

**CENTRAL ADMINISTRATIVE TRIBUNAL**  
**AHMEDABAD BENCH**  
**Original Application No.80/2017 with MA 82/2017,**  
**OA 103/2017 with MA 92/2017,**  
**OA 104/2017 with MA 93/2017,**  
**OA 161/2017 with MA 157/2017 &**  
**OA 511/2017 with MA 451/2017**

**Dated this the 5th day of March, 2021**

<b>Reserved on</b>	<b>:</b> <b>06.11.2020</b>
<b>Pronounced on</b>	<b>:</b> <b>05.03.2021</b>

**CORAM:**

**Hon'ble Shri Jayesh V. Bhairavia, Member (J)**  
**Hon'ble Dr.A.K. Dubey, Member (A)**

**Applicant in OA 80/2017 with MA 82/2017**

Shri Rajesh,  
 S/o Pravinbhai Ajara,  
 Aged about: 31 years,  
 Address: 4, Parsana Nagar,  
 Nr Khodiyar Krupa, Jamnagar Road,  
 Rajkot – 360 001.

**Applicant in OA 103/2017 with MA 92/2017**

Shri Dipak Parmar  
 S/o Kisanbhai Parmar,  
 Aged about: 40 years,  
 Address: Shradanand Harijanvas,  
 Moci Bazar, Nr Ramdev Mandir,  
 Rajkot.

**Applicant in OA 104/2017 with MA 93/2017**

Shri Mukesh,  
 S/o Haribhai Sodha,  
 Aged about: 35 years,  
 Address: Shradhanand Harijanvas,  
 Mochi Bazar, Nr Ramdev Mandir,  
 Rajkot.

**Applicant in OA 161/2017 with MA 157/2017**

Sri Dhansukh  
 S/o Kalubhai Amrabhai Vaghela,  
 Aged about: 31 years,  
 Address : 4, C/o. Manubai Karsanbhai Kakhar,  
 Sardar Bazaar, Sheri No.1,

Thakkar Harijan Vas,  
Nr. Moti Khatki-road, Rajkot – 360 001.

**Applicant in OA 511/2017 with MA 451/2017**

Shri Nihil Kher,  
S/o Narendrabhai Babubhai Kher,  
Aged about : 29 years,  
(Date of Birth: 26.10.1987),  
Address : “Vinayak Villa”  
House No.64, Ratanpar,  
Opp. Ratanpr Mandir – Morbi Road,  
Rajkot – 360 001.

By Advocate Ms K L Kalwani

V/s

- 1 Union of India,  
Through: Deputy Comptroller and  
Auditor General of India,  
Government of India, New Delhi – 110 001.
- 2 Accountant General (A&E),  
Office of the Accountant General (A&E),  
Lekha Pariksha Bavan,  
Iswar Buvan, Navrangpura,  
Ahmedabad – 380 009.
- 3 Accountant General,  
Office of Accountant General (A&E),  
Race Course Road,  
Rajkot – 360 001. ... Respondents in all the cases

By Advocate Shri H D Shukla

**ORDER (ORAL)**

Per Shri Jayesh V Bhairavia, Member (J)

- 1 The applicants who were selected and appointed as MTS-trainee in the present OAs have raised common grievance against the respondents as to termination of their service due to non acquiring of requisite qualification of Matriculation pass within the period of two years prescribed from the date of their appointment, as also against the decision of respondents rejecting their request/representation for their reinstatement on their passing

matriculation examination. The grounds and contention urged by all the applicants in support of their claim and the prayer sought in these OAs are common in nature. The counsel for both parties is one and the same in all these cases. The pleas put-forth by the respondents are also common. All the applicants have filed MA for condonation of delay in filing the application. Considering the reason and grounds stated in the MA filed by the applicants, the delay caused in filing of these OAs are condoned. All the five MAs stand allowed.

All the five OAs are clubbed and heard together with the consent of all the parties.

The relevant details in brief relating to date of joining, date of termination, date of passing Xth standard examination, date of representation and the date of rejection of representation of the applicants of all the OAs are shown in a tabular form for ready reference as under:-

S.No.	OA No.	Date of appointment	Date of termination	Date of passing Xth examination	Date of representation	Date of rejection of representation
1	80/2017	17.06.2011	17.06.2013	10.12.2013	23.12.2013	11.04.2014
2	103/2017	17.06.2011	17.06.2013	10.12.2013	23.12.2013	11.04.2014
3	104/2017	17.06.2011	17.06.2013	10.12.2013	23.12.2013	11.04.2014
4	161/2017	17.06.2011	17.06.2013	10.12.2013	23.12.2013	11.04.2014
5	511/2017	20.06.2011	17.06.2013	10.12.2013	23.12.2013	11.04.2014

Accordingly, common order is passed by taking OA 80/2017 as a lead case.

