

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA

No. O.A. 636 of 2016

Reserved on: 4.12.2019

Date of order: 17.12.2019

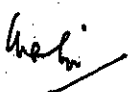
Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

1. Sri Biswajit Kumar Paul,
Son of Late Ranajit Kumar Paul,
Aged about 51 years,
Working as Library Clerk (General),
National Library,
Residing at 353,
Sahid Kshudiram Bose Sarani,
Kolkata - 700 030.
2. Shri Jayabrata Hazra,
Son of Late Chinmoy Hazra,
Aged about 34 years,
Working as Library Clerk under National Library,
India,
Residing at 265, Bacharam Chatterjee Road,
Kolkata - 700 061.

..... Applicants.

Versus

- 1) Union of India,
Through the Secretary to the
Government of India,
Ministry of Culture,
Shastri Bhawan,
'C' Wing,
Dr. Rajendra Prasad Road,
New Delhi - 110001.
- 2) The Director General,
National Library,
Kolkata,
Alipore,
Kolkata - 700 027.
- 3) Shri Surendra Prasad Saha.
- 4) Shri Partha Pratim Roy.
- 5) Shri Santanu Halder.
- 6) Smt. Ruma Deb Sarma.
- 7) Shri Atanu Mitra.



Respondents No. 3 to 7 are working as LIA
under the respondents Alipur, Kolkata - 27.

..... Respondents.

For the Applicants : Mr. A. Chakraborty, Counsel

For the Respondents : Mr. B.P. Manna, Counsel

ORDER

Per Dr. Nandita Chatterjee, Administrative Member:

The applicants have approached the Tribunal under Section 19 of the Administrative Tribunals Act, 1985 praying for the following relief:-

"(a) Office Order dated 26th February, 2015 issued by the Director General, National Library, Kolkata, in respect of the applicants cannot be tenable in the eye of law and therefore the same may be quashed.

(b) An Order do issue directing the respondents to restore their position in the post of LIA (General & Language) and to grant all consequential benefits.


(c) Leave may be granted to file this original application jointly under Rule 4(5)(a) of the CAT procedure Rule 1987."

2. As the two applicants have both challenged order dated 26.2.2015 reverting them to the post of Library Clerk, liberty is granted to the applicants to jointly pursue this O.A. on grounds of common interest and common cause of action under Rule 4(5)(a) of Central Administrative Tribunal (Procedure) Rules, 1987.

3. Heard rival contentions of both Ld. Counsel, examined pleadings and documents on record.

4. The facts, in a narrow compass, are as follows:-

The applicants, who are Library Clerks with the respondent authorities, were aspirants for the post of Library and Information Assistant (LIA) (General & Language) for which the notified recruitment rules prescribes that the said posts would be filled up 50% by direct recruitment, 25% by promotion from Library Clerks (General) and 25%



from Group 'C' and 'D' employees by promotion through limited departmental examination.

That, a circular No. 5 of 2012-2013 was issued on 1.5.2012 notifying the 2 (two) vacancies (SC-1 and UR-1) in the grade of Library & Information Assistant (General and Language) in the scale of pay of Rs. 9300-34800/-, Grade Pay Rs. 4200/- to be filled up by promotion through Departmental Qualifying Test. Employees holding Gr. 'C' posts with Grade Pay of Rs. 1900/- and above and with five years minimum regular service along with those holding Gr. 'C' posts with Grade Pay of Rs. 1800/- and a minimum of 8 years regular service with essential academic qualifications were invited to apply against the said notification.

In response to the same, ten incumbents submitted their applications for the purpose of promotion to the post of LIA, and, out of the said ten, on 11.5.2012, Applicant No. 1 requested (Annexure R-2 to reply) Respondent No. 2, namely the Director General of National Library, to allow him to appear at the said departmental qualifying test by condoning 1 year 08 months shortage in completion of 5 years of regular service.

