



सत्यमेव जयते

न्यायालय मुख्य आयुक्त निःशक्तजन

Court of Chief Commissioner for Persons with Disabilities

सामाजिक न्याय एवं अधिकारिता मंत्रालय

Ministry of Social Justice & Empowerment

निःशक्तता कार्य विभाग / Department of Disability Affairs

Case No.896/1011/12-13

Dated:- 09.07.2014

In the matter of:

Shri R. Balasubramaniam,
1/242 A1, Royal Nagar,
Collectorate (PO), Dharmapuri,
Tamil Nadu – 636705

..... Complainant

Versus

Union Public Service Commission,
Through the Secretary,
Dholpur House, Shahjahan Road,
New Delhi-110069.

..... Respondent No 1

Department of Personnel & Training,
Through the Secretary,
Ministry of Personnel, Public Grievances & Pension,
North Block, New Delhi-110067.

..... Respondent No. 2

Employees' State Insurance Corporation,
Through Director General,
Panchdeep Bhawan, CIG Road,
New Delhi-110002.

..... Respondent No. 3

Case No. 311/1012/2013

In the matter of:-

Shri Avdhesh Tiwari,
E-1696, Jahangir Puri,
Delhi-110033.

..... Complainant

Versus

Union Public Service Commission,
Through the Secretary,
Dholpur House, Shahjahan Road,
New Delhi-110069.

..... Respondent No.1

Date of hearing : 22.07.2013, 08.01.2014, 26.06.2014

Present :

22.07.2013

1. S/Shri Arun Gaur, Deputy Secretary and Inderjeet, US on behalf of the respondent.
2. None on behalf of Complainant.

08.01.2014

1. S/Shri V.K. Sharma, Deputy Director, Arun Gaur, Deputy Secretary, Inderjeet, Under Secretary and Shri K.K. Paul, Under Secretary on behalf of Respondent No.1.
2. None on behalf of the complainants.

.....2/-

26.06.2014

1. Shri Avdhesh Tiwari, Complainant.

1. Shri Debabrata Das, US(Res-II) on behalf of the Respondent (DoP&T)

ORDER

By this order two identical cases are being examined and disposed off.

Case No.896/1011/12-13

2. The complainant in this case who is a person with 55% locomotor disability filed a complaint dated 17.10.2012 under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, hereinafter referred to as the Act submitted that UPSC had invited applications for the post of Deputy Director in ESI Corporation without providing the benefit of age relaxation to persons with disabilities. As per the advertisement, the age limit was 40 years as on 29.12.2011 but while applying online the UPSC's portal rejected his application giving the reason as 'overage', though his age was less than 40 years.

3. Para 21 of Department of Personnel & Training's O.M. No.36035/3/2004-Estt (Res) dated 29.12.2005 provides as under:-

- (i) Upper age limit for persons with disabilities shall be relaxable
 - (a) by 10 years (15 years for SCs/STs and 13 years for OBCs) in case of direct recruitment to Group 'C' and Group 'D' posts;
 - (b) by 5 years (10 years for SCs/STs and 8 years for OBCs) in case of direct recruitment to Group 'A' and Group 'B' posts where recruitment is made otherwise than through open competitive examination; and
 - (c) by 10 years (15 years for SCs/STs and 13 years for OBCs) in case of direct recruitment to Group A and Group B posts through open competitive examination.
- (ii) Relaxation in age limit shall be applicable irrespective of the fact whether the post is reserved or not, provided the post is identified suitable for persons with disabilities

4. The matter was taken up with the respondent vide this Court's letter dated 15.01.2013.

5. Respondent No.1 vide letter No.F.1/19(2)/2011-SPC-1 dated 21.02.2013 inter-alia submitted that the Commission advertised 36 posts of Deputy Director (Administration/Insurance/Training etc.) in ESIC vide advertisement no.23/2011 which was published in the Employment News dated 10-16 December, 2011. Out of 36 posts, one post was reserved for persons with disabilities with category HH, OH-OL, OA or Cerebral Palsy. As per the advertisement, age relaxation of 5 years was permissible/allowed to persons with disabilities. Therefore the allegation of the candidate that no age relaxation was permitted was totally wrong. The complainant had only stated that if relaxation of 10 years + 3 years (for PH and OBC) was permitted, he would have been eligible to apply for the post. UPSC further submitted that with reference to Para 21 of the DoP&T's O.M. dated 29.12.2005, the said recruitment case was neither a post filled through open competitive examination nor a post belonging to Group C or D category. Therefore, candidates with disabilities could be entitled to a

relaxation of 5 years in upper age limit which is applicable in case where recruitment is made otherwise than through open competitive examination for Group A and B posts.

