

Cuttack, this the 15th day of March, 2011

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FOR INSTRUCTIONS

1. Whether it be referred to reporters or not? *Yes*
2. Whether it be circulated to Principal Bench, Central Administrative Tribunal or not? *Yes*

(C. R. MOHAPATRA)
Member (Admn.)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A No. 202 of 2008

Cuttack, this the ~~15th~~ day of March, 2011

CORAM:

THE HON'BLE MR.C.R.MOHAPATRA, MEMBER (A)

AND

THE HON'BLE MR.A.K.PATNAIK, MEMBER (J)

Trilochana Mali, S/o.Late Rama Mali, At/Po/Ps-Parlakhemundi,
Dist. Gajapati.

.....Applicant

By legal practitioner:M/s.A.K.Bose,P.K.Das,D.K.Mallik,Counsel

-Versus-

1. Union of India represented by the Secretary, Ministry of Finance, Central Secretariat, New Delhi, North Block, New Delhi-110 011.
2. Chief Commissioner, Central Excise and Customs,Bhubaneswar-1.
3. Commissioner, Central Excise and Customs, At-Rajaswa Vihar, Bhubaneswar.

....Respondents


By legal practitioner: Mr.S.B.Jena,ASC

ORDER

MR. C.R.MOHAPATRA, MEMBER (ADMN.):

The case of the Applicant, in nut shell, is that he joined in the post of Sepoy under the Respondent No.3 on 11-11-1975. Although he has been continuing as Record Keeper since 17-08-1979, his case was not considered for promotion while giving promotion to his junior to the post of LDC in the year 1986 on the ground that he was not a Matriculate. He passed Hindi Prathama from Allahabad Sahitya Sammilani in the year 1992 and according to the Government of India notification the qualification of Hindi Prathama is equivalent to

Matriculation. Even then his case has not received any consideration. However, earlier he approached this Tribunal in OA No. 739 of 1997 seeking direction to the Respondents to promote him to the post of LDC w.e.f. 1.1.1986 i.e. from the date when his junior was promoted to the said grade. But the said OA was dismissed by this Tribunal on 25.1.1999 holding that as the applicant is not educationally qualified to hold the post, he is not entitled to the relief claimed in the said OA. Meanwhile, the Government of India, Ministry of Human Resources Development Department vide notification dated 27.7.2001 has recognized the Prathama Examination conducted by Hindi Sahitya Sammilani, Allahabad for the purpose of employment under the Central Government for the post for which the desired qualification is prescribed as Matric Pass. Initially the period of such recognition was for three years since 27.7.2001. In continuation of the above notification dated 27.7.2001 the Government of India extended the provisional recognition granted to the Prathama Examination for the same purpose for further period of three years w.e.f. 27.7.2004 to 27.7.2007 and this recognition has further been extended for a period of three years i.e. upto 26.10.2010. In the circumstances



it is the contention of the applicant that as he meets the required qualification he is entitled to the second financial up-gradation under ACP w.e.f. 9.8.99 instead of w.e.f. 17.8.2007 as has been granted to him in Annexure-A/8 with all consequential service and financial benefits retrospectively.

2. Respondents' contention is that the applicant could not be considered for promotion to the next higher grade (LDC) as he did not possess the requisite academic qualification prescribed in the relevant Recruitment Rules. In order dated 25.1.1999 this Tribunal dismissed the OA No. 739 of 1997 earlier filed by the applicant holding that the Hindi Prathama Certificate issued by Hindi Sahitya Sammelan Allahabad cannot be considered as equivalent to Matriculation pass. The qualification required for promotion is also required for grant of ACP. His prayer for grant of such benefit has already been considered but rejected as communicated to him in Annexure-A/5. Recognition to the qualification possessed by the applicant equivalent to matriculation came through notification dated 14.5.2004 (Annexure-A/9) for three years w.e.f. 27.7.2004 to 27.7.2007 and in absence any specification, this notification cannot have retrospective implication. Applicant passed

Prathama examination in 1992. As such the recognition is applicable only w.e.f. 27.7.2004 to 27.7.2007 or onwards and certainly not from the year 1992. The allegation that similarly situated employees having acquired the similar qualification have been conferred with the benefit was denied by the Respondents. The background under which the applicant was granted 2nd financial up-gradation under ACP scheme to the pay scale of Head Havaladar w.e.f. 17.8.2007 as described by the Respondents in their counter is that in terms of the Recruitment Rules for the post of Havaladar and Head Havaladar, 2007 (received vide Ministry letter dated 06.09.2007), applicant submitted representation dated 15.11.2007 requesting consideration of his case for grant of 2nd financial up-gradation under ACP scheme on the ground that he has not been given a single ACP throughout 28 years of his service career. In terms of the new Recruitment Rule, 2007 Record Keeper with 3 years regular service in the grade is eligible for promotion to the grade of Head Havaladar in the pay scale of Rs.3050-75-3950-80-4590. Since no post of Head Havaladar was vacant in both the Commissionerates to be filled up by promotion from among the feeder posts i.e. Havaladar and Record Keeper, the case of the

