

**CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH  
61/35, COPERNICUS MARG, NEW DELHI-110001**

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**Order Sheet**

Item no.: 2  
M.A./1353/2024 (DELHI)  
[ EARLY HEARING ]  
In  
O.A./1483/2024  
RECRUITMENT  
M.A./1307/2024  
MA Joining Together  
Court No.: 4

**No of Adjournment:**

**Order Dated: 16/04/2024**

**NITIN  
Vs  
DSSSB**

**For Applicant(s) Advocate :** Mr. Anuj Agarwal

**For Respondent(s) Advocate :** Mr. Amit Anand for DSSSB, Ms. Anupama Bansal for MCD

**Order of The Tribunal**

Learned counsel for applicants presses for grant of interim relief as he would contend that the last date of submission of application form is 17.04.2024 (Ram Navmi, Holiday). To substantiate their claim for interim relief, he would contend that on 24.01.2024, the MCD sent requisition to DSSSB for selecting candidates for the post of Assistant Sanitary Inspectors (ASI). Despite several attempts on the part of MCD i.e. the user department, on 29.07.2020, 01.12.2020, 23.07.2021 and 03.08.2022

no concrete action has been taken. The applicants received RTI information wherein it was contended that out of total posts of Assistant Sanitary Inspector, 117 posts in MCD are vacant for Direct Recruitment Quota. DSSSB is being requested to fill the vacancy. As regards vacancy of Malaria Inspectors, the same may be ascertained from Health Department.”

2. Learned counsel for applicants draws attention to letter dated 01.12.2020 for filling up the vacancies, wherein it has been highlighted by the respondents-user department that there are acute shortage of Sanitary Inspectors. Operating para of the same reads as under:-

*“There are two Zones namely Shahdara(South) and Shahdara(North) Zone under the jurisdiction of EDMC. The work of sanitation is being taken by employees working in different capacities. To supervise the sanitation works like sweeping of roads, desilting of drains less than 4', collection and transportation of Municipal Solid Waste etc., it is very essential to have the required strength of Supervisors at the level of ASIs. There are 91 sanctioned posts under direct recruitment quota of ASI in EDMC against which only 16 ASIs are working. There are 75 posts lying vacant under direct recruitment quota.*

*For effective supervision of sanitation work, it is very essential to fill up the vacant posts of ASIs. Therefore, it is requested to kindly post 75 Nos. of ASIs to EDMC at the earliest so that the sanitation services can be further improved please”*

2.1. It is the contention of the learned counsel for the applicants that the selection is under process by the respondents – DSSSB. It is further contended that for the last four years the examination could not be conducted and the applicants herein have become overage in the meantime. Last advertisement was issued by the respondents for filling up the post of ASI in the year 2012. Therefore, in the last 12 years, till the present advertisement, no vacancies were filled up and no advertisement was issued.

2.2. Learned counsel for applicants further relies upon the Office Memorandum dated 18.05.1998 on the subject of recruitment of staff through Employment Exchange. The same is reproduced herein below:-

“The undersigned is directed to invite a reference to this Department's Office Memorandum No.14024/2/77-Estt(D) dt. 13.4.1977. These instructions, inter-alia,

provide that all vacancies arising under Central Government offices/establishments (Including quasi-Government institutions and statutory organisations) irrespective of the nature and duration (other than those filled through UPSC), are not only to be notified to, but also to be filled through the Employment Exchanges alone and other permissible sources of recruitment can be tapped only if the Employment Exchange concerned issues a Non-availability Certificate. There can be no departure from this recruitment procedure unless a different arrangement in this regard has been previously agreed to in consultation with this Department and the Ministry of Labour (Directorate General, Employment & Training). Similar instructions are also in force requiring vacancies against posts carrying a basic salary of less than Rs. 500/- per month in Central Public Sector Undertakings to be filled only through Employment Exchanges.

2. The Scheme of Employment Exchange Procedure came under the judicial scrutiny of the Supreme Court in the matter of Excise Superintendent, Malkapatnam, Krishan District, Andhra Pradesh v/s. K.B.N. Visweshwara Rao & Ors (1996 (6) SCALE 676). The Supreme Court, inter-alia, directed as follow:-

"It would be mandatory for the requisitioning authority/establishment to intimate the employment exchange and employment exchange should sponsor the names of the candidates to the requisitioning Departments for selection strictly according to seniority

and reservation, as per requisition. In addition, the appropriate Department or undertaking or establishment, should call for the names by publication in the newspapers having wider circulation and also display on their office notice boards or announce on radio, television and employment news bulletins and then consider the cases of all the candidates who have applied."