6. A copy of the reply was forwarded to the complainant for submission of his comments. The complainant vide letter dated 20.04.2013 submitted that the Commission be called upon to produce the relevant GOs/OMs which provide for only 5 years of age relaxation to candidates with disabilities in any type of recruitment process.

7. After considering respondent's reply dated 21.02.2013 and complainant's rejoinder dated 20.04.2013, a hearing was scheduled on 22.07.2013.

8. On 22.07.2013, none appeared on behalf of the Complainant.

9. During the hearing, the representatives of Union Public Service Commission submitted that as indicated in the advertisement, the applications for 36 posts of Deputy Director (Administration/Insurance/Training etc.) in the Employees' State Insurance Corporation were invited for recruitment by selection method of recruitment. The recruitment was not through "Open Competitive Examination". The respondent also sought to highlight the distinction between the expressions "By Open Competition" and "By Open Competitive Examination". In the open competitive examination, the candidates possessing higher qualifications are treated equal to those candidates who possess minimum threshold qualification and no weightage is given to the experience or the desirable qualifications. The mode of recruitment to the post in question was on the basis of selection and not on the basis of direct open competitive examination. In selection method, in the event of the number of applications being large, the Commission adopts short-listing criteria to restrict the number of candidates to be called for interview to a reasonable number by any or more of the following methods as prescribed in the advertisement itself :-

- (a) On the basis of higher educational qualifications than the minimum prescribed in the advertisement.
- (b) On the basis of higher experience in the relevant field than the minimum prescribed in the advertisement.
- (c) By counting experience before or after the acquisition of essential qualifications.
- (d) By holding a Recruitment Test.

10. Whereas in the Open Competitive Examination, no such restrictions for shortlisting the candidates are applied and all the eligible candidates who apply in response to the advertisement are allowed to compete on equal footing. Examination tools are used to find meritorious candidates. In the present case, the recruitment was to be held on the basis of selection procedure which was otherwise through the open competitive examination. The Commission conducted the written test only for the purpose of short listing the candidates. The age relaxation in this method of selection is 5 years for Group 'A' and 'B' posts and if the candidate belongs to SC/ST or OBC category then additional relaxation is added as per the Government policy. In this case, the candidate in question after getting 8 years age relaxation i.e. 5 years as PH and 3 years as OBC was found overage and hence the online recruitment software did not allow/permit him to fill up the application form for the post in question.

11. In the above view of the matter, UPSC was directed as follows vide RoP dated 29.07.2013 :-
- (a) Demystify and simplify the nuanced distinction amongst the expressions "Recruitment through open competitive examination", "Recruitment through open competition" and "Recruitment by selection" – the expressions repeatedly and emphatically used by the respondent in the course of hearing, clarification in respect of this matter must be properly contextualized with the instant case.
 - (b) To clarify whether the recruitment against these 36 advertised posts was meant to be made through which one of the 3 expressions mentioned at (a) above.
 - (c) To clarify why only one post, instead of 2 posts was reserved since going by the relevant instructions of DoP&T, 2 posts/vacancies should have been reserved for persons with disabilities.
12. UPSC vide letter No.1/19(2)2011-SPC-I dated 08.11.2013 informed that the clarification sought vide Record of Proceedings dated 29.07.2013 pertains to ESIC and DoP&T and accordingly they were requested vide letter dated 24.09.2013 to furnish their reply/clarification. Since their replies were not received, despite reminders dated 17.10.2013 and D.O. dated 29.10.2013, it was decided to implead Department of Personnel & Training and Employees' State Insurance Corporation as respondents nos. 2 and 3 respectively.

