

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

O.A./100/2080/2019
M.A./100/2562/2019

Reserved on: 20.09.2019
Pronounced on: 15.10.2019

**Hon'ble Mr. Pradeep Kumar, Member (A)
Hon'ble Mr. Ashish Kalia, Member (J)**

Shri Vivek Sharma (Aged about more than 32 years)
S/o Shri Sushil Kumar Sharma,
R/o H.No.67-A, Street No.2
Durgapuri Extension,
Delhi-110093

.... Applicant

(Through Shri T.D. Yadav, Advocate)

Versus

Union of India through:

1. The Secretary,
Ministry of Personnel, Public Grievances & Pensions
Department of Personnel & Training,
North Block, New Delhi-110001
2. The Chairman,
Staff Selection Commission,
Block No.12, CGO Complex,
Lodhi Road, New Delhi

....Respondents

(Through Shri Gyanendra Singh and Shri Ramzan Khan,
Advocates)

ORDER

Mr. Ashish Kalia, Member (J)

Respondents advertised for the post of Junior Engineer (JE) in various disciplines for various departments of the Government of India. Applications were required to be

submitted online between 1.02.2019 and 25.02.2019. Exam is to be held in two parts : Paper 1 from 23.09.2019 to 27.09.2019 and Paper 2 on 29.12.2019. Cut-off date for determination of age limit has been fixed as on 1.08.2019 and this is the precise grievance of the applicant.

2. Pursuant to advertisement uploaded on 1.02.2019, the applicant tried to submit online application for the aforesaid examination but the same was not accepted as he had become overage on the cut-off date. Applicant made a representation to the Chairman, Staff Selection Commission (SSC) on 4.02.2019 to correct the age limit criteria. The SSC through its communication dated 11.02.2019 informed the applicant as follows:

“I am directed to refer to your representation dated 4/5-02-2019 on the subject cited above and to say that the Commission has fixed the cut off date for reckoning of age as per the instructions of DOP&T contained in its OM No.AB-14017/10/87-Estt(RR) dated 14-07-1988 specifying the provisions for determining the crucial date for calculation of age limit for competitive examinations conducted by UPSC/SSC. The Commission in strict conformity with the said instructions/provisions has fixed the crucial date for reckoning of age as on 01-08-2019 in the notice of JE Examination 2018 and no change in it is feasible.”

3. Challenging the advertisement and the communication dated 11.02.2019, the applicant has prayed as follows:

- (i) To set aside and quash the impugned notice dt. 1.2.2019 to the extent of para 6 regarding age limit as on 1.8.2019 instead of 1.1.2019.
- (ii) To direct the respondents to declare the result of the applicant for the post of Junior Engineer (Civil) in case the applicant is finally selected on merit then the respondent may be directed to issue offer of

appointment letter for the post of Junior Engineer (Civil) to the applicant.

4. In support of his case, the applicant has raised the following grounds:

- (a) The respondents have not followed DoP&T OM dated 14.07.1988;
- (b) For the vacancies of 2018, exams are being conducted from 23.09.2019 to 27.09.2019 and on 29.12.2019 and the age limit has been prescribed as 1.08.2019; and
- (c) The applicant cannot be made to suffer due to fault of the respondents as they have failed to conduct exam regularly every year from time to time.

5. The respondents filed counter affidavit opposing the OA. They stated that the cut-off date has been fixed as per the instructions of the DoP&T contained in OM dated 14.07.1988. Since the examination is to be conducted between 23.09.2019 and 27.09.2019 and on 29.12.2019, it is stated that the crucial date for reckoning age limit has been rightly prescribed as 1.08.2019. Reference is made to an order of the Hon'ble High Court of Delhi in a similar matter in W.P. No.2041/2012, where it was observed as follows:

“28. In view of the legal position narrated above, we are of the view that the cut off date of August 01st fixed by the respondents for determining the age cannot be interfered with as fixing of the cut off date is primarily for the executive to determine and Court should not normally interfere unless the fixation of such a cut off date is blatantly discriminatory

and arbitrary. Nothing has been shown to us that the fixing of the cut off date as August 01st is discriminatory and arbitrary.”

