

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH**

...

Original Application No. 290/00308/2016

RESERVED ON : 05.07.2019
PRONOUNCED ON : 11.07.2019

CORAM:

HON'BLE MRS. HINA P.SHAH, MEMBER (J)
HON'BLE MS. ARCHANA NIGAM, MEMBER (A)

Ashik Kumar s/o Vijay Singh aged about 26 years, resident of Vill- Narayanpur, Panchayat- Panchrukhi, Ward No. 16, PO-Pedibheetal, Distt. Saaran (Bihar).

...Applicant

(By Advocate: Shri Siddharth Tatia)

Versus

1. Union of India through the Secretary to the Govt. of India, Ministry of Defence, Raksha Bhawan, New Delhi.
2. Air Officer Commanding-in-Chief, South Western Air Command, Indian Air Force, Sector-09, Gandhinagar (Gujarat) – 382009.
3. Chief Administrative Officer, Air Force Station Ratanada, Jodhpur (Raj) – 342011.
4. Shri Mustaq Ahmed Bhat, Telephone Operator, No. 32 Wing, Air Force C/o 56 APO.

...Respondents

(By Advocate: Shri K.S.Yadav for respondent Nos. 1 to 3)

ORDER

Per Mrs. Hina P.Shah

The applicant has filed the present OA u/s 19 of the Administrative Tribunal Act, 1985, praying for the following reliefs:-

- (i) That impugned order dt. 10.8.2015 (Annexure A-1), to the extent it related to the 4th respondent and appointment order issued in respect of 4th respondent to the post of Telephone Operator, may be declared illegal and the same may be quashed. The respondents may be directed to interpolate the name of the applicant in select list dated 10.08.2015 (A/1) and given him appointment to the post of Telephone operator Gde II allow all consequential benefits.
- (ii) That any other direction, or orders may be passed in favour of the applicant which may be deemed just and proper under the facts and circumstances of this case in the interest of justice.
- (iii) That the costs of this application may be awarded.

2. Brief facts of the case are that Ministry of Defence issued notification for the post of Telephone Operator Grade-II in the pay band Rs. 5200-20200 with Grade Pay of Rs. 1900. The applicant being eligible applied for the same. The selection was consisting written examination, practical test and interview. The applicant appeared in the selection conducted on 9.8.2015. He was told that his name was included in the standby list as well as final merit list, but he could not be selected being lower in merit and paucity of vacancies. He had some doubt regarding selection of respondent No. 4, Shri Mustaq Ahmed Bhat, since he was given special treatment during the examination by the committee. The selected candidates were offered appointment and they joined the post. The applicant has further stated that he has obtained information under RTI Act and the same has been supplied vide letter dated

4.3.2016. He has also been supplied with the list of candidates appeared, recommendations of the committee and final select list and selected candidates along with date of Birth. It reveals that applicant stood at Sl.No.1 of the standby candidate (general category) on the recommendations of the Select Committee and at Sl.No.3 of the Final Merit (General Category) and his name was not included in the select list for want of vacancies and being lowest in merit. The applicant further states that from perusal of various documents included in Ann.A/1, it would reveal that the date of birth of respondent No.4 is 21.3.1988 and he was overage on the last date of submission of application. His age on the last date of submission i.e. 25.4.2015 was 27 years and one month and four days, whereas the maximum age was 25 years for general category to whom respondent No.4 belongs. Therefore, the selection and appointment of respondent No.4 being illegal cannot be sustained in law. The applicant was the actual eligible candidate who ought to have been appointed on the post of Telephone Operator Grade II against unreserved vacancies, but due to appointment of respondent No.4 he could not be given appointment.

