

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH
HYDERABAD

O.A. 1284/1996

Date of order: 11/11/96

Between:

Sadras Saibaba

.. Applicant

A N D

1. The Chairman,
Central Board of Direct Taxes,
Ministry of Finance,
Department of Revenue, North Block,
New Delhi -1.
2. The Director of Inspection (Systems),
ARA Centre, Ground Floor,
6-2, Jhandewalan Extension,
New Delhi.
3. Chief Commissioner of Income Tax,
A.P. Ayakar Bhavan,
Basheerbagh, Hyderabad..
4. Mohd. Ghouse,
Data Processing Assistant,
Grade-D,
O/o. Deputy Commissioner of Income Tax,
Range-5, Hyderabad, Ayakar Bhavan,
Basheerbagh, Hyderabad.1.

.. Respondents

Counsel for the applicant : Mr. J. Sudheer

Counsel for the respondents : Mr. Jaya Prakash Babu
for official respondents.

Mr. S. Ramakrishna Rao
for respondent no. 6

C O R A M :

THE HON'BLE MRS. BHARATI RAY, MEMBER (J)

THE HON'BLE DR. CHHATTRA SAL SINGH, MEMBER (A)

O R D E R
(Per Hon'ble Mrs. Bharati Ray, Member (J))

This application has been filed by the applicant
seeking the following relief :

To declare that the action of the 1st respondent
in issuing the recruitment rules 1995 dt.
14.9.95 bearing F.No. A-11019/27/89-AJ-VII (PE)
relating to the income tax department (Data

Processing Assistant Grade A&B) is illegal, arbitrary and contrary to the principles of natural justice and consequently direct respondents 1 to 3 to consider the case of the applicant for the promotion of Data Processing Assistant Grade-A in the place of 4th respondent or with effect from 18.8.1994 the date from which the applicant is eligible for promotion.

2. It is the case of the applicant that he joined the respondent organisation as Data Entry Operator on 20.6.1988. The applicant is a graduate in Commerce with Diploma in Data Entry. In the year 1992 he passed Diploma in Computer Applications from National Institute for Training in Industrial Engineering. Consequent upon revision of pay scales and grades of Data Entry Operators, he was redesignated as Data Entry Operator, Grade-B in the pay scale of Rs.1350-2200 w.e.f. 11.9.1989. The next promotion to which he was entitled was to the post of Data Processing Assistant Grade-A. It is the contention of the applicant that in the year 1989 there were no rules governing the promotions with respect to Data Entry Operators. There were three posts of Programme Assistants/Console Operators available in the year 1989 and they were filled up on deputation, one from the same department and two from the Director of Census Operations. Their period of deputation was four years. In the year 1990 the Finance Ministry framed rules known as "Directorate of Income Tax (systems), Programme Assistant/Console Operators Recruitment Rules, 1990." The said rule came into force on 18.8.1990. On 27.6.1991 the applicant made a representation seeking his promotion and prayed for reconsideration of the decision to absorb the candidates of Console Operators/Programme Assistants who had been working on deputation basis. It was followed by another representation dt. 30.6.1992. In the year 1994

the posts of Console Operators/Programme Assistants were redesignated as Data Processing Assistants, Grade-A and Grade-B and Rules, 1990 were repealed. It is submitted by the applicant that in 1994 another set of rules were framed. The 1994 Rules were called "Income Tax Department, Data Processing Assistants Recruitment Rules, 1994. As per these rules, the posts of Data Processing Assistants, Grade-A had to be filled up by two methods, i.e. (a) 50% by promotion and (b) 50% by transfer. If persons were not available for recruitment by transfer, then the posts had to be filled up by direct recruitment. It is stated that at that time four posts were available in DPA Grade-A and B. The fourth respondent who was working as temporary Supervisor in the National Council for Applied Economic Research, Hyderabad was taken on deputation to work as DPA Grade A. It is the contention of the applicant that the fourth respondent was not eligible to work as DPA Grade A by transfer. The applicant made representation on 13.7.1995. In the meantime the recruitment rules 1995 were framed and the 1990 rules were repealed by the 1995 rules and according to 1995 rules the post of DPA Grade A had to be filled up only by transfer on deputation/transfer/direct recruitment. The applicant submitted a representation on 19.4.1996 to the Chairman, Central Board of Direct Taxes, New Delhi requesting him to consider for promotion to the cadre of Data Processing Assistant Grade-A with retrospective effect i.e. from the date on which the vacant post filled in by a non-departmental candidate on deputation though it should have been filled in by the

departmental candidates on promotion. He has made another representation to the Director of Inspection (Systems), ARA Centre, Ground Floor, Jhandewalan Extension, New Delhi to consider his candidature and issue orders for promotion to the cadre of Data Processing Assistant Grade-A in view of the 1:1 basis of allotment as applicable to the departmental candidates which was in force as at the time of August, 1994 during which period he was due for the said promotion. The said representation, are enclosed at page 32 and 33 of the OA. The representation dated 19.4.1996 was replied on 8-8-1996 by the 2nd respondent stating that application of the applicant for considering his case under the promotion quota cannot be considered and he was asked to apply for the post of DPA falling under either of the Direct Recruitment or transfer on deputation/transfer quotas as per the recruitment rules. The contention of the letter dated 8-8-1996 is reproduced below :

