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**(2018) 05 CAT CK 0102**

**In the Central Administrative Tribunal**

**Case No : Original Application No. 3993 Of 2015**

Neelam And Ors

APPELLANT

Vs

Union Of India And Others

RESPONDENT

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**Date of Decision : 04-05-2018**

**Acts Referred:**

Administrative Tribunals Act, 1985 — Section 19  
Constitution Of India, 1950 — Article 14, 16

**Citation : (2018) 05 CAT CK 0102**

**Hon'ble Judges :** Raj Vir Sharma, J;Praveen Mahajan, Member (A)

**Bench :** Division Bench

**Advocate :** M.K. Bhardwaj, Gyanendra Singh

**Final Decision :** Dismissed

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## **Judgement**

Raj Vir Sharma, J

1. The applicants have filed the present Original Application under Section 19 of the Administrative Tribunals Act, 1985, seeking the following reliefs:

"(i) To declare the action of respondents in not giving age relaxation and weightage to the applicants in the matter of appointment to the post of Assistant Archivist as illegal and unjustified and issue appropriate directions for considering the applicants for appointment to the post of Assistant Archivist by granting age relaxation and weightage for the period the applicants have served on contract basis.

(ii) To declare the action of the respondents in not considering the applicants for appointment to the post of Assistant Archivist by treating them as separate block in the matter of criteria prescribed for judging suitability, as illegal, arbitrary and unjustified and issue appropriate directions for considering the applicants for appointment to the post of Assistant Archivist as separate block by giving due relaxations.

(iii) To allow the OA with exemplary costs.

(iv) To pass any such other order as this Hon"ble Tribunal may deem fit and proper in the facts and circumstances of the case."

2. Resisting the OA, the respondents have filed counter replies.

The applicants have filed rejoinder replies refuting the stand taken by the respondents.

3. We have carefully perused the records.

4. Brief facts of the case, which are relevant for the purpose of deciding the controversy and are not disputed by either party, are as follows:

4.1 During the years 2006 to 2014 the National Archives of India, after inviting applications from persons having Postgraduate Degree in Modern Indian History from a recognized University of India and conducting a process of selection, engaged the applicants purely on contractual basis for a period of six months/one year on consolidated remuneration to perform the work of Processing and Accessioning of Records, and other allied works in the National Archives of India, New Delhi. Accepting the terms and conditions of engagement, the applicants initially joined the National Archives of India on different dates during the aforesaid years and worked on contractual basis. The period of their contractual engagement was extended from time to time.

4.2 The National Archives of India decided to fill 23 (2 UR, 08-OBC, 02-SC and 01-ST (including 01-OH) vacancies in the post of Assistant Archives (General) in accordance with the National Archives of India (Recruitment to Group "A" and Group "B" posts) Rules, 1993 (hereinafter referred to as "Recruitment Rules"). The Recruitment Rules classified the post of Assistant Archive (General) as a Group "B" post, and specified the age limit of candidates not exceeding 30 years, which is relaxable for Government servants up to 5 years in accordance with the instructions or orders issued by the Central Government. It was also prescribed in the Recruitment Rules that the crucial date for determining the age limit shall be the closing date for receipt of applications from candidates in India (and not the closing date prescribed for those in Assam, Meghalaya, Arunachal Pradesh, Mizoram, Manipur, Nagaland, Tripura, Sikkim, Ldakh Division of Jammu and Kashmir State, Lahaul and Slpiti district and Pangi Sub Division of Chamba district of Himachal Pradesh, Andaman and Nicobar Islands of Lakshadweep). The Respondent-Staff Selection Commission (SSC) issued notice/Advertisement No.ER-02/2015, which was published in the Employment News 20-26 June 2015, inviting applications from eligible persons by 20.7.2015, i.e., the closing date for receipt of applications, for selection and recruitment against the aforesaid 23 vacancies in accordance with the Recruitment Rules. The relevant portion of paragraph 8 of the Notice/Advertisement reads thus:

"8. AGE-LIMIT AND RELAXATION ON UPPER AGE-LIMIT AND RESTRICTION ON RELAXATION ON UPPER AGE LIMIT.

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### C. RELAXATION IN UPPER AGE LIMIT.