2 Being aggrieved and dissatisfied by the action of the respondents in terminating the services of the applicant vide impugned order dated 17.6.2013 (Ann. A/1) and rejection of his representation/request for his reinstatement vide order dated 11.4.2014 (Ann. A/2), the applicant has invoked the jurisdiction of this Tribunal seeking the prayers as under:-

*“8A The Hon’ble Tribunal may be pleased to admit and allow the present application.*

*“AA The Hon’ble Tribunal may be pleased to declare, hold and direct the respondents to enlarge/extend and relax the condition of passing SSCE till 10<sup>th</sup> December 2013 (10.12.2013).*

*B The Hon’ble Tribunal may be pleased to issue an appropriate order or direction quashing and setting aside the*

*office order No.75 dated 17.06.2013 passed by Respondent No.3 and also the communication dated 11.04.2014 issued by the Respondent No.3 whereby the representation made by the applicant for reinstatement/re-appointment has been rejected.*

*C The Hon'ble Tribunal be pleased to direct the Respondents to reconsider the case of the applicant considering the fact that the applicant has now procured the requisite qualification as per the order of appointment dated 17.06.2011, in the interest of justice.*

*D The Hon'ble Tribunal be pleased to direct the respondents to reconsider the case of the applicant sympathetically by relaxing the rule and/or condition of passing SSC exam within 2 years from date of appointment and reinstate the applicant in service with all consequential benefits.*

*E The Hon'ble Tribunal be pleased to hold that rule or condition providing 2 years condition of passing 10<sup>th</sup> Standard and/or such condition in appointment order is ultra vires of the Constitution of India, as it cause discriminatory treatment between daily rated/direct recruits candidates for appointment qua appointments on compassionate grounds which are also direct recruitment, amounting to same class.*

*In alternative or in addition to and without prejudice to the above reliefs:*

- (i) Hon'ble Tribunal be pleased to hold, declare and direct that applicant is entitled to be granted temporary status and regularization under the scheme namely "Casual Labourers (Grant of Temporary Status and Regularization) Scheme and under other rules regulations empowering of relaxation in educational qualification: and further that applicant be deemed to have been regularised on basis of educational qualification as was necessary on the date of their appointment as casual labourer; and be reinstated in service with its continuity and all consequential benefits.*
- (ii) Hon'ble Tribunal be pleased to further hold that condition of passing 10<sup>th</sup> Standard in appointment of applicant is arbitrary and be quashed and set aside."*

3. The brief facts of the case is as under:-

3.1 The applicant worked with the office of the respondent No.3 as daily wager between the year 2003 and 2010 continuously though with some artificial breaks. Thereafter, pursuant to an advertisement published by the respondents on 2.10.2010, the applicant applied to be considered for the post of MTS and was successful in the selection process. By order dated 17.6.2011 (Ann.A/4) the applicant was appointed on MTS post, however,

with the condition that the applicant would have to obtain qualification of 10<sup>th</sup> standard pass within two years from the date of his appointment as M.T.S., that is from 17.6.2011.

- 3.2 The applicant appeared in the 10<sup>th</sup> standard examination conducted by the Gujarat secondary & higher secondary education board, Gandhinagar in the month of March, 2013 and July, 2013. However he was not successful in the said exam.
- 3.3 In the month of March 2013 the applicant had also filed examination form for the Xth standard with National Institute of Open Schooling (GOI), CBSE Board, the examination which was scheduled in October-November, 2013.

Before he could appear in said SSC exam (CBSE Board), as two years period from the date of his appointment had elapsed on 16.06.2013, the respondent No.2 terminated the service of the applicant vide impugned order dated **17.6.2013** with immediate effect (Ann. A/1).

- 3.4 Since the applicant passed Secondary School Examination (SSC) from National Institute of Open Schooling in December, 2013, he submitted his representation dated 23.12.2013 (Annexure A/19) requesting to reinstate him. In support of his request, he had also submitted certificate/mark-sheet of passing SSC examination dated 10.12.2013 (Ann. A/18). However, the respondents rejected the representation and the said decision was conveyed to the applicant vide letter dated 11.4.2014 (Ann. A/2) which is also impugned in this OA.
- 3.5 Aggrieved by the said termination order the applicant had filed SCA NO. 11498 of 2014 in the Hon'ble High Court of Gujarat which came to be disposed of as withdrawn by order dated 18.6.2015 granting liberty to the applicant to seek alternative remedy (Ann. A/20). Hence, this OA.

