

## IN THE SUPREME COURT OF INDIA

## CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.4262 OF 2008

(@ SLP(C) NO.21012 OF 2005)

UNION OF INDIA AND ANR.

Appellant(s)

VERSUS

T.UDHISTIRO

Respondent(s)

O R D E R

Leave granted.

The respondent herein was an employee of the Customs House/Department. He joined service as a Lower Division Clerk on 22.4.1992 and was promoted as Upper Division Clerk on 24.6.1998. He sought for promotion to the cadre of Customs Inspector. The respondent's case was not considered by the Department, as according to the Department rules, he had crossed the age of 55 years and he was not eligible to be considered for promotion for appointment to Customs Inspector/PO Examiner. The respondent filed an application for relaxation of his age but the same was rejected by the Department. Thereafter, the respondent moved an O.A. before the Central Administrative Tribunal at Hyderabad Bench and the same was rejected by the Tribunal and thereafter the respondent filed a writ petition before the High Court challenging the order passed by the Tribunal. The respondent pointed out before the High Court that the department had, under similar circumstances, in the case of A.P.Loganathan, another employee, had relaxed the age for promotion and

the respondent's case also should have been considered in terms of the relaxation order passed in A.P.Loganathan's case. This contention was accepted by the High Court and by the impugned judgment of the High Court it was directed that the relaxation of the age of the respondent's case may be considered in terms of the order passed in favour of A.P.Loganathan vide F.No.A.32011/44/04-AdIII A dated 16.12.2004. Aggrieved by this order, the Union of India has come up in this appeal.

Heard learned Addl.Solicitor General and learned counsel for the respondent.

It is pointed out by learned Addl.Solicitor General that the date of birth of the respondent was 5.6.1945 and the maximum age for promotion to the cadre of Customs Inspector/PO Examiner was 50 years and in the case of ex-servicemen for considering for promotion to the cadre of Customs Inspector, the age limit could be relaxable for a period of another 5 years. In the case of the respondent, he had completed the age of 55 years in May, 2003 and as regards the maximum age, even on the basis of relaxation, the respondent was not entitled to be considered for promotion and it was also pointed out that Loganathan's case was not applicable to the case relating to respondent and it was argued that the direction of the High Court cannot be complied with as Loganathan's case was not applicable to the present case.

On the other hand, learned counsel for the respondent contended that the respondent had served in the Army for a period of 20 years and therefore, he is entitled to the age relaxation even if he had completed 55 years. Of course, who have served the military, such person

was entitled to get age relaxation as per the various orders passed by the Union of India but in this case the maximum age relaxation is only 5 years. In the present case this was not applicable to the respondent as he had already crossed the age of 55 years in May, 2003 itself. The Union of India was right in refusing to relax further the age of the respondent and the direction of the High Court to consider the question of relaxation on the basis of A.P.Loganathan's case was not warranted in the facts and circumstances of the present case. Accordingly, we clarify the decision and the direction issued by the High Court is set aside to the extent indicated above. Appeal is disposed of on the above terms. No costs.

.....CJI.  
(K.G. BALAKRISHNAN)

.....J.  
(P. SATHASIVAM)

.....J.  
(J.M. PANCHAL)

NEW DELHI;  
7TH JULY, 2008.