"As per the recruitment rules for the post of Data Processing Assistant Grade "A", the posts are to be filled up as under:

- (i) 50% by direct recruitment
- (ii) 50% by transfer on deputation/transfer quota, failing which by direct recruitment.

In view of the above, the application of Shri S. Saibaba, DEO for considering his case under the promotion quota cannot be considered. He may be asked to apply for the post of DPA falling under either of the Direct Recruitment or transfer on deputation/transfer quotas as the recruitment rules."

3. Challenging the letter dated 8-8-1996 and also the validity of the Recruitment Rules, 1995 the

applicant has filed this application seeking the above stated relief.

4. When the matter was heard on 21.1.1998 the learned counsel for the respondents submitted that rules were not approved by the competent authority and were only at draft stage. They submitted that Rule 1995 were promulgated repealing 1994 rules. Considering the above facts and circumstances this Tribunal observed that there is no justification to challenge Rules 1995 for the reason that ^{applicant} he had become eligible for consideration for the post of DPA Grade-A which was lying vacant before the said Rules, 1995 came into operation. The applicant is therefore to be considered for promotion as per the rules then in force i.e. the Rules, 1990 and held that the respondents must consider the case of the applicant for promotion to the post of DPA Grade A available in 1990 in accordance with the Rules, 1990 and disposed of the OA with the following directions:

(a) The respondents 1 to 3 are directed to consider the case of the applicant for promotion to the post of DPA Grade A against the posts available in 1990 in accordance with the Recruitment Rules, 1990.

(b) If the applicant is found eligible, then he should be promoted to the said post.

(c) Time for compliance - Four months from the date of receipt of this order.

5. Challenging the order of this Tribunal the respondents filed W.P. No. 17295 of 1998 before the Hon'ble High Court of A.P. The Hon'ble High Court set aside the direction of the Tribunal on 11.2.2003 ^{and} allowed the writ petition with the following observation:

"Now the whole case of the 2nd respondent was based on 1994 Rules. It has been emphatically denied that 1994 Rules were ever enforced. The Rules of 1995 were in force in the year 1995 and the 2nd respondent himself knows that he had no case under 1994 Rules, therefore he challenged 1995 Rules in the O.A. The Tribunal rejected the prayer of the 2nd respondent with regard to the challenge to the 1995 Rules. Since there were no rules in force after 1990 till 1995 Rules and 1994 Rules were only draft rules, therefore no claim on the basis of those draft rules could have been allowed in favour of the 2nd respondent. The 2nd respondent has not challenged the order of the Tribunal. Therefore, the finding of the Tribunal with respect to the challenge of 1995 Rules has become final. But the 1995 Rules lay down the method of recruitment to the post of Data Processing Assistant, Grade-A, (a) 50% by transfer on deputation/transfer failing by direct recruitment and (b) 50% by direct recruitment by DIT (systems). So under 1995 Rules the post is not a promotion post at all.

For the reasons given hereinabove, we find that the directions given by the Tribunal cannot sustain and accordingly they are set aside. The writ petition is allowed. No costs.

6. Thereafter the applicant filed review writ petition Miscellaneous Petition No.6777 of 2003 in W.P No. 17295 of 1998 before the Hon. High Court stating that the 1995 rules were also only draft rules and never published or notified. The Hon. High Court has observed that the Writ Petition No. 17295 of 1998 was decided on the assumption that there were Rules of 1995 which govern the Service conditions of the petitioner which had come into effect from 14.09.1995 and the said rule was also relied by the Tribunal. The respondents conceded in the said review writ petition that 1995 rules were only draft rules and were never published or notified. At this stage the Hon. High Court found that the whole question remains whether the 1995 Rules which have not been gazetted at all can at all be enforced and recalled their judgment dated 11.2.2003 and set aside the judgment of Tribunal as well and remanded the matter back to the

Tribunal to decide it in accordance with the merits of the case.

