

(2010) 11 DEL CK 0212

In the Delhi High Court

Case No : Writ Petition (C) 7030 of 2008

Union of India (UOI) and Others

APPELLANT

Vs

A.K. Chopra and Others

RESPONDENT

Date of Decision : 09-11-2010

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19

Civil Aviation Department (Director General of Civil Aviation) Recruitment Rules, 2005
— Rule 5

Constitution of India, 1950 — Article 14, 16(1), 226, 227, 309

Citation : (2010) 11 DEL CK 0212

Hon'ble Judges : Siddharth Mridul, J; Pradeep Nandrajog, J

Bench : Division Bench

Advocate : Sanjay Agnihotri and Z.A. Siddiqui, for the Appellant; A.K. Behera, Sridhar Nayak and Jaismin Ahmad for R-1, Varun Goswami and Abhishek Bhardwaj for R-4, for the Respondent

Final Decision : Allowed

Judgement

Pradeep Nandrajog, J.—The Directorate General of Civil Aviation is an attached office of Ministry of Civil Aviation. The Directorate of Civil Aviation coordinates all regulatory functions with International Civil Aviation Organization and is the main regulatory organization in the country responsible for regulation of air transport services to/from/within India and for enforcement of civil air regulations, air safety and airworthiness.

2. The directorate is headed by a Director General who is assisted by Joint Directors General, Deputy Directors General, Directors and other officials. There is one post of Director General of Civil Aviation (hereinafter referred to as "DGCA") in the pay scale of Rs. 22400-525-24500/- and three posts of Joint Director General of Civil Aviation (hereinafter referred to as "Joint DGCA") in the pay scale of Rs. 18400-22400/-. The job of DGCA involves looking after the entire work of Directorate General of Civil Aviation, supervising functions relating to the safety of air travel as well as for the responsible functioning of the aviation

industry, airworthiness control, licensing of pilots, safety of civil air operations, bilateral air services agreements and research and development.

3. In exercise of the power conferred by Article 309 of Constitution of India, the President promulgated Civil Aviation Department (Director General of Civil Aviation) Recruitment Rules, 2005 (hereinafter referred to as "Recruitment Rules") regarding the recruitment of DGCA, the relevant portion whereof reads as under:

2. Number of posts, classification and scale of pay - The number of the said post, its classification and the scale of pay attached thereto shall be specified in Columns (2) to (4) of the Schedule annexed to these rules.

....

5. Power to relax - Where the Central Government is of the opinion that it is necessary or expedient to do so, it may, by order and for reasons to be recorded in writing, and in consultation with Union Public Service Commission relax any of the provisions of these rules with respect to any class or category of persons.

....

SCHEDULE

....

Method of In case of recruitment by recruitment: promotion/deputation/absor Whether by direct ption from which recruitment or by promotion/deputation/ absor promotion or by ption to be made deputation/absorption and percentage of the posts to be filled by various methods II 12 Promotion, failing Promotion: which by From amongst Joint Director deputation. Generals with three years regular service in the grade, failing which Joint Director Generals with five years combined regular service in the grade of Joint Director General and Deputy Director General/Deputy Director General (Research and Development) of which two years shall be in the grade of Joint Director General. Deputation: 1. From amongst officers under Central Government including All India Services:- (a)(i) holding analogous posts on regular basis in the parent cadre/department; or (ii) with three years? service in the grade rendered after the appointment thereto on regular basis in the scale of pay of ^18,400-22,400 or equivalent in the parent cadre/ department (b) having experience as under: Twelve years? of experience in the Aviation/Flying/Aircraft Engineering/Airworthiness, out of which, a minimum of five years? experience should be in administration and Finance Disciplines at the Senior Management Level.

4. Mr. K. Gohain who was holding the post of DGCA at the relevant time was to retire from service on 30.06.2007. In view of the impending superannuation of Mr. K. Gohain and the fact that none of the officers who were holding the post of Joint DGCA possessed the service experience required for being promoted to the

post of DGCA, Ministry of Civil Aviation decided to fill up the post of DGCA by way of deputation and thus issued a vacancy circular dated 09.01.2007 in relation to the appointment to the post of DGCA on deputation basis as also placed an advertisement in the Employment News in said regard. However, no suitable candidate applied to the Ministry in response to the afore-noted circular dated 09.01.2007 and the advertisement published in said regard.

