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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

Date of order: 15.09.2000

OA No.142/93

Pooran Mal Meena S/o Shri Ram Nath Meena, LDC in the Office of Income Tax Circle, Alwar.

.. Applicant

Versus

1. Union of India through its Secretary to the Ministry of Finance, Govt. of India, New Delhi.
2. The Commissioner of Income Tax, Central Circle, ED Road, Jaipur.
3. The Deputy Commissioner of Income Tax, Circle, Alwar (Raj.)
4. Shri Ram Lal Sardana, LDC in the Office of Tax Recovery Office, Alwar

.. Respondents

Mr. Manish Bhandari counsel for the applicant

Mr. N.K.Jain, counsel for the respondents.

CORAM:

Hon'ble Mr. Justice B.S.Raikote, Vice Chairman

Hon'ble Mr. N.P.Nawani, Administrative Member

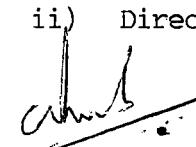
Order

Per Hon'ble Mr. N.P.Nawani, Administrative Member

In this Original Application filed under Section 19 of the Administrative Tribunal Act, the applicant prays for the following reliefs:

- i) The impugned order dated 17.2.1993 (Ann. All) may kindly be quashed and set-aside. Further the 2nd and 3rd respondents may kindly be directed to allow the applicant to continue to serve as LDC in such a manner as if no reversion orders ever were passed in respect of the applicant.

- ii) Directions may kindly be issued to the respondent No. 2 and 3

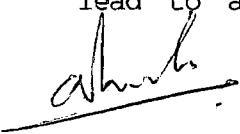


to pay the minimum pay scales applicable to the post of LDC which the applicant has been holding w.e.f. 18.2.1992 instead of pay scale of Group 'D' with interest @ 24% p.a. on arrears.

2. It appears that vide its order dated 25.1.1995 this Tribunal had earlier disposed of this OA upholding the impugned order dated 17.2.1993 (Ann.A11)/order i.e. 25.1.1995. The applicant had challenged the said order of this Tribunal in the Apex Court, which by its judgment dated 3.3.1997, in the Civil Appeal No. 1765/1997, filed by the applicant herein, set-aside the order of the Tribunal and remanded the matter with the direction that the matter be disposed of afresh, giving liberty to the parties to place further material on record. It is in pursuance of the said direction of the Apex Court that the matter has been heard afresh and all the material filed by the parties has been taken into consideration.

3. We have heard the learned counsel for the parties and perused all the material on record including the additional reply filed by the respondents and the Notification dated 22.11.1979 issued by the Govt. of India, Ministry of Education and Culture, Department of Education filed by the applicant as an additional document.

4. Upon consideration of the rival contentions, we find that the controversy in this case is limited to the question whether or not the "Praveshika" Examination conducted by the Bhartiya Vidya Bhawan, Bombay was equivalent to the Matriculation examination and, therefore, the applicant was eligible to be appointed to the post of LDC as a departmental candidate in terms of Memorandum dated 14/17.2.1992 (Ann.A4). The resolution of this controversy will then lead to a decision whether the impugned order dated 17.2.1993



(Ann.A11) is required to be quashed and set-aside.

5. The applicant has essentially contended that the certificate of his having passed the 'Praveshika' examination during 1977 (copy at Ann.A1) makes him educationally qualified for the post of LDC and that the Govt. of India had only cancelled its recognition on 22.11.1979. As per the claim of the applicant, he appeared in the recruitment test for the post of LDC on 24.9.1979 and since the recognition was withdrawn by the Govt. of India on 22.11.1979, he was qualified on the relevant date and should not have been denied appointment only on the ground that "he does not possess the requisite educational qualification for the post of LDC" as mentioned in the impugned order dated 17.2.1993. It was argued on behalf of the applicant that even if it is accepted, for the sake of arguments, that the contention of respondents that the recognition of 'Praveshika' was withdrawn in March, 77, the applicant cannot be denied the appointment in view of the judgment of the Apex Court in the case of Suresh Pal and ors. v. State of Haryana, reported in AIR 1987 SCC 2027.

6. The respondents have controverted the averments and arguments put forward on behalf of the applicant. They have not denied that the recruitment test was held on 24.9.1979 but only contended that mere appearing in the test without the minimum and basic qualification does not create any right in favour of the applicant. It has also been stated by the respondents that the applicant was wrongly given an offer of appointment dated 18.2.1992 as LDC, the offer was subject to condition mentioned in letter dated 14.2.1992 and later on the applicant was not found qualified.

