

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION No.736/2016

Date of Decision: 11.02.2019.

CORAM: R. VIJAYKUMAR, MEMBER (A)
R.N. SINGH, MEMBER (J)

Amol Arun Rane
 Son of Arun Vanji Rane,
 DOB:15.06.1988, Age 28 years,
 Working as Pharmacist-cum-Clerk
 (Group 'C' Post), in Government Medical
 Store Depot, under Senior Chief Medical
 Officer (SAG), incharge of Government
 Medical Store Depot, Belasis Road, Mumbai
 Central, Mumbai 400 008.
 R/at Flat No.24, 2nd Floor, Bldg. No.20, Vijay
 Nagari Annex Apartment, Ghodhbunder Road,
 Thane (W), State Maharashtra, pin code – 400 615. ... *Applicant*
(By Advocate Shri R.G. Walia)

VERSUS

1. The Union of India,
 Through the Secretary,
 Ministry of Health & Family Welfare,
 348, 'A' Wing, Nirman Bhavan,
 New Delhi 110 011.
2. Director,
 Directorate General of Health Services,
 West Block, No.1, Wing No.6, R.K. Puram,
 New Delhi 110 605.
3. DOPT (Department of Personnel & Training)
 Through its Secretary, Govt. of India,
 Ministry of Personnel & Public Grievances and
 Pension (Department of Personnel & Training)
 DOPT, New Delhi 110 001.
4. Sr. Chief Medical Officer,
 Government Medical Store Depot,
 Mumbai Central, Mumbai 400 008. ... *Respondents*
(By Advocate Shri R.R. Shetty)

ORDER (Oral)
Per : R. Vijaykumar, Member (A)

Heard the learned counsels for the parties.

2. This Application was filed on 27.10.2016 under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs;

“8.a) This Hon'ble Tribunal will be graciously pleased to call for the records and proceedings of the case which led to the passing the impugned OM dated 10.10.2016 (i.e. Anxx.A1) and after examining its propriety, legality, validity and constitutionality be pleased to quash and set aside the same with all consequential benefits.

8.b) This Hon'ble Tribunal will be graciously pleased to hold and declare that the appointment of the applicant is absolutely legal and proper and at this late state he cannot be terminated at all.

8.c) Consequently this Hon'ble Tribunal will be pleased to quash and set aside the impugned order dated 19.09.2016, with all consequential benefits of confirmation in service with effect from 02.09.2016.

8.d) Any other and further order as this Hon'ble Tribunal deems fit in the nature and circumstances of the case be passed.

8.e) Costs of this Original Application be provided for.”

3. The Respondents made a requisition with the Employment Exchange on 01.08.2014 seeking names of persons below the age of 33

for recruitment to the post of Pharmacist-cum-Clerk. The proposed recruitment was to be made under the Recruitment Rules, 1984. Based on this requisition, the Employment Exchange furnished a list of 64 candidates and notices were sent to all of them, in response to which, 10 persons have appeared for the written exam followed by an interview. In the ranking by cumulative marks, the applicant ranked 3rd. The topper joined but the person who ranked 2nd could not join for various reasons and then, the applicant was appointed to the post on 03.09.2014. The list of 10 candidates, who appeared in the exam, was provided by the respondents with details of date of birth and shows that as on the cut-off date of 01.08.2014, 7 of them were over-aged by which it is meant that they had exceeded the age of 25 years. The Applicant was issued appointment orders on 03.09.2014 and he joined on the same day and completed two years of probation on 02.09.2016. However, his probation was extended by six months to 02.03.2017. Thereafter, the respondents have

issued show-cause notice No.PES11014/16-17/4122 dated 10.10.2016 stating that the Recruitment Rules prescribe 25 years as the ceiling cut-off age and therefore, his appointment was irregular and he was called upon to explain why he should not be terminated from service. The Applicant has approached this Tribunal immediately thereafter and in their replies, the respondents have clearly circumscribed under which they are bound to terminate his services. It is in these circumstances, that this Tribunal has consented to look into the matter and pass necessary orders.

4. Learned counsel for the applicant argues by reference to the Central Civil Services and Civil Posts (Upper Age-Limit for Direct Recruitment) Rules, 1998 which came into effect from 01.04.1999, by which persons selected by direct open competitive examinations and other categories were extended a benefit by amending the Recruitment Rules to increase the age limit for recruitment by two years. In these circumstances, the learned counsel argues

that the age limit was now 27 years for the said recruitment and the applicant is accordingly eligible. In the present case, the respondents have filed a detailed reply explaining the position to which the applicant has filed a rejoinder and sur-rejoinder has been filed and taken on record from the respondents.

5. Heard Shri R.G. Walia, learned counsel for the applicant and Shri R.R. Shetty, learned counsel for the Respondents and the records have been carefully perused.

6. It is apparent that in the face of the amendment to the Recruitment Rules increasing the age of recruitment for direct recruitment candidates by two years, the applicant fell within the age limits required for the said recruitment.

7. The Respondents have relied upon three judgments of Hon'ble Apex Court i.e. in the case of **Ashish Kumar Vs. State of Uttar Pradesh & Ors.**, (2018) 3 SCC 55, **Deepa E.V. Vs. Union of India & Ors. in Civil Appeal No.3609/2017 dated 06.04.2017** & **Gaurav Pradhan & Ors. Vs. State of Rajasthan & Ors.**

in Civil Appeal No.8351/2017 decided on 18.08.2017 which we have carefully perused and given the facts and circumstances of the amendment, it is apparent that the challenge may be different in those cases and the consequent judgments would not apply in the present case and they would not be relevant in the circumstance that the applicant is not claiming any benefits on account of his reservation category.

8. In view of the above, this OA is **allowed** and the impugned show cause notice dated 10.10.2016 is quashed and set aside. No costs.

(R.N. Singh)
Member (J)

(R. Vijaykumar)
Member (A)

dm.