Case No. 311/1012/2013

13. Shri Avdhesh Tiwari, a person with disability filed a complaint dated 13.08.2013 under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 and submitted that UPSC had published an advertisement No.11/2013 for the post of Assistant Director, Rajbhasha vide which only 5 years' age relaxation was provided to persons with disabilities whereas as per DoP&T's O.M. No.36035/3/2004-Estt.(Res) dated 29.12.2005, 10 years age relaxation is to be given to persons with disabilities.
14. The matter was taken up under Section 59 of the Act with the Secretary, Union Public Service Commission, New Delhi vide letter dated 04.11.2013. UPSC's stand vide letter No.F.1/49(05)/2013-R.IV dated 03.12.2013 was the same as in case no. 896/1011/12-13.
15. In view of the above, both the cases were scheduled for hearing on 08.01.2014.
16. During the hearing on 08.01.2014, The representative of UPSC, the Respondent No.1 submitted that the O.M. No. 36034/2/2013-Estt. (Res.) dated 08.04.2013 does not actually address the issues raised by this Court vide Para 6 of the Record of Proceedings dated 29.07.2013. The said O.M. is reproduced below :-

"Subject:- Recruitment on all India basis by open competition and otherwise than by open competition – clarification regarding.

.....

The undersigned is directed to say that the Ex-servicemen (Re-employment in Central Civil Services and Posts) Amendment Rules, 2012, interalia provides as follows:-

- “5(b) For appointment to any vacancy in Group A and Group B services or posts filled by direct recruitment otherwise than on the results of an **Open All India Competitive Examination**, the upper age limit shall be relaxed by the length of military service increased by three years in the case of ex-servicemen and commissioned officers including Emergency Commissioned Officers or Short Service Commissioned Officers.
- (c) For appointment to any vacancy in Group A and Group B service or posts filled by direct recruitment **on the results of an All India Competitive Examination**, the ex-servicemen and Commissioned Officers who have rendered at least five years military service and have been released:-
- (i) on completion of assignment (including those whose assignment is due to be completed within one year) otherwise than by way of dismissal or discharge on account of misconduct or inefficiency; or
- (ii) on account of physically disability attributable to military service or on invalidment, shall be allowed maximum relaxation of five years in the upper age limit.”
2. This Department has been receiving representations and RTI applications to clarify the meaning of the phrases “recruitment otherwise than on the results of an Open All India Competitive Examination” and “posts filled by direct recruitment on the results of an All India Competitive Examination” mentioned in the above paragraph.
3. It is hereby clarified that instructions on the subject already exist that the expression ‘direct recruitment on the results of an All India Competitive Examination’ means (i) all recruitment by UPSC whether through written examination or by interview or both and; (ii) recruitment made by other authorities including Staff Selection Commission or any other appointment authority through written competitive examination or tests (but not by interview only). The expression ‘direct recruitment otherwise than by open competition means’ (i) any recruitment not made by the UPSC or (ii) recruitment not made through written competitive tests held by any other authority.
4. All the Ministries/Departments are requested to bring it to the notice of all establishments under their control.”

The aforesaid O.M. of DoP&T does not actually address the issues raised by this Court vide Para 6 of the Record of Proceedings dated 29.07.2013. This O.M. only clarifies the distinction between the two expressions, namely, “**Direct recruitment on the result of All India Competitive Examination**” and “**Direct recruitment otherwise than on the result of an Open Competition**”. The expressions mentioned in the ROP dated 29.07.2013 in Para 6(a), more particularly, the expression “Recruitment by selection” has not been clarified. He further clarified that the method of recruitment for the post of Deputy Director in ESIC is by “selection”. In selection method, though anybody who is eligible, can apply for the post but he does not necessarily have the right to be considered in as much as the UPSC

can adopt its own procedure on the basis of equality and equity to short-list the number of candidates for making selection. Whereas in the All India Open Competitive Examination, all the eligible candidates whosoever apply, have a right to be considered. The recruitment is made on the basis of written examination or by interview, or by both. This procedure of the UPSC has been upheld by the Apex Court in various judgments. Had it not been so, then there would have been no need for Para 21(i)(b) of DoP&T's O.M. No.36035/3/2004-Estt.(Res) dated 29.12.2005 as, in such an eventuality, it would become redundant. In cases of direct recruitment through open competitive examination like Civil Services Examination, Indian Forest Service Examination, Indian Statistical Service Examination etc., the upper age limit is relaxed by 10 years. In case of recruitment by selection method, the upper age is relaxed by 5 years only in respect of persons with disabilities belonging to General Category.