3. The official respondents have filed reply to the OA. So far as the averment of the applicant regarding the date of birth of the respondent No.4, the respondents have stated that as per order No.1068 dated 11.12.1995 issued by the Government of Jammu Kashmir, wherever any recruitment to the Central Civil Services and posts is made, a relaxation in the upper age limit for a period of five years shall be admissible to all persons who had ordinarily been domiciled in the Kashmir Division of the State of Jammu Kashmir during the period from 1.1.1980 to 31.12.1989 and any person intending to avail the relaxation of age limit as admissible, shall submit a certificate from the District Magistrate in the Kashmir Division under whose jurisdiction such incumbent ordinarily resided. Respondent No.4 submitted a certificate dated 12.7.2014 issued by District Magistrate, Budgam certifying that respondent No.4 was a resident of Gudsthoo (Tehsildar Badgam) from 21.3.1988 to December, 1989. Hence, as per provisions contained in order dated 11.12.1995 respondent No.4 was granted relaxation in the upper age limit of five years and his application was considered for the purpose of recruitment process for the post of Telephone Operator and after facing the selection process, respondent No.4 being more

meritorious was rightly selected and appointed. Therefore, the OA is liable to be dismissed.

4. Respondent No.4 has also filed reply. He has submitted that as per order No.1068 dated 11.12.1995 issued by the Government of Jammu and Kashmir wherever any recruitment to the Central Civil Services and Posts is made, a relaxation in the upper age limit for a period of five years shall be admissible to all persons who had ordinarily been domiciles in the Kashmir Division of the State of Jammu Kashmir during the period from 1.1.1980 to 31.12.1989 and any person intending to avail relaxation of age shall submit a certificate and accordingly he has submitted certificate dated 12.7.2014 issued by the District Magistrate, Budgam certifying that he was a resident of Gudsthoo (Telsildar Badgam) from 21.3.1988 to December, 1989. Hence, he was entitled for age relaxation and therefore, rightly selected and appointed.

5. In rejoinder, the applicant has stated that the respondents have deceitfully placed the certificate of residence from 21.3.1988 to December, 1989 in respect of respondent No.4 in Budgam of Jammu and Kashmir State. The same is said to have been issued in pursuance with

Government of Jammu and Kashmir Notification dated 11.12.1995. Firstly the said certificate is not a domicile certificate which is different from a residence certificate. Secondly, the said notification prescribes the period of domicile from 1.1.1980 to 31.12.1989 in J&K State for seeking age relaxation in Government service. A period of 10 years is prescribed for issue of a domicile certificate. No domicile certificate can be issued to a person having residing for a period of about one year and nine months. Thirdly, if one could be given the status of domicile to a person residing in particular State like J&K only for a short period for availing the benefit of age relaxation of Five years, one could chose to remain for a small period in such state and could take advantage of age relaxation. The benefit under the said notification can be allowed only to a person who domiciled during the period from 1.1.1980 to 31.12.1989 and not to anybody else. The respondent No.4 who was born on 21.3.1988 and therefore there is no question of residing in J&K during the prescribed period. Respondent No.4 resided for a short period of about one year and nine months and thus could not otherwise be considered as domiciled to State of J&K and therefore, there was no question for his selection to the said post.

6. Heard learned counsel for the parties and perused the material available on record.

7. Earlier this Tribunal while disposing of this OA vide its order dated 11.01.2019 observed that it would appear from the OM dated 27.03.2012 of the DoPT that for persons who were ordinarily domiciled in the State of Jammu and Kashmir during the period from 01.01.1980 to 31.12.1989, relaxation of upper age limit by five years was available upto 31.12.2013. Counsel for the respondents is unable to clarify whether this date was extended for a further period covering the date of issue of advertisement and the date of appointment of fourth respondent. As the matter has to be decided only in terms of whether the age relaxation granted was legitimate or otherwise, we would like to dispose of this OA with a direction to the respondents to ascertain from the DoPT whether the date was extended beyond 31.12.2013. In the event of such extension, the appointment of fourth respondent shall be regarded as valid. Otherwise, the claim of the applicant for appointment at serial No.2 would be unassailable. The respondents shall pass a speaking order in this regard within a period of two months from the date of receipt of a copy of the order. Thereafter the respondents passed a speaking order dated 27.2.2018, but

the applicant was not satisfied with the same and approached the Hon'ble Rajasthan High Court by filing DB Civil Writ Petition No.8282/2018. The Hon'ble High Court vide its order dated 5.10.2018 remanded the matter back to decide it afresh within six months from the date of receipt of the order. In para-9 of the said order, it was clarified that this Tribunal would firstly decide whether the benefit of relaxation in the age granted by DoPT would be availed to those persons who were domiciled in the Kashmir Division of the State of Jammu and Kashmir for the period 1.1.1980 to 31.12.1989 and not for a part period. The second issue to be decided was whether the notification in question inviting application from eligible candidates limited to age relaxation only to those who applied in the reserved category. If either issue was decided against respondent No.4 no further issue was to be decided. Only if the said issues were decided in favour of respondent No.4, the tribunal was to decide whether the benefit of DoPT relied upon by the respondents was extended.

