

(2021) 03 DEL CK 0086

In the Delhi High Court

Case No : Civil Writ Petition No. 225 Of 2021

Azmira Bhima

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 05-03-2021

Acts Referred:

Constitution Of India, 1950 — Article 14
Ministry of Culture, Archaeological Survey of India, Conservation Cadre (Group "A" and "B" Gazetted Posts) Recruitment Rules, 2019 — Rule 5
Delhi Health Service (Allopathy) Rules, 2009 — Rule 16
Orissa Ministerial Service (Method of Recruitment of Posts of Lower Division Assistants in the Offices of Heads of Department) Rules, 1975 — Rule 14

Citation : (2021) 03 DEL CK 0086

Hon'ble Judges : Rajiv Sahai Endlaw, J; Amit Bansal, J

Bench : Division Bench

Advocate : Kumar Rajesh Singh, Punam Singh, Vivek Goyal

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J

C.M. No. 591/2021 (for exemption)

1. Allowed, subject to just exceptions and as per extant Rules.

2. The application is disposed of.

W.P.(C) 225/2021 & C.M. No.590/2021 (for stay)

3. The petition impugns the order dated 25th September, 2019 of the Central Administrative Tribunal, Principal Bench (CAT) of dismissal of O.A.

No.2862/2019 preferred by the petitioner seeking a direction to the respondents to consider the petitioner for appointment/promotion to the post of

Director (Conservation) in the Archaeological Survey of India (ASI).

4. We have heard the counsel for the petitioner and the counsel for the respondents appearing on advance notice.

5. The petitioner joined ASI on 21st December, 1987, as a Conservation Assistant Grade-II and was successively promoted as, Conservation

Assistant Grade-I on 29th January, 1996, Senior Conservation Assistant on 1stst March, 2003, Assistant Superintending Archaeological Engineer on

8th July, 2005, Deputy Superintending Archaeological Engineer on 9th September, 2010 and Superintending Archaeological Engineer on 1st

September, 2016.

6. The next promotional post in the cadre of the petitioner is of Director (Conservation), which requires five years of residency as Superintending

Archaeological Engineer, under the Ministry of Culture, Archaeological Survey of India, Conservation Cadre (Group A and B

Gazetted Posts) Recruitment Rules, 2019.

7. On 18th January, 2019, the post of Director (Conservation) was advertised. The petitioner, though had admittedly not completed a residency period

of five years at the post of Superintending Archaeological Engineer, sought relaxation of the Rule in this regard and thereafter approached CAT and

being unsuccessful therein, has filed this petition.

8. The only argument of the counsel for the petitioner is, that since Rule 5 of the aforesaid Rules vests the power of relaxation

in Central Government in consultation with the Union Public Service Commission (UPSC), the petitioner is eligible to seek relaxation and on such

relaxation being granted, to consideration for promotion to the post of Director (Conservation). It is contended that the said post is to be filled by

promotion, failing which by deputation, failing which by direct recruitment.

9. It is further the argument, that though the petitioner has made a representation dated 17th September, 2018 seeking relaxation in the Rule, but the

same has not been decided.

10. The counsel for the respondent Union of India states that Rule 5, under which the petitioner is claiming relaxation is not applicable. The said Rule

reads as under:-

"5. Power to relax." Where the Central Government is of the opinion that it is necessary or expedient so to do, it may, by order and for reasons

to be recorded in writing and in consultation with the Union Public Service Commission, relax any of the provisions of these rules with respect to any class or category of persons.â??

11. It is argued that the same permits relaxation of the provisions of the Rules with respect to any class or category of persons and not qua individual cases.

12. The counsel for the petitioner has contended that in the past also, such relaxation has been given but he was unable to place the document in this regard; he has now procured the said document.

13. We have requested the counsel for the petitioner to read out the document to us and on hearing the counsel for the petitioner, it appears that the relaxation subject matter thereof was neither with respect to subject post of Director (Conservation) nor was with respect to an individual case but

with respect to a class or category of persons and which is not the case today. Here, neither a category or class of Superintending Archaeological

Engineers are seeking relaxation of the Rule for residency period for a reason common to all of them or attributable to a reason beyond their control.

Here, the petitioner, though not qualified for the said post and though not having any reason beyond his control for being eligible for the said post, is

seeking to bend the Rule, to give him that for which he is not eligible under the law/Rules.

14. The counsel for respondent UPSC, in this regard has also drawn our attention to Sapna Channa Vs. Government of NCT of Delhi

MANU/DE/2236/2014 where a Division Bench of this Court, concerned with Delhi Health Service (Allopathy) Rules, 2009, containing Rule 16 also

empowering the government to, if â??of the opinion that it is necessary of expedient so to do.....for reasons to be recorded in writing, and in

consultation with the Commission, relax any of the provisions of these Rules with respect to any class or category of personsâ?? held, (i) that the power

of relaxation is not to be interpreted as one conferring a blanket power; (ii) its scope would be limited to relaxing any Rule, such as eligibility criteria,

but would not expand to forcing the government to disregard the Rules altogether; if it was to be so interpreted, it may not stand the test of Article 14

of the Constitution; (iii) the object of framing the power of relaxation is to mitigate undue hardship or to meet a particular situation; (iv) the power is to

be exercised in a just and equitable manner and to ensure that strict application of service Rules does not create a situation where a particular

individual or a set of individuals may suffer undue hardship or where requisite qualified persons may not be available for appointment to the service;

and, (v) in exercise of such power, general order relaxing a particular Rule with a view to avail the services of requisite officers, can be issued.

Reliance is also placed on State of Orissa Vs. Sukanti Mohapatra (1993) 2 SCC 486, concerned with Orissa Ministerial Service (Method of

Recruitment of Posts of Lower Division Assistants in the Offices of Heads of Department) Rules, 1975, Rule 14 which empowered the government

to, for reasons to be recorded in writing, relax any of the provisions of those Rules in respect of any class or category of persons in public interest. It

was held that "compassionate grounds" without facts, could not be in public interest. It was further held that such a Rule could not be invoked to

shelve the remaining Rules. Reliance is also placed on Ashok Kumar Uppal Vs. State of J&K (1998) 4 SCC 179, also holding that the power of

relaxation is generally contained in the Rules with a view to mitigate undue hardship or to meet a particular situation, since many a times strict

application of Service Rules creates a situation where a particular individual or set of individuals may suffer undue hardship and further where there

may be a situation where requisite qualified persons may not be available for appointment to the service; arbitrary exercise of such power must be

guarded against and the Rule must get a pragmatic construction so as to achieve effective implementation of a good policy of the government; the

power of relaxation cannot be exercised to give undue advantage or favour to an individual employee.

15. CAT also in the impugned order has accepted the aforesaid argument of the counsel for the respondents and has rejected the claim of the

petitioner and we have no reason to differ.

16. The judgments cited by the counsel for the UPSC though indicate that relaxation may also be in favour of individual employee, but only to mitigate

hardship or where no other qualified person is available for the post or for other reasons in public interest. The claim of the petitioner for relaxation is

bereft of any such facts and in the absence thereof no case for even issuing a direction to the respondents to consider the representation of the

petitioner, is made out.

17. Dismissed.