

(2002) 02 DEL CK 0079

In the Delhi High Court

Case No : Civil Writ Petition No. 3549 of 2001

Praveen Kumar

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 14-02-2002

Acts Referred:

Citation : (2002) 6 AD 547 : (2002) 97 DLT 53 : (2003) 1 SLJ 74(2)

Hon'ble Judges : Sanjay Kishan Kaul, J

Bench : Single Bench

Advocate : R.K. Saini, for the Appellant; R.V. Sinha, for the Respondent

Final Decision : Allowed

Judgement

Sanjay Kishan Kaul, J.—Rule.

2. With consent of learned counsel for the parties, the petition is taken up for final disposal.

3. In the month of May 199 respondents published an advertisement inviting applications from unmarried male Indian citizens for selection as Airmen in the Non Technical Trades (Group Y).

4. The eligibility condition for the candidate in pursuance to the advertisement were as under :

" a) The candidate should have passed matriculation Equivalent examination with a minimum of 45% marks in aggregate ;

b) The candidate should have been born between 1.11.1980 and 1.11.1983."

5. The petitioner applied in pursuance to the advertisement on 17.11.1999. He was declared successful in the written examination. The petitioner thereafter appeared in the medical test and he was declared medically fit and was short listed. The petitioner was issued a call letter dated 20.6.2000 stating that the petitioner had been provisionally selected and asking the petitioner to report

along with call letter on 1.8.2000. However, on 17.7.2000 the petitioner was issued a letter to the effect that due to administrative and other reasons the intake for which the petitioner was called for enrolment stood cancelled. It was also stated in the said letter that the next tentative schedule of intake was during December 2000/January 2001 and that the petitioner may be called for the said enrolment OB again. This was subject to vacancy at that stage and medical fitness of the petitioner.

6. The petitioner was once again issued a call letter on 13.11.2000 as a medical due candidate in view of the fact that he qualified earlier. The said letter require the petitioner to undergo re-medical examination due to the fact that more than six months had lapsed since his last medical examination in which he was declared medically fit. A medical examination was once again held on 11.12.2000 but the petitioner was not found fit on account of obesity. The petitioner preferred an appeal against the said decision and the case of the petitioner was referred to the Appeal Medical Board Vide letter dated 30.1.2001. It was further stated in the said letter that the petitioner was getting over age on 16th June, 2001 since requirement is that a candidate should be under 20 years of age and the petitioner was born on 16.6.1981. It was thus stated that the appearance before the Medical Board may not serve any useful purpose. The relevant paragraphs of the said letter is as under :

"2. As you are getting over age on 16th June, 2001 before the next enrolment you cannot be enrolled even if you are declared Fit during the Appeal Medical Board.

3. However, you have the option to undergo Appeal Medical Examination if you so desire, but this will not serve any useful purpose towards your enrolment."

7. The petitioner appeared before the Medical Board on 30th April, 2001 and was declared medically fit. The petitioner was however not appointed.

8. The petitioner sent a legal notice dated 13.5.2001 to which no response was receive and the present petition was filed on 28.5.2001.

9. Mr. R.K. Saini, learned counsel for the petitioner contends that the next intake of Airmen took place on 20th June, 2001 and by that criteria the petitioner would be four days over age. It is thus contended that it was a fit case for relaxation specially in view of the fact that same has been admitted in para 11 of the counter affidavit to the following effect :

" It is intimated that over-age" sanction was obtained as one time measure for those candidates only who become over-age as on december 2000 due to change of enrolment schedule from August 2000 to December, 2000 due to administrative reasons."

10. Mr. Saini further contended that in view of the decision in the appeal by the Medical Board on 30th April, 2001 the relevant date in case of the petitioner would relate back to the original date when the petitioner was declared medically

unfit on 11th December 2000 and thus the petitioner would be under 20 years of age. It is thus contended that the petitioner should have been so appointed and the plea of relaxation was being made in the alternative only to show that there have been cases where such relaxation has been granted particularly where there is delay due to administrative reasons. Mr. Saini also referred to a Division Bench judgment of this Court in CW 5056/2000 decided on 7.9.2000 Shri Prashant Srivastava v. C.B.S.E. The said case related to allotment of a seat in MBBS/BDS course in the second round of allotment. It was held that once the appellant passed the supplementary examination of Class XII the result of that would relate back to the first appearance in the first examination and reliance was also placed on the judgment of the Division Bench of this Court in LPA 385/1995 decided on 7.9.1999 Neha Kattiyar v. The Central Board of Secondary Education and Ors.

11. Learned counsel for the petitioner thus contended that same principle of relating back would apply to the case of the petitioner.

12. I have heard the learned counsel for the parties and I am in agreement with the submissions advanced by learned counsel for the petitioner. The petitioner was initially not appointed and the initial letter was cancelled due to administrative reasons. It is also stated in the petition that the petitioner was found medically fit and he was again issued the call letter dated 13.11.2000 but had to undergo once again medical test which was due to the lapse of a period of six months from the last medical check up. Though the petitioner was declared unfit as he was stated to be obese, an appeal was preferred and he was declared medically fit on 30.4.2001.

13. In view of the judgment of the Division Bench in Shri Prashant Srivastava case (supra) and Neha Kattiyar case (supra) the same principles would apply in the present case and the relevant date would relate back to his initial call letter of 13.11.2000. The petitioner was admittedly within the prescribed age of 20 years at that time.

14. It is also to be appreciated that there have been cases of relaxation on administrative grounds as set out by the respondents in their counter affidavit. In the present case the next intake has occurred on 20th June, 2001 and the petitioner was four days over age in view of the fact that he completed 20 years on 16.6.2001.

15. In view of the aforesaid facts, I am of the considered view that the petitioner could not be disentitled from appointment on the ground of being over age as the result of the Medical Board would relate back to the original offer letter dated 13.11.2000.

16. It may also be added that on 30th January, 2001 it was not really open to the respondents to state that appearance of the petitioner before the Re-medical Board would be a mere formality. The respondents were continued of the fact that the petitioner would be over age on 16.6.2001 and in view of the petitioner

having filed an appeal the respondents should have taken expeditious steps for examination of the petitioner before the Appeal Medical Board. The appeal filed by the petitioner cannot thus be made infructuous by delaying the medical examination of the petitioner and thereafter saying that petitioner is over age.

17. A writ of mandamus is thus issued directing the respondents to appoint the petitioner to the post of Airmen within a period of one month from today with all consequential benefits of seniority and pay as if the petitioner was appointed along with batch for which call letter of 13.11.2000 was issued.

18 The writ petition is allowed in the aforesaid terms leaving the parties to bear their own costs.