

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: BANGALORE**

ORIGINAL APPLICATION NO.170/00098/2019

DATED THIS THE 12th DAY OF FEBRUARY, 2020

HON'BLE DR.K.B.SURESH, JUDICIAL MEMBER

HON'BLE SHRI C.V.SANKAR, ADMINISTRATIVE MEMBER

Rigesh M
S/o Shri K.Kottan
Aged about 33 years
O/o Addl. Commissioner of
Income Tax, Range-2
Central Revenue Building
N.G.Road, Attavara
Mangaluru-575001.

...Applicant

(By Advocate Shri.T.C.Gupta)

Vs.

1. Union of India through the
Finance Secretary
Ministry of Finance
Department of Revenue
Government of India
New Delhi-110001.

2. Pr. Chief Commissioner of Income Tax
Karnataka & Goa Region
Queens Road,
Bangalore-560001.

3. Secretary
Department of Personnel and Training
North Block
New Delhi-110001.

...Respondents

(By Advocate Shri.H.R.Sreedhara, ACGSC)

O R D E R

(PER HON'BLE SHRI C.V.SANKAR, MEMBER (ADMN))

The facts of the case are that the applicant who joined as MTS in the year 2011 in the 2nd respondent's office was promoted as Tax Assistant(TA) on 1.4.2016. Now he is due for promotion to the post of Sr.Tax Assistant(Sr.TA). As per the Recruitment Rules(RRs) for Sr.TA, the eligibility for promotion is 3 years service as TA and passing of departmental examination of Ministerial Staff. The applicant passed departmental examination of Ministerial staff in the year 2017 and also the requisite departmental examination and completed 3 years service as TA on 31.3.2019 for further promotion to Sr.TA. As per DOPT OM dtd.28.5.2014(Annexure-A2), the erstwhile crucial date for determining eligibility for promotion of 1st January was changed to 1st April from 2015-16. The DOPT OM dtd.28.1.2015(Annexure-A3) further clarified OM dtd.28.5.2014 regarding crucial date of 1st April from 2015-16. As per DOPT OM dtd.8.5.2017(Annexure-A4), the crucial date for determining eligibility for promotion was changed to 1st January for the vacancy year 2019. When the applicant submitted representation, the respondents rejected the same vide order dtd.28.11.2018(Annexure-A1). The applicant submits that as per CBDT directions dtd.17.12.2018(Annexure-A5) the respondents are going to hold DPC for the promotions shortly on the basis of DOPT OM dtd.8.5.2017 revising the crucial date of eligibility from 31st March to 1st January for the vacancy year w.e.f. 2019 due to which the applicant will not complete 3 years service as TA on 1.1.2019 and will not be considered for promotion for the vacancy year 2019 in the ensuing DPC but will have to wait for 1.1.2020 the next vacancy year. The change of crucial date without providing any opportunity of being heard is arbitrary and illegal. The respondents are changing

the crucial date frequently which will now cause irreparable loss to him in present as well as in future promotions without any fault of his. Without providing appropriate measures/concession to the applicant who is being adversely affected during this transitional period, changing crucial date from 1st April to 1st January from 2019 is arbitrary and illegal and against the principles of natural justice.

2. The applicant has filed MA.387/2019 seeking additional relief and submits that as per the FAQs on RRs issued by the DOPT No.AB.14017/13/2013-Estt. (RR) (1349), para 10 specifies that 'the Ministries/Departments are competent to relax the RRs for Group 'C' posts'. Thus the statement made by the respondents in letter dtd.28.11.2018 is not as per law. The respondents have already granted relaxation in the RRs of Sr.TA in their OM No.2129 dtd.14.7.2017, in the RRs of TA in OM No.2130 dtd.14.7.2017, in the RRs of Stenographer Gr.II in OM No.9658 dtd.10.3.2017 and in the RRs of TA in OM No.7900 dtd.29.3.2019. Vide DOPT OM dtd.8.5.2017, the crucial date of eligibility has been changed on the ground of non availability of APARs of reckoning period for sending the proposals to the UPSC. Further, the DOPT in the OM held that for the transitional year of 2018, the vacancy period shall be from 1st April 2018 to 31st December 2018. The crucial date of eligibility shall be 1st April, 2018 for the transitional year. For the applicant, the year 2019 is also a transitional year as he will complete three years service on 31st March. Further, the change of crucial date has been made mainly keeping in view the DPCs held by the UPSC, whereas for the applicant only local level DPC is to be conducted. To change the crucial date on the ground of APAR and that too again and again is not justified. Therefore, the applicant has filed the present OA seeking to quash the order dtd.28.11.2018(Annexure-A1) with a direction to the respondents to consider him for promotion in the ensuing DPC for

the vacancy year 2019 giving requisite relaxation in the eligibility criterion and also to quash the DOPT OM dtd.8.5.2017(Annexure-A4) by considering him for promotion in the convening review DPC as on 1st April 2019 for the vacancy year 2019 and with all consequential benefits.