3. Accordingly, it is clarified that in addition to notifying the vacancies for the relevant categories (excluding those filled through the Union Public Service Commission / the Staff Selection Commission) to the Employment Exchange, the requisitioning authority/ establishment may keeping in view administrative / budgetary convenience, arrange for the publication of the recruitment notice for such categories in the "Employment News" published by the Publications Division of the Ministry of Information and Broadcasting, Government of India and then consider the cases of all the candidates who have applied Condition to the above, such recruitment notices should be displayed on the office notice boards also for wider publicity.

4. These orders will take effect from the date of issue and will not apply to such cases where process of recruitment through employment exchanges/open advertisement has been initiated before the said date.

5. All Ministries / Departments are requested to strictly adhere to the aforesaid instructions and also bring to the notice of their attached and sub-ordinate offices for information and compliance."

2.3 Learned counsel for applicants further relies upon OM dated 13.06.2016 for filling up the vacancies through employment exchange. The same is reproduced here:-

*“In continuation of this Department's Office Memorandum No. 14024/2/96-Estt. (D) dated 18th May, 1998 and further amended vide OM of even number dated 09th November, 2005 on the above noted subject wherein it has been prescribed that all vacancies to be filled on regular basis, except those which fall within the purview of UPSC/Staff Selection Commission, are to be notified in the local Employment Exchange/Central Employment Exchange as per the provisions of the Employment Exchange (Compulsory Notification of Vacancies) Act, 1959. In addition to the reporting of the vacancies to the local Employment Exchange/Central Employment Exchange, it has been stipulated that the vacancies should be given wide publicity on an all India basis. In this regard, it was advised that the advertisement should be placed in the Employment News/Rozgar Samachar published by the Publication division of Ministry of Information & Broadcasting. Such recruitment notices are also to be displayed on the Office Notice Board.*

*2. It has been decided that in addition to the above procedure, advertisement of vacancies may also be placed at the National Career Service (NCS) Portal of Ministry of Labour & Employment, which has been*

*developed primarily to connect the opportunities with the aspiration of youth.*

*3. These instructions shall be applicable to all services/posts. All Ministries/Departments are requested to bring these instructions to the notice of all concerned including attached and subordinate offices.”*

2.4 Learned counsel for applicants further relies upon the decision rendered by the Hon’ble High Court of Delhi in the matter of *Sachin and Ors. Vs. Central Reserve Police Force and Ors.*, W.P.(C) No. 90/2023 wherein one time relaxation was allowed. 3 years age relaxation was granted in the said case against the substantial delay of 6 years. Learned counsel for applicants does not dispute that he is seeking relaxation over and above the SC/ST and other categories. He would contend that the applicants herein filed a Writ Petition before the Hon’ble High Court seeking prayer for issuing appropriate advertisement for inviting applications. The said Writ was disposed of vide order dated 21.08.2023. Paras 31, 32 and 33 of the same are reproduced below:-

*“31. It would, however, be open to the petitioners to approach the CAT for determination of their grievances on merit. It is made clear that this Court has not*

*expressed any opinion on the merits of the instant case.*

*32. Accordingly, this petition is dismissed. Pending applications, if any, also stand dismissed.*

*33. The order be uploaded on the website forthwith.”*

2.5 Learned counsel for applicant further relies upon OA No. 3979/2023 decided on 18.12.2023. Paras 5, 6, and 7 of the same are reproduced here:-

*‘5. We are conscious of the limits of our own jurisdiction and would be hesitant in issuing any direction to the respondents over a subject which is squarely within the domain of administration. The present subject, undoubtedly, squarely falls in that. However, considering that the applicants had approached the Hon'ble High Court and it is on account of liberty given by the Hon'ble High Court, we are of the considered view that the present OA deserves to be disposed of at the initial stage itself with a direction of the respondents to take an appropriate decision upon the representations, which the applicants have furnished to the Commissioner, MCD ie., Respondent No.2. These representations are placed as Annexure A-1 (Colly).*

*6. In view of what has been stated above, the OA stands disposed of with a direction to the Competent Authority amongst the respondents to take an appropriate decision in accordance with rules, instructions, and the*



*facts and circumstances of the case upon the pending representations of the applicants within a period of eight weeks from the date of receipt of a certified copy of this order.*

*7. We would like to emphatically state that neither have we examined nor commented upon the merits of the OA or the claim of the applicants.'*

2.6 Learned counsel for applicants further contends that there is backlog of vacancies also which ought to have been taken care of while issuing the advertisement and year wise vacancies also have to be taken care of.