6. Heard Shri T.D. Yadav, for the applicant and Shri Gyanendra Singh and Shri Ramzan Khan, for the respondents.

7. The applicant has prayed for quashing and setting aside the notice dated 1.02.2019 to the extent it has prescribed 1.08.2019 as the cut-off date for determination of age limit. He has relied upon DoP&T OM dated 14.07.1988, stating that since the examination is to be conducted in two parts i.e. from 23.09.2019 to 27.09.2019 (Paper I) and on 29.12.2019 (Paper II) for the vacancies of previous year, the cut-off date should 1.01.2019 instead of 1.08.2019. It would be relevant here to quote the DoP&T OM dated 14.07.1988, which reads as follows:

“As the Ministry of Defence etc., are aware, according to the instructions contained in para 2 of this Department’s O.M. No.42012/1/79-Estt(D) dated 4th December, 1979, the crucial date for determining the age limits for competitive examinations held for recruitment by UPSC/SSC etc. in the first half of the year is the first day of January of the year in which the examination is held; and if the examination is held in the second half of the year, the crucial date will be the first day of August of the year in which the examination is held.

2. Some doubts have been expressed as to what should be the crucial date for determining the age limits in respect of examinations which are held in two parts on two different dates of the year. For instance, the preliminary examination of the Civil Services Examination is normally held in the first half of the year and the main examination is held in the second half of the year. In this case the position has been clearly indicated in the rules for this examination that the later of the two dates would be the crucial date. If, however, both parts of an examination fall in the first half of the year, the crucial date for determining the age limits will normally be the 1st of January. Similarly, if both parts of an examination fall in the second half of the year, the crucial

date for determining the age limits would be the 1st of August. The position in this regard is clarified in the following illustrations:-

Illustrations

Name of Examination	Date on which first part of Exam held	Date on which second part of Exam. held	Date for determining the age limits (Minimum and Maximum)
1	2	3	4
Exam.A	1-3-88	25-8-88	As on 1-8-88
Exam.B	1-9-88	1-3-89	As on 1-1-89
Exam.C	1-3-88	1-5-88	As on 1-1-88

3. It may sometimes so happen that due to exigencies of circumstances an examination, which is normally held during the first half of the year, is shifted to the second half. In such a case, the date for determining the age limits would still be the 1st of January. The exact position should be clearly indicated in the rules for the respective examinations, which are notified for the purpose.”

8. Learned counsel for the applicant submitted that previously also when the exams were conducted late in successive years, the cut-off date for determining age limit was prescribed as first day of January of the year.

9. Respondents, on the other hand, stated that as per DOPT instructions dated 14.07.1988, the cut-off date is to be fixed as per the schedule of examination and not with respect of year of vacancies. Accordingly, the cut off date for determining the age limit shall be first day of January of the year if the examination is held in the first half of the year and it shall be first day of August of the year, if the examination is held in the second half of the year (para 7 supra).

10. Since the entire exam is scheduled for 2nd half of year 2019 as per the advertisement, and there has been no change in this schedule, the cut off date is correctly fixed as 1.08.2019. Further, the decision of the Commission in this regard is final. As per stipulations of said Advertisement, for the post of JE in CWC and CPWD, a general category candidate must be below 32 years of age as on 1.08.2019.

11. Learned counsel for the respondents also cited the judgment dated 29.01.2019 of the Hon'ble Supreme Court in **Hirandra Kumar Vs. High Court of Judicature at Allahabad and anr.**, Writ Petition (Civil) No.1343/2018, relevant portion whereof reads as under:

“21. The legal principles which govern the determination of a cut-off date are well settled. The power to fix a cut-off date or age limit is incidental to the regulatory control which an authority exercises over the selection process. A certain degree of arbitrariness may appear on the face of any cut-off or age limit which is prescribed, since a candidate on the wrong side of the line may stand excluded as a consequence. That, however, is no reason to hold that the cut-off which is prescribed, is arbitrary. In order to declare that a cut-off is arbitrary and ultra vires, it must be of such a nature as to lead to the conclusion that it has been fixed without any rational basis whatsoever or is manifestly unreasonable so as to lead to a conclusion of a violation of Article 14 of the Constitution.