The following Relaxation in upper Age-limit admissible to eligible categories of applicants are given below, subject to fulfillment of terms and conditions stated at Para 9 of the Notice and also to Restriction on Relaxation on upper age-limit at Para-8(D) of the Notice.

The Relaxation in upper Age-limit is admissible only when the applicants claim it at Column No.12 of the Application Form and also properly fill the CATEGORY CODE at Column no.12.1 of the Application Form.

The details of the "Category CODES, "CATEGORY" and "Permissible Age Relaxation beyond the upper age limit as mentioned at Para-2 of this Notice" are given below:

#### CATEGORY CODE

#### CATEGORY

Permissible Age Relaxation beyond the Upper age limit

For Group "B" & Group "C" posts

01

SC

5 years

02

ST

5 years

03

OBC

3 years

04

PWD

10 years

05

PWD (OBC)

13 years

06

PWD (SC)

15 years

07

PWD(ST)

15 years

08

Ex-Servicemen (Unreserved/General)

03 years after deduction of the military service rendered from the actual age as on the closing date

09

Ex-Servicemen (OBC)

06 years (3 years + 3 years) after deduction of the military service rendered from the actual age as on the closing date

10

Ex-Servicemen (SC)

08 years (3 years + 5 years) after deduction of the military service rendered from the actual age as on the closing date

11

Ex-Servicemen (ST)

08 years (03 years + 5 years) after deduction of the military service rendered from the actual age as on the closing date

For Group "B" posts

12

Central Government Civilian Employees (Unreserved/General) who have rendered not less than 3 years regular and continuous service as on closing date

05 years

13

Central Government Civilian Employees (OBC) who have rendered not less than 3 years regular and continuous service as on closing date

08 (5+3) years

14

Central Government Civilian Employees (SC) who have rendered not less than 3

years regular and continuous service as on closing date

10 (5+5) years

15

Central Government Civilian Employees (ST) who have rendered not less than 3 years regular and continuous service as on closing date

10 (5+5) years

4.3 Neither the Recruitment Rules nor the Notice/Advertisement stipulated any age relaxation or weightage to be given to any persons having contractual service under the National Archives of India.

4.4 In response to the Notice/Advertisement (ibid), the applicants made applications for selection and recruitment to the post of Assistant Archive(General). After scrutinizing the applications received in response to the Notice/Advertisement, the respondent-SSC published a list of candidates whose applications were summarily rejected. In the said list, the applications of the applicants and some others were shown to have been rejected as they being overage by the crucial date. Therefore, the applicants made representations requesting the respondent-National Archives of India to allow them age relaxation as well as weightage for the period of their contractual service and also to permit them to appear for the interview to be held for selection and recruitment to the post of Assistant Archive(General). There being no response, the applicants filed the present O.A. with the prayers referred to earlier.

5. In the above backdrop, it has been contended by Mr.M.K.Bhardwaj, learned counsel appearing for the applicants that the applicants that they have possessed the requisite qualifications for selection and appointment to the post of Assistant Archive (General). After being engaged by the respondent-National Archives of India on contractual basis through due process of selection, they have been performing the duties attached to the post of Assistant Archive (General). By the crucial date stipulated in the Notice/Advertisement, they have become overage. Therefore, the respondent-National Archives of India ought to have granted them age relaxation and weightage for selection and recruitment to the post of Assistant Archive(General) pursuant to the Notice/Advertisement issued by the respondent-SSC. Similar age relaxation and weightage has been granted by various organizations under the Government of India. It is, thus, submitted by the applicants that the respondent-National Archives of India has acted arbitrarily and unreasonably in not granting them age relaxation and weightage for the period of their contractual service. Consequently, the rejection of their applications by the respondent-SSC without taking into account the actual period of their contractual service under the respondent-National Archives of India is unsustainable and liable to be interfered with. In support of his contentions, Mr.M.K.Bhardwaj has relied on the following:

(i) Judgment dated 15.11.2011 passed by the Hon"ble High Court of Delhi in WP

( C ) No. 1641 of 2011 (DSSSB and another vs. Preeti Rathi & ors) wherein the respondents were appointed as Primary Teachers in MCD on contract basis. The respondents sought age relaxation while applying for selection and recruitment to the post of Primary Teacher in MCD on regular basis pursuant to the Advertisement issued by the DSSSB. The Tribunal allowed the O.A. filed by the respondents and directed the petitioner-DSSSB to declare the results of the respondents in the recruitment examination in which they were provisionally allowed to appear on the basis of the interim order passed by the Tribunal. The writ petition filed against the Tribunal's decision was dismissed by the Hon"ble High Court