3. Per contra, the respondents have submitted in their reply statement that the DoPT vide OM dtd.28.1.2015 issued instructions to follow the model calendar for DPCs conducted by the Ministries/Departments for grades/posts not associated with UPSC. As per the said OM, those departments which are following financial year as the vacancy year, the crucial date of eligibility for promotion would be 1st April 2016 for the vacancy year 2016-17 and for those departments which are following calendar year based vacancy year, the crucial date of eligibility for promotion would be 1st January 2016. Since the Income Tax Department was following the financial year based vacancy year, the crucial date of eligibility would be 1st April 2016 for the vacancy year 2016-17 as per the said OM. Subsequently, the DoPT issued instructions vide OM dtd.8.5.2017 to follow uniform method of vacancy year based on calendar year from 2018 onwards, according to which the crucial date of eligibility will be 1st of January of the vacancy year w.e.f. 2019. The year of 2018 being the transitional year, the vacancy period shall be from 1st April 2018 to 31st December 2018.

4. The respondents submit that the applicant was recruited on 4.7.2012 in the grade of MTS. Based on one time relaxation given in qualifying service in the Recruitment Rules(RRs) for Tax Assistant by the CBDT, the applicant who had only completed a little over 4 years of service as on 1.4.2016 was promoted to the cadre of Tax Assistant in the year 2016 whereas the qualifying service for promotion to the cadre of Tax Assistant is 5 years of regular service in the grade.

If the RRs had not been relaxed for one year in the year 2016, the applicant would not have become Tax Assistant in the year 2016 itself. He would have continued to be in the grade of MTS till he completed 5 years of regular service in the grade of MTS and he would have become eligible for promotion to the cadre of TA only in the year 2017. In fact, the applicant was one of the major beneficiaries of one time relaxation given by the CBDT. Further the OM was issued on 8.5.2017 itself and is binding on all the Central Govt. Departments w.e.f. 1.1.2019 but the applicant had not raised any objection and had not made any representation in this regard. Since the 2nd respondent is neither the competent authority to change the crucial date nor to take a decision with regard to relaxation, the representations of some candidates were forwarded to the CBDT, New Delhi who clarified vide letter dtd.28.11.2018 that as per the extant instructions, the eligibility date for promotion for the vacancy year 2019 is 1.1.2019. Further, there is no provision in the said DoPT OM regarding relaxation of change/shifting of crucial date of eligibility for promotion. The OM has a transitional provision from 1.4.2018 to 31.12.2018. Hence, the claim of the applicant regarding not providing transitional provision is false and devoid of merits. Change of crucial date is effected by the DoPT and not by the 2nd respondent and hence the claim of not providing an opportunity of being heard is devoid of merit. Also his claim that he was put to irreparable loss is arbitrary and cannot be accepted. The applicant has not given any representation to the department or to the DoPT. Having not exhausted the remedies available to the applicant, the OA is not maintainable. Therefore, the OA being devoid of merits is liable to be dismissed with exemplary costs.

5. The applicant has filed rejoinder reiterating the points made in the OA and submits that the relaxation for promotion in the year 2016 was given on All India basis to fill the huge number of vacancies in many cadres. Such relaxation for promotion was given vide CBDT orders dtd.4.3.2016 for TA, order dtd.27.9.2016 for SG Gr.II and SG Gr.I and order number 6744 for Sr.TA. Thereafter relaxation was given by further orders dtd.14.7.2017, 10.3.2017, 14.7.2017 and 29.3.2019. Those relaxations were not given by the DOPT but by the CBDT. This fact proves that the contention of the respondents that they have no power to give relaxation is incorrect and false. Also there was no agreement or commitment by the applicant that he will not be entitled for any subsequent relaxation. As per the DOPT FAQs on recruitment rules, the CBDT has been given powers to relax the rules/crucial date of eligibility for promotion and that the respondents have themselves given relaxation again and again, therefore, considering the DOPT FAQs and earlier relaxation orders of the respondents, there should be no problem with the department to relax the rules. The CBDT time and again has itself given relaxation, which shows that the CBDT/respondents have power to grant relaxation in the matter. The respondents have huge number of posts of Sr.TA at 711 and Inspector at 220, lying vacant for promotion quota as per the information given by the respondent vide their letter dtd.17.1.2018. Therefore, their order dtd.28.11.2018 deserves to be quashed.