22. Several decisions of this Court have dealt with the issue. In *Dr Ami Lal Bhat v. State of Rajasthan*, (1997) 6 SCC 614, a two judge Bench of this Court dealt with the provisions contained in the Rajasthan Medical Services (Collegiate Branch) Rules, 1962. Rule 11(1) prescribed that a candidate for direct recruitment should not have attained the age of 35 years on the first day of January following the last date fixed for the receipt of applications. Rejecting the contention that the cut-off was arbitrary, this Court held that the fixation of a cut-off date prescribing maximum or minimum age requirements for a post is in the discretion of the rule making authority. The Court held thus:

“5.In the first place the fixing of a cut-off date for determining the maximum or minimum age prescribed

for a post is not, *per se*, arbitrary. Basically, the fixing of a cut-off date for determining the maximum or minimum age required for a post, is in the discretion of the rule-making authority or the employer as the case may be. One must accept that such a cut-off cannot be fixed with any mathematical precision and in such a manner as would avoid hardship in all conceivable cases. As soon as a cut-off date is fixed there will be some persons who fall on the right side of the cut-off date and some persons who will fall on the wrong side of the cut-off date. That cannot make the cut-off date, *per se*, arbitrary unless the cut-off date is so wide off the mark as to make it wholly unreasonable."

The same view has been adopted in other decisions, including those in (i) *State of Bihar v Ramjee Prasad* ("Ramjee Prasad"); (ii) *Union of India v Sudheer Kumar Jaiswal* ("Sudheer Kumar Jaiswal"); (iii) *Union of India v Shivbachan Rai* ("Shivbachan Rai"); and (iv) *Council of Scientific and Industrial Research v Ramesh Chandra Agarwal* ("Ramesh Chandra Agarwal").

23. In *Ramjee Prasad* (*supra*), the State issued advertisements for the post of Assistant Professors and prescribed 31 January 1988 as the last date for the receipt of applications. Applicants must have had three years of experience. Contending that applicants could not meet the prescribed requirement of experience by the date prescribed, the cut-off date was challenged as being arbitrary and ultra vires Article 14 of the Constitution. A two judge Bench of this Court upheld the cut-off date and held thus:

"8. It is obvious that in fixing the last date as January 31, 1988 the State Government had only followed the past practice and if the High Court's attention had been invited to this fact it would perhaps have refused to interfere since its interference is based on the erroneous belief that the past practice was to fix June 30 of the relevant year as the last date for receipt of applications. Except for leaning on a past practice the High Court has not assigned any reasons for its choice of the date. **As pointed out by this Court the choice of date cannot be dubbed as arbitrary even if no particular reason is forthcoming for the same unless it is shown to be capricious or whimsical or wide off the reasonable mark. The choice of the date for advertising the posts had to depend on several factors, e.g. the number of vacancies in different disciplines, the need to fill up the posts, the availability of candidates, etc.** It is not the case of anyone that experienced candidates were not available in sufficient numbers on the cut-off date. Merely because the respondents and some others would qualify for appointment if the last date for receipt of applications is shifted from January 31, 1988 to June 30, 1988 is no reason for dubbing the earlier date as arbitrary or irrational." (Emphasis supplied)

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27. These judgments provide a clear answer to the challenge. The petitioners and the appellant desire that this Court should roll-back the date with reference to which attainment of the upper age limit of 48 years should be considered. Such an exercise is impermissible. In order to indicate the fallacy in the submission, it is significant to note that Rule 12 prescribes a minimum age of 35 years and an upper age limit of 45 years (48 years for reserved candidates belonging to the Scheduled Castes and Tribes). Under the Rule, the age limit is prescribed with reference to the first day of January of the year following the year in which the notice inviting applications is published. If the relevant date were to be rolled back, as desired by the petitioners, to an anterior point in time, it is true that some candidates who have crossed the upper age limit under Rule 12 may become eligible. But, interestingly that would affect candidates who on the anterior date may not have attained the minimum age of 35 years but would attain that age under the present Rule. We are advertizing to this aspect only to emphasise that the validity of the Rule cannot be made to depend on cases of individual hardship which inevitably arise in applying a principle of general application. Essentially, the determination of cut-off dates lies in the realm of policy. A court in the exercise of the power of judicial review does not take over that function for itself. Plainly, it is for the rule making authority to discharge that function while framing the Rules.