Thereafter, respondent No. 2, namely, the Director General issued a circular dated 30.5.2012 (Annexure A-2 to the O.A.) declaring thereby that, in continuation to earlier circular No. 5, dated 1.5.2012, the concerned candidates who have completed 3 years/6 years of regular service would also be considered for promotion to the post of LIA (General & Language) on the publication of results and on completion of 05 years/08 years of regular service in the respective grades.

As the recruitment rules published under Article 309 of the Constitution of India by the authority of President of India and Clause 6

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therein had specially delegated the "power to relax" to the Central Government to relax any of the provisions of these rules with respect to any clause or category of persons for reasons to be recorded in writing, the said notification issued by the respondent No. 2 was without appropriate authority and in violation to the provisions of recruitment rules. Accordingly, as the said respondent No. 2 had exceeded his jurisdiction in erroneously issuing circular No. 12 dated 30.5.2012, the Ministry of Culture advised respondent No. 2 vide their communication dated 9.8.2012 (Annexure R-4 to the reply) to take necessary action to fill up the vacant post of LIA on the basis of existing rules against promotional quota. Further, on 22.12.2014 (Annexure R-5 to the reply) the Union of India informed the respondent No. 2 that DOP&T has informed that DOPT would not agree to any relaxation for appearing in Departmental Qualifying examination.

In the meanwhile, however, the two applicants herein were appointed on adhoc basis, and, on promotion to the post of LIA vide an order dated 4.4.2013, were allowed to continue as such for over 24 months and for 22 months respectively.

An office order was thereafter issued on 26.2.2015 (Annexure A-5 to the O.A.), whereby the two applicants of this O.A., were reverted to their posts of Library Clerk. The applicants have primarily challenged such reversion orders in this O.A.

The applicants have challenged their reversion on the following grounds:-

- (a) That, as only 2 vacancies were notified, the panel of 10 candidates had to come to an end after the two vacancies were exhausted and those who had completed five years of service in such panel were promoted arbitrarily.

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- (b) Although the applicants had completed five years in the light of circular No. 12/2012-2013, they were reverted discriminating them from the other promotes.
- (c) The applicants would further allege that such incumbents had been promoted in violation of rules, namely, that the life of the panel was illegally not allowed to expire upon filling up of the two vacancies.
- (d) That, the respondents ought to have issued fresh circulars for filling up the posts of LIA, and, had such circular been issued in time, the applicants could have been considered for promotion to the post of LIA after acquiring eligibility thereof.
- (e) As the applicants were promoted as per Circular No. 12/2012-2013 issued by respondent No. 2, such promotions cannot be said to be violative of the said circular.
- (f) The applicants were not given an opportunity of being heard before directing their order of reversion.
- (g) As the applicants functioned in the post of LIA on adhoc basis (being senior most Library Clerks) their promotions cannot be turned down by the respondent authorities at a later stage.

4. The respondents have disputed the contentions of the applicants on the following grounds:-

- (a) That, circular No. 12 of 2012-2013 dated 30.5.2012 was clearly violative of recruitment rules and issued by respondent No. 2 in excess of his jurisdiction as the power of granting any relaxation was vested only with the Central Government. Hence, the said circular dated 30.5.2012 was ab initio void and bad in law.
- (b) The applicants were perfectly aware that they were not fulfilling the promotional criteria of five years so as to be eligible to

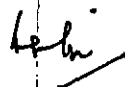
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apply in response to the notification dated 1.5.2012. This would be obvious from the prayer of applicant No. 1 at Annexure R-2 of the reply whereby he has prayed for special dispensation to waive his shortage of 1 year 8 months against the requisite 5 years for eligibility to such promotion.

(c) That, out of the 10 incumbents, who applied for promotion through LDCE, 7 eligible candidates had applied against the two regular posts and were empanelled accordingly and, the three ineligible applicants, including the applicants in the O.A., could not have formed a part of such panel, which according to settled principles of governance, could only comprise eligible candidates.