5. Considering the fact that no suitable candidate had applied to the Ministry for appointment to the post of DGCA on deputation basis and Mr. Gohain was about to retire, the Ministry of Civil Aviation decided to appoint Mr. Gohain to the post of DGCA on re-employment basis with effect from 01.07.2007 for a period of six months. The Ministry further decided to amend the Recruitment Rules and forwarded the said proposal of amendment of Recruitment rules to Department of Personnel and Training (hereinafter referred to as "DOPT") and Union Public Service Commission (hereinafter referred to as "UPSC") for approval. The amendment sought by the Ministry was the reduction of experience in aviation prescribed in the Recruitment Rules for deputationists from 12 years to 5 years. Be it noted here that DOPT approved the aforesaid proposal mooted by the Ministry for amendment of Recruitment rules.

6. On 31.07.2007 the Ministry issued another vacancy circular in relation to the appointment to the post of DGCA on deputation basis as also placed an advertisement in the Employment News in said regard.

7. In the meantime, respondent No. 1 made a representation to the Ministry inter-alia stating that he will be completing two years of service on the post of Joint DGCA in November 2008 and that the Ministry should grant him an one-time relaxation in minimum qualifying service of 2 years prescribed in the Recruitment rules for being promoted to the post of DGCA in terms of Rule 5 of Recruitment rules thereby promoting him to the post of DGCA.

8. Since no suitable candidate was found for being appointed to the post of DGCA till 20th December 2007 and the term of re-employment of Mr. Gohain was nearing expiration, the Ministry decided to extend the term of re-employment of Mr. Gohain by a period of six months.

9. The proposal mooted by the Ministry of amending the Recruitment rules did not find favor with UPSC. Letter dated 11.01.2008 written by UPSC to the Ministry in said regard reads as under:

"Subject" Amendment to Recruitment rules for the post of Director General of Civil Aviation.

Sir,

....

(i) MR requested for relaxation of technical experience for deputationists, as proposed by the Ministry. It was explained that as already intimated vide our

letter of even number dated 10th December, 2007, the Commission have after due consideration not agreed to the Ministry's proposal for relaxing the professional competence experience required to be possessed by the incumbent officer to the post of DGCA. As discussed in the meeting, one suggested solution is for the Ministry of Civil Aviation may explore the possibility of filling up the post by promotion by relaxing the provision as available in Col. 12 of the existing RRs for the post by exercising the power available in Clause 5 of the covering notification of the RRs for the post. For this purpose, the Ministry may send a proposal to DOP&T for their initial approval and approach the Commission with a self-contained proposal enclosing necessary documents and information, as required.

(ii) The Ministry may also consider the amendment to the Recruitment rules for the post for prescribing a relaxed mandatory regular service to be possessed by the immediate below feeder grade officer of Joint DGCA from the existing two years to one year. If this is agreeable, an amendment proposal may be forwarded to DOP&T initially and to UPSC after offering the approval of DOP & T.

2. As discussed, it was felt that considering the urgency of the requirement, solution at (i) above could be explored to fill up the post....

(Emphasis Supplied)

10. Pursuant to the vacancy circular dated 31.07.2007 and the advertisement issued in said regard, the Ministry received applications from four officers namely, Dr. Naseem Zaidi (IAS), Mr. V.S. Madan (IAS), Air Marshal Yeshwant Rao Rane (IAF) and Air Marshal Jyoti Narayan Burma (IAF).

11. On 31.03.2008 Joint Secretary, Ministry of Civil Aviation prepared a note regarding the appointment to the post of DGCA for the consideration of Minister of Civil Aviation, relevant portion whereof reads as under:

Note pre-page may be seen. Four applications have been received in response to the advertisement for filling up the post of DGCA which is going to fall vacant on the expiry of the extension period of Shri K. Gohain on 30-6-2008. The applications were scrutinized and it was found that none of the applicants meet all the eligibility criteria. It may be recalled that during one last year three advertisements for filling up the post of DGCA has been made by the Ministry i.e. 10th February, 2007, 3rd July, 2007 & 22nd December, 2007. In all the occasion, we have not received appropriate response from eligible candidates. Based on this experience it can safely be assured that any further exercise of notifying the vacancy inviting applications would probably be futile.

2. A proposal was also made to DoPT and UPSC for amendment of RRs to bring down the Civil Aviation experience criteria from 12 years to 5 years in order to attract more applications. Although DoPT concurred with the proposal, USPC did not agree to the proposal.

