
Hon'ble Ms. Jaya Das Gupta, Administrative Member

Shri Arun Shanda Kumar
S/o shri S. Immanuel,
R/o Buniyadabad village,
Port Blair Tehsil,
South Andaman District,
Presently practicing as an Advocate at District
Court in Andaman & Nicobar IslandApplicant

VS.

1. Union of India & Ors.
Service through the Secretary,
Ministry of Home Affairs,
New delhi- 110001.
 2. The Hon'ble Lieutenant Governor,
(Administrator)
Raj Niwas, Port Blair,
South Andaman District,
Andaman & Nicobar Island-744101.
 3. The Chief Secretary,
Secretariat Building,
Andaman & Nicobar Administration,
Port Blair - 744101.
 4. The District Magistrate,
Post Blair Teshil,
Andaman & Nicobar Administration,
Port Blair - 744101.
 5. The Secretary (Law)
Secretariat Building,
Andaman & Nicobar Administration,
Port Blair - 744101.
 6. The Deputy Secretary (Law)
Secretariat Building,
Andaman & Nicobar Administration,
Port Blair - 744101.
-Respondents

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7. Miss K. Zahida Bibi
D/o Shri K. Hamza
R/o South Point Village,
Port Blair Teshil,
South Andaman District- 744101.
Presently performing and discharging duties as Assistant
Public Prosecutor, Chief Judicial Magistrate,
Mayabunder.
8. Shri Pradeep Ram
S/o Shri Kishen Ram
R/o Dignabad village
Port Blair Teshil,
South Andaman District
Presently performing and discharging duties as Assistant
Public Prosecutor, Chief Judicial Magistrate,
Mayabunder.Private Respondents
9. The Government of India
Service through the Secretary,
Ministry of Personnel, P. G & Pensions,
Department of Personnel & Training
.....Proforma Respondent

For the Applicant : Mr R. George, Counsel

For the Respondents : Mr S.K.Mandal,
Mr S.C. Mishra, Ms A.Nag,
Mr K.M.B.Jaypal, Counsel

Date of Hearing : 12.04.2016 Date of order: 19.4.2016

ORDER

Justice V C Gupta, Judicial Member:

Heard Mr R.George, learned counsel for the applicant, Mr S.K.Mandal assisted by Mr S.C.Mishra, learned counsel for official respondents, Ms A. Nag, learned counsel for respondent No.7 and Mr K.M.B.Jaypal, learned counsel for respondent No.8.

2. The brief facts of the case are that Andaman & Nicobar Administration published a notice of recruitment for the post of Assistant Public Prosecutor (for short APP) on 23.10.2014. The present applicant and the private respondents



No.7 & 8 along with others applied for the said post. The maximum age limit for applying the post as mentioned in the advertisement was 30 years as on 18.11.2014. Thereafter, some of the applicants including the present applicant and respondent No.7 & 8 and the Bar Association of the Andaman & Nicobar made a request for enlarging the minimum age. On the basis of representation made by the applicant, respondents as well as the other participants and persons a proposal has been made by the administration through Secretary, Law, which reads as under :

"All the Advocates including the Secretary Bar Association made the following prayer :-

1. The mode of selection of self marking need to be changed and a recruitment written exam be hld for 85 marks and 15 marks for interview. It has also been mentioned that the marking system in the academic qualification of different Universities/Colleges varies and a good academic student may not be a good Lawyer/Pleader, as because presentation and argument by the Advocates having much importance for successful practice.
2. Age relaxation should be provided, since the Recruitment Rule provides the maximum age limit upto 30 years. The Recruitment Rule empowers the Hon'ble Lt. Governor to relax the age limit for providing opportunity in appearing the Recruitment Exam to the larger number of candidates. The candidate also submitted the Order dated 15.06.2006 passed by Hon'ble Calcutta High Court in MAT No.015 of 2004 by which Hon'ble Court has directed the respondents give age relaxation sympathetically as per law, if not found otherwise ineligible. It may be mentioned here that upon the publication of vacancy notice, only 18 candidates have applied out of which, merely 10 candidates are eligible.

Keeping in view the above stated circumstances, it is proposed that a Recruitment Exam for selection of APP may be held instead of Self Marking system through the Recruitment Cell of this Administration. It may be added here that the Prosecution Branch of this Administration is a small establishment having 04 posts of APP and 02 post of Sr.APP, as such the opportunity of appointment for Law Graduate is limited. Providing age relaxation will enlarge the Zone of consideration to select the suitable and

meritorious candidates and the Law graduate of these Islands having no opportunity to apply for the Judicial Exam, as because, the UT of A&N Administration has no separate cadre of Judiciary. Moreover, appearing in the Judicial Exam of other State by the aspirants of these Islands is expensive and remote. Accordingly, it may be proposed to give age relaxation upto the age of 38 years for every categories of candidates. This will also facilitate to the applicants, who were eligible for applying this post on 15.06.2006 i.e. upto the date of order passed by Hon'ble High Court. There are sufficient reasons for providing age relaxation, for which Hon'ble Lt. Governor is competent."

