

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.864 OF 2010.  
(arising out of S.L.P.(C)No.5132/2006)

UNION PUBLIC SERVICE COMMISSION ...Appellant

VERSUS

SANJAY KUMAR MISHRA & ANR. ...Respondents

O R D E R

Leave granted.

Whether the action taken by the Union Public Service Commission (for short "the Commission") to comply with an interim order passed by Allahabad Bench of the Central Administrative Tribunal (for short, 'the Tribunal') in O.A. No.112 of 2004 titled Sanjay Kumar Mishra and another vs. Union of India and others and the statement made by the advocate holding brief of the Additional Standing Counsel appearing on behalf of the Union of India and others could be made basis by the Tribunal for granting relief to the respondents ignoring Rule 5(b) of the Engineering Services Examination Rules, 2004 (for short, "the Rules") is the question which arises for determination in this appeal.

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For the purpose of filling vacancies in various engineering services/posts, the Ministry of Railways issued the Rules vide notification No.2003/E(GR)I/18/2 dated 10th January, 2004. On the same day, the Commission issued advertisement notice No. 5/2004 for holding competitive examination. Respondent Nos. 1 and 2, who were then working as Assistant Executive Engineers in General Reserve Engineer Force in Border Roads Organization, Ministry of Surface Transport, applied for being considered for appointment against the advertised posts. The Commission

did not entertain their candidature because as on the cut-off date specified in Rule 5(a) of the Rules they had become overage and they could not be given the benefit of age relaxation in terms of Rule 5(b) because the Border Roads Organization, Ministry of Surface Transport did not figure in the list of the departments/offices enumerated in the table appearing below that rule. The respondents filed an application under Section 19 of the Administrative Tribunals Act, 1985 for issue of a direction to the opposite parties to give them benefit of age relaxation and allow them to participate in the Combined Competitive Examination. By an interim order dated 2.6.2004, the Tribunal directed the Commission to allow the respondents

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to provisionally appear in the examination with the rider that their results shall not be declared till further orders.

In compliance of the aforementioned order, the Commission permitted the respondents to take the examination. To this effect, letter dated 1.7.2004 was sent by Deputy Secretary of the Commission to the Additional Standing Counsel appearing on behalf of the Government of India. For the sake of reference that letter is reproduced below:

"BY SPEED POST  
COURT CASE  
No.F23/1/2004-E(B)  
Dt. 1 July 2004.

Shri Satish Chaturvedi, Advocate  
Additional Standing Counsel,  
Government of India,  
Chamber No.11, High Court,  
(Old Building)  
Allahabad.

Sub: O.A. No. 112 of 2004 filed by Shri Sanjay Kumar Mishra and Anr. Vs. Union of India & Ors. in the Central Administrative Tribunal, Allahabad Bench for age-relaxation as departmental candidates of Border Roads Organisation - Regarding.

Sir,

I am directed to refer to your letter dated 4.5.2004 forwarding therewith a copy of the interim orders passed by the Hon'ble CAT in the above mentioned case. I am to inform you that,

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as per the directions of the Hon'ble CAT both the candidates viz. Shri Sanjay Kumar Mishra and Shri Ram Kishore (applicants in the O.A.) have been made eligible provisionally for the examination after giving them benefit of age relaxation being Govt. servants. As such the interim orders of the Hon'ble CAT stand implemented.

Yours faithfully

(S.L. Gupta)  
Deputy Secretary  
Union Public Service Commission'  
New Delhi, Tel: No. 23381056"

On the next date of hearing i.e., 31.8.2004, no one appeared on behalf of the respondents, but after taking note of the statement made by Shri P. Srivastava, Advocate appearing for the Additional Standing Counsel for the Government of India, the Tribunal disposed of the original application by directing the Commission to declare the result of the respondents treating them eligible. Paragraphs 3 and 4 of the order passed by the Tribunal read as under:

"3. Shri P. Srivastava holding brief of Sri S. Chaturvedi learned counsel for the respondents submits that pursuant to the interim order passed by the Tribunal, the applicants have been made eligible for the examination and they have been given the benefit of age relaxation being Government servants. It is submitted by the learned counsel for the respondents that the O.A. has in the circumstances, become infructuous.

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4. Having heard counsel for the parties and upon regard being had to the statement made at bar by the counsel for the respondents and also the letter dated 1.7.2004 produced before us during the course of argument by Sri P. Srivastava holding brief of Sri S. Chaturvedi learned counsel for the respondents, we dispose of the O.A. with direction that the result of the applicants examination in question shall be declared treating them to be eligible being within prescribed age limit and the age relaxation granted by the Commission would be taken to be final."

Upon receipt of the Tribunal's order, the

Commission became alive to the blunder committed by the advocate who appeared on behalf of the Additional Standing Counsel and filed an application for review, which was dismissed by the Tribunal. Civil Misc. Writ Petition No.5662 of 2006 filed by the petitioner was dismissed by the Division Bench of the High Court by observing that the Tribunal had decided the original application in view of the statement made by the counsel appearing on behalf of the Union of India and others.

We have heard Ms. Binu Tamta, learned counsel for the petitioner and carefully perused the records. Rule 5 of the Rules notified by the Ministry of Railways (Railway Board) for holding Combined Competitive Examination for recruitment to various engineering cadres together with the relevant portion of the table appearing below that rule

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reads as under:

"5(a) A candidate for this examination must have attained the age of 21 years and must not have attained the age of 30 years on the 1st August, 2004 i.e. he must have been born not earlier than 2nd August, 1974 and not later than the 1st August, 1983.

(b) The upper age limit of 30 years will be relaxable up to 35 years in the case of Government servants of the following categories, if they are employed in a Department/Office under the control of any of the authorities mentioned in column 1 below and apply for admission to the examination for all or any of the Service(s)/Post(s) mentioned in column 2, for which they are otherwise eligible.