4. Assailing the order of termination of the applicant and subsequent decision of the respondents in rejecting the representation of the applicant, refusing to re-instate him in service upon acquiring requisite qualification of 10<sup>th</sup> standard passed belatedly by six months, learned advocate for the applicant Ms. Kalwani contended as under:-

- 4.1 The action of the respondents in terminating the service of the applicant is illegal, arbitrary, unreasonable, bad in law, contrary to the facts and evidence on record and also violative of principles of natural of justice.
- 4.2 The respondent No.3 has taken hasty decision in passing the impugned order in as much as the period of two years within which the applicant was required to get the requisite qualification before 16.6.2013 and the impugned came to be passed on very next day, i.e. on 17.6.2013.
- 4.3 It is submitted that since the applicant could not remain successful in Gujarat Secondary Examination Board, he has also filed an application for re-assessment of his mark-sheet for which he was awaiting the result of it, therefore he has submitted an application dated 13.06.2013 before the respondents apprising them of the said fact and requested till the result of re-assessment, he may be allowed to continue as MTS.

It is submitted that the applicant on being unsuccessful in Gujarat Board, has also filed CBSE Board Xth standard examination form in the month of March 2013 for the examination scheduled in the month of October 2013. That was also apprised by him to the respondents and he was given oral assurance that as he was working in the department for about a decade, he would be reinstated the moment he acquires the requisite qualification. However, after the applicant passed Xth Standard examination in December 2013, the respondents turned down his representation without assigning any reason.

The respondents have taken a mechanical approach and terminated his services in technical manner which caused grave injustice to the applicant.

- 4.4 It is submitted that the candidates appointed on compassionate ground as trainee (MTS) were granted relaxation / allowed to complete required qualification. i.e. passing of 10<sup>th</sup> standard examination, till five years. However, the treatment meted out to the applicant by granting only two years to pass 10<sup>th</sup> standard examination is arbitrary and discriminatory and such discrimination is unconstitutional. There is no reason or nexus for cause decimation to the class of employees like the applicant.
- 4.5 It is submitted that similarly placed one Shri Satishkumar Sharma, MTS working with the office of Accountant General, Gwalior, Madhya Pradesh who did not pass requisite SSC examination within a period of two years of his appointment and on successful passing of the said examination subsequently he was allowed re-employment by the said office i.e. office of Accountant General, Gwalior, MP.
- 4.6 Learned counsel for the applicant placed reliance on judgment passed by Hon'ble High Court of **Madhya Pradesh in Writ Petition NO. 4678 of 2014 between Om Prakash and Others vs. UOI & Ors. decided on 17.11.2014** (Ann. A/23), and vehemently contended that the said decision is directly applicable to the facts of the present OA and stands to the benefit of the applicant. In this regard it is also submitted that the issue involved in the present OA is squarely covered by the said judgment. The Hon'ble MP High Court held that the restriction of two years imposed on MTS for passing Xth standard examination is unjust and arbitrary and the said decision was set aside. Aggrieved by the said judgment of Hon'ble High Court of MP, the respondents had challenged the

same before the Hon'ble Supreme Court in Civil Appeal No. 6915-6921 of 2015 which came to be disposed of by three Judge's Bench wherein it was held that "*when the respondents have already passed the requisite qualification, that is, matriculation. Keeping in view the fact that they have qualified in the meantime, and they had served the department several years before their removal, the respondents shall be taken back in service and past service shall only be counted for the purpose of pension. They shall not claim any seniority and shall not be entitled to any back-wages.*"

It is argued that the observation of Hon'ble MP High Court has not been overruled and hence the said judgment and order has attained finality. The respondents complied with the direction by reinstating the said petitioners. Since the case of the present applicant is on similar facts and ground, he is also entitled to be reinstated.