The proposal was accepted by the Lt. Governor as is evident from the note appended thereon. The age relaxation was granted to all the candidates irrespective of fact whether they belongs to open category or to the reserved category. Thereafter, the applicant as well as the private respondents participated in the selection process and merit list was prepared on the basis of written test and interview and respondents No.7 & 8, namely, Miss Zahida Bibi and Shri Pradeep Ram were selected for the post as is evident from the press note released on 27.10.2015, relevant portion of which is reproduced herein below :

"Based on marks obtained in the written exam, the following 10 candidates were short-listed and allowed to attend the interview on 26.10.2015. The marks obtained in the written exam as well as interview the combined merit list of the short-listed candidate is as under :

Roll No.	Name of candidate	Category	Marks obtained		Total marks
			Written (85%)	Interview (15%)	
013	Zahida Bibi K	OBC	41	08	49
001	Arun Shanda Kumar	General	35	10	45
008	Rakesh Kumar	General	38	06	44
002	Pradeep Ram	OBC	38.5	05	43.5
012	Kanwaljit Singh	General	37.5	05	42.5
025	Subir Kumar Golder	OBC	35	06	41
022	V.D.Siva Balan	General	33.5	07	40.5
014	Sujeet Kumar Mazumdar	OBC	34	06	40
020	Swadesh Kumar Samadder	OBC	36	04	40
023	Pradeshia Munda	General	33.5	05	38.5

As per the notified criteria of selection, the below mentioned candidates have been declared provisionally selected for

appointment to the post of Assistant Public Prosecutor in the Prosecution Branch of this Administration.

Roll No.	Name of candidate
013	Zahida Bibi K
022	Pradeep Ram

3. It is not in dispute that Lt. Governor who has having an authority to relax the rules of recruitment as contained in Rule 5 & 6 which reads as follows :

"5. Power to Relax:-

Where the Lieutenant Governor (Administrator), Andaman and Nicobar Islands is of the opinion that it is necessary or expedient so to do, it may, by order and for reasons to be recorded in writing and in consultation with the Union Public Service Commission relax any of the provisions of these rules with respect to any class or category of persons.

6. Saving:-

Nothing in these rules shall affect reservations, relaxation of age limit and other concessions required to be provided for the candidates belonging to Scheduled Castes, Scheduled Tribes and other specified categories of persons in accordance with the orders issued by the Central Government from time to time in this regard."

It is also not in dispute that both the selected candidates belong to OBC category and the applicant belongs to general category. The grievance of the applicant is that the respondents No.7 & 8 being candidates of the reserved category cannot be placed in open category/un-reserved quota, if they have not been granted any type of relaxation in view of para 22.3 of O.M. No.36011/6/2010-Estt(Res) dated June, 2010. This O.M was shown to be a compendium on reservation for the SC, ST and OBC classes in service, as is evident from the caption. However, taking advantage of it as contained in para 22.3 the applicant built up his case. Para 22.3 is extracted herein below :

"22.3 Only such SC/ST/OBC candidates who are selected on the same standard as applied to general candidates shall be treated as own merit candidates. If any SC/ST/OBC candidate is selected by getting any relaxation in age limit, experience

qualification, number of permitted chances in written examination, zone of consideration etc., he/she shall be counted against reserved vacancies. Such a candidate cannot be considered for appointment against an unreserved vacancy.

The perusal of para 22.3 reveals that if the reserved category candidates are selected on the same standard as applied to the general category candidates shall be treated as own merit candidate. But if any reserved candidate is selected by granting any relaxation in age, experience, qualification, number of permitted chance in examination and zone of consideration etc. their candidature shall be counted against reserved vacancies and such candidates cannot be considered for appointment against the un-reserved vacancy.

4. On the strength of this clause, learned counsel for the applicant would submit that age relaxation was given to the respondents No.7 & 8 being candidates of OBC, so they cannot be appointed against un-reserved vacancy.

5. Para 22.1 of the same O.M of June 2010 is also relevant, which reads as under :

"22.1 SC, ST and OBC candidates in case of direct recruitment and SC and ST candidates in case of promotion, appointed on their own merit and not owing to reservation should not be shown against reserved quota. They will be adjusted against unreserved quota."

6. The sum and substance of para 22 thus, that if a reserved category candidate on his own merit on the same standard is above the merit of the general category then he can be accommodated or appointed against an un-reserved post/vacancy. But if a reserved category candidate has been given some special privilege by relaxation as contained in para 22.3 and para 6 of recruitment rules, he cannot be placed in unreserved category on the basis of marks obtained by him and he can be placed in the reserved category alone.

7. Learned counsel for the respondents as well as the private respondents categorically submitted that para 22.3 will not apply in the present case. They have submitted that age relaxation was not only granted to the candidates of reserved category but the same is given to all the candidates and other participants in the selection process irrespective the fact whether they belongs to reserved category or open category. The need of age relaxation also reveals that age relaxation has not been granted only to the reserved category candidates. Hence the age relaxation in this case would be a general relaxation to participants in the light of Rule 5 of Recruitment Rules 2011 and not in the light of Rule 6 of Recruitment Rules because the same has been granted irrespective of the fact whether they belongs to reserved category or not. This will means that the minimum qualifying age of 30 years was substituted by the enhanced age of 38 years to all the participants and as such para 22.1 of O.M dated June 2010 would come into play, which is quoted herein above. Only such SC, ST, OBC candidates who was selected on the same standard as applied to general candidates shall be treated as on own merit candidates in terms of para 22.1. In such a situation, a candidate who belongs to reserved category can be appointed against the vacancy of un-reserved candidates on the basis of merit.

8. In view of the above, we are of the view that this O.A lacks merit and accordingly dismissed. There shall be no order as to costs.

(Jaya Das Gupta)
MEMBER(A)

(Vishnu Chandra Gupta)
MEMBER(J)