

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

O.A. No.4321 of 2017

Orders reserved on 21.02.2019

Orders pronounced on : 05.03.2019

Hon'ble Ms. Nita Chowdhury, Member (A)

Hon'ble Mr. S.N. Terdal, Member (J)

Pramod Bhan,
S/o Late Sh. Chander Bhan,
Aged about 36 years,
Presently working as APHI on contractual basis in
South Zone, Green Park of South DMC

....Applicant

(By Advocate : Shri Pragya Routray)

VERSUS

1. DSSSB
Through its Chairman,
FC 18, Karkardooma Institutional Area,
Karkardooma, Delhi.
2. South Delhi Municipal Corporation
Through its Commissioner,
9th Floor, SPM Civic Centre,
J.L. Nehru Marg, Minto Road,
Delhi.

.....Respondents

(By Advocate : Shri Atul Kumar)

ORDER

Ms. Nita Chowdhury, Member (A):

Heard learned counsel for the parties.

2. By filing this OA, the applicant is seeking the following reliefs:-

“i) issuance of appropriate direction to the respondent to grant the Applicant age relaxation and include the name of the Applicant in the selected list of candidates and offer the applicant appointment to the said post Assistant Malaria Inspector.

- ii) pass such order or orders as this Hon'ble Tribunal may deem fit in the facts and circumstances of the case."

3. The grievance of the applicant is against the Order dated 6.7.2017 whereby the respondents had rejected the candidature of the applicant for the post of Assistant Malaria Inspector (Post Code No.21/14) on the ground of overage, as his name is at serial no.8 in the UR category whereas the applicant belongs to SC category.

3.1 Applicant's main contention is that since 29.9.2010, he is working on the post of APMI on contract basis and his contract was extended from time to time, the applicant is entitled for grant of age relaxation and his candidature would not have been rejected on the ground of being overage and also the fact that he is an SC category candidate. In support of his contention, counsel for the applicant placed reliance on the decision of the Hon'ble Supreme Court in the case of **UPSC vs. Dr. Jamuna Kurup and others** (2008) 11 SC 10 as also of Office Order dated 5.5.2016 (Annexure A-12) issued by the South Delhi Municipal Corporation, Delhi wherein age relaxation was given to even contractual employees, i.e., General -40 years, OBC -43 years, SC/ST 45 years and Disabilities- 50 years.

4. Respondents have stated in their counter affidavit that applicant is common candidate for all the post codes under SC category which was advertised by the DSSSB vide

Advertisement No.01/13. Since the applicant was falling under the consideration zone, he was asked to upload the documents on the e-dossier portal. On scrutiny of the documents, it has been found that the applicant is 33 years 04 months old and thereby he became overage for the post of Assistant Malaria Inspector under Post Code No.21/14 and APHI/Vaccinator under Post Code 22/14 in Municipal Corporation of Delhi as the age limit for SC candidates is 27 years + 5 years that comes to 32 years. As regards the post of Vaccinator under Post Code 29/14 in New Delhi Municipal Council, no vacancy under SC category has been notified. Regarding Assistant Sanitary Inspector under Post Code-93/14 in New Delhi Municipal Council, only 03 vacancies under SC category has been notified and last candidate selected under this category scored 83.50 marks whereas the applicant scored 79 marks.

4.1 As regards the contention of the applicant that he is eligible for grant of age relaxation under departmental candidate category, as he is working in Municipal Corporation of Delhi as APHI since 2010 on contractual basis and cited the ruling of Hon'ble Apex Court in the case of **UPSC vs. Dr. Jamuna Kurup and others** (2008) 11 SC 10, it is submitted that in the said case, the Apex Court extended the benefit to Dr. Jamuna Kurup on the plea that in the advertisement for recruitment to the post of Ayurvedic Vaid, age relaxation was

granted to the departmental candidates of MCD, which include both permanent or temporary, regular or short term contractual and adhoc employees of MCD whereas in the instant case, in para 6 of the Advertisement No.1/14 under the head 'Age relaxation', it has been clearly mentioned that departmental candidates with at least three years continuous service in Central Govt./Govt. of Delhi are eligible for grant of age relaxation upto 05 years for Group 'B' posts. Therefore, the applicant being a contractual employee of the MCD and not in continuous service in Central Govt./Govt. of Delhi is not eligible for extending the benefit of age relaxation under departmental category.

5. During the course of hearing, counsel for the applicant beside reiterating the aforesaid main contentions placed reliance on the decision of this Tribunal in OA No.2288/2016 decided on 25.1.2019 and of the Hon'ble Delhi High Court in the case of **DSSB and another vs. Preeti Rathi and others** in WP(C) No.1641/2011 decided on 15.11.2011.

6. After hearing the learned counsel for the parties and after perusing the material placed on record, we observe that the respondents have themselves stated that the applicant's candidature has been considered under the category of SC and he was not found to be within the age of 32 years as the applicant's age as on cut off date was 33 years and 04

months, as the minimum age for SC category candidate is 27 + 5 = 32 years.

7. So far as the contention of the applicant that his case ought to have been considered for age relaxation in accordance with the Office Order dated 5.5.2016 is concerned, the same is not applicable in the case of the applicant as the candidature of the applicant is in relation to advertisement issued in 2014 and as such his case is only required to be considered in terms of the provisions of the advertisement against which he had applied for and any deviation by the Court on the basis of any subsequent development in a particular case would amount to discrimination with other candidates who had also participated with the applicant in the said examination.

8. So far as reliance placed by the applicant on the case of **Dr. Jamuna Kurup** (supra) is concerned, the same is not applicable in the present case as in this case the respondents have specifically mentioned in the said Advertisement as under:-

“Departmental candidate with at least three years continuous service in Central Govt./Govt. of Delhi	Upto 05 years for Group ‘B’ (which are in the same line or allied cadres an where a relationship could be established that the service already rendered in a particular post will be useful for the efficient discharge of the duties of post.
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whereas the said provisions were not there in that case when the Hon'ble Supreme Court considered the case of **Dr. Jamuna Kurup** (supra) and as such reliance placed by the applicant on the said case is not relevant to the facts of this case.

9. Admittedly, the applicant is working on contractual basis and as per the averments of the respondents, he is not in continuous service in Central Govt./Govt. of Delhi and applicant has not disputed this fact. This Court is of the view that the applicant is not eligible for extending the benefit of age relaxation under departmental category in view of the specific provisions in the said Advertisement, especially as he has not been in continuous service.

10. In view of the above position, this OA is dismissed. There shall be no order as to costs.

(S.N. Terdal)
Member (J)

(Nita Chowdhury)
Member (A)

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