
(1999) 04 AP CK 0086

In the Andhra Pradesh High Court

Case No : Writ Petition No. 23540 of 1998

Machiraju (Pedaprolu) Aparna

APPELLANT

Vs

Staff Selection Commission, Bangalore and another

RESPONDENT

Date of Decision : 02-04-1999

Acts Referred:

Citation : (1999) 3 ALD 499 : (1999) 3 ALT 175

Hon'ble Judges : Vaman Rao, J;B. Subhashan Reddy, J

Bench : Division Bench

Advocate : Mr. Nooty Rama Mohana Rao, for the Appellant; Mr. B. Adinarayana Rao, SC for Central Govt., for the Respondent

Judgement

Vaman Rao, J

1. This writ petition is directed against the order of the dismissal passed in OA No.1659 of 1997 dated 4-8-1998 on the file of the Central Administrative Tribunal, Hyderabad.

2. The facts leading to filing of this writ petition as stated in the affidavit filed in support of the petitioner may be stated briefly as follows : The petitioner herein (applicant in OA before the Tribunal) was selected for the post of Lower Division Clerk by Staff Selection Commission and was allotted to the All India Radio on 29-5-1985. She possessed M.Com., degree from Andhra University, a Diploma in Library Science and certificates of Typewriting English, Lower and Higher grades. She also underwent Computer course in introduction to PCs and Xenix related to software conducted by National Informatics Centre. She had also passed "Pragya" Course in Hindi.

3. The Staff Selection Commission issued advertisement No.1/97 inviting applications for the post of Section Officers (Commercial). The Upper age limit in case of Departmental candidates was upto 40 years and for other i.e., OBCs upto 43 years, and 45 years for Scheduled Castes/Scheduled Tribes provided their job had nexus to the post of Section Officer (Commercial). The relevant portion of

the notification as extracted in the order of the Central Administrative Tribunal is as follows :

"Upper age limit is relaxable upto the age of 40 years (43 years for OBC and 45 years for SC/ST candidates) as on 13-6-1997, to the Departmental candidates who have-rendered not less than three years continuous service (on regular basis and not ad hoc basis) provided they are working in posts which are in the same line or allied cadres and where a relationship could be established that service rendered in the Department will be useful for official discharge of the duties in the other categories of posts in accordance with the Department of personnel & training's OM Nos./4/4/74-Estt. (D) dated 20-7-1976, 35014/4/79-Estt (D) dated 24-10-1985; 15034/3/87-Estt.(D) dated 7-10-1987 and 15012/1/88-Estt. (D) dated 20-5-1988."

The applicant applied for the same and she was admitted for the written examination but she was not allowed to sit for the interview in view of the letter No.6/1/97-SSC(KKR) dated 8-12-1997. The said letter was issued on the ground that her duties as Lower Division Clerk in the All India Radio have no nexus to the duties of Section Officer (Commercial) in the Audit Department, it was this letter which was challenged by the petitioner in the Tribunal in the said OA on the ground that she was an eligible candidate for recruitment as Departmental candidate for the post of Section Officer after granting age relaxation. It appears that an interim order was passed by the Central Administrative Tribunal under which the Staff Selection Commission was directed to permit the petitioner to appear for oral interview on 5-2-1998 at Bangalore. She appeared for the said test. In respect of other candidates who appeared for the interview the result of selection was published. The petitioner claims that she is eligible candidate in terms of the advertisement issued for the selection. The petitioner in her affidavit states that the Tribunal was required to consider only the correctness of the order of the Staff Selection Commission cancelling her candidature. It is stated that the relaxation of age limit is not related to the kind of work being done by the Departmental candidate. Thus, it is averred that the cancellation of the petitioner's candidature was bad. However the learned Tribunal dismissed the application of the petitioner on the ground that the job requirement for the post of Section Officer which is the first level supervisory charge of a section and such job includes heading a local Inspection Audit Party and Lower Division Clerk post which is the lowest rung of clerical cadre does not have necessary connection for being considered for the post of Section Officer (Commercial).

4. On behalf of the respondents a counter-affidavit has been filed in this petition by the Regional Director of Karnataka and Kerala Regional Office, Staff Selection Commission, Bangalore. The factual statement as to the petitioner being a member of the staff as Lower Division Clerk, the issuing of advertisement, the petitioner's having made an application and the issuing of letter cancelling her candidature are all admitted. The contention of petitioner that the job requirements of Section Officer (Commercial) do not hold out any criterion for