(ii) Judgment dated 16.10.2015 passed by the Hon"ble High Court of Delhi in WP ( C ) No. 9816 of 2015 (AIIMS vs. Ruchika Madan) wherein the respondent was working as Junior Physiotherapist with the petitioner-AIIMS on contract basis. The respondent was called for an interview and declared successful for appointment to the post of Junior Physiotherapist on regular basis, but subsequently she was declined appointment as she was overage. The Tribunal allowed the O.A. filed by the respondent and directed the petitioner-AIIMS to give age relaxation to the respondent. The Hon"ble High Court of Delhi upheld the Tribunal's decision and dismissed the writ petition filed by the petitioner-AIIMS.

(iii) Judgment dated 13.1.2012 passed by the Principal Bench of the Central Administrative Tribunal in OA NO. 3044 of 2010 (Manju Aggarwal vs. GNCTD) wherein the applicant was appointed as Teacher (Primary) in the Municipal Corporation of Delhi on contractual basis. The DSSSB rejected the applicant's candidature on the ground of her being overage. The Tribunal allowed the O.A. filed by the applicant claiming age relaxation and directed the respondents to treat the applicant as a departmental candidate.

(iv) Judgment dated 23.12.2015 passed by the Hon"ble High Court of Delhi in WP ( C ) No. 3474 of 2015 (Mukul Mishra vs. Delhi Electricity Regulatory Commission) where the petitioner was appointed as Advisor (Law) in the office of the Electricity Ombudsman for a period of three years. The petitioner mainly prayed for a direction to the respondents to permit him to work on the post of Advisor (Law) till the GNCT of Delhi takes a final view on the notification whereby it was decided by the Government not to terminate the services of the contractual employees engaged by the Departments till further instructions in the matter. The petitioner also prayed for a direction to the respondents not to take any action on the basis of the interview held for the post of Advisor (Law). The Hon"ble High Court dismissed the writ petition.

(v) Judgment dated 7.2.2017 passed by the Hon"ble High Court of Delhi in WP ( C ) No. 532 of 2017 (GNCTD vs. Nazarul Islam and another) wherein the respondent was appointed as ECG Technician on contract basis. He applied for regular appointment to the post of Junior Radiographer. He participated in the selection process and was declared successful, but his dossier was not forwarded

by the DSSSB to the user Department for appointment on the ground of his being overage. The Tribunal allowed the OA filed by the respondent. The writ petition filed by the Government of NCT of Delhi against the Tribunal's decision was dismissed by the Hon"ble High Court of Delhi.

6. On the other hand, it has been contended by Mr.Gyanendra Singh, learned counsel appearing for the respondents that the respondents that the orders of engagement of the applicants on contract basis did not contain any stipulation that they would be entitled to age relaxation and weightage for the period of their contractual service, if they apply for selection and recruitment to the post of Assistant Archive (General) as and when recruitment process to fill the vacancies in the said post on regular basis is initiated by the National Archives of India. In the absence of such stipulation in the orders of their engagement, and when there is no provision in the Recruitment Rules for allowing age relaxation and weightage to any contractual employees, the claim of the applicants being baseless is untenable. Therefore, the rejection of the applications of the applicant remains unassailable, and the O.A. is devoid of any merit and liable to be dismissed. To buttress his submissions, Mr.Gyanendra Singh, learned counsel has relied on the following:

- (i) Order dated 31.1.2018 passed by the Tribunal in OA Nos. 1743 and 1744 of 2016 (Ms.Mamta, etc. vs. Union of India and others);
- (ii) Order dated 21.4.2011 passed by the Tribunal in OA No.1446 of 2011 (Shri Chandra Mouleshwar Jha and others vs. Union of India and others); and
- (iii) Order dated 21.4.2011 passed by the Tribunal in OA No.1447 of 2011 (Mrs. Neelam Mallik and another vs. Union of India and others).

