

**CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
(CIRCUIT AT PORT BLAIR)**

No. O.A. 351/00147/2015
M.A. 351/00035/2015
M.A. 351/00048/2015

Date of order: 06.10.2015

Present : Hon'ble Mr. Justice G. Rajasuria, Judicial Member
Hon'ble Ms. Jaya Das Gupta, Administrative Member

1. Shri P. L. Kumar,
S/o Late Palaniappan,
Aged about 47 years,
Posted as regular Mazdoor,
Working as Heavy Vehicle Driver
Under Kadamtala Range Office,
Rangat Office, Rangat Division,
Middle Andaman - 744 205,
Residence at Santanu Forest Colony,
Kadamtala (Post), Middle Andaman-744205.
2. Shri S. Ganeshan,
S/o Shri Subbaiah,
Aged about 48 years,
Posted as regular Mazdoor,
Working as Heavy Vehicle Driver
Under Tugapur Range Office,
Mayabunder Division,
Middle Andaman - 744 204,
Residence at Rest Camp, Tugapur (Post),
Mayabunder, Middle Andaman-744204.
3. Shri G. Suresh,
S/o Shri Ganesh,
Aged about 47 years,
Posted as a regular Mazdoor,
Working as Heavy Vehicle Driver,
Under Kalighat Range Office,
Diglipur Division,
North Andaman - 744202,
Residence at Kalighat, Kalighat (Post),
Diglipur, North Andaman- 744 202.
4. Shri K. P. Haneefa,
S/o Late K. P. Komu,
Aged about 47 years,
Posted as a regular Mazdoor,
Working as Light Motor Driver,
Under Rangat Bay Forest Workshop,
Under Rangat Division,



Middle Andaman - 744 205,
Residence at Batapur No. 2, Batapur (Post),
Middle Andaman-744205.

5. Shri M. Santosh Kumar,
Son of Late V. Madhava Kurup,
Aged about 42 years,
Posted as Multi Tasking Staff,
Working as Light Motor Driver,
Under Divisional Forest Officer, South
Division, Wimberlygung,
South Andaman- 744 206,
Residence at Wimberlygunj,
Wimberlygunj (Post),
South Andaman - 744 206.

..... Applicant

- Versus -

1. The Union Of India,
Service through the Secretary,
M/o Environment & Forests,
New Delhi - 110 001.
2. The Hon'ble Lt. Governor,
Andaman & Nicobar Islands, Raj Niwas,
Port Blair - 744 101.
3. The Principal Chief Conservator of Forests,
Department of Environment & Forest,
Van Sadan, Haddo, Port Blair-744 102.
4. The Chief Conservator of Forests (T),
D/o Environment & Forest,
Van Sadan, Haddo, Port Blair-744102.
5. The Divisional Forest Officer,
Middle Andaman, Rangat-744 205.
6. The Divisional Forest Officer,
Middle Andaman, Diglipur- 744 202.
7. The Divisional Forest Officer,
Middle Andaman, Mayabunder-744 204.
8. The Divisional Forest Officer,



South Division, Wimberlygunj-744 206.

.. Respondents

9. Shri M. Kanna,
S/o. Late M. Muthu,
R/o. Haddo, Post Box No. 602,
Port Blair,
Under PCCF, Department of Environment
& Forest,
Andaman & Nicobar Administration.
10. Shri K. Hussain,
S/o. K. Komu,
R/o. Calicut,
Port Blair,
South Andaman,
Pin - 744 105.
11. Shri Binu Nair,
S/o Late N. Chandra Sekhar Nair,
R/o Ongy Tekri,
Block No. G-15,
House No. 7-A,
Hutbay, Little Andaman,
Pin - 744 207.
12. Shri K. Mohammed Aslam,
S/o. Shri K. Abdul Salam,
R/o. Wimberligung,
Kanyapuram,
South Andaman,
Pin - 744 206.
13. Shri Subhankar Mondal,
S/o Shri Lankeswar Mondal,
R/o Rangat,
Middle Andaman,
Pin - 744 205.
14. Shri Isht Preet Singh,
S/o. Shri Sikandar Singh,
Quarter No. P/112/2,
MES Colony, Buniyadabad,
Post - Haddo, Port Blair,
Pin - 744 102.

