

CENTRAL ADMINISTRATIVE TRIBUNAL  
CALCUTTA BENCH : KOLKATA

No.OA 1507/96

Present : Hon'ble Mr. Sarweshwar Jha, Member (A)

Hon'ble Mr. Mukesh Kumar Gupta, Member (J)

K.R. Biswas and 109 others

Applicants

v.

Union of India and others

Respondents

For the applicants : None

For the respondents : MR. R.K. Dey

Heard on : 29.9.2004

Order on : 19.11.2004

O R D E R

Per Mukesh Kumar Gupta, Member (J):

1. 110 applicants in this case seek the following reliefs:

- "(a) Leave may kindly be granted to file the application jointly as they have common interest and same relief sought for under rule 4(5)(a) of Central Administrative Tribunal (Procedure) Rules, 1987.
- (b) An order directing the respondents and each of them to treat the applicants (Accounts Clerk) having successfully passed in the Appendix-II examination, at par with the Junior Accounts Assistants, being direct recruits in the matter of promotion, seniority and other service benefits.
- (c) To strike down the arbitrary, illegal and irrational quota system in the matter of scope of promotion of the applicants holding the post of accounts clerks as prescribed under clause 171(3) of the IREM-I, referred to above.
- (d) To direct the respondents to give and effect immediate promotion to the applicants in the next higher post i.e. the Junior Accounts Assistants with retrospective effect from their respective successful completion of the Appendix II examination.
- (e) To direct the respondents to formulate an uniform the promotional policy for the purpose of promotion of the incumbents holding the posts of Accounts Clerk and Junior Accounts Assistants to their respective next higher posts treating them

at par after having successfully completed the Appendix-II examination with provisions of consequential reliefs therefor.

- (f) An order directing the respondents to give retrospective of seniority to the applicants from their respective date of compietion of the Appendix-II examination, after striking down the provisions of clause 171(3) of IREM-I, forthwith.
- (g) To direct the respondents to give the arrear benefits to the applicants w.e.f. their respective due dates of promotion as prayed for in prayers (d) above.
- (h) Any other prayer/prayers, relief/reliefs to which the applicants may be entitled to in law and in equity."

2. The facts as stated by them are that they joined as Accounts Clerks initially in Grade II but presently they are working in different posts of Accounts Clerks, Junior Accounts Assistants and Accounts Assistants in Eastern Railway posted at different places. Some time in 1988 posts of Accounts Clerks Grade II was redesignated as Accounts Clerks. As per para 171(3) of IREM I Accounts Clerks were eligible for Junior Accounts Assistants in the pay scale of Rs.1200-2040 against 20% quota of vacancies. Out of 20%, 75% were to be filled on the basis of promotion quota by qualifying the Appendix-II examination and 25% on promotion quota of non-qualifying Accounts Clerks with 5 years or more service, who displayed conspicuous ability, seniority and suitability test by written examination. The applicants contend that they fall under para 171(3) of IREM as they had passed Accounts Clerks Appendix II Examination. It is contended that the policy prescribed under clause 171(3) of IREM I is illegal, arbitrary and contrary to the scope of Articles 14 and 16 of the Constitution of India, besides principle of natural justice and Article 300A of the Constitution. There was no justification to

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treat the two groups dissimilarly inasmuch as there was no reason why discrimination should be made in respect of incumbents of the applicants group.

3. The respondents contested the aforesaid claim of the applicants and stated that in terms of Rule 171(3) and (4) of IREM Volume I, the procedure for promotion and/or appointment to the post of Junior Accounts Assistants, is as under:

"(3) Accounts Clerks are eligible for promotion as Junior Accounts Assistants in scale Rs.1200-2040 against 20% quota of vacancies as under:

- (i) 75% of the vacancies of promotion quota by qualified Appendix-2 passed Accounts Clerks; and
- (ii) 25% of the vacancies of promotion quota by non-qualified Accounts Clerks with five years service or more who have displayed conspicuous ability, on seniority-cum-suitability basis, written test forming part of seniority-cum-suitability test.

(4) The remaining 80% of the vacancies in the grade of Junior Accounts Assistant in scale of Rs.1200/2040 will be filled by direct recruitment through the agency of the Railway Recruitment Boards as per conditions stipulated below:

- (i) Educational Qualification:- University Degree preference being given to persons with I & II Divisions - Honours and Masters Degree.
- (ii) Age:- Between 18 and 25 years.
- (iii) Training:- A concentrated training course of three months as per instructions issued by the Railway Board from time to time.
- (iv) They will have to pass Appendix-II Examination within a period of three years of their appointment and in two chances failing which they are liable to be discharged from service.
- (v) They will be eligible to draw annual increment only on passing Appendix II examination on completion of one year's service whichever is later. Once

an increment has been allowed arrears due will be payable from the date of completion of one year's service, wherever applicable."