- 4.7 It is submitted that the applicant was appointed as MTS in the Office of Accountant General and his service is governed by Indian Audit and Accounts Department Multitasking Staff Recruitment Rules 2011. The Rule 5 of said rules confers upon Comptroller and Auditor General of India the power to relax any provision of the said rule.
- 4.8 It is submitted that the applicant is about 35 years. There are no chances of securing any employment as he became over age. Considering long standing unblemished service to his credit, the applicant should have been allowed extension of six months. Since the applicant had passed the Matriculation examination, the applicant ought to be reinstated in service.
- 5 The counsel for the applicant submits that applicant belongs to socially & economically backward community, for want of proper legal advice initially he had filed writ petition before Hon'ble High

Court subsequently the same was allowed to be withdrawn by Hon'ble High Court with liberty to file the petition in appropriate forum to avail alternative remedy. The applicant was unable to afford expenses as whatever amount was with him, was spent in filing SCA in High Court. Thereafter on receipt of the advice and assistance for protection of his legal rights, he has approached this Tribunal by filing this OA. The applicant had rendered service for more than a decade and thereafter he (all the applicants) remained successful in recruitment process and were appointed as MTS-trainee. They did pass matriculation albeit late by six months for which their services should not be terminated as such they were not granted regular grade pay of MTS, the said grade pay would be granted subject to clearing matriculation.

6 Per contra the respondents have filed their reply and opposed the prayers sought in this OA. Learned standing counsel for the respondent contested the claim of applicant for reinstatement on passing SSC examination. In support of it, the standing counsel mainly submitted as under:-

6.1 The applicant was appointed as trainee in 1-S Pay Band without GP (MTS) vide order dated 17.06.2011 (Ann. R/1). As per the condition stipulated in said appointment order, the applicant had to acquire requisite qualification within two years failing which his service was liable to be terminated. As the applicant was not placed in the payband – 1, of Rs.5200-20200 along with GP 1800, his service was not regularised and he was considered as trainee/temporary in the department. Since the applicant remained unsuccessful to acquire the requisite qualification of passing SSC examination within two years of his appointment, respondents have terminated the service of the applicant as per provision of Rule 5 of CCS (Temporary Service) Rules, 1965. Therefore, the decision of respondent to

terminate the service of the applicant is just and fair and also in terms of appointment order.

- 6.2 It is submitted that the respondents acted in just and fair manner. Even the representation sent by the applicant for reinstatement after the applicant acquired the required qualification; same was forwarded to the competent authority for sympathetic consideration. However, for the reasons recorded in the order dated 11.3.2014, the competent authority deem it fit to reject the claim of the applicant for reinstatement (Ann. R/3).
- 6.3 It is submitted that the condition to acquire the requisite qualification within two years stipulated in the appointment order for selection/recruitment of MTS-trainee like applicant, the said condition cannot be compared with the condition of five years time given to candidates appointed on compassionate grounds on the MTS post. It is submitted that the rules governing to the appointments on compassionate ground is not comparable to the case of the applicant at all. They operate in different realm and cannot be made applicable in the case of the applicant. Therefore, the submission of the applicant that respondent have adopted two different criteria for passing or acquiring requisite qualification of Xth standard pass for the candidates appointed as trainee MTS through selection process and who is/are appointed on compassionate ground is not correct and accordingly same is denied.
- 6.4 It is submitted that the applicant was recruited as Multitasking staff. The said service is governed by Indian Audits and Accounts Department, Multi-Tasking Staff Record Rules, 2011, which stipulates that non-matriculate MTS-trainee must acquire the qualification of Xth pass within two years from their appointment. Under the provision of Rule 5 of Rules 2011, the

power to relax any rule rests with the Comptroller and A.G. of India and not with the Central Government.

6.5 It is submitted that the judgment passed in **Om Prakash and Others (supra)** which is relied upon by the counsel for the applicant, the said judgment does not apply to the facts of the present case and therefore does not come to the rescue of the applicant. Hence, the decision of termination of the services of the applicant was just and proper. The applicant is not entitled to any relief as claimed for.

7. The applicant has filed rejoinder and re-iterated the contentions in the OA. Additionally in support of the contention copy of judgment passed by Hon'ble High Court of MP in Om Prakash & Ors v/s Union of India & Ors (supra) has been placed on record, copy of order passed by Hon'ble Apex Court in the case of Union of India & Ors v/s Om Prakash & Ors (Ann. A/24). The learned counsel for the applicant has also relied upon the judgment passed by Hon'ble High Court of Gujarat in SCA No. 1314/2009 in the case of Vipul Kumar Atmaram Parekh and 4 Ors v/s State of Gujarat decided on 24.03.2009 reported in 2009 (5) GLR 3914 and submitted that the Hon'ble High Court held that "*the law laid down by the High Court must be followed by all authorities and subordinate tribunals when it has been declared by the Highest Court in the case and they cannot ignore it either in initiating proceedings of deciding on the rights involved in such a proceeding. It is also held that it is immaterial that in a previous litigation the particular petition was or was not a party, but if law on a particular point has been laid down by the Hon'ble High Court, it must be followed by all authorities and tribunals in the State.*"

It is argued that the Hon'ble MP High Court in the case of Om Prakash (supra) held that the decision of keeping two year limit for passing SSC examination is unjust and the Hon'ble Apex Court by considering the fact that the MTS trainee has passed the requisite SSC Matriculation examination, even beyond the said two year stipulation,

the respondent Accountant General Office were directed to reinstate the petitioner. The said dictum of Hon'ble Apex Court and the order passed by Hon'ble High Court is squarely applicable in the case of applicant since in the present case all the applicants have acquired the qualification of Matriculation in December 2013 instead of the cutoff date of June, 2013 are required to be treated equally.

