

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
KOLKATA

OA. 350/908/2019

Present :Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Suman Majumder, S/o Sailendra Nath Majumder, aged about 32 years, working as Tax Assistant under Pr. Chief Commissioner of Income Tax West Bengal & Sikkim, Aayakar Bhawan, P-7, Chowringhee Square, Kolkata- 700069 at present residing at Srinagar-2, Madhyamgram, 24 Pgs. North, Pin- 700129.

.....Applicant.



1. Staff Selection Commission, through its Chairman, Block No. 12, CGO Complex, Lodhi Road, New Delhi- 110003.
2. Union of India, through its Secretary, Ministry of Personnel, Public Grievances & Pensions, (Department of Personnel & Training), North Block, New Delhi- 110001.
3. Under Secretary (P&P-1) Staff Selection Commission, Block No. 12, CGO Complex, Lodhi Road, New Delhi- 110003.
4. Principal Chief Commissioner of Income Tax, West Bengal and Sikkim, Aayakar Bhawan, P-7, Chowringhee Square, Kolkata- 700069.

.....Respondents.

Heard on : 11.11.2019

Date of order: 15-11-19

For the Applicant : Mr. C. Sinha, Counsel

For the Respondents : Mr. P. Mukherjee, Counsel

O R D E R (Oral)

Per Ms. Bidisha Banerjee, JM:

This OA has been filed to seek the following reliefs:

"8(a) To set aside and quash the impugned corrigendum no. F. No. 3-1/2018-P&P-1 (Pt.) dated 31st May, 2018 issued by the under Secretary (P&P-1), Staff Selection Commission.

(b) To direct the respondents to provide for upper age relaxations by 5 years to central government civilian employees who have rendered not less than 3 years regular and continuous service for appearing in Combined Graduate Level Examination conducted by the Staff Selection Commission for Group-B posts for all future notifications.

(c) Any other order or orders as the Hon'ble Tribunal deems fit and proper."

2. We heard the 1st Counsel for both sides, perused the materials on record and considered the rival contentions.

3. At hearing, the respondents submitted that an identical matter has been dismissed by the Principal Bench of this Tribunal, and therefore the present OA deserves to be dismissed. The order is extracted verbatim herein below for clarity:

"The 1st respondent issued a notification dated 05.05.2018 for selection to various posts such as Inspector of Central Excise, Inspector(Preventive Officer), Inspector (Examiner), Tax Assistant (CBEC). The qualifications for the relevant posts, the age limits and the extent of relaxation, were also provided under different paragraphs of the notice. The applicant is a Group 'C' employee of the Government of India and she wanted to apply. Para 5.3 of the notice provided for relaxation of age limit by five years for such candidates.

2. Through a Corrigendum dated 31.05.2018, the 1st respondent omitted the clause 7 and 8 of para 5.3 of the notice, which provided for relaxation of age limits for different sections of employees. The same is challenged in this OA.

3. The applicant contends that she submitted her application in response to the notice dated 05.05.2018 and change of the qualifications and age limit half way through, is arbitrary and illegal.

4. We heard Shri Sumit Kishore, learned counsel for applicant and Shri Manish Kumar, learned counsel for respondents, at the admission stage.

5. In the notice dated 05.05.2018, not only the qualifications but also the facilities such as relaxation in age limit are provided. The last date for submission of the applications is stipulated as 04.06.2018. However, before the expiry of the last date, the respondents realized that the relaxation of age limit for posts which are to be filled on the basis of the performance in competitive examination, is contrary to the guidelines contained in the Office Memorandum dated 15.10.1987, issued by the DOP&T. Therefore, they issued a Corrigendum on 31.05.2018, omitting the relevant clause in para 5.3 of the Notice.

6. The plea of the applicant based on 'legitimate expectation' would have been available if only any rights have accrued to hereon the basis of submission of the application. Even before the expiry of the last date for submission of the applications, the corrigendum was issued. The principle gets attracted only when certain rights accrue to a citizen on the basis of the acts and the representations made on behalf of the State and its Agencies. The mere existence of a clause for relaxation of age limit, hardly for a period of three weeks, cannot lead to the conferment of any rights on the applicant or for that matter on any individual.

7. Added to that, the respondents have ensured that the employment notice is brought in conformity with the guidelines issued by the DOP&T. It appears that they wanted to ensure fair play in the context of holding of competitive examination. We do not find any merit in the OA and the same is accordingly, dismissed. There shall be no order as to costs.

4. Vehemently opposing the above contentions, ld. Counsel for the applicant would submit that the said order cannot apply to the present factual situation in as much as it was not rendered in identical circumstances or on an identical premise. ld. Counsel would submit that the applicant in the said matter had sought for consideration against 2018 notification, whereas the present applicant desires to seek relaxation in age to apply against 2019 notification, that the last date to apply against the same is 25.11.2019 and that the corrigendum dated 31.05.2018 stands in

the way. Therefore, the present case is not one of "legitimate expectation" and the order of Principal Bench not being rendered on identical facts, would not apply.

5. Ld. Counsel would strenuously urge that the impugned corrigendum dated 31.05.2018, contradicts the Recruitment Rule for the posts in question that stipulate the following :

1	2	3	4	5	6
2. Inspector (Preventive Officer)	2970 (2016) *Subject to variation dependent on workload	General Central Service, Group 'B', Non- Gazetted, Non- Ministeri- al	Level-7 in the pay matrix (Rs. 44,900- 1,42,400)	Selection	Not exceeding 30 years <u>Note 1:</u> <u>Relaxable for</u> <u>Government</u> <u>servants</u> <u>upto five</u> <u>years in</u> <u>accordance</u> <u>with the</u> <u>instructions</u> <u>or orders</u> <u>issued by</u> <u>the Central</u> <u>Government.</u>

Ld. Counsel would further urge that the applicant an aspirant for the said post where relaxation in age is applicable is eminently eligible to apply against 2019 notification. Therefore, Ld. Counsel would contend that the corrigendum that has done away with the provision for relaxation was bad in law and that the DOPT OM dated 15.10.1987 has been misread and misinterpreted by the respondents.