(d) That the promotion of the applicants to the post of LIA on adhoc basis was illegal and in blatant violation of recruitment rules. Hence upon detection of such illegal and irregular actions, their promotions as adhoc LIA was cancelled vide Office Order dated 26.2.2015, issued in terms of Department of Personnel and Training O.M. No. 28036/1/2012-Estt. (D) dated 3rd April, 2013 read with O.M. No. 28036/8/87-Estt.(D) dated 30th March, 1988 and O.M. No. 28036/3/97-Estt.(D) dated 17th February, 1998 as also Ministry of Culture letter No. F. 12-27/2013-Lib. Dated 22nd December, 2014.

(e) That, in the normal course, the panel/select list is valid for one year and all eligible candidates, who qualified in the departmental test, were promoted on regular basis to the post of LIA within 18.9.2013 against subsequent vacancies. The panel of eligible candidates was kept alive for a year as it was a panel prepared for promotion on the basis of departmental qualifying test and not for the purpose of direct recruitment.



The applicant No. 1 acquired his eligibility to appear in the departmental qualifying test in the recruitment year 2014-2015 as he fulfilled all the eligibility criteria on 10.2.2014 and the applicant No. 2 acquired such eligibility on 25.3.2013 respectively.

5. The applicants have primarily challenged the Office Order dated 26.2.2015 (Annexure A-5 to the O.A.) vide which they were reverted to the post of Library Clerks.

6.1. To examine their claim, reference is made to the recruitment rules of post of LIA of the respondent organization as annexed at Annexure R-1 to the reply which is recorded as under:-

THE GAZETTE OF INDIA : OCTOBER 21, 2000/ASVTNA 29, 1922				[PART II—SEC. 3(i)]	
2	3	4	5	6	7
General Information: (A) MINOR GROUPS (B) General and Language.	157* General Central Service, (1000) Group 'C' Non-Gazetted. (Non-Ministerial) *Subject to variation dependent on workload.	R. 5000-150-8000/-		Selection-com-seniority	
8	9	10	11	12	13
Not applicable	28 years (Relaxable for Government servants upto 40 years in accordance with the instructions or orders issued by the Central Government).	Essential: 1. (i) A Bachelor's degree from a recognised University, and (ii) a degree in Library Science from a recognised University. 2. For the posts of Library and Information Assistant (Language) proficiency in the language concerned in the Matriculation or equivalent level from a recognised Board.	Not applicable	Two years for direct recruits.	
	31 years for Other Backward Class candidates (inclusive of 3 years of age relaxation). 33 years for Scheduled Caste/Scheduled Tribe candidates (inclusive of 5 years of age relaxation). Note: The crucial date for determining the age limit shall be the date for receipt of applications from candidates in India (and not the closing date prescribed for those in Assam, Meghalaya, Arunachal Pradesh, Mizoram, Manipur, Nagaland, Tripura, Sikkim, Ladakh Division of Jammu and Kashmir State, Lahaul and Spiti District and Pangl Sub Division of Chamba District of Himachal Pradesh, Andaman and Nicobar Islands and Lakshadweep).	Note: Qualifications are relaxable at the discretion of the Staff Selection Commission/competent authority in case of candidates otherwise well qualified.			
14	15	16	17	18	19
10% by direct recruitment. 15% by promotion from Library Clerk (General) and 15% from Groups 'C' and 'D' employees by promotion. 10% by direct recruitment.	Promotion: Library Clerk (General) with thirteen years' regular service in the grade: Promotion through Departmental Examination: From employees holding five years' regular service in Group 'C' posts or eight years' regular service in Group 'D' posts, having qualifications required for direct recruitment on the basis of a departmental qualifying test.	Group 'C' Departmental Promotion Committee (for considering promotion, confirmation) consisting of:— 1. Director, National Library, Calcutta—Chairman 2. Senior Administrative Officer, National Library, Calcutta—Member 3. One Library and Information Officer, National Library, Calcutta—Member. 4. Under Secretary in the Department of Culture dealing with the National Library, Calcutta—Member 5. One Administrative Officer, National Library, Calcutta—Member		Not applicable	

It is clear therefrom that such gazette notification issued under Rule 309 of the Constitution of India categorically laid down that for

promotion purpose (through departmental examination) only employees with five years regular service in Gr. 'C' post and those with eight years regular service in Gr. 'D' posts, along with other requisite qualifications as relevant for the direct recruitment, were eligible to be continued for such promotion.