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applicant was taken up for consideration for grant of 2nd financial up-gradation to the pay scale of Head Havaldar in terms of the Recruitment Rules, 2007, inasmuch as he having fulfilled the eligibility criteria as per the said Recruitment Rules was eligible for consideration for grant of 2nd financial up-gradation under ACP scheme to the pay scale of head Havaldar w.e.f. 17.8.2007 i.e. the date of publication of the Recruitment Rule in the official Gazettee. Otherwise, the applicant would not have been eligible at all for consideration for grant of 2nd financial up-gradation under ACP scheme to the pay scale of Head Havaldar w.e.f. 17.8.2007. The post of Record Keeper albeit has been treated as feeder cadre for promotion to the grade of LDC as per the amended Recruitment Rule but the requisite qualification of matriculation pass for eligibility has not been done away with. Since the applicant does not possess the eligible academic qualification his case cannot be taken up for consideration for promotion to the grade of LDC. New Recruitment Rule came into existence w.e.f. 17.8.2007. The said rule was not in existence as on 8.9.1999. By stating so, the Respondents have prayed for dismissal of this OA.

3. Learned Counsel appearing for the respective parties have reiterated the stand taken in their pleadings and having heard them at length, perused the materials placed on record. According to the Respondents recognition to the qualification possessed by the applicant equivalent to matriculation came into effect through notification dated 14.5.2004 (Annexure-A/9) for three years w.e.f. 27.7.2004 to 27.7.2007 and in absence of any specification this notification cannot have retrospective implication and as the applicant had the qualification of Prathama examination in 1999 the notification under Annexure-A/9 is hardly of any help to him. Further stand of the Respondents is that the post of Record Keeper though has been treated as feeder cadre for promotion to the grade of LDC as per the amended Recruitment Rule, requisite qualification of matriculation pass for eligibility has not been done away with. In the Recruitment Rules, 2007 it has been provided that record Keepers with three years⁴ regular service in the grade are eligible for promotion to the grade of Head Havaladar. Therefore, it appears, that considering the hardship caused to the applicant though the applicant had not possessed the educational qualification but as he has put in three years regular service in

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the grade of Record Keeper, he was granted the second financial up-gradation under the scheme w.e.f. 17.8.2007 i.e. the date when new Recruitment Rule came into effect.

4. Through rejoinder the Applicant produced two notifications of the Government of India, Ministry of Human Resources Development, Department of Secondary and Higher Education dated 27th July, 2001 and 14th May, 2004. The Notification of July, 2001 reads as under:

“On the recommendation of the High Level Committee for recognition of Educational qualifications, the Government of India have decided to recognize the Prathama Examination being conducted by Hindi Sahitya Sammelan Alahabad for the purpose of employment under the Central Government for the post for which the desired qualification is a pass in matriculation. The recognition is provisional for the period of three years after which the committee will review the recognition granted.”

5. In the subsequent notification dated 14th May, 2004 such recognition was extended for another period of three years w.e.f. 27.7.04 to 27.7.07 and it is the positive case of the applicant that the recognition granted vide notifications dated 27th July, 2001 and 14th May, 2004 is still in force. This was not also controverted by the Respondents either in their counter or in course of hearing.

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6. It is true that the notifications dated 27th July, 2001 and 14th May, 2004 have no retrospective effect. It is the positive stand of the Respondents that even for promotion to the post of Head Havildar the qualification of matriculation has not been done away with under the new Recruitment Rules. Despite this position, the Respondents considered the case of the applicant and granted him the second financial up-gradation w.e.f. 17.08.2007 i.e. from the date when new rule came into effect. But the counter is conspicuously silent as to whether the benefit was granted by relaxing the educational qualification or by virtue of the notifications dated 27th July, 2001 and 14th May, 2004. If it is accepted that there was relaxation of qualification then why the same relaxation could not be extended prior to 17.8.2007. If it is in accordance with the notifications dated 27th July, 2001 and 14th May, 2004, then why not from the date of notification i.e. w.e.f. 27th July, 2001. Hence we are of the view that the date of granting the second financial up-gradation has no reasonable nexus with the promulgation of the new Recruitment Rules in 2007. In view of the above, ends of justice would be met if we direct the Respondents to consider the case of the applicant for conferment of second financial up-gradation



under the ACP scheme to the applicant placing him to the next higher scale w.e.f. 23rd July, 2001 (if he is otherwise eligible) and for consequential financial benefits within a period of 120 days from the date of receipt of copy of this order. Ordered accordingly.

5. With the aforesaid observation and direction, this OA stands allowed. There shall be no order as to costs.


(A.K.PATNAIK)
MEMBER(JUDL.)


(C.R.MOHAPATRA)
MEMBER (ADMN.)