- 8 The learned counsel for the applicant has submitted written submission on 09.11.2020 the same was taken on record, wherein the learned counsel has reiterated the submissions in the OA.
- 9 We have heard the learned counsel for the parties and perused the material placed on record.
- 10 In the present case, the facts are not in dispute that initially applicant was engaged as casual labour by the respondents and had continuously rendered his service from 2003 to 2010 (with short artificial breaks). Pursuant to advertisement issued by the respondents the applicant applied for the post of MTS and was successful in recruitment process. Accordingly he was appointed as MTS/trainee vide appointment order dated 17.06/2011 with the condition that he will have to acquire the requisite qualification i.e. Standard Xth within two years of his appointment failing which the service is liable to be terminated. The applicant attempted the SSC examination conducted by Gujarat Secondary and higher secondary education Board in the month of March 2013. However, he remained unsuccessful and submitted an application for re-assessment of his answer sheet, the said fact has been apprised by him to respondent no.3 with a request till the result of re-assessment comes, he may be allowed to continue in service (Ann. R/5).

At the same time he continued in his attempt to acquire the requisite qualification also by filing examination form with National Institute of Open Schooling, (GOI) Secondary School Examination. The examination of National Institute of Open Schooling was scheduled in the month of October 2013 in which he appeared and

was successful as per the result declared by the said examination board on 10.12.2013 (Ann. A/18). However as noted hereinabove the time limit of two years expired in the month of June 2013, accordingly the respondents vide impugned order dated 17.06.2013 terminated the service of applicant. Since the applicant has passed the SSC examination six months later, he submitted his representation for his reinstatement however the same has been rejected by the respondents.

It is also not in dispute that similarly placed other non matriculate MTS trainee working in the office of Accountant General, at Madhya Pradesh, on their remaining unsuccessful in passing Matriculation examination within two years of their appointment, whose services were terminated by respondents, against which they approached the Hon'ble High Court of MP vide Writ Petition No.4678/14 (Om Prakash & Ors v/s Union of India) which came to be allowed vide order dated 17.11.2014 (Ann. A/23).

At this stage, we deem it fit to reproduce the relevant observations in the judgment passed by Hon'ble High Court of MP, which reads as under:-

*“3. Facts as pleaded in the writ petitions are to the effect that the petitioners have been working in the office of the Accountant General, M.P, Gwalior as daily-wager for more than 10-15 years, but respondents did not take any steps for regularization of their services though they acquired right to be conferred temporary status under the Casual Labourers (Grant of Temporary Status and Regularisation) Scheme, 1993 (in short ‘the Scheme of 1993’).*

*4. After implementation of the recommendations of the Sixth Pay Commission, all group D posts were upgraded as Multi Tasking Staff (in short ‘MTS’) carrying grade pay of Rs. 1800/-. The Comptroller and Auditor General of India vide circular dated 31-12-2009 has issued instructions providing minimum qualification as matriculation for the aforesaid MTS posts, however, in the case of daily wage workers engaged in IA and AD this condition was relaxed and for them the minimum required qualification was 8th class subject to following conditions:*

*(i) The candidates will have to pass 10th class from any recognized Board of education/National Open School.*

(ii) Such candidates shall have to pass 10th class within a period of two years. Failure to do so shall entail termination of services.

The aforesaid circular was issued in the backdrop of office memorandum of Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) [in short 'the DoPT'] dated 23-1-2012 regarding applicability of revised group D pay scale to casual labourers that who were in receipt of wages based on S-I scale as on 1-1-2006 shall be given pay Band I with grade pay of Rs. 1800/- w.e.f 1-1-2006 provided they are matriculate. In the case of nonmatriculate temporary status casual labourers, it was provided that the aforesaid benefit shall be extended w.e.f 1-1-2006 only after imparting the requisite training by the respective administrative Ministries/Departments on the lines indicated in the MOF O.M No. 1/1/2008-IC dated 24-12-2008.

