
(2023) 07 CAT CK 0007

In the Central Administrative Tribunal

Case No : Original Application No. 3330 Of 2022, Miscellaneous Application No. 2217 Of 2023

Vishakha Shrama

APPELLANT

Vs

Department Of Education

RESPONDENT

Date of Decision : 07-07-2023

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19

Citation : (2023) 07 CAT CK 0007

Hon'ble Judges : Anand Mathur, Member (A); Manish Garg, Member (J)

Bench : Division Bench

Advocate : Aditi Gupta, Amit Anand

Judgement

Anand Mathur, Member (A)

1. Learned counsel for the applicant stated as under:-

1.1 The applicant filed the present OA under Section 19 of the Administrative Tribunal, 1985 seeking the following reliefs:-

"i). Allow the present Original Application.

ii) Direct the respondents to grant benefit of age relaxation in the upper age limit to the Applicant as per OM dated 12.11.1987 and for Librarian advertisement No.08/22 post code 37/2022 direct all consequential benefits given of the Applicant in terms of the aforesaid prayer.

1.2 The applicant also filed MA No.697/2023 seeking the following relief:-

"a) Allow the present Application and permit the Applicant to appear in the examination provisionally scheduled on 18.03.2023 for post code 37/22 namely post of Librarian being conducted by the respondent No.2 subject to outcome of the OA;

b) Pass such other and any further orders as this Hon'ble Court may deem fit

and proper in the facts and circumstances of the present case.”

1.3 Considering the fact that the date of examination had not been fixed by that time, the aforesaid MA was dismissed being premature vide order dated 24.05.2023.

1.4 Learned counsel for the applicant stated that Respondent no.2 has issued the Examination Schedule dated 07.06.2023 whereby the date of examination for post code No.37/22 i.e. for the post of Librarian has been indicated as 10.07.2023. Hence, the applicant has filed the MA No.2217/2023 seeking the following reliefs:-

“a) Allow the present Application and permit the Applicant to appear in the examination provisionally scheduled on 10.07.2023 for post code 37/22 namely post of Librarian being conducted by the respondent No.2 subject to outcome of the OA;

b) Pass such other and any further orders as this Hon’ble Court may deem fit and proper in the facts and circumstances of the present case.”

1.5 The applicant is mainly aggrieved by the non-provision of age relaxation to meritorious sportsperson including the applicant as provided under DOP&T’s OM No.15012/3/84-Estt.(D) dated 12.11.1987, in the Advertisement No.08/22 dated 14.10.2022 issued by Respondent No.2/DSSSB. As contended by the applicant, it is an admitted position that Govt. of NCT of Delhi has been following the age relaxation as prescribed by the DOP&T and even prior to the advertisement in question, respondents had also been providing age relaxation to meritorious persons.

1.6 The issue of non-extension of age relaxation to meritorious persons was considered by this Tribunal in Mukesh Vats vs. Govt. of NCT of Delhi [OA No.1618/2010 decided on 03.01.2012] wherein the applicant was allowed the benefit of age relaxation in terms of the aforesaid OM of DOP&T and the said order was upheld by the Hon’ble High Court of Delhi in WP No.3038 of 2012 decided on 21.05.2012. Hence, in view of the aforesaid decision, the applicant is entitled to be extended the benefit of age relaxation for appearing in the examination for the post of Librarian (Post Code No.37/22] to be held on 10.07.2023.

2. Per contra, learned counsel for the respondents stated that the applicant’s claim for age relaxation is not tenable on the ground that Ministry of Home Affairs vide letter dated 12.04.2023 has clarified the rule position for age relaxation of meritorious sports persons that the same would only be admissible in respect of Group-C posts to be filled on direct recruitment basis and not to Group-A or Group-B posts. To substantiate his claim, learned counsel for the respondents relied upon the decision of a Co-ordinate Bench of this Tribunal in Mrs. Anju vs. Chairman, Govt. of NCT of Delhi & Ors. [OA No.1046/2021 and OA No.1075/2021 decided by a common order on 22.06.2021] wherein it has been

held that once the DOP&T itself withdrew the benefit of age relaxation, there was no way for the Tribunal to grant such a relief to the applicants therein.

3. We have heard Ms. Aditi Gupta, learned counsel for the applicant, Mr. Amit Anand, learned counsel for the respondents and have carefully perused the material on record as also the decisions relied upon by the learned counsel for both the parties.