8. The learned counsel for the applicant contended that this Tribunal had to decide these issues and it is clear that as per notification of the Government of Jammu and Kashmir, the respondent No.4 is not entitled to get the

certificate for the limited period of stay and, therefore, the appointment of the respondent No.4 should be set-aside and it should be held illegal and respondents be directed to give appointment to the applicant to the post of Telephone Operator Grade-II with all consequential benefits. The applicant heavily stressed that the applicant should have been domiciled in Kashmir Division of the State of Jammu and Kashmir from 1.1.1980 to 31.12.1989 and not for a part period.

9. On the other hand, the respondents contended that respondent No.4 was born on 21st March, 1988 and being minor child had to be shifted along with his family. Respondent No.4 had obtained a certificate from the office of District Magistrate, Budgam dated 12.7.2014 certifying that he has been continuously residing in District Budgam from 21.3.1988 to December, 1989. The respondents further stated that pursuant to the Resident of Kashmir Division in the State Jammu and Kashmir (Relaxation of upper Age Limit for recruitment to Central Civil Service and Posts) Rules, 1995 (Rules of 1995) issued vide DoPT OM dated 28th June, 1995, the Government of Jammu and Kashmir issued Order No.1068 dated 11.12.1995 which clearly provides that wherever any recruitment to the

services and posts referred to above is made a relaxation in the upper age limit of 5 years shall be admissible to all persons who have ordinarily been domiciled in Kashmir Division of the State of Jammu and Kashmir during the period from 1st January, 1980 to the 31st Day of December, 1989. It is further mentioned that rule 4(a) and (b) of the said rules further provide that any person intending to avail the relaxation of age limit admissible under rule 3 shall submit a certificate from :- a) The District Magistrate in the Kashmir Division whose jurisdiction he had ordinarily resided or b) Any other authority designated in this behalf by the Government of Jammu and Kashmir to the effect that he had ordinarily been domiciled in the Kashmir Division of the State of Jammu and Kashmir during the period from the 1st January, 1980 to the 31st Day of December, 1989 and respondent No.4 submitted the same for claiming benefit of age relaxation. The respondents have further submitted that benefit of relaxation of age was further extended from time to time by the DoPT by amending the rules.

The respondents further state that benefit of the said notification and order was required to be given to respondent No.4 since from the date of birth till December,

1989, respondent No.4 was continuously residing in Budgam District. Therefore, it was fair and just for the respondents to consider his case for appointment on the said post as per the certificate of the Office of the District Magistrate Budgam dated 12.7.2014.

10. Considered rival contentions of both the parties.

11. It is pertinent to mention here that the DoPT vide notification dated 10.4.1997, has further issued Residents of the State of Jammu and Kashmir (Relaxation of Upper Age Limit for Recruitment to Central Civil Services and Post Rules, 1997 which further included the residents of Jammu region and were of similar nature. The benefit of age relaxation to the residents of State of Jammu and Kashmir under these rules was extended from time to time by making suitable amendments. By way of speaking order dated 27.2.2018 passed in compliance of the order of this Tribunal, the respondents have stated that the DOP&T had already issued notification dated 30th September, 2014 and 23rd October, 2015 vide which relaxation of upper age limit for five years has been extended beyond 31.12.2013. The period so extended covers the date of issue of advertisement. Therefore, it is clear that the provisions of

age relaxation of 5 years to the residents of Jammu and Kashmir were in force during the selection of respondent No.4.