5. Pursuant to the aforesaid decision of the CAG, advertisement in the weekly Rojgar Express newspaper dated 19-4-2010 inviting applications for MTS posts was published with stipulation that in case of daily wage workers in IA & AD the minimum qualification will continue to be 8th class subject to the condition as hereinabove mentioned. Copy of advertisement is on record as Annexure R/2.

6. It appears that on 10-1-2012 CAG issued a circular No. 8-Staff (App 1) 25-2010.KW, wherein it was provided that non-matriculate MTS were required to pass matriculate examination within two years and failure to do entail termination of their services. Copy of the circular is annexed as Annexure R/8.

7. On 3-4-2012 the DoPT issued a circular, F. No. 14014/2/2009-Estt. (D) for regulation of conditions for compassionate appointment. It was provided that person appointed as trainee on compassionate ground has to acquire minimum educational qualification (10th examination) in five years. It is relevant to mention that the CAG vide its clarificatory note No. 275-Staff (App-II) 87-2011 dated 9-4-2012 issued an order with reference to and in the context of the aforesaid order of the DoPT dated 3-4-2012 to the following effect:—

"These orders will apply to the newly recruited non-matriculate MTS also. The clarifications issued vide circular No. 8 Staff (App. I) 25-2010.KW dated 10-1-2012, which are not in conformity with these instructions, may be treated as superseded."

Combined reading of the DoPT circular dated 3-4-2012 and the instant CAG clarificatory note dated 9-4-2012 leads to an irresistible conclusion that the non-matriculate MTS were extended the period from two years to five years for qualifying 10th class from any recognized Board of education/National Open School; the minimum qualification required for regular appointment as MTS.

8. Petitioners applied pursuant to the aforesaid advertisement for appointment as non-matriculate MTS. After going through the selection process, petitioners were appointed as temporary MTS vide order dated 3-7-2012. The appointment letters bore the stipulation to the effect that; (i) the candidates will have to pass 10th

*class from any recognized Board of education/National Open School; and (ii) such candidates shall have to pass 10th class within a period of two years. Failure to do so shall entail termination of their services.*

*9. It appears that after appointment in the month of July, 2012, petitioners had appeared in 10th Board examination, but could not succeed purportedly for the reason that petitioners having been in service for last 10-15 years were out of touch with the studies, however, were suddenly required to appear in the examination.*

*10. On 20-9-2012 the CAG with reference to the clarificatory note dated 9-4-2012 issued another clarificatory note No. 820 Staff (App. II) 72/2012.Vol. II to the effect that the decision taken and as contained in the earlier clarificatory note dated 9-4-2012 (supra) has been reviewed and it is further clarified that the clarification given of serial No. 2 of the DoPT circular dated 3-4-2012 (supra) would not be applicable in the cases of, newly recruited matriculate MTS and accordingly, they will have to acquire the minimum educational qualification of matriculation within two years of their appointment. Copy of clarificatory note dated 20-9-2012 is annexed as Annexure R/9.*

*11. As petitioners could not pass the examination as aforesaid, therefore, termination orders were issued on 14-7-2014.”*

11 The above quoted observation of the Hon'ble High Court of MP in the case of **Om Prakash and Others (supra)**, clearly goes to show that the facts of that case and the circulars governing the facts of the said case are akin to the facts of the present case. It can be seen that (i) in both the cases, before the regular appointment order was given to them, the applicants were working as daily wager in the department since several years, (ii) that appointment order were given with condition that they are required to pass Xth standard within two years from the date of appointment as MTS-trainee, failing which their services shall be liable to be terminated from service, (iii) in both the cases, the applicant(s) could not pass the Xth standard examination within the prescribed time limit of two years and therefore their services were terminated, (iv) after the termination, in both the cases the affected employees approached this Tribunal. In the case of employees working at Madhya Pradesh approached the Jabalpur Bench of CAT which came to be dismissed vide order dated 28.07.2014 against which Writ Petition of 4678/2014 and others were filed. The said Writ Petitions were allowed by Hon'ble High Court of

MP by setting aside the order passed by CAT, Jabalpur Bench and directed to reinstate the petitioners as MTS forthwith and further held that they were entitled to avail the facility of Xth Board examination in five years as provided in circular dated 09.04.2012. In the case of applicants, they had passed the matriculation albeit late by six months. In view of this undisputed similarity this Tribunal is in agreement with the submission of the applicant that the case of applicant is identical to the case of petitioners in the aforesaid writ petition (filed before the High Court of MP).