4. On analysis, we find that Clause II (b) of OM dated 04.08.1980 provides that "(b) No such appointment shall be made to any post in Group ?A? or Group ?B?, by direct recruitment" whereas in Clause VII of OM dated 12.11.1987, the specific issue of age relaxation has been dealt with wherein it has been categorically mentioned that age relaxation would be applicable to all Groups of Civil posts/services. Relevant portion of the said OM is extracted hereunder:-

"2. The matter has been carefully considered in consultation with the UPSC, the Ministry of Law and the Department of Youth Affairs and Sports. It has been decided then the categories of sportsmen/ sportswomen specified in Par 1.a of this Department O.M dated 04.08.1980 may be allowed relaxation in upper age limit upto a maximum of 5 years (10 years in case of those belonging to Scheduled Castes and Scheduled Tribes) for the purpose of appointment to all Groups of Civil posts/services under the ..of Indian Filled otherwise then though competitive examinations conducted by the UPSC. This concession will be available only to those sportspersons who satisfy all other eligibility conditions relating to Educational qualifications etc. and furnish a certificate in the form from an authority prescribed in the O.M. dated 4th August, 1980. Sub-para (b) of paragraph 1 of this O.M. would be deemed to have been amended to this extent."

4.1 Though there are consolidated instructions on incentives for Sportspersons in Government of India, yet it is not clear as to whether these consolidated instructions are in supersession of OM dated 04.08.1980 and 12.11.1987 or not. Therefore, it is not clear whether the benefit of age relaxation ought to be extended for Group-B posts or not, more particularly to the applicant herein.

4.2 Having gone through the decision in Anju (supra) case, relied upon the learned counsel for the respondents, we find that while deciding the said matter, the Co-ordinate Bench of this Tribunal did not specifically deal with the issue in question. For reference, paragraph no.5 of the said order is reproduced hereunder:-

"5. The applicants claim the benefit of relaxation of age limit for the posts of Teachers, which are classified under Group ?B?. It is true that the DOPT issued OM in the year 1980 providing for relaxation of age limit in favour of sports persons in the selections of Group ?C? posts in the year 1980 and thereafter it was extended to 1987 for the posts of Group ?B? also. The fact however remains that the DOPT clarified to the Board as well as the Government of Delhi, that the relaxation in respect of selection to Group ?B? has since been withdrawn or that does not apply for those posts. Once the DOPT itself has withdrawn the benefit,

there is no way, that the Tribunal can grant relief to the applicants.”

4.3 From the above decision, it is clear that only on the basis of instructions obtained from the learned counsel for the respondents, the Tribunal had concluded that once the DOPT itself withdrew the benefit, there was no way that the Tribunal could grant relief to the applicants therein. It is also not clear from the said decision whether the instructions so obtained from the learned counsel for the respondents were in supersession of OM dated 04.08.1980 and 12.11.1987.

4.4 In view of the aforesaid discussion and keeping in view the urgency of the matter as the examination is going to be held on 10.07.2023, we are of the considered opinion that the applicant has made out a prima case and balance of convenience also lies in her favour for grant of interim relief in light of the decision of the Hon’ble High Court in Govt. of NCT of Delhi & Ors. vs. Mukesh Vats & Ors.[WP(C) No.3038/2012 decided on 21.05.2012] wherein it has been held as under:-

“7. We have also examined the two OMs viz., OM dated 4.8.1980 and 12.11.1987 and are clear that while the first OM dated 4.8.1980 pertained to age relaxation in respect of meritorious sportspersons for Group ‘C’ and Group ‘D’ posts, the second OM dated 12.11.1987 extended that age relaxation to all groups of Civil Posts/Services under the Government of India filled otherwise than through the competitive examinations conducted by the UPSC. Since the Government of NCT of Delhi has adopted the said OMs, the interpretation that is to be given would be that the same age relaxation is to be given for the purpose of appointment to all groups of civil posts/services under the Government of NCT of Delhi filled otherwise than through the examinations conducted by the UPSC. This being the case the Tribunal cannot be faulted for arriving at the conclusion that it did. The respondents are clearly covered by the said OMs read in the manner indicated above.

8. Consequently, no interference is called for insofar as the impugned order passed by the Tribunal is concerned except to the extent that we extend the period for implementation of the order by a further 06 weeks. We make it clear that those of the respondents, who are appointed pursuant to the directions given by the Tribunal, as upheld by this Court, would not be entitled to any seniority or back wages prior to the date of the joining.”

4.5 In view of what has been discussed above, we are of the considered opinion that if the interim order permitting the applicant to appear provisionally in the ensuing examination to be held on 10.07.2023, is not granted, she would suffer an irreparable loss. Hence, the respondents are directed to permit the applicant to appear provisionally in the examination for the post of Librarian [Post Code No.37/22] slated to be held on 10.07.2023. However, the result of the examination qua the applicant only shall not be declared without leave of the Tribunal.

Issue Dasti.

4.6 MA No.2217/2023 stands disposed of in the above terms.

4.7 List the main OA for hearing on 03.11.2023.