.. Private Respondents



For the Applicants : Mr. S. Samanta, Counsel
 For the Respondents : Mr. S.K. Mandal, Counsel
 Mr. S.C. Misra, Counsel
 Mr. G.B. Kumar, Counsel
 (Pvt. Respondents)

O R D E R (Oral)

Per Mr. G. Rajasuria, Judicial Member:

Heard both sides.

2. In as much as the applicants in this M.A. happened to be the fresh appointees through direct recruitment, they are also interested in this O.A. and accordingly this application is allowed for impleading them as private respondents.

3. This O.A. has been filed seeking the following reliefs:-

"a) Leave be granted to the applicants having a same and similar cause of action as stated in paragraph 4(ee) hereinabove to join together and file the instant application jointly under the provisions of Rule 4(5)(a) of the Central Administrative Tribunal (Procedure) Rules, 1987;

b) Direction do issue quashing and setting aside the impugned order dated 31.8.2015, being Annexure A-8 hereto and thereupon directing the respondent authorities to consider the case of the applicants in terms of the existing Recruitment Rules at the relevant point of time since when they are discharging the duties of Drivers and issue call letter to the applicants for participation in the selection process for the post of Heavy Vehicle Drivers & Light Vehicle Drivers as their age and qualification has already been relaxed by orders of the Lieutenant Governor;

c) Direction do issue upon the respondent authorities directing them to produce and/or cause to be produced the entire records of the case and upon such production being made to render conscionable justice by passing necessary orders thereon;

d) Cost and costs incidental hereto;

e) And/or to pass such other or further order or orders as to your Lordships may seem fit and proper."

4. This case has a chequered career of its own. Earlier the applicants P.L. Kumar & ors. filed O.A. No. 75/AN/2014 seeking the following reliefs:-

"8.(a) An order be passed permitting your applicant to join together and file this application under rule 4(5)(a) of the Central Administrative Tribunal Rules, 1987 as the cause of action and the nature of relief prayed for is same having common interest in the matter.

(b) An order be passed directing the respondent authorities to consider the case of the applicants in terms of the existing Recruitment Rules at relevant point of time since when they are discharging the duties of Drivers and issue call letter to the applicants for participation in the selection process for the post of Heavy Vehicle Drivers & Light Motor Vehicle Drivers as their age and qualification has already been relaxed vide letter dated 31.1.2013.


(c) An order be passed directing the respondent authorities to produce entire case record before this Hon'ble Court so that after perusing the same conscious able justice may be render to your applicants.

(d) Incidental and cost of the proceedings be awarded in favour of the applicant.

(e) Any other or further relief as your applicant may be found entitled to."

5. Ultimately in the said O.A. order was passed on 7.4.2015. The operative portion of it would run thus:-

"9. In the fitness of things the respondents are directed to issue a reasoned and speaking order dealing with the aforesaid, within 2 months. In case it is found that the approval of Lt. Governor for the applicants, as aforesaid, has not been withdrawn, to proceed with selection of the applicants in accordance with law."



6. Thereafter the Lt. Governor, A&N Islands vide Annexure A-8 passed the impugned order dated 31.8.2015. The operative portion of it would run thus:-

"WHEREAS, the proposal for relaxation for the Mazdoors of the department was examined at various levels and it was concluded that the Department is required to strictly adhere to the provisions of Recruitment Rules and also to the instructions issued by the DOP&T regarding relaxation of age available to the departmental candidates and the recruitment process was completed by the Department as per the notified Recruitment Rules.

WHEREAS, the Hon'ble Supreme Court in the case of Keshav Chandra Joshi - v.- Union of India (1992 Supp (1) SCC 272), decided that there can be no relaxation of basic or Fundamental Rules of recruitment and there is a distinction between rules of recruitment and conditions of service, while the conditions of service can be relaxed, the rules of recruitment cannot be.

AND WHEREAS, it is clarified that the provisions of relaxation in clause 5 of the said Recruitment Rules empowers the Lt. Governor to relax provisions of Recruitment Rules in respect of any class or category of persons by recording the reasons in writing for relaxing such provisions and such relaxation cannot be made selectively. For this class of people particularly the departmental candidates, relaxation is available for age as per RR and apart from that there is no scope for relaxation for educational qualification because adequate qualified candidates are available for direct recruitment.