The applicants in the above cases were engaged by the National Archives of India on contractual basis. After considering the relevant provisions of the Recruitment Rules and the Advertisement/Notice for filling the vacancies in the post of Assistant Archive (General), the Tribunal rejected the claim of the applicants for age relaxation and weightage for the period of their contractual service. It has, thus, been submitted by Mr.Gyanendra Singh, learned counsel, that the above decisions of the coordinate Bench are binding on us, and that the claim of the applicants in the present O.A. being same as that of the applicants in those cases, is also liable to be rejected by the Tribunal.

7. After having given our thoughtful consideration to the rival contentions, we have found no substance in the contentions of the applicants.

8. Indisputably, the orders of engagement of the applicants on contractual basis did not contain any stipulation that the applicants would be granted age relaxation and weightage for the period of their contractual service, if they apply for selection and appointment to the post of Assistant Archive (General) as and when the recruitment process to fill the vacancies in the post of Assistant Archive (General) on regular basis is initiated by the respondent-National Archives of

India. The Recruitment Rules also do not contain any provision for granting any age relaxation and weightage to any contractual employees engaged by the National Archives of India to perform any of the duties related to the post of Assistant Archive (General). The selection and engagement of the applicants on contractual basis and their continuance as contractual employees for any period do not clothe the applicants with any right, much less any enforceable right, to claim age relaxation and weightage for the period of their contractual service. The practice and/or any decision taken by other organizations in the matter of age relaxation and weightage to their contractual/ad hoc/part time employees cannot also be said to have conferred any right, far less any enforceable right, on the applicants to claim age relaxation and weightage for the period of their contractual service. A process of selection and appointment to a public office should be absolutely transparent, and there should be no deviation from the terms and conditions contained in the Advertisement issued by the recruiting agency during the recruitment process and the rules applicable to the recruitment process in any manner whatsoever, for a deviation in the case of a particular candidate amounts to gross injustice to the other candidates not knowing the fact of deviation benefitting only one or a few. The procedure should be same for all the candidates. In *Bedanga Talukdar vs. Saifuddin Khan*, (2011) 12 SCC 85, the Hon"ble Supreme Court has observed that the selection process has to be conducted strictly in accordance with stipulated selection procedure which needs to be scrupulously maintained. There cannot be any relaxation in the terms and conditions of advertisement unless such power is specifically reserved in relevant rules and/or in advertisement. Even where power of relaxation is or is not provided in relevant rules, it must be mentioned in the advertisement. Such power, if exercised, should be given due publicity to ensure that those candidates who become eligible due to relaxation are afforded equal opportunity to apply and compete. Relaxation of any condition in advertisement without due publication is contrary to the mandate of equality in Articles 14 and 16 of the Constitution. In the instant case, acceptance of the applicants" plea for granting them age relaxation and weightage to the period of their contractual service under the National Archives of India would also amount to directing the respondents to act contrary to the provisions of the Recruitment Rules as well as the terms and conditions of the recruitment notice. The Tribunal is required to enforce the rule of law, and not to issue a direction which is contrary to what has been injected by law. Therefore, the respondent-National Archives of India or, for that matter, the respondent-SSC cannot be said to have acted arbitrarily and unreasonably in not acceding to the applicants" claim to give them age relaxation and weightage for the period of their contractual service.

9. The decisions cited by the applicants, being distinguishable on facts, do not go to support the case of the applicant.

10. In *Ms.Mamta, etc. vs. Union of India and others* (supra), *Shri Chandra Mouleshwar Jha and others vs. Union of India and others* (supra), and *Mrs. Neelam Mallik and another vs. Union of India and others* (supra), the applicants

were engaged by the National Archives of India on contractual basis. They claimed age relaxation and/or weightage for the period of their contractual service, when they applied for selection and recruitment to the post of Assistant Archive (General) in the National Archives of India. After considering the relevant provisions of the Recruitment Rules and the terms and conditions of the Notice/ Advertisement, the Tribunal rejected their claim for granting them age relaxation and/or weightage for the period of their contractual service. The said decisions of the coordinate Bench are binding on us. We also see no reason to differentiate between the applicants in the present O.A. and the applicants in those cases.

11. No other point worth consideration has been urged or pressed by the learned counsel for the parties.

12. In the light of our above discussions, we have no hesitation in holding that the O.A. is devoid of any merit and liable to be dismissed. Accordingly, the O.A. is dismissed. No costs.