(i) A candidate who holds substantively a permanent post in the particular Department/Office concerned. This relaxation will not be admissible to a probationer appointed against a permanent post in the Department/Office during the period of his probation.

(ii) A candidate who has been continuously in a temporary service on a regular basis in the particular Department/Office for at least 3 years on the 1st August, 2004.

| Column 1 | Column 2 |
|----------|----------|
| (1)      | (2)      |

Railway Department

I.R.S.E.

I.R.S.M.E.  
I.R.S.E.E.  
I.R.S.S.E  
I.R.S.S.

Central Public Works  
Department

C.E.S. Group 'A' C.E. &  
M.E.S., Group 'A'

Engineer in-Chief

M.E.S. Group 'A'

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Army Headquarters

(I.D.S.E.) (B&R Cadre)  
and Surveyor or Works  
Cadre, MES Group 'A'  
(I.D.S.E.) (E & M Cadre)

Directorate General  
Ordnance Factories  
Central Water Commission

I.O.F.S. Group 'A'  
C.W.E. Service (Group  
'A') Central Electricity  
Authority C.P.E. Service  
(Group 'A')

Wireless Planning and  
Coordination Wing/  
Monitoring Organization

Engineer (Group 'A')

Ministry of Communication,  
Department of  
Telecommunications

Indian Telecommunication  
Service Group 'A'

Indian Navy

Indian Naval Armament  
Service, Indian Naval  
Store Officer Grade-I

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Note.- The period of apprenticeship if followed by  
appointment against a working post on the Railways may  
be treated as Railway Service for the purpose of age  
concession."

A plain reading of the above reproduced rule  
makes it clear that the minimum and maximum age prescribed  
for recruitment to the posts specified in different  
categories were 21 years and 30 years respectively as on 1st  
August, 2004. In terms of Rule 5(b), the upper age limit  
could be relaxed up to 35 years in the case of Government  
servants of the enumerated categories if they were employed  
in a Department/Office under the control of any of the  
authorities mentioned in column 1 of the table and applied  
for admission to the examination for all or any of the  
service(s)/post(s) mentioned in column 2.

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Undisputedly, as on the last date fixed for  
submission of application, the respondents were not

employed in a department/office under the control of any of the authorities mentioned in column 1 of the table appearing below Rule 5(b). It is also not in dispute that none of the posts advertised by the Commission was meant for the Border Roads Organization. As a matter of fact, in the original application filed by them, the respondents had questioned the non-inclusion of the Border Roads Organization in the list of the departments of whose employees were eligible for age relaxation of 5 years. This being the position, the Tribunal could not have disposed of the original application only on the basis of statement made by the advocate who appeared as proxy counsel on behalf of the Additional Standing Counsel and directed the petitioner to declare the result of the respondents examination.

A careful reading of letter dated 1.7.2004 sent by Deputy Secretary of the Commission to Shri S. Chaturvedi, Additional Central Government Standing Counsel,

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Government of India makes it clear that in compliance of the interim order passed by the Tribunal, the respondents were provisionally allowed to take the examination. By no stretch of imagination, that letter could be interpreted as a decision of the competent authority to relax the upper age limit prescribed in Rule 5(a) of the Rules. So far as the petitioner-Commission is concerned, it is not empowered to grant relaxation in terms of Rule 5(b) of the Rules. Therefore, the Tribunal committed a serious jurisdictional error by directing declaration of the result of the respondents examination. We have no doubt that if the Tribunal had examined the entitlement of the respondents to get age relaxation in terms of Rule 5(b) of the Rules, it would have found that the respondents were neither eligible nor entitled to age relaxation.

Before parting with the case, we consider it appropriate to observe that age relaxation can be granted by the competent authority strictly in accordance with the statutory rules, if any, framed for that purpose or the policy framed by the Government and no court, tribunal or other judicial forum has jurisdiction, power or authority to grant such relaxation and that too in the absence of any challenge to the vires of the relevant rules or the policy

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decision.

In the result, the appeal is allowed. The impugned order of the High Court as also the one passed by the Tribunal are set aside and the original application filed by the respondents is dismissed. The parties are left to bear their own costs.

.....J.  
(G.S. SINGHVI)

.....J.  
(ASOK KUMAR GANGULY)

NEW DELHI,  
JANUARY 20, 2010.

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ITEM NO.3

COURT NO.12

SECTION XI

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).5132/2006

(From the judgement and order dated 31/01/2006 in CMWP No. 5662/2006 of The HIGH COURT OF JUDICATURE AT ALLAHABAD)

UNION PUBLIC SERVICE COMMISSION

Petitioner(s)

VERSUS

SANJAY KUMAR MISHRA & ANR.

Respondent(s)

(With prayer for interim relief and office report )

Date: 20/01/2010 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI  
HON'BLE MR. JUSTICE ASOK KUMAR GANGULY

For Petitioner(s) Ms. Binu Tamta,Adv.

For Respondent(s)

UPON hearing counsel the Court made the following  
O R D E R

Notice of the special leave petition was served upon the respondents well before March, 2008. On 14.3.2008, the Court directed that the case be listed for final disposal on a non miscellaneous day in August, 2008. However, when the case was listed on 7.12.2009, by inadvertence a direction came to be given for fresh service of notice upon the respondents. In our  
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opinion, it is not necessary to wait for the fresh service because the respondents have been duly served but neither of them appeared to contest the prayer made on behalf of the petitioner.

Arguments heard.

Order dictated.

The appeal is allowed in terms of the signed order.

(A.D. Sharma)  
Court Master

(Mithlesh Gupta)  
Court Master

(Signed Order is placed on the file)