

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

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**O.A. No.61/1184/2018
M.A. No.61/181 & 533/2019**

Date of decision: 09.5.2019

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**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J).
HON'BLE MRS. P. GOPINATH, MEMBER (A).**

...

Jaswinder Singh, S/o Sh. Jeet Singh, aged 33 years, R/o Village Keran,
P.O. Bantalab, Tehsil & District, Jammu (J&K)-180001.

... APPLICANT

VERSUS

1. Union of India through Secretary to Government of India, Ministry of AYUSH, Department of Ayurveda, Research Ayurveda Research Institute for Skin Disorder (AYUSH), B Block, GPO Complex, INA, New Delhi-110023.
2. Director General, Research Ayurveda Research Institute for Skin Disorder, Central Council for Research in Ayurvedic Sciences, Ministry of Ayush, Government of India, New Rajiv Nagar, Payakapuram, Vijaywada-520015 (A.P.).
3. Assistant Director-in-Charge, Research Ayurveda Research Institute for Skin Disorder, Central Council for Research in Ayurvedic Sciences, Ministry of Ayush, Government of India, New Rajiv Nagar, Payakapuram, Vijaywada-520015 (A.P.).

... RESPONDENTS

PRESENT: Sh. D.R. Sharma, counsel for the applicant
Sh. Sanjay Goyal, counsel for the respondents.

ORDER (Oral)

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SANJEEV KAUSHIK, MEMBER (J):-

1. The applicant is aggrieved against notification dated 6.9.2018 (Annexure A-6), whereby his candidature for the post of MTS (Ward Boy) was cancelled being over-age.

2. Facts are not in dispute.
3. Applicant who belongs to State of J&K applied pursuant to advertisement No.5/2017 for a single post of MTS (Ward Boy) which was unreserved. His application was processed and he was allowed to participate in selection and ultimately when result was declared, his candidature was cancelled because he was over-age. Against which, the applicant is before this Court.
4. Sh. D.R. Sharma, learned counsel for the applicant relied upon Govt. of India notification dated 10.4.1997 (Annexure MA-1), issued by DoPT whereby in exercise of power conferred under Article 309 and clause 5 of Article 148 of Constitution of India, Govt. of India has issued instructions for providing relaxation in upper age limit upto 5 years to residents of J&K, which was made applicable till 31.12.1999. This notification was subsequently modified and latest one is dated 9.2.2018, which was made applicable from date of their publication. Based upon these, learned counsel for the applicant submitted that since applicant belongs to State of J&K, in terms of 1997 notification, which were in force till 1999, applicant is entitled to grant of 5 years relaxation in upper age limit. He submitted that applicant is at serial no.1 of the merit list and if he is granted relaxation, he will be granted appointment. He also referred to para 4(e) of the written statement, which reads as under:

"3(E) That in case of MTS (Ward Boy) and MTS (Peon), one unreserved post, each was being filled. A total number of 146 and 497 applications were received for MTS (Ward Boy)/MTS (Peon) which were broadly scrutinized. A total number of 17 and 155 candidates appeared for the written examination for the post of MTS (Ward Boy) and MTs (Peon) respectively. Subsequent to evaluation of answer paper a merit list was prepared and it was noticed from the merit list that the applicant, Shri Jaswinder Singh figuring at merit list number one for the post of MTS (Ward Boy) was from

reserved community of SC. However, he was over age as on cutoff date 01.01.2017. The eligibility criteria for Unreserved Post as per Recruitment Rules is 27 years, however, he was 31 years and 21 days, thus not eligible. In this connection it is stated that as per DoP&T instructions contained in OM 36011/1/98-Estt (Res) dated 1 July 1997 and No.43011/4/2018-Estt.(Res) dated 04 April, 2018 the post being unreserved, any candidate from the reserved category requiring any of the relaxed standard available for them including age relaxation, is not eligible to be selected for an unreserved post. Thus Shri Jaswinder Singh, a candidate from SC community required age-relaxation as he was and not within the stipulated age laid down in RRs for unreserved candidate hence could not be considered for selection despite figuring at merit list number one as only one post belonging to unreserved category was being filled. The OM 36011/1/98-Estt (Res) dated 1 July 1998 and No.43011/4/2018-Estt.(Res) dated 04 April, 2018 are annexed herewith as Annexure R-2 and Annexure R-3 respectively.

5. Learned counsel for the respondents doubted, whether these notifications are applicable to autonomous bodies or not. To this learned counsel for the applicant submitted that in para 4(e), respondents have admitted that these instructions are applicable to the respondent autonomous Institute.
6. We have given our thoughtful consideration to the entire matter and have gone through the pleadings.
7. Notification dated 10.04.1997 is relevant for better appreciation of the present case, where Govt. of India had taken a conscious decision to grant relaxation in upper age limit up to 5 years to resident of J&K which was applicable up to 31.12.2019. Relevant para of the same reads as under:

"3. Relaxation of upper age limit:-

Wherever any recruitment to the services and posts referred to in rule 2 is made, a relaxation in the upper age limit of five years shall be admissible to all persons who had ordinarily been domiciled in the State of Jammu and Kashmir during the period from the 1st Day of January 1980 to the 31st day of December 1989. Provided that the relaxation in the upper age limit for appearing at any examination shall be subject to the maximum number of chance permissible under the relevant rules."

8. The applicant being resident of State of J&K is entitled to relaxation of 5 years in upper age limit in terms of above notification. Since the case of the applicant has not been considered in that aspect of the matter, therefore, injustice has been caused, which resulted in miscarriage of justice. Thus we find that the impugned order cannot sustain accordingly, the same is quashed and set aside. Matter is remitted back to the respondents to re-appreciate the case of the applicant in terms of above notification accordingly, he be granted relaxation in age as provided in above notification and if he is found to be otherwise eligible, he be granted appointment. The above exercise be completed within a period of two months from the date of receipt of a certified copy of this order.
9. The O.A. along with all the pending MAs stand disposed of in the above terms. No costs.

(P. GOPINATH)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Date: 09.05.2019.
Place: Chandigarh.

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