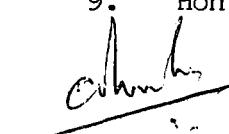
7. We have considered the rival contentions carefully. It is not disputed that the applicant had passed the 1977 Praveshika

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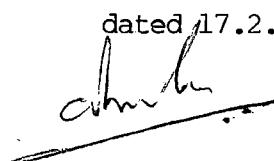
examination conducted by the Bhartiya Vidya Bhawan, Bombay. The certificate is dated 30.6.1977 and it follows that the applicant was doing the 'Praveshika' course prior to 30.6.1977, although the exact duration of the said course has not been intimated to us. Vide notification No.F.7-1/77-SJT.2, the Department of Education in the Ministry of Education and Culture, Govt. of India cancelled the interim equivalence of certain examinations including 'Praveshika' with effect from the date of the said Notification. In the absence of any proof otherwise, it has to be presumed that the equivalence of 'Praveshika' examination with lower secondary had prevailed upto 21.11.1979. The respondents have stated that they were following the recognition of 'Praveshika' examination as per the orders of the Govt. of Rajasthan, which had withdrawn the equivalence of 'Praveshika' in March, 1977 itself and since the applicant passed the said examination in June, 1977, it could not be treated as equivalent to High School or Matriculation.

8. To our query as to why a Central Government department/office like that of the Chief Commissioner of Income Tax, Rajasthan (for short CCIT) was following the orders of the Govt. of Rajasthan rather than the order of the Govt. of India, the learned counsel for the respondents tried to explain that since the CCIT is the cadre controlling authority for the entire State of Rajasthan and since the Notification dated 22.1.1979 was issued by the Ministry of Education and Culture rather than their administrative Ministry, the Ministry of Finance, the respondents were following the order of the Govt. of Rajasthan and, therefore, cancellation of the equivalence should be taken w.e.f. March, 1977. We are not inclined however, to accept this explanation, ~~as~~ we are not required to give our findings on this/in the present case.

9. Hon'ble the Supreme Court of India has held in the case of



Suresh Pal (supra) that it will be unjust to tell the students that though at the time of their joining the course it was recognised, yet they cannot be given benefit of such recognition and the certificates obtained by them would be futile because during the pendency of the courses it was derecognised by the State Govt. It was, however, also held that the students joining course after derecognition were not entitled to the benefit of the order. It follows from the law laid down by the Apex Court that the denial of the benefit of a course can be only prospective i.e. students who join the course after the cancellation of equivalence can only be held to be not having that particular qualification. In the case before us the applicant has been declared pass in the 1977 examination of 'Praveshika' and the pass certificate is dated 30.6.1977. That the marksheets is dated 19.9.1997 is of no consequence. As already mentioned earlier, in the absence of any information before us about the duration of the 'Praveshika' course (and nothing is revealed from the certificate also), we have to presume that the course must have been at least one year if not of two years duration. If that be so, the applicant can be taken to have joined the said course a little earlier than 30.6.1976. In irrespective of the fact this situation/whether the course was derecognised in March, 1977 (by Govt. of Rajasthan) or 22.11.1977 (by the Govt. of India), following the law laid down by the Apex Court in the case of Suresh Pal (supra), we have to hold that the applicant to be treated as one with the educational qualification of 'Praveshika'. The respondents have not claimed that Praveshika was not equivalent to Matriculation, in fact it can be informed from their reply that they considered it equivalent to High School/Matriculation. Accordingly, we have no hesitation in holding that the applicant should be considered to have educational qualification equivalent to High School/Matriculation. This being so, the impugned order dated 17.2.1993 (Ann. All) is not sustainable in law.



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10. The applicant has also averred that a number of persons, as detailed in para ix) of his OA, having same educational qualification for the same Institution (i.e. Praveshika), also presently working as LDCs and none of these were reverted or sought to be reverted to Group 'D' posts. In reply the respondents have stated that in the case of these persons ad-hoc promotions were ordered prior to 3.10.1983, the date till which the controversy about the standard of educational qualification possessed by them had not been settled and while it was decided that in future persons possessing such qualification would not be considered eligible for promotion from Group 'D' to LDC, it was also decided that benefit conferred on certain employees prior to above decision is will not be revoked. What follows from the reply of the respondents is that 'Praveshika' was accepted by the respondents as equivalent to Higher Secondary/Matriculation in respect of certain persons, even though, as per respondents own admission that the recognition to the said examination was withdrawn by the state Govt. of Rajasthan way back in March, 1977. It is not explained as to why, the same concession could not be extended to the applicant, who had appeared in the prescribed selection process on 24.9.1979 and subsequently given the offer of appointment.

11. In any way, in view of the law laid down by Hon'ble the Supreme Court of India, as discussed earlier, we hold that applicant may be considered to have the educational qualification equivalent to Matriculation and entitled for promotion to the post of LDC w.e.f. the date his junior was so promoted.

12. The Original Application is accordingly allowed. The impugned order dated 17.2.1993 (Ann. All) is quashed and set-aside. The respondents are directed to treat the applicant as being



educationally qualified for promotion to the post of LDC and he may be promoted to the post of LDC w.e.f. the date his junior was so promoted. His pay may be fixed notionally from such date with consequential benefits, if any, but he may be paid pay and allowances of the post of LDC from the date he takes over the charge of the post. This direction may be implemented within two months from the date of receipt of a copy of this order.

Parties to bear their own costs.



(N.P.NAWANI)

Adm. Member



(B.S.RAIKOTE)

Vice Chairman