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**CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, CAMP AT NAGPUR.**

ORIGINAL APPLICATION NO. 2142/2017

Dated : 11-03-2019

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

Mangesh s/o Khushal Atram Aged about 43 years,
Occ: Nil, R/o Adivasi Nagar, Gondwana Chowk,
Bairamji Town, Nagpur-440030 (Mah.)

...Applicant

(By Advocate Shri Alok Upasani)

Versus

- 1) The Union of India, Through Secretary, Ministry of Home Affairs, Level-7, R.K.Puram, New Delhi-110001.
- 2) Director, National Fire Services College, Takli, Feeder Road, Raj Nagar, Nagpur-440013.
- 3) Administrative Officer, National Fire Services College, Takli, Feeder Road, Raj Nagar, Nagpur-440013.

...Respondents

(By Advocate Ms.R.P.Nalamwar)

Reserved On : 21.02.2019

Pronounced on: 11.03.2019

O R D E R

R. VIJAYKUMAR, MEMBER (A)

This application was filed on 18.7.2017 by the applicant under section 19 of the Administrative Tribunal Act, 1985 seeking the following reliefs:

"(a) Quash and set aside the impugned

order dated 6.7.2017 whereby the candidature of the applicant is rejected on the ground of requirement of educational qualifications as well as applicant is overage;

(b) Quash and set aside the impugned employment notice published in employment news dated 3-8 March 2017 wherein the only post of driver is proposed to be filled by candidate of general category, being unconstitutional and unsustainable in the eyes of law;

(c) Direct the respondents to consider the applicant's candidature in view of this Hon'ble Tribunal order dated 23.07.2009 on relax standard and grant him appointment on the post of driver.

(d) Further direct to pay and allowances as applicable to the post of driver as applicant in that regard;

(e) Grant any other relief which this Hon'ble Tribunal deems fit and proper in the facts and circumstances of the case, may also be granted".

2. The applicant belongs to the Scheduled Tribe community and states that he was sponsored by the Employment Exchange for the post of Driver and after a driving test was conducted by R-2, was appointed in orders No. No. FC./5-9/2003 dt. 30.6.2003 on a scale of pay for 89 days and directing that his employment was for 89 days and would not bestow

any claim for regular appointment. He also received a further appointment order on 7.5.2004 for 290 days on the same basis. When the respondents did not give him proper reply for getting regular appointment, he approached this Tribunal in OA No.2039/2005 which was disposed by this Tribunal on 23.7.2009 noting that the applicant had worked for about one year and he was, therefore, entitled to certain age relaxation. However, since there was a lapse of almost more than five years from the date of first selection, the respondents were directed to consider the case of the applicant by grant of age relaxation according to the rules as and when vacancy in the grade of Driver arose and not insist that the applicant should be sponsored by the Employment Exchange. The Writ Petition No.418/2011 was, thereafter, dismissed declining to interfere with orders of the Tribunal. Meanwhile, one Rakesh Raparttiwar was appointed temporarily in the post of Driver from 2005 to 2012 on his claim that he was in the ST category, but it was later found that this claim

was false and his appeal before the Hon'ble High Court was also dismissed. Thereafter, following continuous representation, respondents issued an advertisement in the Employment News on 8-10 March, 2017 inviting applications for the post of Driver under general category. The applicant was also asked to apply and file his application on 24.4.2017, but it was rejected for the following reasons:

"1. He does not fulfill the requirement of Educational Qualification viz. Matriculation or equivalent examination pass from recognized education Board.

2. Over age".

3. The applicant submits that his application was wrongly rejected and that for a ST candidate he should have been granted age relaxation, as well as relaxation in educational qualifications. He argues that as per DOPT circulars, an ST applicant could be granted relaxation up to the age of 45 years. He states that he is IXth standard pass and as per his application, he was 43 years old at the time of filing his request. The applicant specifically

urges reference to the details of the eligibility prescribed for the post (Annexure-A-9) which requires a Matriculation for the post of Driver and only specifies age requirements for categories of unreserved, OBC/SC and departmental candidates. In respect of SC candidates age limit is specified as 18-30 years. The applicant, during arguments, referred to OM No.15012/2/2010-Estt.(D) dt. 27.3.2012 of the DOPT allowing age relaxation for the SC and ST for posts filled by direct recruitment by five years.

4. In reply, the respondents have stated that the last termination of the applicant was on 4.6.2004 and that the applicant was considered for the unreserved category post by directly requesting him to file an application which he did. However, the applicant was not eligible in terms of the educational standard. Further, even after allowing the one year age relaxation for the period that he had worked with the respondents, he continued to be overage and this was in strict accordance with the

Recruitment Rules. Although the applicant was eligible to apply under unreserved category, he had to satisfy the requirements of the Recruitment Rules and could only obtain the relaxation in age as allowed by the Tribunal but this was not adequate in his case and he remained ineligible.

5. The learned counsel for applicant and respondents have been heard and pleadings carefully perused.

6. The applicant does not meet the educational standard required for the post of Driver as per Recruitment Rules and there is no provision for relaxation as per the Recruitment Rules. Further, it is evident that for applying against an unreserved category post, the applicant needs to meet requirements as specified for that category and in this case, he would obtain one year age relaxation. At the time when he was originally appointed, there was no post created against which he could have been employed and therefore, his engagement was purely temporary and did not bestow on him any

claim for regular appointment. By the time the post was created and advertised, the applicant became overage not only from the aspect of RRs as applied for an unreserved vacancy but also from the aspect that if any relaxation in age could be given to him of five years as set out in the OM of DOPT aforesaid, the applicant still remains ineligible. Moreover, the applicant does not meet the educational requirements of the post.

7. In the circumstances, this OA lacks merits and is accordingly dismissed, without any order as to costs.

(R.N. Singh)
Member (J)

(R.Vijaykumar)
Member (A)

B.

JW
15/12