the grant of age relaxation in favour of the Departmental candidates is disputed. It is asserted that mere completion of three years regular and continuous service in the Government will not confer any right upon any candidate to be treated as Departmental candidate. It is averred that as per the Commission's advertisement upper age limit is relaxable upto the age of 40 years to the Departmental candidates who have rendered not less than three years continuous service provided they are working in the posts which are in the same lines or allied cadres and it could be established that the service rendered in the Department will be useful for efficient discharge of the duties in other categories of posts in accordance with DOP&T OM on the subject. Thus it is stated that the job requirement of specific nature is an essential condition for granting relaxation of age. It is stated that the service rendered by the petitioner as Lower Division Clerk in All India Radio cannot be said to have any relationship with efficient discharge of duties as Section Officer (Commercial). It is stated that the Commission has not outrightly rejected the application of the petitioner just because she was a Lower Division Clerk. The list of duties performed by her as Lower Division Clerk was called for and duly considered and then held that there was no nexus between the duties of that post to that of the duties of the Section Officer (Commercial). Hence she was declared overaged as an unreserved candidate and thus ineligible. It is averred that the efficiency reflected in the written test/interview can be the only criteria in selecting the candidates in respect of eligible candidates and it cannot be extended to ineligible candidates who were provisionally admitted for written test/interview subject to the verification of their eligibility. Inasmuch as the petitioner has not satisfied the eligible criteria the cancellation of her candidature is justified and in accordance with rules. It is denied that the rejection of the petitioner's application in any way amounts to gender discrimination or can be said to be against the policy of the Government for providing better conditions of service for woman. The petitioner's candidature was cancelled at the stage of interview. This cancellation was challenged in the said OA. The learned Tribunal after examination of the job requirement of the post for which the petitioner made application and the petitioner's post as LDC and other relevant circumstances held that there was nothing illegal or irregular in the rejection of the petitioner's candidature. Accordingly it dismissed the OA which is now challenged in this writ petition.

5. It is contended by the learned Counsel for the petitioner Sri N. Ramamohan Rao that the order of the Tribunal suffers from serious infirmity inasmuch as the Tribunal has not appreciated the legal contentions raised on behalf of the petitioner.

6. On the other hand Sri B. Adinarayana Rao learned Standing Counsel for the Central Government contends that the Tribunal has come to a correct conclusion that the petitioner was not eligible to apply for the post of Section Officer (Commercial) and rejection of her candidature is in accordance with rules. It is further contended that merely because the petitioner was called for written test, she cannot claim to have acquired any vested right to entitle her to be called

automatically on the basis of the written test for interview.

7. It is not disputed that the petitioner would not be eligible to apply for the post of Section Officer (Commercial) unless age relaxation is given as Departmental candidate in terms of instructions to candidates at serial No.5 published in the advertisement. The relevant para relating to age limit and relaxation thereof is extracted below:

"Upper age limit is relaxable upto the age of 40 years (43 years for OBC and 45 years for SC/ST candidates) as on 13-6-1997, to the Departmental Candidates who have rendered not less than three years continuous service (on regular basis and not ad hoc basis) provided they are working in posts which are in the same line or allied cadres and where a relationship could be established that service rendered in the Department will be useful for official discharge of the duties in the other categories of posts in accordance with the Department of Personnel and Training's OM Nos.4/47 74-Estt (D) dated 20-7-1976, 35014/4/79-Estt.(D) dated 24-10-1985, 15034/3/87-Estt.(D) dated 7-10-1987 and 15012/1/88-Estt(D) dated 20-5-1988."

This is based on Office Memorandum No.4/ 4/74-Estt. (D) dated 20-7-1976 from the Cabinet, Secretariat, Department of Personnel and Administrative Reforms which is given at page 9 of the material papers filed by the petitioner. Thus the conditions required for relaxation of age limit according to this memorandum have been incorporated in the instructions to the candidates in the advertisement. Thus it is not possible to contend that the petitioner was not aware of the conditions which are required to be satisfied for securing relaxation of age under the terms of the above memorandum. Under the said memorandum exemption can be granted from the prescribed age limit if the following conditions are fulfilled:

- (1) Where an employee rendered not less than three years continuous service in the same Department, on regular basis and not on ad hoc basis.
- (2) It shall be admissible in respect of persons who are working in posts which are in the same line or allied cadres and
- (3) where a relationship could be established that the service rendered in the Department will be useful for efficient discharge of the duties in other categories of the posts in the same Department.

The question whether the person concerned has been working in the same line or allied cadres is left for determination by concerned Ministry or Department.