3. At this stage we have two options, both entailing a one-time waiver of existing

provisions of RRs. The first option is to consider waiver of two years Jt. DGCA experience in case of Shri A.K. Chopra, the seniormost Jt. DGCA, who will complete two years in November 2008. The functioning of Shri A.K. Chopra as Jt. DGCA has been assessed in the Ministry. Feedback about him has also been received from the industry. It is felt that Shri Chopra does not possess the capability to head DGCA and handle the various complex issues and problems essential for implementing the various regulations as well as nurturing the growth of this industry. Thus exercising the option of waiver of provisions of RR for promotion of Shri A.K. Chopra would not be in the best interest of the Government.

4. The other route for filling the post is through deputation based on the applications received. The objective is to identify the most suitable candidate amongst the four applicants and then request the appropriate authorities to allow a one time waiver of qualification in order to meet this exceptional situation. Accordingly the cases of the four candidates are examined below.

(a) Dr. Naseem Zaidi, IAS (1976) - Dr. Zaidi possesses all the qualifications except an aviation experience of 12 years. Dr. Zaidi has about 7 years aviation experience. He also belongs to the IAS and has been empanelled as Additional Secretary to Govt. of India. He has requisite experience of administrative and financial nature in handling various responsibilities. Dr. Zaidi has also worked in the Ministry as Joint Secretary which has equipped him with insight into functioning of the Ministry and the policy making processes etc. Dr. Zaidi is presently working as Representative of India (ROI) in ICAO and is very much involved in various regulatory functions of ICAO, which has a direct bearing on the working of DGCA as ICAOs recommendation which are generally followed by DGCA. He has also been working closely with DGCA to bring the DGCA regulation at par or in consonance with the mandate/recommendations of ICAO. In performing his assigned function at ICAO he has acquired the knowledge of the various important and cutting edge issues faced in Aviation Safety and security at present.

(b) Shri V.S. Madan - (IAS-1981)....

(c) Air Marshal Yashwant Rao Rane (IAF)....

(d) Air Marshal Jyoti Narayan Burma (IAF)....

5. Since Air Marshal Rane can not be considered due to his age, the choice boils down to only three officers. Air Marshal Burma fulfils the age and seniority condition but fails on account of aviation experience which is essential for this position.... From the service records it is seen that Air Marshal Burma has no experience in dealing with the aforesaid functions of DGCA. Hence his candidature may not be considered.

7. The following points emerge while comparing the qualification of Shri V.S. Madan and Dr. Naseem Zaidi both IAS Officer of 1981 and 1976 batch

respectively.

....

8. In view of the above, it is suggested that the name of Dr. Naseem Zaidi for the post of DGCA may be proposed to the UPSC for consideration. UPSC may also be required to accord one time waiver of the provision of RR relating to 12 years aviation experience in case of Dr. Zaidi in view of the unusual circumstances faced by the Government in finalizing the appointment of DGCA.

(Emphasis Supplied)

12. The aforesaid note received the approval of Minister of Civil Aviation pursuant to which a proposal prepared in terms of aforesaid note was sent to UPSC for approval; however UPSC did not approve the said proposal. The relevant portion of the letter dated 25.04.2008 issued by UPSC to the Ministry in said regard reads as under:

I have received the DO letter No. A.60011/004/2006-VE(V.II) dated 03.04.2008 from Shri Arun Mishra, Joint Secretary, Ministry of Civil Aviation sending a proposal for filling up the post of Director General Civil Aviation, which will fall vacant on 01.07.2008 after the extended period of reemployment of the present incumbent.

....

3. Upon examination of the proposal, it is seen that the Ministry have not sent copies of the circulars/advertisements made for filling up the post, though the letter states that advertisements were issued on 10.02.2007, 03.07.2007 and 22.12.2007 and also that the vacancy was circulated to all Ministries. However, the letter states that it was decided to fill the post on deputation basis as per the Recruitment rules and the Recruitment rules specify that the requirement of experience is 12 years in Aviation/Flying/Aircraft/Engineering/Airworthiness out of which a minimum of 5 years experience should be in Administration and financial disciplines at the senior manager level. Therefore it is presumed that the advertisement specified that the experience requirement as per the RRs. The Ministry also stated that they have not received appropriate response in terms of the advertisement etc from eligible candidates, but have four applications, none of whom meet the eligibility conditions. Of these four applicants, two, according to the Ministry, cannot be considered and therefore, there are only 2 officers, having aviation experience of 7 years and 8 years respectively.