17. It was observed that the clarification given by DoP&T, particularly in Para 3 of their O.M. dated 08.04.2013 was not in conformity with the logical understanding of the provision in Para 21 of DoP&T's O.M. dated 29.12.2005 as the use of the expression "otherwise than" occurring in Para 21 complicates the issue. Since the Nodal Department in the Government of India with respect to the matters relating to recruitment and also the appropriate Department to interpret the expression used in its own O.M. happens to be the DoP&T, that Department was directed to clarify the following:-

- (a) Clarification sought under Para 6 of RoP of this Court dated 29.07.2013 .
- (b) DoP&T's views in respect of the submissions of Respondent No.1, namely, UPSC, more particularly, those contained in these Record of Proceedings with reference to the interpretation of provisions of Para 21 of the DoP&T's O.M. dated 29.12.2005.
- (c) Issue clarificatory O.M. in respect of Para 21 of the said O.M. dated 29.12.2005 in simple intelligible language.

18. DoP&T vide letter dated 12.03.2014 furnished the following clarification :-

Expression	Clarification
Direct recruitment on the result of All India Competitive Examination.	The Department's O.M. No.36035/2/2013-Estt. (Res) dated 08.04.2013 clarifies the expression as below: All recruitment by UPSC whether through written examination or by interview or both; and Recruitment made by other authorities including Staff Selection Commission or any other appointment authority through written competitive examination or tests (but not by interview only).
Direct recruitment otherwise than by open competition (otherwise than through Open Competitive Examination)	The Department's OM No.36035/2/2013-Estt.(Res) dated 08.04.2013 clarifies the expression as below: Any recruitment not made through written competitive tests held by any other authority.

Recruitment by Selection	Para 3.11.1 of this Department's OM No. AB - 14014/48/2010-Estt.(RR) dated 31.12.2010, recruitment by selection is not a recognized method of recruitment.
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19. On 12.03.2014, none appeared on behalf of the complainant in Case No.896/1011/12-13, respondent no.1 and respondent no. 3.

20. Reiterating the written submissions dated 12.03.2014, the representative of DoP&T stated that all recruitments by UPSC whether through written examination or by interview or both; fall in the category of direct recruitment on the results of All India Competitive Examination.

21. Since the recruitment to the post of Deputy Director (Administration/Insurance/Training etc.) in the ESIC and to the post of Assistant Director, Rajbhasha in Central Board of Excise & Customs, Department of Revenue, Ministry of Finance was being made by UPSC, para 21(i)© of DoP&T's O.M. No. 36035/3/2004-Estt.(Res) dated 29.12.2005 would be applicable for the purpose of relaxation in upper age limit, which means the complainants in both the cases and all other similarly placed applicants with disabilities should have been given the benefit of relaxation in upper age limit by 10 years (15 years for SCs/STs and 13 years for OBCs). In the event that the recruitment process has not been completed, a corrigendum inviting applications from candidates with disabilities should be issued extending to such candidates, the benefit of relaxation in upper age limit in accordance with the stipulation of para 21(i)© of DoP&T's O.M. dated 29.12.2005 and they be included in the recruitment process accordingly. However, in case the recruitment process is already over, the UPSC is further advised to follow the instructions of DoP&T as clarified by that Department vide their letter F.No.36035/2/2013-Estt.(Res) dated 12.03.2014 (copy enclosed) for the purpose of relaxation in upper age limit and in that event, if the complainants choose to apply in the next round of recruitment of similar nature, they be given the benefit of relaxation of upper age limit to the extent of 11 years in case they become overage even with relaxation of 10 years so that the loss sustained by them for no fault of theirs can be compensated.

22. Action taken in respect of the matter be intimated to this Court within three months from the date of receipt of this order.

23. The matter stands disposed off with the above advice.

Sd/-

Encl :- As above.

(**P.K. Pincha**)
Chief Commissioner
for Persons with Disabilities