

CENTRAL ADMINISTRITIVE TRIBUNAL

LUCKNOW BENCH

O.A.No.42/2007

This the 18th day of April 2007

HON'BLE SHRI A.K. SINGH, MEMBER (A)

HON'BLE SHRI M. KANTHAIAH, MEMBER (J)

Smt. Rekha Srivastava, aged about 42 years, wife of Sri Manoj Kumar Srivastava, resident of 50, Beni Prasad Road, Lalbagh, Lucknow.

... Applicant.

By Advocate:-Shri N.C. Srivastava.

Versus.

1. Union of India through the Secretary, Ministry of Finance, Department of Revenue, North Block, New Delhi.
2. The Chairman, Central Board of Direct Taxes, North Block, New Delhi.
3. The Director of Income Tax (Systems), 'ARA' Building, Jhandewalan Extension, New Delhi.
4. Chief Commissioner of Income Tax, Aaykar Bhawan, 5, Ashok Marg, Lucknow.

... Respondents.

By Advocate:-Shri Vishal Choudhary for Km. Asha Choudhary.

ORDER

BY SHRI M. KANTHAIAH, MEMBER (J)

The appellant who has been working as Data Processing Assistant (DPA) Grade A in the office of the 4th respondent filed this original application challenging the validity of the provision as contained in column No 9 of schedule of Directorate of Income Tax (System) Programme Assistant/Console Operator recruitment rules

*1990, wherein it prescribed one and the same educational qualification for direct recruits and promotees, due to which departmental candidates are being deprived of promotion on the post of Programme Assistant/Console Operator. By way of Interim relief, she sought stay of operation of impugned provision - column No 9 of Directorate of Income Tax (System) Programme Assistant / Console Operator recruitment rules 1990 while considering the applicant's candidature for the post of Programme Assistant / Console Operator in the coming DPC meeting.

2. Inspite of giving ample opportunity, the respondents have neither filed the counter nor objections but opposed the claim for grant of any stay by advancing oral arguments.

3. Heard Both Side Advocates.

4. The point for consideration is whether the applicant is entitled for grant of interim relief as prayed for,

5. The brief facts of the case are that the applicant who was selected in the examination held by the respondent department in the pay scale of Rs 1200 -30-EB-40-2040 and got appointed on 1st August, 1988 under Annexure 2 , joined on 9th August, 1988. The department also confirmed her services on 10th August, 1990. At the time of her entering into the service, the educational qualification for the post of Data Entry Operator was Graduate / Degree and the desirable qualification was 8000 key depressions per hour. It is also not in dispute that in the year 2001 the post of Data Entry Operator had merged with Data Processing Assistant (DPA)Grade-A as a result of restructuring and since then she has been working in the cadre of DPA



*Grade A. The post of Programme Assistant / Console Operator is the next higher post to DPA Grade A and the same is selection post under the relevant provisions of Directorate of Income Tax (Systems) Programme Assistant / Console Operator recruitment rules 1990.

6. It is also an undisputed fact that during the year 1995 the department had made direct recruitment for the post of Programme Assistant / Console Operator under the provisions of recruitment rules of 1995, depriving the promotional opportunities to the departmental candidates working in the post of DPA Grade A. Some of the employees filed OA 930 of 2003 on the file of Central Administrative Tribunal, Madras, questioning the rules of 1995 upon which the tribunal allowed their claim directing the department to consider the case of departmental candidates for promotion basing on old rules of 1990. Aggrieved by the said decision when the department filed a writ petition 25269 of 2004 on the file of Hon'ble High Court judicature, Madras but the same was dismissed conforming the orders of the tribunal . Annexure 3 is the copy of judgment of Hon'ble High Court of Madras in W.P.No 25269 of 2004 dated 09.09.2004. Against the said judgment when the department / UOI approached Apex Court by filing SLP Civil No 5840 by 2005 the same was dismissed on 12.07.2005. Annexure 4 is the copy of the judgment delivered by Hon'ble Supreme Court.

7. Subsequently when the applicant along with 6 others filed OA 524 of 2006 claiming their promotions based on old rules 1990, the respondents have communicated their decisions to allow the claim of the applicant and after hearing the both sides this tribunal has passed orders directing the respondents to implement their decision for promotion of the applicant's as per their letter dated 21.06.2006 and



18.09.2006 within 3 months time from the date of receipt of the copy of the order to conduct DPC and to consider the case of applicants for their promotion. Annexure – is the copy of the judgment in OA 524 of 2006 dated 14.12.2006. Thereafter the respondents / department has initiated the proceedings for conducting DPC in the month of March, 2007.

8. At this stage, the applicant has filed this application questioning the validity of column 9 of old rule of the year 1990 under which uniform educational qualification required for the post of Programme Assistant / Console Operator by the Direct recruits as well as departmental promotion to the employee's working in the Cadre of DPA group A .