4. The Ministry have also stated that they had obtained the approval of DOP & T to the amendment of RRs for relaxation of the condition of Civil Aviation experience from 12 to 5 years. In this context, two points need to be stressed. The first is that the Ministry had obtained the approval of DOP&T to amend the RRs in October 2007. However, since the advertisements/circulars for the post must have been in terms of the notified RRs they must have provided for experience requirements as in the notified RRs. The second point is that inviting

applications with an essential qualification of 12 years experience and thereafter to shortlist candidates falling short of this essential qualification would deprive all other possible candidates who could have applied if they knew that the essential qualification would be reduced after the applications have been received. This will not only go against the principles of equity and transparency, but will, in all likelihood, result in prolonged litigation and the courts would certainly strike down the shortlisting criteria now proposed by the Ministry.

5. I trust that the position brought out above will make it clear why the Commission cannot proceed with present proposal of the Ministry. Since the Commission realizes that the post of DGCA is a very important and critical post, I am to suggest that the Ministry may:

(i) First finalize the essential qualifications in terms of Aviation experience and management experience that they consider essential for a onetime filling up of the post of DGCA. Thereafter, the Ministry may seek the approval of DOP&T for relaxation of the experience requirement for this one-time filling up of the post. Since this relaxation will not be amending the RRs but a one-time relaxation, specific approval of DOP&T is required.

(ii) Normally for relaxation of qualifications, after DOP & Ts approval, the approval of the Commission is required. In view of the critical nature of the post and the urgency involved, the Commission agree to post-facto relaxation of the experience after the approval of DOP&T, so as to save the processing time.

(iii) After the approval of DOP&T is obtained for relaxation of the experience requirement for one time filling up of the post, the post be re-advertised/re-circulated.

(iv) Thereafter, a self-contained proposal along with all requisite documents as per Government instructions may be referred to the Commission for making a selection. The Commission will accord priority to processing that proposal.

....

13. Accordingly, in terms of the aforesaid suggestions given by UPSC, the Ministry formulated a proposal wherein following relaxation was envisaged in the Recruitment rules:

Existing Proposed Remarks (b) having experience as (b) having 12 years experience The experience under: in administration and in supervision at the Senior administration Management Level of which a and Finance minimum of 5 years should be has been Twelve years of experience in Aviation/Aircraft increased from in Aviation/Flying/Aircraft Engineering/Airworthiness/Air 5 to 12 years Engineering/Airworthiness, Safety. and the out of which, a minimum of aviation five years of experience experience has should be in administration been reduced and finance disciplines at to 5 from 12 the Senior Management years. Level.

14. DOPT approved the aforesaid proposal mooted by the Ministry regarding one-time relaxation in the Recruitment rules. Thereafter the Ministry issued vacancy circular dated 05.05.2008 in relation to the appointment to the post of DGCA on deputation basis as also placed an advertisement in the Employment News in said regard. Be it noted here that the aforesaid circular and advertisement issued by the Ministry were in terms of one-time relaxation proposed in the Recruitment rules by the Ministry and approved by DOPT.

15. Pursuant to the issuance of aforesaid circular and advertisement issued by the Ministry, the Ministry received applications from same four officers who had applied in response to the circular and advertisement issued by the Ministry on an earlier occasion, which applications were forwarded by the Ministry to UPSC for selection of the most suitable candidate for the post of DGCA.

16. Since UPSC was taking time to process the aforesaid four applications and recommend a candidate for the post of DGCA and the term of re-employment of Mr. Gohain was nearing expiration, the Ministry again extended the term of re-employment of Mr. Gohain by a period of six months.

17. In the meantime, respondent No. 1 made two more representations to the Ministry regarding the non-relaxation of the service experience prescribed in the Recruitment rules for being eligible to be promoted to the post of DGCA. In response thereto, the Ministry issued a reply dated 02.06.2008 to respondent No. 1 rejecting the request of respondent No. 1 for grant of necessary relaxation to him.

18. After scrutinizing the aforesaid four applications received by the Ministry and interviewing the eligible candidates, UPSC recommended the appointment of Dr. Nasim Zaidi to the post of DGC on 26.06.2008.