3. Per contra, Mr. Amit Anand, learned counsel for respondents, would contend that rules of the game and the eligibility conditions as such are sought to be changed by seeking the relief in the present OA after the recruitment process has already started. He would contend that similarly situated persons would be deprived of the right to approach the Tribunal and it would be discriminatory if interim prayer is granted.

3.1 Learned counsel for respondents relies upon the decision passed by the Hon'ble Apex Court in the matter of **Anil Kishore Pandit Vs. The State of Bihar and Others**, Civil Appeal No. 1566 of 2024. Para 7 of the same reads as under:-

*“7 Learned counsel for the appellant assails the impugned order on the ground that the Division Bench erred in ignoring the date of the public advertisement that mentioned the cut off date as 01 January, 2011, for reckoning the age of a candidate, which in the case of the appellant herein who belongs to the extremely backward category, was 40 years. He states that the subsequent communication issued by the respondents changing the cut off date from 01 January, 2011 to 01 November, 2011, was not placed in public domain through any advertisement, as had been done earlier. Instead, it was displayed only on the Notice Board in the office of the Collectorate, which was not the correct procedure to be adopted and could not have been treated as overwriting the initial advertisement issued on 01 January, 2011.”*

3.2 Learned counsel for respondents further relies upon the decision passed by the Hon'ble High Court of Punjab & Haryana at Chandigarh in the matter of **Samandeep Singh and Ors. Vs. State of Punjab & Ors.** LPA No. 745-2021. Operating para of the same

is reproduced herein:-

*“Upper age relaxation could not be given to the appellants, just because no such recruitment has been done since 2016 and as such they have lost chance to be selected as Sub-Inspectors. In Mangat Singh's case (supra), learned Single Judge of this Court while taking sympathetic view asked the Government to consider the prayer of the petitioners therein for relaxation in the upper age limit. In the present case, the learned State counsel brought to the notice of the learned Single Judge that in pursuance of the aforesaid directions the request of the petitioners therein was considered and ultimately rejected by the Government vide speaking order dated 14.7.2020 (Annexure R-1 in the Writ Petition). Thus, we are of the view that the decision in Mangat Singh's case (supra) is not of any help to the appellants in any manner.”*

3.3 Finally, learned counsel for the respondents would contend that there arises no question of backlog vacancies as the same is not applicable in Direct Recruitment Rules.

4. Heard learned counsels for the parties.

4.1 We find that the applicants have *prima facie* made out a case in their favour, inasmuch as, as already highlighted above,

requisition was sought by the respondents' user department as early on 24.01.2020 and till the present advertisement, no concrete action has been taken despite several communications between the respondents qua the holding of the exam. By virtue of the same, the applicants lost valuable opportunity which would have accrued to them at the relevant point of time. The issue of age relaxation is a larger issue which has to be adjudicated as per the eligibility and rules position contained under the RRs.

4.2 We further observe that power to relax is contemplated under Rule 5 as already quoted above. Be that as it may, taking rival contentions of the parties, at this stage, we direct the respondents to allow the applicants to participate in the selection process subject to condition that the participation by itself would not give an indefeasible right to applicants to claim age relaxation. The issue of granting age relaxation and to what extent the power shall be determined at the stage of final hearing. Allowing participation online as well as offline mode to the applicants by filling the appropriate application forms to the competent authority

amongst the respondents shall be permitted by tomorrow. We make it clear that the results of the present applicants shall be kept in a sealed cover. It shall not be open without permission of the Courts, to declare the results until and unless the issue on merit qua the age relaxation is adjudicated.

5. Learned counsel for respondents seeks and is allowed two weeks' time to file reply. Rejoinder, if any, may be filed within two weeks thereafter.

List on 14.05.2024.

Order **DASTI**.

**Chhabilendra Roul**  
Member (A)

**Manish Garg**  
Member (J)

/daya/