

(2012) 08 AP CK 0035

In the Andhra Pradesh High Court

Case No : Writ Petition No. 16049 of 2011

Kommathoti Vijay Prakash

APPELLANT

Vs

General Manager, South Central Railway, Secunderabad and
others

RESPONDENT

Date of Decision : 21-08-2012

Acts Referred:

Citation : (2012) 5 ALT 575

Hon'ble Judges : G. Rohini, J;C. Praveen Kumar, J

Bench : Division Bench

Advocate : K.R.K.V. Prasad, for the Appellant; C.V. Rajiv Reddy for Smt. C.V. Vinitha Reddy for Respondent Nos. 1 to 3, None appeared for Respondent No. 4 and Mr. Ramana Allu for the Respondent Nos. 5 to 7, for the Respondent

Final Decision : Dismissed

Judgement

Ms. G. Rohini, J.—This writ petition is filed seeking Certiorari to call for the records relating to the order dated 7.6.2011 in O.A. No. 224 of 2011 on the file of the Central Administrative Tribunal, Hyderabad Bench and to quash the same. The applicant in O.A. No. 224 of 2011 is the petitioner before us. As could be seen from the material available on record, the writ petitioner who is in the service of South Central Railway in the post of Technician-III had applied for the post of Assistant Loco Pilot (previously known as Diesel-cum-Electrical Assistant) in response to the notification dated 6.12.2010. By proceedings dated 18.1.2011 the petitioner's application was rejected on the ground that he was over-aged. Then the petitioner submitted representations to the respondents 1 and 3 requesting to give him an opportunity to appear for the selection by relaxing the age restriction. As there was no response, the petitioner filed O.A. No. 224 of 2011 in the Central Administrative Tribunal, Hyderabad Bench. The said O.A. was dismissed by order dated 7.6.2011. Hence the present writ petition.

2. It is pleaded in the writ petition that as per Rule 124 of Indian Railway Establishment, the General Manager is competent to make rules with regard to

Railway Servants in Group-C and Group-D under their control and in exercise of the said power relaxation was granted to certain candidates who applied pursuant to the earlier notification dated 26.10.2006. Thus it is contended that the Tribunal below had proceeded on a wrong assumption that there was no rule or provision to grant relaxation of age.

3. In the counter-affidavit filed by the Senior Divisional Personnel Officer, South Central Railway, Vijayawada Division on behalf of the respondents, it is contended that the petitioner's representation for age relaxation was considered and an order was passed on 11.3.2011 which was also acknowledged by the petitioner on 29.3.2011. So far as the contention of the petitioner that while making appointments in pursuance of the earlier notification dated 26.10.2006, the eligibility criteria was relaxed in favour of some of the candidates is concerned, it is explained that subsequent to issuance of eligibility list in pursuance of the said notification it was clarified by the Office of the Head quarters at Secunderabad vide letter dated 11.7.2007 that the training period can be counted as service for the purpose of appearing in the departmental examination subject to completion of 2 years probation period. In the light of the said clarification, 8 employees mentioned in the writ petition who have completed 3 years of service including the training and probationary period as on 26.10.2006 were allowed to appear for the examination. Though the writ petitioner had also applied in pursuance of the said notification since he was regularly absorbed as Technician Gr. III only on 18.1.2006 and thus he had completed 3 years of service including the training period and 2 years probation only on 18.1.2008, his candidature was not considered at that time. Thus, it is contended that the relaxation of the eligibility criteria prescribed in the notification-dated 6.12.2010 cannot be granted and therefore the Tribunal below had rightly dismissed the O.A.

4. We have heard Sri K.R.K.V. Prasad, the learned counsel appearing for the petitioner as well as Sri C.V. Rajiv Reddy, the learned counsel appearing for the respondents. We have also heard Sri Ramana Allu, the learned counsel appearing for the respondents 5 to 7 who got themselves impleaded as parties to the writ petition.

5. Clause-5 of the notification, dated 6.12.2010, specifically mentioned that the candidate should be below 35 years of age as on the date of the notification. Admittedly the petitioner by the date of the notification was aged 37 years. Therefore he was found to be ineligible.

6. The only grievance of the petitioner appears to be that the respondents ought to have relaxed the maximum age prescribed in the notification taking into consideration that he is an in-service candidate and moreover number of vacancies remained unfilled from the year 2006 onwards for want of eligible candidates.

7. At the outset, we may point out that the petitioner before making an

application in response to the notification dated 6.12.2010 neither challenged the maximum age prescribed in the notification nor he made a representation before the competent authority for relaxation of the age restriction. It is also relevant to note that the notification dated 6.12.2010 does not contain any clause for relaxation of the prescribed age. It may be a fact that in respect of some of the candidates applied in pursuance of the earlier notification dated 26.10.2006 certain relaxations were granted. However, as could be seen from the counter-affidavit filed on behalf of the respondents, the candidates who were selected and appointed under the said notification stand on a different footing and the relaxation stated to have been granted in their favour was pursuant to the clarifications given by the Head Office. Therefore the same cannot be taken as a precedent for compelling the respondents to grant the relaxation the prescription of maximum age in favour of the petitioner.

8. Admittedly there is no specific provision in the Service Rules much less in the notification for relaxation of the eligibility criteria.

9. In identical circumstances, it was observed by the Supreme Court in *Dr. Ami Lal Bhat Vs. State of Rajasthan and others*, as under:

11. In our view this kind of an interpretation cannot be given to a rule for relaxation of age. The power of relaxation is required to be exercised in public interest in a given case; as for example, if other suitable candidates are not available for the post, and the only candidate who is suitable has crossed the maximum age-limit; or to mitigate hardship in a given case. Such a relaxation in special circumstances of a given case is to be exercised by the administration after referring that case to the Rajasthan Public Service Commission. There cannot be any wholesale relaxation because the advertisement is delayed or because the vacancy occurred earlier especially when there is no allegation of any mala fides in connection with any delay in issuing an advertisement. This kind of power of wholesale relaxation would make for total uncertainty in determining the maximum age of a candidate. It might be unfair to a large number of candidates who might be similarly situated, but who may not apply, thinking that they are age-barred. We fail to see how the power of relaxation can be exercised in the manner contended.

10. We may also refer to the decision of the Supreme Court in *Swaran Lata Vs. Union of India and Others*, wherein it was held that if the relaxation has to be made there is a duty cast on the respondents to re-advertise the post since large number of candidates who are similarly situated might not have applied thinking that they are age-barred.

11. Moreover, as already mentioned above, this is a case where the petitioner though fully aware of the fact that he was over-aged had applied and participated without raising any objection with regard to maximum age prescribed in the notification.

12. It may be true that pending the writ petition the petitioner was permitted to

appear for the examination and he is one of the candidates qualified in the written examination. However, in our considered opinion, that by itself does not create any legal right on the petitioner to seek relaxation of the eligibility criteria. Therefore, the Tribunal below was justified in dismissing O.A. The said order warrants no interference by us. Accordingly, the Writ Petition is dismissed. No costs.