12 It is also noticed the Hon'ble High Court of MP in the said judgment (Om Prakash & Ors v/s Union of India) (supra) held as under:-

*“28. In the backdrop of authoritative pronouncement of law and considering the facts of the case in hand, this Court is of the considered opinion that while petitioners entered in service as MTS employees after selection process and appointment as such, the CAG circular dated 9-4-2012 was very much in existence and, therefore, petitioners had substantive legitimate expectations to avail the opportunity of passing 10th Board examination in a span of five years. There is no reason or justification either indicated in the impugned circular dated 20-9-2012 nor offered or explained before this Court while withdrawing the aforesaid concession or facility by the impugned circular. Instead, what has been stated is that the said circular was issued due to inadvertence; which, in our opinion, is nothing, but as a measure of exit way to avoid test of reasonability and fair play in tie matter of regulation of public employment. The impugned circular, therefore, is found to be unreasonable and arbitrary. Petitioners are fully justified to make complaint of violation of substantive legitimate expectations in absence of any overriding public interest for issuance of said circular. That apart, petitioners; group D employees, undisputedly have been serving respondents for more than 10-15 years. The best part of their life span has been dedicated to the service of respondents. Considering the valuable service of petitioners and experience at hand, they were allowed to appear in the selection process: they were successful. The requirement of passing 10th Board examination may be the requirement of the advertisement for which petitioners have been and are ready to fulfil, but the same cannot be stretched to the extent of justifying the stand that failure to pass 10th Board examination in two years span shall entail termination of employment. This act of respondents in the opinion of this Court is arbitrary and cannot be justified by applying Wednesbury principles of reasonableness. Hence, termination of employment of petitioners for the reason of not having passed 10th Board examination in two years time by force of impugned circular violates petitioners' fundamental right guaranteed*

*under Articles 14 and 16 of the Constitution of India and as they are driven out of employment and means of livelihood, their fundamental right guaranteed under Article 21 of the Constitution is also violated. As regards the submissions that petitioners accrued right by force of circular dated 9-4-2012 and the same could not have been withdrawn reducing the period to qualify 10th Board examination from five years to two years retrospectively, this Court is of the view that the concept of accrued right and principles of its application as laid down by the Constitutions-Bench of the Hon'ble Supreme Court in the case of Raman Lal Keshav Lal Soni (supra) and followed in various judgments by the Hon'ble Supreme Court may not have application in strict sense, but protection against denial of such right on the bedrock of reasoning of protection of accrued right can always be pressed to justify reasonable and bona fide cause against arbitrary action of the respondents.*

*Accordingly, all the above-mentioned Writ Petitions are allowed. The impugned orders of termination of services of petitioners are hereby quashed. Respondents are directed to reinstate the petitioners forthwith as MTS employees. The provisions as contained in circular dated 20-9-2012 reducing the period from five years to two years for passing the 10th Board examination are read down and petitioners are hereby held entitled to avail the facility of passing 10th Board examination in five years as provided in circular dated 9-4-2012.”*

- 13 It can be seen that the Hon'ble M.P.High Court in un unequivocal terms held the action of the respondents in terminating the employment of the petitioners of the said Writ Petition is arbitrary and same cannot be justified by applying Wednesbury principles of reasonableness. Hence, termination of employment of petitioners for the reason of not having passed 10th Board examination in two years time by force of impugned circular violates petitioners' fundamental right guaranteed under Articles 14 and 16 of the Constitution of India and as they are driven out of employment and means of livelihood, their fundamental right guaranteed under Article 21 of the Constitution is also violated.
- 14 It is further noticed that respondents being aggrieved by the aforesaid judgment challenged the same before Hon'ble Apex Court by way of Civil Appeal No.6915-6921 of 2015 (UoI and Ors v/s Om Prakash & Ors). The three Judge Bench of Hon'ble Apex Court disposed of the

said Civil Appeals vide order dated 27.11.2017 (Ann. A/24) which reads as under:-

*“After the application for early hearing was allowed, with the consent of the parties, the appeals have been heard.*

*The singular question that emerges for consideration is whether the court should interfere at this stage, when the respondents have already passed the requisite qualification, i.e. Matriculation.*

*Keeping in view the fact that they have qualified in the meantime and they had served the department for several years before removal, we intend to dispose of the appeals with the following direction:-*

- (i) *The respondents shall be taken back in the service and the past service shall only be counted for the purpose of pension, if any.*
- (ii) *The respondents shall not claim any seniority over the persons who have already been regularised or appointed.*
- (iii) *The respondents shall not be entitled to any backwages.*