12. As per order of the Hon'ble High Court dated 5.10.2018, two issues have to be dealt with and findings to that effect has to be given. Firstly, whether the benefit of relaxation in age granted by DoPT would be available only to those persons who were domiciled in the Kashmir Division of the State of Jammu and Kashmir for the period 1.1.1980 till 31.12.1989 and not for a part period.

13. The contention of the applicant that for the purpose of claiming age relaxation, an incumbent is required to be domiciled in Kashmir Division of the State of Jammu and Kashmir for the whole period from 1.1.1980 to 31.12.1989 and not partially. According to applicant, the respondent No.4 was domiciled between 21.3.1988 to December, 1989 and therefore, he is not entitled to seek age relaxation. But there is no dispute about the fact that parents of respondent No.4 were permanent resident of Kashmir Division and respondent No.4 was born on 21.3.1988. There was no occasion for respondent No.4 to reside prior to his date of birth. As per the Rules of 1995 and the

similar rules made thereafter, it is provided that all persons who had ordinarily been domiciled in Kashmir Division of the State of Jammu & Kashmir during the period from 1.1.1980 to 31.12.1989 a relaxation in the upper age limit for a period of 5 years has to be provided. These rules do not state that if a person has resided for a part period is not eligible for the said benefit. Therefore, it is obvious that the Rules of 1995 and rules made thereafter in this behalf intended to protect and safeguard the interests of the persons residing in that region during the period from 1st January, 1980 to 31st December, 1989. Therefore, answer to this issue is in affirmative.

14. So far as the second issue is concerned, whether as per the advertisement in question inviting applications from eligible candidates the age relaxation is applicable to those who applied under the reserved category. The Rules of 1995 or the similar rules made thereafter nowhere state that the said benefits would be applicable to those who applied to the reserved category only. Though in the advertisement for the vacancies, it has been mentioned that age relaxation is applicable only for reserved posts as per rules, but as per DOPT OM dated 28.6.1995 and the rules made thereafter, the respondent No.4 would be

eligible to get age relaxation since para-6 of the said OM prescribes that:-

"Amendment of recruitment rules:-

All Rules regulating the recruitment of persons to Central Civil services and posts including those in the Indian Audit and Accounts Department and the rules governing, competitive Examination therefor shall be deemed to have been amended to the extent provided for in these rules."

The OM of the DoPT is issued under the constitutional provisions and it is applicable to all Central Civil Services and posts. Rules of 1995 or similar rules of subsequent years on the issue are statutory in nature and duly notified. If an advertisement does not contain any reference of age relaxation provided under the rules, it does mean that the same shall not be given effect to. Thus the Rules of 1995 and the Rules of 1997 made thereafter would on this issue prevail over the advertisement. An advertisement cannot run contrary to rules and the respondent No.4 was entitled to seek age relaxation. Therefore, the benefit of age relaxation to respondent No.4 was rightly given by respondents relying on DoPT notification and as such the answer to the second issue is in affirmative.

15. Also the respondent No.4 was found more meritorious than the applicant as the applicant secured 36.22 marks

and on the other hand, respondent No.4 secured 63.20 marks which included written examination, practical examination and interview marks. Therefore, we find no infirmity or illegality in the action of the respondents in selecting respondent No.4 for the said post.

16. A similar controversy was considered by the Hon'ble Karnataka High Court in the case of **Neeraj Kumar Chadha vs. Punjab National Bank** in Writ Petition No. 16187 of 2013 decided vide order dated 8th August, 2013 wherein the petitioner's application has been considered by the Bank and his candidature for the post of Manager (Credit) was rejected on the ground that he was over-aged as on the cut-off date and his claim for age relaxation was not allowed since he was not domiciled Kashmir in the State of Jammu and Kashmir. The Hon'ble High Court of Karnataka allowed the Writ Petition and the endorsement dated 21st March, 2013 issued informing that petitioner has not been selected because he was over-aged as on cut-off date was quashed and it was directed that petitioner shall be given the relaxation of five years as per 1997 Notification and issue appropriate orders within a period of eight weeks.

17. In view of the discussions made above, the present OA is devoid of merit and is accordingly dismissed with no order as to costs.

(ARCHANA NIGAM)
ADMV. MEMBER

(HINA P.SHAH)
JUDL. MEMBER

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