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**(2002) 05 DEL CK 0212**

**Delhi High Court**

**Case No:** C.W.P. No. 2706 of 1999

P. Gopalakrishnan

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

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**Date of Decision:** May 18, 2002

**Acts Referred:**

- Constitution of India, 1950 - Article 14

**Hon'ble Judges:** S.B. Sinha, C.J; A.K. Sikri, J

**Bench:** Division Bench

**Advocate:** S.K. Gupta, for the Appellant; Amit Andley, for the Respondent

**Final Decision:** Allowed

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### **Judgement**

S.B. Sinha, C.J.

The petitioner has filed this writ petition for issuance of a writ of certiorari for setting aside the judgment dated 17.03.1999 passed by the Central Administrative Tribunal, Principal Bench, New Delhi ( hereinafter referred to as "the Tribunal" ) in O.A. No. 211 of 1996.

2. The petitioner was appointed as "Lower Division Clerk" in the Armed Forces Headquarters in the Ministry of defense. In the year 1991, he appeared for recruitment in the Examination held by the Staff Selection Commission ( in short, "the SSC" ) for the post of Inspector of Central Excise and Income Tax as also Grade - II of Delhi Administration Subordinate Services. He upon selection was appointed in the said post on or about 13.08.1993.

3. He continued, however, to retain his lien in the post of LDC in the Armed Forces Headquarters till 12.08.1996. He applied again for the post of Inspector of Central Excise and Income Tax where for an Examination was conducted by the SSC in the year 1993. He sought for relaxation of his age in terms of Clause 4(e) of the advertisement issued by the SSC published in the Employment News of 10-16 July, 1993. Interpretation of the said provision falls for consideration in this writ petition.

4. As the applicant despite having been allowed to compete in the examination and asked to submit various papers, his representation for age relaxation had been rejected by order dated 14.06.1995.

According to the petitioner, he was eligible for age relaxation both as LDC as well as a member of the Delhi Administration Subordinate Services. It had also been pointed out that the persons similarly situated had been granted the same benefit.

6. The representation made by the petitioner was rejected by the respondents in terms of their letter dated 12.05.1995 where after the petitioner approached the learned Tribunal.

7. Before the learned Tribunal, an earlier decision of its, passed in O.A. No. 456 of 1996 titled m1 "P.B. Narayanan v. Union of India & Ors." on 28.05.1997 was pressed into service. The learned Tribunal held that only the LDCs working in one wing of the Government can take the benefit of age relaxation clause while applying for appointment in another wing of the Government.

8. The learned Tribunal distinguished P.B. Narayanan's case ( Supra ) on the aforementioned ground and relied upon a decision of the Madras Bench of the Tribunal in O.A. Nos. 1075, 1076, 1099, 1120 and 1124 of 1995 disposed of by an Order dated 05.09.1996 wherein it was held that the SSC is vested with the authority to take a view on the nexus principle.

9. Clause 4(e) of the said advertisement is to the following effect :-

"e. Upper age limit is relaxable up to the age of 40 years (45 years for Scheduled Caste/Scheduled Tribe candidates) to the departmental candidates who have rendered not less than 3 years continuous and regular service as on 9.8.1993 provided they are working in posts which are in the same line or allied cadres and where a relationship could be established that the service rendered in the Department will be useful for the efficient discharge of duties of posts for which the recruitment is being made by this examination in terms of DP&AR's O.M. No. 4/4/74-Estt(D) dated the 20.7.76 and DP&T's O.M. No. 35014/4/79-Estt(D) dated 24.10.85, O.M. No. 15024/3/87-Estt(D) dated 7.10.87 and O.M. No. 15012/1/88-Estt(D) dated 20.5.1988."

10. In terms of the said Rule inter alias the following categories of the departmental candidates would be eligible to get the benefit of age relaxation :-

"(iv) LDCs/UDCs/Stenographers Grade D working in the cadres of CSCS/CSSS, Indian Foreign Services(B), Railway Board Secretariat Service, AFHQ, Election Commission of India, Ministry of Parliamentary Affairs and Central Vigilance Commission."

11. A Rule, as is well known, is applicable when the selection process starts.

Keeping in view the fact that at the relevant point of time the petitioner still had his lien in the Armed Forces Headquarters, he was entitled to the benefit thereof by

reason of the aforementioned Rule. The SSC had not been conferred with any power of interpreting the said Rule. The learned Tribunal, in our opinion, thus, committed an error in holding that the SSC could interpret the said Rule and apply the same in the matter for grant of relaxation.

It is not in dispute that the written test for the said Examination was held on 12.12.1993 and interview took place on 28.10.1994. Only on or about 31.01.1995, the Department sought for clarification and guidelines for establishing nexus. The purported clarifications, which run counter to the Rules, could not be given any retrospective effect. Only in the Memorandum dated 31.01.1995, in relation to a particular candidate, it was stated :-

"(v) In support of the claim for age relaxation as a "Departmental" candidate, a complete service certificate from the present employer clearly indicating the length of service, nature of duties performed and job responsibilities handled by him in the various posts held by him during the 3 year period ending on 9.8.93. The service certificate should also indicate that the service has been regular and continuous, and that the candidate is still continuing in service without break. In this connection, it is stated that the service certificate already produced by the candidate does not indicate the nature of duties performed by the candidate and the job responsibilities"

12. Furthermore, even the SSC has requisite jurisdiction with regard thereto as the original applicant pointed out that the persons similarly situated had been granted age relaxation and in that view of the matter the policy decision should have been applied also in the case of the petitioner. Any direction or departure from a known policy or practice would be discriminatory.

The principle for age relaxation must be applied uniformly .A policy decision, as is well known, must be applied in relation to all, who are entitled to the benefit therefore. Any deviation or departure from the policy decision would attract the wrath of Article 14 of the Constitution of India ( in short, "the Constitution" ). ( See [State of Mysore and Another Vs. H. Srinivasmurthy](#), ).

13. For the reasons aforementioned, the impugned judgment cannot be sustained which is set aside accordingly. This writ petition is accordingly allowed. However, in the facts and circumstances of the case, there shall be no order as to costs.