28. We do not find any merit in the grievance of discrimination. For the purpose of determining whether a member of the Bar has fulfilled the requirement of seven years' practice, the cut-off date is the last date for the submission of the applications. For the fulfillment of the age criterion, the cut-off date which is prescribed is the first day of January following the year in which a notice inviting applications is being published. Both the above cut-off dates are with reference to distinct requirements. The seven year practice requirement is referable to the provisions of Article 233(2) of the Constitution. The prescription of an age limit of 45 years, or as the case may be, of 48 years for reserved category candidates, is in pursuance of the discretion vested in the appointing authority to prescribe an age criterion for recruitment to the HJS.

29. For the same reason, no case of discrimination or arbitrariness can be made out on the basis of a facial comparison of the Higher Judicial Service Rules, with the Rules governing Nyayik Sewa. Both sets of rules cater to different cadres. A case of discrimination cannot be made out on the basis of a comparison of two sets of rules which govern different cadres.

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34. In the facts and circumstances of the present batch of cases, we see no reason or justification to interfere. The petitioners had sufficient opportunities in the past to appear for the HJS examinations at a time when they were within the age limit. Having not succeeded in that, their attempt at moving this Court to seek a relaxation of the Rules or

through a challenge to the Rules or through a challenge to the Rules, is misconceived.

35. For the above reasons, we find no merit in the writ petitions or in the appeal. The writ petitions as well as the civil appeal shall accordingly, stand dismissed. However, there shall be no order as to costs."

The Hon'ble Supreme Court has thus clearly laid down the verdict that fixing of cut-off date for determining the maximum or minimum age prescribed for a post is the discretion of the rule making authority or employer, as the case may be.

12. The respondent also cited some advertisements for JE of previous years and pleaded that for all of them, the cut off date was fixed with reference to exam schedule only in terms of DOPT OM dated 14.07.1988 and not with reference to year of vacancies.

13. Matter has been heard at length. The Tribunal is of the view that determination of cut-off date lies in the realm of policy. A court in the exercise of the power of judicial review does not take over that function for itself. Plainly, it is for the rule making authority to discharge that function while framing the rules.

14. Further, in the instant case, the cut-off date fixed *per se*, cannot be said to be arbitrary and it is fixed as per the policy of the respondents.

15. The applicant has not placed any material on record that he has been discriminated. The Hon'ble Supreme Court in Hirandra Kumar (supra) has also held that holding of yearly examination is also not a fundamental right to be asserted in respect of the vacancies for direct recruitment. We thus find no discrimination in fixation of cut-off date.

16. The instant exam of JE is being held in two parts and both these parts are scheduled to take place in 2nd half of calendar year 2019. Accordingly, it is para 2 of DOPT OM dated 14.07.1988 that becomes applicable and fixation of cut off date as 1.08.2019 is in order.

17. The contention of applicant that in instant case para 3 of DOPT OM dated 14.07.1988 needs to be followed, is not acceptable. A close reading of DOPT OM makes it clear that para 3 pertains to a situation when exam was initially scheduled for 1st half of the year but due to exigencies of certain circumstances e.g. election, agitation, natural calamities etc., the date of exam gets postponed to 2nd half of year. In such exigencies cut off date shall continue to remain 1st of January. In instant case, the exam of JE is scheduled to be held in 2nd half of the year 2019, right from the very beginning. Therefore, contention of applicant is without any basis and is liable to be rejected.

18. In view of the above discussion, we find no merit in this

OA. The same is dismissed with no order as to costs.

(Ashish Kalia)
Member (J)

(Pradeep Kumar)
Member (A)

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