

CENTRAL ADMINISTRATIVE TRIBUNAL
MADRAS BENCH

Dated the 29th day of October Two Thousand And Nineteen

PRESENT:

THE HON'BLE MR. P. MADHAVAN, MEMBER(J)
THE HON'BLE MR. T. JACOB, MEMBER(A)

O.A.310/97/2016

S. Tirugnanasamandam,
S/o. S. Shanmugham,
D.No.10, Appavu Naicker Street,
Mudaliarpet, Puducherry- 605 004.Applicant

(By Advocate: Mr. T.P. Manoharan)

Vs.

1. Union of India
Union Territory of Puducherry,
Rep. by the Secretary to Government,
Department of Education,
Govt. of Puducherry, Puducherry.
2. The Director of School Education,
Directorate of School Education,
Govt. of Puducherry, Puducherry;
3. K. Thennagathamizhan;
4. P. Maheswary;
5. V. Tharanidaran;
6. R. Velavan;
7. S. Sudandiram;
8. P. Shalini;
9. M. Vinothini;
10. M. Bharathiraja;

11. P. Santhiya;
12. B. Illavarasi;
13. N. Pushparaj;
14. S. Kowsalya;
15. P. Nandini;
16. P. Prabagaran;
17. G. sivamathi;
18. S. Paramaeswari;
19. R. Devendiran;
20. I. Illavarasan;
21. A. Sadheesh;
22. N. Mouttoukichenin Ramesh;
23. M. Vijayakumar

.....Respondents.

(The address for service on the Respondents -3 to 23 is
C/o. The Director of School Education,
Directorate of School Education,
Govt. of Puducherry, Puducherry.)

(By Advocate: Mr. R. Syed Mustafa)

ORDER

(Pronounced by Hon'ble Mr. P. Madhavan, Member(J))

The OA is filed by the applicant seeking the following reliefs:-

"to call for the records relating to the Notification bearing No. 36518/DSE/Estt.III/C/2014/(B) dt.7.12.2015 and the Select Panel contained therein & the Notification bearing No. 36518/DSE/Estt.III/C/2014/(B) dt.11.12.2015 and the Wait List contained therein on the file of the 2nd Respondent and quash the same and consequently direct the 2nd respondent to select the applicant along with other qualified, eligible and meritorious candidates place him at Rank No.2 in the OBC category for recruitment to the 30 posts of Physical Education Teacher, prepare a fresh Select Panel and make recruitment to those posts."

2. The applicant belongs to MBC community of Union Territory of Puducherry. He was born on 4.3.1976. He is a meritorious sports person and this can be seen from the certificate issued by Joint Director, Sports and Youth Services, Govt. of Puducherry dated 1.6.1994. He is entitled to get upper age relaxation of five years. Since he also belongs to OBC category he is entitled to an age relaxation of eight years.

3. In 1998, the applicant was selected and appointed as Police Constable in Puducherry. He is now working as a Head Constable. In the meanwhile, the applicant obtained a B.A. Degree and he registered his name in the employment

exchange. In 1992, he got permission to study for B.P. Ed Degree course and he passed the course from Annamalai University.

4. The 2nd respondent published a notification for the recruitment of Physical Education Teachers for 22 posts (under erstwhile Recruitment Rules) and also notified 30 posts of Physical Education Teachers as per new rules. The applicant had applied for the posts notified under both notifications as he had the requisite qualifications.

5. As per the notification for 30 posts dated 31.12.2014 the upper age limit prescribed was 30 years. The applicant was born on 4.3.1976 and had 38 years 10 months and 29 days age on the crucial date i.e. 3.2.2015. The applicant is entitled to get age relaxation as follows:-

1. Government Servant – 5 years;
2. Other Backward Class Category- 3 years;
3. M.S.P. Category-8 years &
4. Employment Exchange Seniority- 5 years.

6. So, according to the applicant, he is qualified to apply for the 30 posts notified by the respondents. The respondents had rejected his application stating that he is over-aged. He was not given the age relaxation due to him.

7. The applicant would also contend that the respondents had permitted B.P. Ed Degree issued by the Pondicherry University which is not a recognized degree for teacher education. So, the selection process was illegal. The applicant ought to have come up in Rank No.2 in the merit list of OBC candidates.

The respondents ought to have rejected the applications of Respondents No.3 to 21 as their degrees are not recognized by NCTE. So he seeks to quash the merit list and wait list prepared as per notifications.

8. The respondents filed detailed reply and submitted that the respondents had explained the procedure adopted for preparing merit list and also gave its reasons for rejecting the candidature of the applicant for the posts of 30 vacancies. According to the respondents, the applicant was considered for the 22 posts of Physical Education Teachers as he was sponsored by the Employment Exchange after relaxing age. He got only 65.271 marks whereas the cut off marks in the OBC was 73.70 marks.

9. The applicant in the instant case is a MSP candidate and he is entitled to get age relaxation of five years. But his claim for age relaxation on the basis of government service was not extended, as he come from Police Department which was not in same line or allied cadre. So, he cannot be granted age relaxation for government service. He was also not sponsored by the employment exchange for the 30 posts which is necessary for claiming age relaxation on the basis of seniority in the employment exchange. The maximum age relaxation the applicant would get was age 30 years + 5 years for MSP+ 3 years as OBC candidate. On the crucial date, the applicant' s age was 38 years 10 months and 27 days. Hence, the application of the applicant was rejected. The applicant has applied for 30 posts in MBC category. Only age relaxation was

given to MSP quota persons as there was no reservation provided. Hence there is no merit in the contention.