19. However, before the Ministry could appoint Dr. Nasim Zaidi to the post of DGCA, respondent No. 1 filed an application u/s 19, Administrative Tribunals Act, 1985 before Principal Bench, Central Administrative Tribunal, New Delhi inter-alia stating that the act(s) of the Ministry/Government of not granting relaxation of mere five months in the service experience prescribed in the Recruitment rules for being eligible to be promoted to the post of DGCA thereby preventing him from being promoted to the post of DGCA despite the fact that he was the senior most official in the feeder grade for the post of DGCA and granting substantial relaxation of seven years in the experience in aviation prescribed in the Recruitment rules for deputationists is arbitrary and smacks of mala fide.

20. Per contra, the stand taken by the Ministry/Government before the Tribunal was that power conferred upon the Ministry by virtue of Rule 5 of the Recruitment rules to relax any of the provisions of Recruitment rules in a given case is discretionary and that the Ministry/Government had exercised the said discretion judiciously while refusing to grant necessary relaxation to respondent No. 1. It was also highlighted by the Ministry before the Tribunal that the action for making of an appointment after the superannuation of Mr. Gohain was

initiated in the Ministry on 12th July 2006, at which time respondent No. 1 was not even working in the feeder grade of joint DGCA inasmuch as he was appointed as Joint DGCA on 8.11.2006. It was pointed out by the Ministry that on 12th July 2006 there were three posts in the feeder grade of Joint DGCA, out of which two were vacant and remaining one was held by one Mr. P.K. Chattoadhyaya who was due to superannuate before the superannuation of Mr. Gohain. That since there was no eligible officer in the feeder grade of Joint DGCA, a decision was taken by the Ministry to fill the post of DGCA by way of deputation.

21. Vide impugned judgment dated 01.08.2008 the Tribunal allowed the aforesaid application filed by respondent No. 1 thereby quashing the vacancy circular dated 05.05.2008 issued by the Ministry and all actions taken by the Ministry in pursuance to issuance of the said circular. The Tribunal further directed the Ministry to consider the case of respondent No. 1 for relaxation in the service experience prescribed in the Recruitment rules for being eligible to be promoted to the post of DGCA. In coming to the aforesaid conclusion, it was held by the Tribunal that since the first mode of recruitment to the post of DGCA is promotion it was incumbent upon the Ministry/Government to first consider the case of respondent No. 1 for grant of relaxation of few months in service experience prescribed in the Recruitment rules for being eligible to be promoted to the post of DGCA before proceeding to fill the post of DGCA by way of deputation; that the act(s) of the Ministry/Government of not granting relaxation of few months in the service experience prescribed in the Recruitment rules for being eligible to be promoted to the post of DGCA in the case of respondent No. 1 but at the same time granting a substantial relaxation of seven years in the experience in aviation prescribed in the Recruitment rules for deputationists is discriminatory and thus violative of Article 14 of Constitution of India and that the fact that the Ministry/Government adopted a discriminatory attitude towards respondent No. 1 is further evidenced from the circumstance that no cogent reasons have been supplied by the Ministry for not granting a minor relaxation in the Recruitment rules in the case of respondent No. 1 as also for granting substantial relaxation for deputationists.

22. Aggrieved by the impugned judgment dated 01.08.2008 passed by the Tribunal, the petitioner has filed the present petition under Articles 226 and 227 of Constitution of India.

23. During the pendency of the instant petition, vide order dated 26.09.2008 this Court permitted the petitioner to make an appointment to the post of DGCA, subject to the final outcome of the instant petition. In pursuance to the said order dated 26.09.2008 passed by this Court, the petitioner appointed Dr. Nasim Zaidi to the post of DGCA. It is also noteworthy that during the pendency of the instant petition, respondent No. 1 retired from service in May, 2010. In such circumstances, decision, if any, against the petitioner would only result in a notional promotion to be granted to respondent No. 1 which in turn would impact

pension payable to him.

