

SUPREME COURT OF INDIA

Silvey & Ors.

Vs.

Arun Varghese & Anr.

S.L.P. (C) No.830 of 2006

(Arijit Pasayat and P.Sathasivam,JJ.)

26.02.2008

JUDGMENT

Dr.Arijit Pasayat, J.

1. Leave granted.
2. Challenge in this appeal is to the order passed by a Division Bench of the Madhya Pradesh High Court, dismissing the writ petition filed by the appellants.
3. Factual background facts in a nutshell is as follows:

“ The appellant No.2 herein invited applications for several posts including the post of Cook by Employment/ Recruitment Notice published in the Employment News dated 19-25th October, 2002. The upper age limit in regard to unreserved category candidate was mentioned as 25 yrs. Respondent furnished his date of birth as 17.3.1978 and on that basis he was selected. The School Certificate and other records showed the date of birth as 17.3 1977. Respondent claimed that he did not suppress any facts and he disclosed all the material facts in regard to his date of birth and had also filed an affidavit stating that his date of birth was 17.3.1978 and he had sought for correction of date of birth in the School Records. However, as he was found to be over 25 years, with reference to the date of birth in the School Records, though selected, he was not appointed. Feeling aggrieved by his non-appointment, though selected, the Respondent herein filed O.A. No.322/2003 before the Central Administrative Tribunal, Jabalpur Bench (in short `CAT') seeking a direction to the appellants herein to appoint him as Cook. One of the grounds urged by him by amending the applications was that the Central Civil Services and Civil Posts (Upper Age Limits for Direct Recruitment) Rules, 1998 ('Rules' for short) which came into force on 1.4.1999 had increased the upper age limit for recruitment by the method of "Direct Open Competitive Examination" to the Central Civil Services and Civil Posts specified in the relevant Service/Recruitment Rules, by two years. He contended that

he was entitled to the benefit of said increase and if two years was added, he would fulfill the age recruitment even if the date of birth is taken as 17.3.1977”.

4. CAT allowed the application holding that the Rules applied to the post for Cook for which the respondent had applied and the applicant was entitled to relaxation by two years under the said rules and if such age relaxation is accorded, his selection would be valid.

5. Appellant questioned the correctness of the CAT's order by filing a writ petition which came to be dismissed by the High Court of the impugned order.

6. Appellants's stand before the High Court was that the said rules applied only to recruitment through direct competitive examination conducted by the Union Public Service Commission (in short `UPSC') and the Staff Selection Commission (in short `SCC'). The recruitment in Indian Air Force is not through Central Agency but by a Board constituted by the Commanding Officer of the Station/Units and, therefore, the Rules did not apply.

7. The High Court found that the recruitment was by direct recruitment though it was not by the UPSC/SCC but authority under the Central Government. Therefore, the CAT rightly held that the Rules were applicable. The High Court found no substance in the plea about the false declaration of age and non-applicability of the Rules. 8. In support of the appeal, learned counsel for the appellant submitted that the admitted position is that according to his own affidavit, he has mentioned his date of birth to be 17.3.1978 and in the application form on the basis of the matriculation certificate it was mentioned as 17.3.1977. CAT accepted that the correction of date of birth could have been done only by moving an appropriate application before the concerned authorities or the Education board. Having so observed, the CAT held that this case is of relaxation.

9. It was contended that since the respondent himself did not claim any relaxation at any stage, and gave false declaration about his age, therefore, the view of the CAT and the High Court is unsustainable.

10. Learned counsel for the respondent on the other hand submitted that there was no wrong declaration. In fact, in the form and the affidavit both the dates were indicated.

11. From the record it appears that the authority did not issue any appointment order to the respondent on the ground that he gave a false date of birth. Stand of the respondent before CAT was that it appears from the application filed before it is that the date of birth of the respondent is 17.3.1978. In an annexure he claimed it to be 17.3.1978. The appellants knew about this date and, therefore, held him to be qualified candidate and, therefore, he was interviewed by the Selection Committee and found suitable. Having proceeded in that manner it was not open to the appellants to deny appointment.

12. It appears that the CAT itself accepted that the question of correcting date of birth was not within the domain of the appellants and it was open to the respondent to move appropriate authority in that regard. Having said so, CAT held that there was scope for

relaxation. There were no pleadings in that regard. As a matter of fact, there is no reference even to the relaxation aspect in the application before CAT. For the first time such stand was taken during the hearing before the CAT. The High Court unfortunately did not consider this aspect.

13. Therefore, the orders of the CAT and the High Court are unsustainable and are quashed. It will be open to the respondent to move to the authority for relaxation if he is so advised. It shall be open to the authorities to pass appropriate orders in accordance with law. We do not express any opinion about the acceptability or otherwise if prayer for relaxation is made.

14. The appeal is allowed to the aforesaid extent without any order as to costs.