NOW THEREFORE, taking into consideration of the above facts, the undersigned is of the view that the prayer for relaxation of age and educational qualification is not found in conformity with the guidelines issued by DOPT, Ministry of Personnel and relaxation acceded to 08 (eight) departmental candidates is hereby called. Department of Environment & Forests has to finalise the recruitment process strictly in terms of notified Recruitment Rules of the post of Heavy Motor Vehicle Driver (OG) & Staff Car Driver (OG)."

7. Challenging and impugning the said order the present O.A. has been filed seeking the aforesaid reliefs.

8. The Ld. Counsel for the applicants would pyramid his argument which could succinctly and precisely be set out thus. In the earlier order of Central Administrative Tribunal referred to supra, there is a



categorical finding that the Lt. Governor of A&N Administration gave relaxation concerning age as well as educational qualification for the in-service candidates including the applicants herein and the earlier order of Central Administrative Tribunal mandated the authority concerned to pass a reasoned order. However, to the shock and surprise of the applicants the impugned order dated 31.8.2015 of the Lt. Governor of the A&N Islands is to the effect that the relaxation already extended in favour of the applicants, was withdrawn which he had no power to do so and that too when the fact of relaxation got crystalised in the form of earlier order of Central Administrative Tribunal itself. Once the Central Administrative Tribunal incorporated in the earlier order referred to supra, the factum of relaxation regarding age and educational qualification having been given by the Lt. Governor, the Lt. Governor had no power to withdraw the relaxation granted and, as such, that order has to be set aside and that order is not a speaking order and there is nothing to indicate on what grounds it was withdrawn. Accordingly, he would pray for setting aside the said order.

9. Per contra, the Id. Counsel for the respondents including the private respondents would in unison pyramid their arguments which could precisely and briefly be set out thus. The earlier order of this Central Administrative Tribunal in no way states that the Lt. Governor had no power to withdraw the relaxation; in stricto sensu no relaxation was given in favour of the applicant.

10. The Central Administrative Tribunal, also in the last para namely the operative portion of it contemplated the possibility and probability of the Lt. Governor withdrawing the relaxation. As such, it cannot be

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argued by the Ld. Counsel for the applicants that Lt. Governor had lost his power to withdraw the relaxation which was issued antithetical to the Central Government rules and the directions of DOPT. Accordingly, they would pray for the dismissal of the O.A.

11. The point for consideration is as to whether in view of the earlier order of the Central Administrative Tribunal, the Lt. Governor became functus officio in recalling the earlier relaxation given by him in contravention of the Central Government rules and DOPT instructions concerning the age and educational qualification of the applicants.

12. At the outset itself, we would like to fumigate our mind with the following maxim:

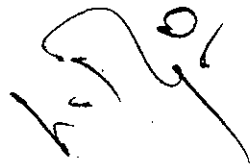
Electio semel facta, et placitum testatum, non patitur regressum

An election once made cannot be recalled.

However, our mind is redolent and reminiscent of the trite law that there is no estoppel against law.

Any erroneous order could be recalled by the competent authority on the administrative side, if it is found that the earlier order passed was not in conformity with the rules of the Central Government and the DOPT instructions. In this case it is just and proper to extract hereunder the relevant Office Memorandum dated 30.1.1990 passed by the Dy. Secretary, Ministry of Personnel, Public Grievances & Pension and it is extracted here under for ready reference:-

"The undersigned is directed to say that this Department's OM dated 20th May, 1988 provides that departmental candidates may be allowed to compete alongwith candidates from open market for appointment to Group 'C' posts up to the age of 40 years in the



case of general candidates and 45 years in the case of candidates belonging to Scheduled Castes and Scheduled Tribes subject to the usual condition that the Group 'C' posts to which direct recruitment is being made are in the same line or allied cadres and that a relationship could be established that service rendered in the post will be useful for efficient discharge of the duties in other categories of posts. It has been decided to extend this concession for departmental candidates for appointment to Group 'D' posts also subject to the same conditions. "

13. Over and above, that we would also like to refer to Swamy's Complete Manual on Establishment and Administration Thirteenth Edition dated June, 2011 and more specifically the Chapter 15 concerning the age relaxations for appointments and in that at page 127, it is found specified as under:-