It is further contended that the graduates working as Class II are permitted to appear against direct recruit quota to be filled by Railway Service Commission. Thus the existing graduates have two channels one in competition with graduates of open market and another in ordinary course of passing Appendix II examination. Rule 5 of the IREM lays down procedure for filling up the post of Accounts Assistant in scale of Rs.1400-2600, which reads as under:

"The vacancies in the grade of Accounts Assistant in scale Rs.1400-2600/- will be filled by promotion of Junior Accounts Assistants in scale Rs.1200-2040 after they have completed three years service in the grade, and passed Appendix-II Examination. Provided that the condition of passing the Appendix-II examination will not be applicable to those Junior Accounts Assistant, who were promoted as such against unqualified senior suitable quota as per clause 3(ii) above."

It was also contended that the terms & conditions of appointment and promotional aspects of Accounts Clerk and Junior Accounts Assistant are different and cannot be compared at par. Direct recruit Junior Accounts Assistants are not promoted to the post of Accounts Assistant immediately after passing Appendix II examination, they are promoted to the post of Accounts Assistants in the pay scale of Rs.1400-2600 only after completion of three years of service in the pay scale of Rs.1200-2040 subject to their fitment and availability of necessary vacancies. Similarly it was contended that direct recruit Junior Accounts Assistants is appointed against 80% quota and their continuance in the Railway is subject to passing Appendix II examination, otherwise

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they will be discharged from service. Moreover, the standard of academic qualification and/or background of direct recruited Junior Accounts Assistants is more higher than the standard of academic qualification of the Accounts Clerks, as prescribed under the rules. Therefore, mere passing of Appendix II examination by both groups cannot place them on similar footing, as contended. An Accounts Clerk will have to be promoted to the post of Junior Accounts Assistant against 20% promotional quota and thereafter he will become eligible for promotion to the post of Accounts Assistants as per his seniority.

It is further contended that the applicants have challenged the aforesaid procedure on the ground that their promotional chances to the grade of Junior Accounts Assistant have been curtailed because 80% of the total strength of Junior Accounts Assistants is presently filled up by direct recruitment. The applicants herein were initially appointed as probationary Accounts Clerks Gr.II (redesignated as Accounts Clerk) and passed Appendix-II examination. Thereafter promotion to the post of Junior Accounts Assistants in the scale of Rs.1200-2040 is governed by Rule 171(3)(i) of IREM I.

4. We heard learned counsel for the parties at length and perused the pleadings carefully.

We find that more or less identical issues on the subject had been the subject matter in TA No.1840/86 Somnath Mukhopadhyay and others v. Union of India and others, decided on 30.9.1991 by this Bench of the



Tribunal, and O.A. No.421/92 T. Rozario and others v. Union of India and others decided on 30.4.1997 by the Mumbai Bench of the Tribunal and it was held that the circular dated 16.5.1980 which affected their promotional opportunities was neither mala fide nor violative of fundamental rights.. It was contended in the said case that the said circular could not have been issued which affected their promotional avenues without giving an opportunity of hearing which contention was repelled following the judgments of Mohd. Sujat Ali v. Union of India AIR 1974 SC 1631: State of Maharashtra v. Chand Kant Anant Kulkarni AIR 1981 SC 1990: K.Jagadeeshan v. Union of India 1990 Lab IC 839: AIR 1990 SC 1072 and Union of India v. S.L. Dutta AIR 1991 SC 363. It was held that there was no merit in the contentions raised. Similarly the Mumbai Bench also considered the same issue regarding Appendix II examination as well as promotion to the next higher post and held that in the year 1982 it was decided to progressively increase the recruitment to Grade I category from 20% to 80%. The Tribunal held that no exception can be taken to the policy decision and it found no reasons to interfere with the policy decision of the administration.

7. On bestowing our careful consideration to the entire matter as well as pleadings on record we find no merits in the applicants contention that they should be treated at par with Junior Accounts Assistant after having successfully completed Appendix II examination for the purpose of promotion to the next higher post, as prayed for.. Moreover it is well settled law that the promotion cannot be given with retrospective effect

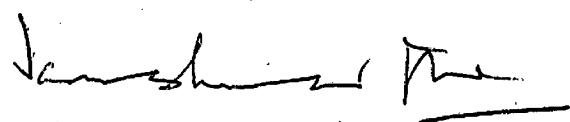


particularly when neither the details have been furnished in the application as to how they can be made eligible to promotional post without satisfying the requirement of the rule. It is not the case of the applicants that there was no promotional avenues available to them.

8. In view of the discussion made hereinabove we find no merit in the application and accordingly the same is dismissed.



(Mukesh Kumar Gupta)  
MEMBER (J)



(Sarweshwar Jha)  
MEMBER (A)

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