8. It was firstly contended by the learned Counsel for the petitioner that the list of duties of Section Officer (Commercial) was never intimated to the applicant so as to satisfy herself that she fulfilled the conditions that her duties as LDC have nexus to the duties of the Section Officer (Commercial) and that she has submitted her service certificate along with her application and if information so furnished did not satisfy the requirements of her candidature her application

should have been rejected initially and she should not have been called for written examination and that having permitted her to write the examination, cancellation of her candidature was illegal and arbitrary. It is further submitted that the nature of duties to be performed as Section Officer has not been indicated either in the advertisement or in the reply filed by the respondents before the Tribunal. As such the petitioner was disabled to judge her eligibility to apply for the post of Section Officer (Commercial) after age relaxation. The Tribunal while dealing with this contention has observed that job requirement has been specified in the advertisement and in the reply filed on behalf of the respondents it was specifically stated that the Section Officer (Commercial) is required "to have first level supervisory charge of Section or heading a local Inspection Audit party." Thus the contention that the petitioner was not aware of the requirement of the job of Section Officer (Commercial) is not tenable and has been rightly rejected by the Tribunal. It is however contended that mere inclusion of job requirement in the advertisement will not be sufficient for appreciating the nature of duties including the list of duties and hence in the absence of such list of duties furnished to the petitioner, cancellation of her candidature cannot be sustained. As stated above, the job requirement has been given in the advertisement itself as "first level supervisory charge of a Section or heading of local Inspection Audit party." The particulars so given are adequate to appreciate the nature of the job and there was no need to furnish any list of duties of the Section Officer (Commercial). At any rate, when an advertisement is given with certain job requirements it is for the candidate concerned to ascertain by whatever means available to him/her by appropriate enquiry at appropriate time with appropriate authorities as to what are the duties attached to the post advertised.

9. As the petitioner's candidature is dependant on the grant of exemption of age under the relevant memorandum referred above, it is for the petitioner to show that she fulfilled the conditions for admissibility of exemption in her favour. Understandably it is not contended before us that the duties of the petitioner as LDC in the All India Radio can in any way be said to be in the same lines or allied cadres as Section Officer (Commercial). It is not the case of the petitioner that with reference to the service certificate annexed by her to her application, a relationship could be demonstrated that the service rendered by the petitioner will be useful for efficient discharge of the duties in other categories of posts in the same Department. The said service certificate filed, merely mentions the fact that as LDC in All India Radio the petitioner has been working as Programme Secretary for the past three years and her work was to assist in the programme section such as Music etc. which include correspondence, issue of contracts to artists, drafting, preparation of statistics and returns maintenance of records, concerning different grades of artists, assistance in the conduct of auditions for empanelling casual artists etc., It also mentioned that she had taken introductory course in computers. It also adds that before being assigned to the programme Section she was in the Administrative and Accounts Section attending to the

work of monthly pay bills, TA bills etc. There is nothing in this certificate to show that the petitioner satisfies the requirements for grant of exemption of age limit. As stated above, the Tribunal rightly held that the cancellation of her candidature on that ground was in accordance with the rules.

10. The next contention is that at any rate petitioner was allowed to appear for the written examination after the scrutiny of her application and that her candidature could not have been cancelled after the written examination was over in which she got qualified. It may be mentioned that the petitioner was never informed that she was granted exemption of age limit for applying for the post. Her candidature admittedly depended on the grant of such an exemption. It is stated that as a large number of other notifications were required to be scrutinised, the concerned authorities took some time in examining the application of the petitioner and the nature of service being rendered by her as LDC with a view to examining whether the petitioner satisfies the criteria for granting exemption from the age limit. It would appear that it was as a matter of grace that the petitioner was permitted to appear for the written examination so that her rights could not be prejudiced in the event of ultimately finding that she was eligible for exemption. Merely because she was permitted to write the written examination does not confer on the petitioner any vested rights. It cannot be construed as an estoppel or promissory estoppel inasmuch as the petitioner has not changed her position adverse to her by virtue of her having been permitted to appear for the written test. The learned Tribunal has rightly observed that in the decision relied upon on behalf of the petitioner in the case of *Shri Krishnan Vs. The Kurukshetra University, Kurukshetra*, , the petitioner was admitted to some course of study on the basis of his application and his candidature was sought to be cancelled on the ground of insufficiency of attendance. That decision is based on the interpretation of a specific statute contained in Kurukshetra University Calender Vol.I Ordinance X which authorised the University to withdraw the candidature on any ground "at any time before the examination." In that case the candidate has already appeared for the examination before cancellation of his candidature. In this case there is no comparable statutory provision. In this case the validity of the candidature of the petitioner depended on the grant of exemption from age limit in terms of the memorandum referred above. Mere allowing the petitioner to appear for written test does not amount to presumed grant of exemption which is the very condition for eligibility of the petitioner for applying for the post notified for selection. If before the selection process was completed it was found that the petitioner was not entitled for exemption and as such ineligible to apply for the said post, mere permission to the petitioner to undergo the written test in itself does not confer any rights on the petitioner. Hence the Supreme Court judgment cited above does not advance the case of the petitioner. The learned Tribunal has rightly rejected the contentions advanced on behalf of the petitioner. Neither there is any error apparent on the face of the record in the judgment nor anything has been pointed out to show that it is contrary to law or it has failed to

take notice of any statutory requirements.

11. In the result, this writ petition is dismissed but in the circumstances without costs.