24. Article 14 of Constitution of India provides that "State shall not deny to any person equality before the law or the equal protection of the laws." Article 16(1) issues a positive command to the State that "there shall be equality of opportunity for all citizens in the matters relating to employment or appointment to any office under the State". Article 16(1) is a facet of Article 14 and takes its roots from Article 14. Article 16(1) particularizes the generality in Article 14 and identifies, in a constitutional sense, "equality of opportunity" in matters of employment and appointment to any office under the State. The word "employment" being wider, it takes within its fold, the aspect of promotions to posts above the stage of initial level of recruitment. Thus, Article 16(1) provides to every government servant otherwise eligible for promotion or who comes within the zone of consideration, a fundamental right to be "considered" for promotion. (See the decision of Supreme Court reported as *Ajit Singh and Others Vs. The State of Punjab and Others*,

25. As a sequitur to the aforesaid, the question which arises is that whether a government servant can claim relaxation in the Recruitment rules as a matter of right for the purposes of promotion.

26. In the decision reported as *T.S. Kapoor and Others Vs. State and Others*,) by way of filing a writ petition the petitioner prayed before Rajasthan High Court that the State be directed to consider his case for promotion on the post of Director of Rajasthan Police Forensic Science Department after relaxing the requirement of service experience prescribed under Rajasthan Police Forensic Science Service Rules, 1979 and to quash the appointment of respondent No. 1 on the said post on re-employment basis. The case of the petitioner was predicated upon Rule 24 of the Service rules which empowered the State to relax the provisions of the rules in a given case. After examining the Rule in question, it was held by the Court that power of relaxation vested in the State is discretionary and that relaxation cannot be claimed as a matter of right. The relevant observations made by the Court are being noted herein under:

During the course of arguments, the record of Department of Personnel was also called. Upon perusal of the entire file, it is revealed that in the public interest, it is felt necessary by the State Government to grant re-employment to respondent No. 1, looking to his expertise in the subject and experience and the said re-employment which is granted after due approval as per rules was further approved by the Cabinet, which is evident from the record, which I have perused and in public interest, the Cabinet after considering the case of re-employment of respondent No. 1, approved the action of the State Government, which is evident from the decision No. 74/2007 dated 10.8.2007 of the Cabinet.

Although there is a provision for granting temporary appointment in accordance with the rules and notification was also issued by the Government for the said purpose, which is placed by the petitioner on record as Annexure-5 in which it

provided that the relaxation can be granted by the DPC but in my opinion nobody can claim promotion as a matter of right while asking that he is entitled for relaxation in the eligibility condition. Any relaxation cannot be claimed as a matter of right even though it is provided under the rules because the prime duty of the State Government is to appoint most suitable post to the highest post of department and for the said purpose, if it is felt necessary by the State Government to re-employ the Director for two years while exercising power under Rule 151 of the rules of 1996, then, in my opinion, there is no illegality committed by the State Government. Further, it is also evident from the order Annexure-1 itself that this order is for two years or till any eligible officer becomes available in the Department. Therefore, when the State Government has not exercised its discretion to grant relaxation then it is not proper for this Court to direct the State Government to grant relaxation in eligibility condition for promotion of the petitioner and allow ineligible person to work on the higher post of the important department. In view of above discussions, the order Annexure-1 dated 28.3.2007 does not require any interference by this Court because it has been passed within competence of the State Government in public interest.

(Emphasis Supplied)

27. In Writ Petition No. 8520/2001 titled as R.J.A. Raveendran v. State of Tamil Nadu decided on 18.09.03 Madras High Court observed as under:

...Further a person cannot ask as a matter of right for relaxation of the rules in case of appointments or in the case of promotion to higher cadre. It is for the authorities to consider such representation for relaxation of the rules. Consideration of the relaxation is not a matter of right and therefore, the contention of the petitioner cannot be accepted. Therefore, there is no merit in the writ petition.

28. In the decision reported as G.L. Verma Vs. DDA, a learned Single Judge of this Court observed as under:

The next question, however, is whether the respondent should have in this particular case exercised the power of relaxation as provided for in regulation 15 of the Recruitment rules, as argued on behalf of the petitioner. Power of relaxation is always a discretionary matter. The said discretion has to be exercised by the authority on whom the said power is vested within the bounds and circumscribed limit as set out in the provision and must be done in the manner provided, after recording reasons in writing for the same.

29. In the decision reported as Food Corporation of India v. Bhanu Lodh AIR 2005 SC 275 power of relaxation provided in the Regulations was exercised by the appropriate authority in favors of number of candidates who had applied for being appointed to a particular post. While quashing the selection of such candidates, Supreme Court observed as under:

...Even assuming that there is a power of relaxation under the Regulations, we think that the power of relaxation cannot be exercised in such a manner that it completely distorts the Regulations. The power of relaxation is intended to be used in marginal cases where exceptionally qualified candidates are available. We do not think that they are intended as an "open sesame" for all and sundry....