*The appeals are disposed of accordingly. There shall be no order as to cost.”*

15 In the case on hand before passing the impugned order of termination, the respondents ought to have considered the undisputed facts that the applicant had served the respondents for more than a decade. The best part of his life span has been dedicated to the service of the respondents. The valuable service rendered by the applicant and the experience acquired by him, ought to have been considered by granting the request made by him vide representation dated 23.12.2013. The requirement of passing 10<sup>th</sup> Board examination may be the requirement of the advertisement and/or appointment order, for which the applicant had been and was ready to fulfill, but the same

cannot be stretched to the extent of justifying the stand that failure to pass 10<sup>th</sup> Board Examination in two years span shall entail termination of employment as held by Hon'ble High Court of MP in the aforesaid identical case. In the present case, the applicant could even acquire the requisite educational qualification, though late by few months. The suitability of the applicant daily wager is not in doubt, as he was already tested in the selection test for appointment to the MTS group D post. The submission of the respondents that the order and judgment passed in the case of Om Prakash & Ors v/s Union of India & Ors is not applicable the same is not tenable in view of the order/judgment of Hon'ble Apex Court in the case of Union of India v/s Om Prakash (supra). In our considered view as noted hereinabove the said judgment is squarely applicable to the case on hand.

16 We have also kept in mind that the candidates did fulfil the requirement albeit late by about six months. But the very provisions which mandated acquisition of qualification did not foresee interim failure in achieving it as a debilitating factor since it calls upon the employer to impart training in terms of DOPT OM dated 23.01.2012 in which it was clearly mentioned that the grade pay of Rs.1800/- w.e.f. 01.01.2006 would be extended to non matriculate temporary status casual labourer only after imparting requisite training by the respective ministry/department on the lines indicated in MOF OM No.1/1/2008-IC dated 24.12.2008. We cannot lose sight of undisputed fact that before the cut off date by which the applicants ought to have cleared the matriculation, they had informed the respondents that they had filled the examination form with National Institute of Open Schooling and examination was scheduled in October 2013. Undisputedly the applicants have continuously put in every effort for clearing the Matriculation exam and neither sat idle nor was negligent. They had passed Xth standard examination from National Institute of Open Schooling in December 2013. In our considered view the observation and direction in the judgment passed by the Hon'ble High Court of MP and Hon'ble Apex Court in the case of Om Prakash

(supra) squarely answered the controversy. The said dictum is binding in nature.

16 In the backdrop of the decision in **Om Prakash and Others v/s Union of India & Ors by Hon'ble High Court of MP (supra)** and **Hon'ble Apex Court in appeal against the decision of Hon'ble High Court of MP had held that since the original petitioners had already acquired the requisite qualification in the meanwhile and also taking into consideration their long service directed the department to reinstate them forthwith and** considering the factual matrix of the case in hand, this Tribunal is of the considered view that the impugned termination orders are unreasonable and contrary to the order passed by Hon'ble High Court of MP. Taking note of the aforesaid judgment and order passed in the case of Om Prakash & Ors (supra) by Hon'ble High Court of MP and Hon'ble Apex Court, since the applicants here are similarly placed in all respects (they had also rendered their service for more than a decade and thereafter they applied in response to the advertisement issued and got selected as MTS-trainee but could not acquire the prescribed qualification within the prescribed period of two years, however all the applicants have acquired the said qualification after six months from the cutoff date) as also in light of judgment passed by Hon'ble High Court of Gujarat in SCA No. 1314/2009 in the case of Vipul Kumar Atmaram Parekh and 4 Ors v/s State of Gujarat decided on 24.03.2009 reported in 2009 (5) GLR 3914, applicants herein are also required to be treated equally by way of their reinstatement in light of aforesaid judgments.

Since this Tribunal is following the judgment of Hon'ble High Court of MP in the case of Om Prakash (supra) and considered the claim/entitlement of the applicants for their reinstatement as MTS trainee, we do not find it appropriate to deal with the alternative prayer sought in this OA.

17 In the result, all the five OAs (OA 80/17, 103/17, 104/17, 161/17 & 511/17) succeed. The impugned order of termination dated 17.6.2013

is hereby quashed and set aside. The respondents are directed to take the applicants back in the service forthwith and their past service shall only be counted for the purpose of pension, if any. The applicants shall not claim any seniority over the persons who have already been regularised or appointed as MTS in regular grade of MTS and shall not be entitled to any backwages.

18 All the five OAs stands allowed as per aforesaid directions. No costs.

(Dr A K Dubey)  
Member(A)

(Jayesh V Bhairavia)  
Member(J)

abp