10 Here the counsel for the applicant would contend on the basis of the decision of the Hon'ble Apex Court in **Jitendra Kumar Singh & Anr. Vs. State of Uttar Pradesh (reported in (2010)3SCC 119)** that though the applicant has obtained age relaxation under reserved category, he is entitled to compete in the open category. The concession of age cannot be taken as a ground to seclude him to the reserved posts.

11. The applicant in this case has got only 65.271% marks. On a reading of the decision referred supra it can be seen that as per the U.P. Public Services (Reservation for Scheduled Castes & Scheduled Tribes and Other Backward Classes) Act, 1994, Section 3(6) of the Act it provides that if a reserved candidate gets selected on the basis of merit in an open competition with general candidates, he shall not be adjusted against vacancies reserved for reserved category. In the decision of the Hon'ble Supreme Court in 'Jitendra Kumar Singh & Anr. case' the Hon'ble Supreme court had held that it is permissible for State to make suitable provisions in law to eradicate disadvantages of candidates belonging to socially and educationally backward classes. So from the above it can be seen that the decision in that case was based on Section 3(6) of the Uttar Pradesh Public Services (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act and the instructions issued in similar lines by the Uttar Pradesh Government dated 25.03.1994. There is no such rule prevailing

in the Union Territory of Pondicherry and the said procedure of treating persons of reserved category candidates coming up in the general merit to the open merit list is not applicable in this case. The applicant had applied in the MBC category and after availing concession he cannot claim that he should be treated in the general quota. So we are of the opinion that the said decision of the Hon'ble Apex Court referred supra is not applicable to this case.

12. The lowest cut off marks for MBC in the select list (for 22 posts) was 68.675 and in the OBC category was 73.770. So there is no merit in the contention put forward by him. The D.O.P& T Order No. 1512/2/2010 –Estt (D) dated 27.3.2012 clearly shows that all government servants coming from different departments will not get age relaxation. Sl. No. 12 dealing with age relaxation of Group B Government Servants clearly state that 5 years relaxation in age can be given only if the government servant comes from same line or allied cadres and where a relationship could be established that the service already rendered in a particular post will be useful for efficient discharge of duties of post. Here the applicant was working as a Police Head Constable and there is no relationship can be seen between the two posts involved in this case. It was argued that the Govt. OM S.No.12 is restricting a right given to the Government Servant as per rules and it is against the said rules. On a reading, we find that S.No.12 is only defining the scope of the rule and not restrictive in nature. So, the respondents had rightly denied the age relaxation on this ground. Further, the employment exchange had not recommended his name

for the 30 posts and he is not entitled to get age relaxation on that count also. The respondents had given age relaxation of five years on the basis of Meritorious Sports quota and 3 years on the basis that he belonging to OBC community. Even then he is overaged on the crucial date fixed in the notification. The applicant has applied the post under MBC category and there is no reservation for MBC provided in the notification for 30 posts published by the respondents in this case. He cannot be considered in the general quota also as he is overaged.

13. In view of the discussion above, we find that the applicant has failed to make out a case in his favour and OA is liable to be dismissed. No costs.

(T. JACOB)
MEMBER(A)

Asvs

29.10.2019

(P. MADHAVAN)
MEMBER(J)

Annexures referred to by the applicant in OA No. 310/97/2016

Annexure A1: Notification dated 10.02.2010 issued by the 2nd respondent;

Annexure A2: Application made by the applicant dated 26.02.2010 through the Police Department, Puducherry;

Annexure A3: Recruitment Rules dated 24.08.2010

Annexure A4: G.O.Ms. No.22/92-Lab dated 28.08.1992 issued by Labour Department, Govt. of Puducherry

Annexure A5: Nationality, Nativity, Income and Community certificate dated 11.2.2002 issued to the applicant;

Annexure A6: Certificate of Meritorious Sports Person dated 01.06.1994 issued to the applicant;

Annexure A7: Proforma of Meritorious Sports Person dated 20.04.1998 issued to the applicant;

Annexure A8: B.A. Degree Certificate dated 10.09.1997 issued by the Pondicherry University to the applicant

Annexure A9: Memorandum dated 09.10.2002 issued by the S.P. (HQ) permitting the applicant to study B.P. Ed Degree Course;

Annexure A10: B.P. Ed. Degree Certificate dated 19.03.2004 issued by the Annamalai University to the applicant

Annexure A11: Employment Certificate dated 11.1.2011 issued to the applicant

Annexure A12: Recruitment Rules for the post of Physical Education Teacher dated 24.08.2010

Annexure A13: Order bearing G.O.MS. NO. 45 dated 30.04.2012 forwarding the Office Memorandum dated 27.03.2012

Annexure A14: Notification dated 31.12.2014 for recruitment to 22 posts of Physical Education Teacher along with prospectus

Annexure A15: Notification dated 31.12.2014 for recruitment to 30 posts of Physical Education Teacher along with prospectus

Annexure A16: Service Certificate dated 09.01.2015 issued by the Police Department, Govt. of Puducherry to the applicant

Annexure A17: Application dated 10.01.2015 made by the applicant through the Police Department, Puducherry for recruitment to 30 posts of Physical Education Teacher

Annexure A18: Notification dated 07.12.2015 containing the Select Panel for 30 posts

Annexure A19: Memorandum dated 07.12.2015 for Certificate Verification in respect of 30 posts

Annexure A20: Notification dated 11.12.2015 containing the wait list panel for 30 posts

Annexure A21: Interim order dated 23.12.2015 made in OA. OA1735/2015