7. Heard Mr. J. Sudheer, learned counsel for the applicant and Mr. Jaya Prakash Babu, Sr.CGSC for the official respondents and Mr. S. Ramakrishna Rao, learned counsel for the private respondent. We have gone through the facts of the case and material papers placed before us. We have also gone through the judgment of the Tribunal as well as the Hon. High Court. We have also gone through the counter reply filed by the official respondents as well as respondent no.4.

8. In the case in hand the applicant has questioned the decisions of the respondents for not considering his case under the promotion quota and also the advice of the respondents to apply for the post of DPA falling under either of the Direct Recruitment or transfer on deputation/transfer quotas as per the recruitment rules. The said memorandum dated 8.8.1996 is enclosed as Annexure A-9 at page 34 to the OA. We find that the relief prayed by the applicant is to declare the action of the respondents in issuing the recruitment rules, 1995 dated 14.9.95 relating to the Income Tax department (Data Processing Assistant Grade -A&B) as illegal, arbitrary and contrary to the principles of natural justice and consequently direct respondents 1 to 3 to consider the case of the applicant for promotion of Data Processing Assistant Grade-A in the place of 4th respondent or with effect from 18.8.1994 the date from

which the applicant is eligible for promotion.

9. In the counter reply filed by the respondents on 10.6.1997 the respondents have categorically stated in para 6 that the 1994 Recruitment Rules were only a draft one and were never approved by the competent authority and therefore lack the legal sanctity. In the review writ petition filed in the Hon. High Court the respondents have conceded before the Hon. High Court that the 1995 Rules were only draft rules and were never published or notified. They have not denied the contention of the applicant (Writ Petitioner) in Writ Petition that the recruitment rules were only draft rules and were never published or notified. Therefore the said rules also lack legal sanctity and cannot be enforceable and therefore the question does not arise to advise the applicant to apply for the post of DPA falling under either of the Direct Recruitment or transfer on deputation/transfer quotas as per the 1995 rules. Therefore the memorandum dated 8-8-1996 is not sustainable in the eye of law and the same is liable to be quashed and set aside.

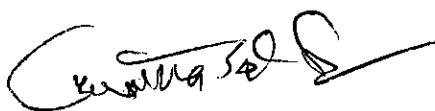
10. In view of the above facts the only recruitment rules that is in existence is the 1990 Recruitment rules. In the OA the applicant has categorically stated that he became eligible for consideration from 18.8.1994 i.e. the date the official respondents brought the 4th respondent on transfer. We find in para 7 of the reply that the respondents

categorically stated that according to 1990 Recruitment Rules, a candidate to be eligible for promotion to the post of Programme Assistant/Console Operator (as the post was then called) had to have the following educational qualifications : "Bachelor's Degree in Statistics/Mathematics (with Statistics)/Operations Research/Physics/Commerce (with Statistics)/ Economics from a recognised University or equivalent or Diploma in Engineering/Computer Science of a recognised University/Institute". It is the contention of the respondents that the applicant is Commerce graduate and has obtained only a Diploma in Computer Application and the applicant did not possess the prescribed educational qualification to be eligible for consideration for promotion to the post of Data Processing Assistant Grade A as laid down in the Recruitment Rules, 1990. Learned counsel for the respondents also submitted that applicant who is a commerce graduate is not entitled because one must have the qualification of Commerce with Statistics. To establish that the applicant is a commerce graduate (with statistics) the learned counsel for the applicant produced before us the marksheet of his graduation from Osmania University dated 19.6.1987 which shows that applicant does possess the degree of commerce with statistics. Respondents have not disputed that the applicant was holding the DPA post earlier. From the additional reply filed by the private respondent we find that the applicant had already been given promotion as DPA Gr.A with effect from 1998. It is not the case of the respondents that in 1998 the applicant acquired the

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required qualification for the post of DPA Gr.A. Therefore the contention of the respondents that applicant did not possess the required educational qualification to be eligible for consideration for promotion to the post of DPA Gr.A in terms of Recruitment Rules, 1990 in 1994 is not correct. Since the applicant had already been promoted to the post of DPA Gr.A in 1998 and was possessing the required qualification in 1994 itself he is entitled to get the promotion notionally w.e.f. 1994 when vacancy was very much available.

11. In view of what has been said and discussed above, the application has ample merit and substance and stands allowed. The respondents are directed to treat the applicant promoted notionally as DPA Gr.A w.e.f. 1994, the day when he became eligible under Rules 1990 and shall accordingly fix his seniority as per rule. The *proper appropriate order accordingly & they shall* respondents shall complete the above exercise within a period of two months from the date of communication of the order.


(CHHATTRASAL SINGH)
MEMBER (A)


(BHARATI RAY)
MEMBER (J)

MD