Category of Persons to whom Age concession is admissible (1)	Categories of Posts to which the Age concession is admissible (2)	Extent of Age concessions (3)
(xi) Departmental candidates with 3 years continuous service.	For appointment to Group 'C' by direct recruitment which are in the same line or allied cadres.	Up to 40 years of age (45 years for SC/ST)*

14. As such, the above extract from Swamy's Compilation is in pari-materia with the aforesaid Office Memorandum dated 30.1.90. Without any iota or shred of doubt, it is clear that Clause 5 of the Andaman & Nicobar (Gr. 'B' & 'C' (Non-Ministerial/Non-Gazetted) posts in the Department of Environment & Forests) Recruitment Rules, 2010 should

be read in conjunction with the CCS rules and DOPT instructions. The said Clauses 5 and 6 of the rule would run thus:-

"5. Power to Relax:-

Where the Hon'ble Lieutenant Governor (Administrator), Andaman and Nicobar Islands is of the opinion that it is necessary or expedient to do so, he may, by order, for reasons to be recorded in writing 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 reservation relaxation, of age limit and other concessions required to be provided for the Scheduled Castes, Scheduled Tribes and other special categories of persons in accordance with the orders issued by the Central Government from time to time in this regard. "

(emphasis supplied)

15. It is, therefore, clear from the cumulative reading of the aforesaid provisions which are made under Article 309 of the Indian Constitution that any rule made by the Lt. Governor of A&N Islands should be read in conjunction with the Central Government rules and instructions concerning age relaxation as well as relaxation concerning educational qualification and the Clause 5 of the said Rules of A&N Islands cannot be read in isolation to the exclusion of the CCS Rules and DOPT instructions.

16. At this stage we do not want to delve deep into the argument of the ld. Counsel for the private respondents that the previous order passed by the CAT, is in accordance with the real factual position law or not. No

doubt there was no WPCT filed against the said earlier order and we are not the appellate authority over the previous order. What we would like to mention here is that we are having power to interpret the previous order. The operative portion of the earlier order of Central Administrative Tribunal extracted in the impugned Governor's order, contemplates even withdrawal of the relaxation and it cannot be interpreted that because such a withdrawal is contemplated in the operative portion of the earlier order of CAT, the Lt. Governor had lost his power to withdraw the relaxation. There is no law that the Lt. Governor, A&N Islands who earlier gave relaxation concerning age and educational qualification pertaining to the candidates in violation of the CCS Rules as well as DOPT instructions, cannot recall his own order. At this juncture our mind is reminiscent and redolent of the legal maxims

1. *Ubi jus, ibi remedium*

Where there is a right, there is a remedy.

2. *Ubi jus incertum, ibi jus nullum*

Where the right is uncertain, there is no right.

There is nothing to indicate and exemplify that any right got vested in the applicants concern relaxation.

17. As such, the applicant cannot by way of right demand for retaining in their favour the erroneous relaxation which was earlier given by the Lt. Governor in violation of the CCS Rules and DOPT circular and if it is held so, CAT would be writer of wrongs.

18. We have to see factually as to whether the Lt. Governor was justified in holding that the earlier relaxation given by him was not in conformity with age relaxation. A little bit of factual analysis is required.

The Ld. Counsel for the private respondents appropriately and appositely, correctly and pointedly has drawn the attention of this Court, to the earlier order passed by our CAT to the effect that all applicants were above the age of 45 years but DOPT circular clearly contemplates ~~that~~ age relaxation upto 40 years only can be given. Here as on the date of giving the age relaxation the applicants were all above 45 years and none of the in-service candidates belongs to SC/ST category and in such case the earlier relaxation was in violation of the CCS rules and DOPT instructions. It has become ^a trite proposition of law that illegal orders can be ignored in collateral proceedings also, even though those orders were not set aside by any court or Tribunal. Hence in this view of the matter, we could see no infirmity in the impugned order passed by the Lt. Governor in recalling the earlier relaxation given in favour of the applicants.

19. On hearing the order passed by this Central Administrative Tribunal, the Ld. Counsel for the applicant would make an extempore submission that this order might be stayed for three weeks so as to enable the applicants to challenge this order before the Hon'ble High Court. In as much as this order is passed in accordance with the rules and regulation and on well established law, we do not think that any stay could be granted.

20. Accordingly, the O.A. is dismissed and disposed of. No costs.

(Jaya Das Gupta)
MEMBER(A)

(G. Rajasuria)
MEMBER(J)

SP