6. The respondents have filed reply to the rejoinder stating that the DOPT FAQs on RRs(Annexure-RJ2) in reply to SI.No.7 specifies the power to relax the rules in respect of class or category of person. Further in reply to SI.No.9, it mandates 'in case of deviation from existing guidelines/model recruitment rules, the concurrence of DoPT is to be obtained. FAQ SI.No.10 quoted by the applicant

without mentioning FAQ Sl.No.7 & 9 is an attempt to mislead the Court. For removing the hardship, year 2018 was providing with transitional provisions, which cannot be perpetuated as it will defeat the very purpose of the OM dtd.8.5.2017(Annexure-RJ1) which aims to bring uniformity across government departments. The relaxation referred by the applicant relates to minimum qualifying service and not change of the crucial date. If change of crucial date is allowed and similar relaxation is granted, the objective of achieving uniformity across Government department will never be achieved. The submission of the applicant regarding the 2nd respondent's power to relax the crucial date of eligibility for promotion is false. The main grievance of the applicant has arisen due to change of crucial date as per the instructions issued by DOPT in consultation with UPSC in OM dtd.8.5.2017. However, the applicant has failed to make DOPT and UPSC as party respondents. Hence, the OA suffers a serious defect of nonjoinder of parties and therefore is liable to be rejected on this ground alone. The earlier change of crucial date from 1st January to 1st April vide OM dd.28.5.2014 & OM dtd.28.1.2015(Annexure-RJ3) has made the applicant eligible for his promotion as Tax Assistant. Merely existence of huge number of vacancies does not vest any right in the applicant for promotion without fulfilling eligibility criteria.

7. The applicant has filed MA.No.743/2019 seeking additional relief stating that the respondents may be directed to relax the rules for promotion by granting three months relaxation in qualifying service for promotion and promote him from 1.1.2019 by holding a review DPC with all consequential benefits on the ground that the CBDT is already considering grant of relaxation for some posts due to huge vacancies as well as due to change of crucial date of eligibility for promotion

by their review meeting held on 16.10.2019 under the chairmanship of the Chairman, CBDT wherein issues were decided with regard to obtaining one year relaxation in the existing RRs of Sr.Tax Assistants and Steno Gr.II. The applicant also filed MA.799/2019 to implead DOPT as party respondent since vide OM dtd.8.5.2017, the DOPT has changed the crucial date of eligibility from 1st April to 1st January on the ground of non-availability of APARs of reckoning period for sending proposals to the UPSC.

8. We have heard the Learned Counsel for both the parties and perused the materials placed on record in detail. The issue in this case is in a very small compass. The applicant would become eligible for promotion as Sr.TA if the crucial date is considered as 01.04.2019 instead of 01.01.2019 as has been mandated due to the DOPT OM dtd.8.5.2017(Annexure-A4). The applicant has given many examples where relaxation of the Recruitment Rules have been given reducing the period of service to make persons eligible for the next promotion. The respondents would contend that the procedure as per the DOPT OM of May 2017 has been uniformly applied and the respondents cannot give any relaxation without the approval of the DOPT and that DOPT has not been arrayed as a party respondent by the applicant. Further they would say that the OM of DOPT is in May 2017 but the applicant has challenged it only in January 2019. The applicant has finally filed a separate MA for impleading DOPT also. The applicant in OA.No.1893/2018 on his side has furnished the document at Annexure-A11 wherein it appears that obtaining one year relaxation in the existing RRs of Sr.Tax Assistant and Steno Gr.II(erstwhile) to fill up huge number of vacant posts and due to change of crucial date of eligibility for promotion from 1st April to 1st January by the DoPT is being considered by the respondents in their quarterly review

meeting held on 16.10.2019. The applicant would therefore reiterate that since the respondents themselves are considering the relaxation, it will not be difficult for them to give relaxation as per his application, so that he becomes eligible for being promoted as Sr.Tax Assistant. It is clear that the respondents' action has been taken on an uniform basis to ensure certain regularity in the procedure adopted for convening of DPC and promotions in an orderly manner across all Ministries and Departments. There is no case to consider that the person like the applicant has been singled out for any unfavourable treatment. Therefore, we cannot find any fault in the modification of the procedure which has been announced well in advance even with respect to the date of eligibility of the applicant for his promotion. However, since the respondents themselves are considering the relaxation as sought for in view of the large number of vacancies in the relevant posts, we deem it appropriate to direct the respondents to consider the same as early as possible and pass appropriate orders.

9. The OA is disposed of with the above. No costs.

(C V SANKAR)
MEMBER (A)

(DR K B SURESH)
MEMBER (J)

/ps/

Annexures referred to by the applicant in OA No.98/2019:

Annexure-A1: Respondent order 28.11.2018
Annexure-A2: DoPT OM dtd.28.5.2014
Annexure-A3: DoPT OM dtd.28.1.2015
Annexure-A4: DoPT OM dtd.8.5.2017
Annexure-A5: CBDT direction dtd.17.12.2018

Annexures with MA.387/2019 filed by the applicant:

-NIL-

Annexures with reply:

-NIL-

Annexures with rejoinder:

-NIL-

Annexures with reply to the rejoinder:

Annexure-RJ1: OM dtd.8.5.2017
Annexure-RJ2: DoPT FAQs on RRs
Annexure-RJ3: OM dtd.28.5.2014 & 28.1.2015

Annexures with MA.743/2019 filed by the applicant:

-NIL-

Annexures with MA.799/2019 filed by the applicant:

-NIL-
