

CASE NO.:
Appeal (civil) 2478-79 of 1993

PETITIONER:
STATE OF ORISSA AND ORS.

RESPONDENT:
SUDHIR KUMAR BISWAL AND ORS.

DATE OF JUDGMENT: 16/08/1994

BENCH:
KULDIP SINGH & B.L. HANSARIA

JUDGMENT:
JUDGMENT

With C.A. No. 3929 of 1993

1994 SUPPL. (2) SCR 665

The Judgment of the Court was delivered by

HANSARIA, J. A challenge was made before the Orissa Administrative Tribunal to some portion of the proviso to rule 5(1) of Orissa District Revenue Service (Method of Recruitment and Conditions of Service Rules) 1983 hereinafter the Rules; so also to certain part of: rule 6(1) of the Rules. The Tribunal has accepted the challenge. Hence these appeals.

2. Rule 5(1) deals with the eligibility conditions of direct recruitment and has, inter alia, provided that the candidate must be below 28 years, This find place in clause (b) which has the following proviso :

"Provided that the maximum age-limit may be relaxed by five years in case of candidates belonging to the Scheduled Castes and Scheduled Tribes and up to five year in case of candidates having actual work experience in Settlement/Consolidation, and to such extent in case of candidates of such other categories as Government may, by generator special order, specify from time to time", (underlining by us).

3. The challenge was to the under lined portion of the proviso. As to this, the Tribunal has stated that the same has conferred unbridled power; there being not guidelines for invoking this power. We are, however, of the view that the challenged portion of the proviso does contain some guidelines. The first is that the categories in relation to which the power can be invoked has to be analogous to the two categories specifically mentioned in the rule. To us this appears to be the clear intention, as in the first part of the proviso mentioned has been made to some categories, and so, "other categories" have to be akin to them, like other Backward Glasses. This apart, as the power has been conferred on the Government and can be exercised only by issuing general or special order, a presumption of invoking the power in appropriate cases only is permissible to be drawn. Further, the extent to which maximum age limit may be relaxed cannot also to unlimited, as in the case of candidates belonging to Scheduled Castes and Scheduled Tribes, as well as for other categories of candidates mentioned in the first pan of the proviso, the limit is of five years. We are of the view that the relaxation in case of other categories cannot also exceed five years.

4. We, therefore. do not agree with the Tribunal in the view it had taken about the power in question being unguided.

5. The next rule to be challenged is a part of rule 6(1) which reads as below :

"Direct recruitment to the cadres of 'Revenue Inspectors, Amins and Collection Moharirs for the district shall ordinarily be made annually by the Collector, who shall invite applications from the candidates of the district through advertisement in the newspapers of the State".

6. The offending portion of this rule are the words "from the candidates of the district". Shri Panda appearing of the appellants has submitted in this connection that this is ordinary requirement because of the word "ordinarily" appearing in the sub-rule, We are, however, of the view that the word "ordinarily" as used and placed in the sub-rule, refers to the periodicity which is said to be annual. It has no connection with the place of residence of the candidates.

7. As to this part of the sub-rule, it has been pointed out by the Tribunal that the same is in conflict with Article 16(2) of the Constitution, which has laid down that no citizen shall be discriminated against, inter alia, on the ground of "place of birth, residence or any them". The aforesaid part of the sub-rule is thus clearly violative of the aforesaid prohibition and has, therefore, rightly been held to be ultravires.

8. We, therefore, reverse the view taken by the Tribunal qua the proviso to rule 5(1), subject to the observations made by Us relating to its real purport and reach, but affirm its view as regards the challenged part (6). As the selection had, however, been made on the basis of the applications which had been invited from the candidates of the concerned district alone, the selection made pursuant to such an imitation cannot be sustained. The selection of the respondents in C.A. No. 2419/1993 cannot, therefore, be upheld. The appellants are directed to issue fresh advertisement by inviting applications for the posts in question from the candidates of all the districts of the State. (May it be Stated that the requirement of residence within a State is not prohibited by Article 16(2) as was held in Pradeep Jain v. Union of India, AIR (1984) SG 1420. Appointments shall be made thereafter in accordance with the provisions contained in the Rules and other statutory provisions holding the field.

9. The appeals are disposed of accordingly.