9. In view of the revial contentions raised by both the following are the main points for discussion for considering the claim of the application for grant of interim orders.

I. Whether the applicant has made out the case challenging the operation of the requirement of column 9 of old rules of the year 1990 for considering her claim for promotion by relaxing such educational qualification on the ground that it is arbitrary and violative of the equality clause contained in Article-14 of the Constitution and discriminatory and thus entitled for the stay of its operation by way of interim relief.

II. Whether the applicant who alongwith 6 others obtained orders for implementation of old rules 1990 for promotion on the post of Programme Assistant / Console Operator in OA 524 of 2006 is justified to seek stay of one of its requirement i.e column 9 of old



✓ rules 1990, when there was direction to the respondents / department for compliance of the order within a stipulated time.

III.To What relief

10. Point No I & II - Both these points are inter linked with each other and as such discussed in common

In respect of the claim of Point No I, the main grievance of the applicant who is seeking promotion for the post of Programme Assistant / Console Operator that the educational qualification required for promotion is the same as required for direct recruits though they got experience of more than 10 years as DPA Grade A, for want of educational qualification similar to direct recruits dis entitled her for promotion and thus questioned the validity of educational qualification as of prescribed in column 9 of old rules 1990.

Column No 9 of rules 1990 says as follows.
 "That the educational qualifications Prescribed for direct recruits will apply in the case of promotees

Column 8 of rules 1990 is in respect of educational and other qualifications required for Director Recruits

Essential:

I. Bachelor's degree in Statistics Mathematics (with Statistics /Operational Research / Physics / Commerce (with Statistics)/Economics from a recognized University or requirement of Diploma in Engineering / Computer Science of a recognized University/ Institute .

II.2year's experience of Electronic Data Processing work.



Note 1: Qualifications are relaxable at the discretion of U.P.S.C in case of candidates otherwise well qualified

Column 12 is in case of recruitment by promotion / deputation / transfer etc.

Promotion:

Data Entry Operator with 10 year's regular service in the grade

11. Thus from the combined reading of column 8, 9 & 12 it is clear that the Data Entry Operator with 10 years experience required Educational Qualification equivalent to the direct recruits as Bachelor's Degree with optional subject of Statistics or Mathematics or Physics or Commerce with Statistics or economics etc.

12. Admittedly the Data Entry Operator who are having 10 years experience while joining in the said cadre, their educational qualification was only Bachelor's Degree without any specialized subjects as required under column No 8 of rules.

13. Thus there is force and also merits in the contention of the applicant in question equal educational qualification for promotees who got 10 years experience as Data Entry Operator similar to that of Director recruits.

14. But as per note 1, beneath column of 8 of rules, it is clearly mentioned the qualifications are relaxable at the discretion of U.P.S.C in case of the candidates otherwise well qualified. By way of such note option or discretion was given to U.P.S.C for relaxation of qualification



as required in the column no 8 of the rules.

15. Admittedly these are the rules for the year 1990 and till now there was no representation either to the department or to the U.P.S.C for relaxation of the qualification as required under column no 8 for their promotion by any of the departmental candidates more particularly from the applicant herein. Nothing is pleaded in respect availing such relaxation . Without taking any such steps, now seeking stay of applicability of educational qualification under column no 9 of rules 1990 for promotion from DPA group A to Programme Assistant / Console Operator and permitting the applicant in the coming DPC is not at all justified, since the DPC meeting to be held or held as per the directions of the Tribunal in OA 524 of 2006 at the instance of the applicant and 6 others. It is also the case of learned respondent council that DPC was held - March, 2007 and the results are to be announced.

16. In view of the above circumstances though the applicant got valid and legal grounds to challenge the requirement of educational qualifications of promotees similar to that of Director recruits which are to be discussed and decided at the time of final disposal of OA after completion of pleadings but there are no merits for grant of stay by way of Interim Orders at this stage.

17. Thus 1st part of Point No 1 is decided in favor of the applicant, whereas second part of a Point No 1 and also Point No 2 are decided against the applicant .

Point No 3 . Though the first part of point No 1 is decided in favor of the applicant, second part of Point No 1 and also Point No 2 are



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decided against the applicant and in favor of the respondents and in such circumstances the applicant is not entitled for interim relief as claimed by her.

18. In the result the claim of the applicant for stay of operation of column 9 of Directorate of Income Tax (System) Programme Assistant / Console Operator recruitment rules 1990 while considering the claim of the applicant for the post of Programme Assistant / Console Operator by way of promotion in the coming DPC meeting is liable for dismissal and as such the same is dismissed. No costs are awarded.


(M. KANTHAIAH)

MEMBER (J)


(A.K. SINGH)

MEMBER (A)

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