6. The impugned corrigendum dated 31.05.2018, reads as under:

F. No. 3-1/2018-P-P&P-I (Pt.)
 Government of India
 Staff Selection Commission
 Block No-12, CGO Complex, Lodhi Road, New Delhi-110003

CORRIGENDUM

Subject: Combined Graduate Level Examination, 2018-regarding.

The candidates may please refer to the Notice of Combined Graduate Level Examination, 2018 uploaded on the website of the Commission on 05th May, 2018 and note that the following amendments are being made to the notice of the said Examination.

S. no	Para no of Notice	Code/post/subject	For	Read as
01	2.1	14. Inspector (Central Excise)	OA, OL, OAL, HH, OL, HH	OA, OL, OAL, HH
01	2.1	15. Inspector (Preventive Officer)	OA, HH	OA, OL, OAL, HH
03	2.1	16. Inspector (Examiner)	OL, HH	OA, OL, OAL, HH
04	2.2	31. Tax Assistant	BL, OL, PD, D, PB, B, OA	OL, OA, BL, OAL, B, LV, HH
05	5.3	07. For Group-B Posts in Central Government Civilian employees who have rendered not less than 3 years regular and continuous service as on closing date for receipt of application	5 YEARS	Omitted

7. The DOPT OM dated 24.10.1985 which is the basis of the impugned corrigendum dated 31.05.2018 is extracted hereunder for clarity:

No. 35014/4/79-Estt(D)
 Government of India/Bharat Sarkar
 Ministry of Personnel & Training,
 Admn. Reforms and Public Grievances and Pension.
 Department of Personnel and Training.

New Delhi, the 24th October, 1985.

OFFICE MEMORANDUM

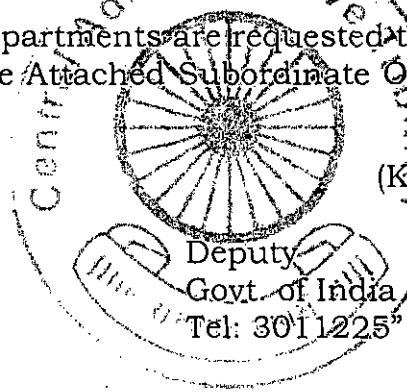
Subject: Relaxation of upper age limit for departmental candidate for appointment to Group A and B posts in their own department.

The undersigned is directed to say that as per this Department's O.M No. F.4/4/74-Estt(D) dated 20th July 1976 (copy enclosed), the age relaxation upto 35 years in favour of departmental candidates for direct recruitment in Groups C and D posts/Services will be available for the posts under the control of the same Ministry/Department.

2. On a review of the above mentioned instructions, it is observed that the requirement of there being a nexus between the duties of the post to which recruitment is being made and those of the post held by the departmental candidate for availing of the age concession, is(not legible) even if the earlier service was under some other ministry/Department as the duties of common posts, eg. Clerk, are the same by and large, in all the Ministries/Departments. This restriction of consideration of the departmental candidates to the vacancies under the same Ministry/Department seems to be unnecessary. Accordingly, it has been decided that the words "and the age relaxation will be available for the posts under the control of the same Ministry/Department" appearing in the last sentence of para 2 of this Department's O.M. dated 20th July, 1976 shall be omitted.

3. All other conditions for eligibility to avail of the age concession stipulated in the above mentioned O.M. will continue to be applicable. The specific provisions relating to age relaxations already existing in the recruitment rules for different services will continue to be operative.

4. Ministries/Departments are requested to bring the above decision to the notice of all the Attached Subordinate Offices under their control for their guidance.



(K.S. R. Krishna Rao)

Secretary

to

the

8. Having noted the contents of the aforesaid orders, we discern from the records that :

(i) The Corrigendum under challenge, dated 31.05.2018, was issued, admittedly and irrefutably, in connection with CGLE-2018, and not in connection with any subsequent notifications including that of 2019. Therefore there is no substance in the submission that it would prevent the applicant to seek relaxation in age against the notification of 2019.

(ii) The applicant was not even entitled to apply or seek relaxation of age to apply against CGLE notification of 2018, due to non-completion of 3 years of service.

(iii) No subsequent notification of CGLE 2019 or related corrigendum is challenged in the present OA.

(iv) The respondents have averred that "the corrigendum was issued pursuant to a DOPT OM dated 15.10.1987 and the scrutiny of Government orders regarding relaxation in upper age limit for Government servants for Group 'A' and 'B' posts revealed that such relaxation are only admissible for the posts other than those filled on the basis of competitive examinations. Since the Combined Graduate Level Examination conducted by the Staff Selection Commission is a competitive examination, therefore the said relaxation was withdrawn by the Commission vide Corrigendum No. 3-1/2018-P&P-I (Pt.) dated 31.05.2018".

In its decision(extracted supra), the Principal Bench has duly referred to the DOPT OM dated 15.10.1987 and upheld the contents of the corrigendum dated 31.05.2018, having said that :

".....the employment notice is brought in conformity with the guidelines issued by the DOP&T. It appears that they wanted to ensure fair play in the context of holding of competitive examination....."

9. In the aforesaid backdrop, the OA fails and is dismissed.
No costs.

10. This order shall not prevent the applicant from agitating
against the 2019 notification, if so, advised.

(Dr. Nandita Chatterjee)
Member (A)

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(Bidisha Banerjee)
Member (J)