30. In the decision reported a Kendriya Vidyalaya Sangathan and Others Vs. Sajal Kumar Roy and Others, relevant Recruitment Rules contained a provision for relaxation of age in case of Scheduled Caste/Tribe and retrenched Central Government employees including defence personnel. While examining the said provision, Supreme Court observed as under:

...Relaxation of age limit even in relation to Scheduled Castes and Scheduled Tribes candidates or the retrenched Central Government employees, including the defence personnel, is, however, not automatic. The appointing authorities are required to apply their mind while exercising their discretionary jurisdiction to relax the age limits....

31. From the afore-noted judicial pronouncements, the legal norm which emerges is that the power of relaxation of the Recruitment Rules vested in the government/appropriate authority is discretionary and that no government servant can claim relaxation as a matter of right. Of course, the representation by the Government servant requires the same to be considered and decided with fairness.

32. In the instant case the issue of exercise of discretion has to be decided with reference to the expression "where the Central Government is of the opinion that it is necessary or expedient to do so" occurring in Rule 5 of the Recruitment rules. The expression makes it clear that the decision to grant/non-grant relaxation in a given case is the subjective satisfaction of the Central Government and therefore relaxation cannot be claimed by a government servant as a matter of right.

33. Turning to the issue of fact, whether in the instant case the Central Government has exercised the discretion vested in it by virtue of Rule 5 of the Recruitment rules in a "judicious manner" by not granting relaxation in service experience in case of respondent No. 1 and granting relaxation in aviation experience in case of the deputationists?

34. As pointed out by the petitioner before the Tribunal, when the action for making an appointment to the post of DGCA after the superannuation of Mr. Gohain was first initiated in the Ministry in July, 2006, respondent No. 1 was not even working in the feeder grade of Joint DGCA. Since no eligible officer was working in the feeder grade of Joint DGCA, the Ministry decided to fill up the said post by way of deputation.

35. Respondent No. 1 got appointed to the post of Joint DGCA in November 2006.

36. As already noted hereinabove, while rejecting the proposal of UPSC for

amendment of condition of aviation experience prescribed in the Recruitment rules for deputationists, UPSC gave two suggestions to the Ministry, one of which was to consider grant of relaxation in service experience to respondent No. 1. At that stage, in pursuance of the aforesaid suggestion given by UPSC, the Ministry considered the grant of necessary relaxation to respondent No. 1. After assessing the functioning of respondent No. 1, it was felt by the Ministry that respondent No. 1 does not possess the capability to head DGCA and nurturing the growth of aviation industry as also to handle the various complex issues and problems arising in implementing the various regulations. In that view of the matter, the Ministry did not consider it appropriate to grant necessary relaxation to respondent No. 1 and decided to fill up the post of DGCA by way of deputation. Therefore, it is not as if that the grant of necessary relaxation to respondent No. 1 was not considered by the Ministry, as projected by respondent No. 1 before the Tribunal.

37. At the same time, the Ministry also reviewed the service records of the four candidates who had applied for being appointed to the post of DGCA by deputation including Dr. Nasim Zaidi and found him suitable to be appointed to the post of DGCA and therefore proposed to grant relaxation in aviation experience to him. The aforesaid proposal mooted by the Ministry was approved by DOPT.

38. At its end, UPSC also reviewed the service records of aforesaid four candidates including Dr. Nasim Zaidi as also interviewed them. It was only thereafter that UPSC recommended the appointment of Dr. Nasim Zaidi to the post of DGCA and granted ex-post facto approval to the proposal of the Ministry of granting necessary relaxation to Dr. Nasim Zaidi.

39. Decision of non-granting of necessary relaxation to respondent No. 1 is the subjective satisfaction of the Central Government. Of course, it was incumbent upon the Government to disclose to this Court the objective facts which formed the basis of the subjective satisfaction of the Government. In the instant case, adequate objective facts have been brought on record and it is not for this Court to reappraise the subjective satisfaction of the Central Government.

40. In view of the above discussion, the instant petition is allowed. Accordingly, impugned judgment dated 01.08.2008 passed by the Tribunal is hereby set aside and the Original Application filed by the first respondent is dismissed.

41. Parties shall bear their costs throughout.