6.2. It is undisputed that the respondent No. 2 had acted beyond his jurisdiction in issuing the Circular No. 12 dated 30.5.2012 as because under no circumstances, respondent No. 2 was authorized to amend recruitment rules published under powers delegated under Article 309 of the Constitution. Neither had the Central Government delegated to him the power of unilateral amendment to accommodate a certain set of employees on the basis of their representations to waive the qualified mandatory period for eligibility. It is a settled principle of law that illegal appointments are ab initio void and there is not an iota of substance in the applicant's submissions vide which such illegal, arbitrary and irregular act can be resurrected as justifiable in accordance with law.

The Hon'ble Apex Court in ***Union of India v. Ravi Shankar, (1998) 3 SCC 146*** ruled that any appointment made in violation of a mandatory statutory rule is void and illegal. In ***Raghavendra Rao v. State of Karnataka, (2009) 4 SCC 635***, it was held that an appointment made by an incompetent authority is a nullity.

6.3. The fact that the applicants were enjoying adhoc service since 2013 on the basis of an ab initio illegal appointment process does not entitle them with an indefeasible right to such appointment, and, in this, we are supported by the judgment of Hon'ble High Court at Calcutta in ***Sk. Sahim v. State of W.B. & ors. W.P. No. 10868(W) of 2006***, wherein the Hon'ble High Court at Calcutta ruled as follows:-

"It is known that such illegal appointment for however long a period one may continue in service on the basis of such appointment, does not create any right

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in favour of the appointee to seek legalization of the appointment. The initial appointment being illegal, it continued to remain illegal all through. Mere length of illegality does not create any sort of right to seek permanent appointment to the post."

Accordingly, the decision of the respondent authorities dated 26.2.2015 (Annexure A-5 to the O.A.) along with their advisory issued to respondent No. 2 at Annexures R-4 and R-5 to the reply are upheld.

6.4. Judicial review is invoked in reversion orders on following grounds:-

- (a) By way of punishment and without complying with the principles of natural justice.
- (b) Contrary to statutory provision or rules.
- (c) Mala fide or for a collateral purpose.
- (d) Arbitrarily or by way of discrimination.
- (e) By way of glaring injustice etc.

As none of these grounds have been successfully established by the applicants while challenging their reversion order, their claim fails.

6.5. The applicants would further submit that as no further promotional exam was notified after they had acquired commensurate tenure of 5 years, they had lost their opportunity in staking a claim to such promotion on a regular basis.

It has been adequately laid down in **Lt. CDR. M. Ramesh v. Union of India and others (2019) 1 SCC (L&S) 213** that it is for the authorities to decide as to how many vacancies would be filled up and such decision is not subject to challenge if adopted on bonafide grounds.

6.6. The respondents have made it clear that, being a promotional panel, the panel of eligible candidates was kept alive to accommodate eligible candidates on promotion as and when vacancies arose. Unlike a panel for direct recruitment, the panel would not automatically lose its

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force the moment the vacancies as notified vide notice dated 1.5.2012 were exhausted.

We find significant strength in this reasoning of the respondent authorities and we find no reason to question the promotion of eligible candidates subject to availability of vacancies.

7. The applicants have been further aggrieved, as articulated during hearing, that they had not been allowed to appear at subsequent promotional examinations despite vacancies and Ld. Counsel for the applicant would substantiate this claim through a response received through RTI whereby the respondents have purportedly disclosed certain vacancies to the post of LIA.

Upon a careful consideration of such submission, we would like to direct the concerned respondent authorities to take necessary action as per law and as per their recruitment rules, and, subject to their pragmatic assessment of vacancies, to notify the vacancies for filling up the posts of LIA. If not otherwise debarred, the applicants would be at liberty to respond to the same as per their eligibility.

8. The O.A. is disposed of with the above directions.

Parties will bear their individual costs.

(Dr. Nandita Chatterjee)
Administrative Member

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(Bidisha Banerjee)
Judicial Member