

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA 514/2012
MA 416/2012

Reserved on: 8.09.2016
Pronounced on: 16.09.2016

Hon'ble Mr. P.K. Basu, Member (A)
Hon'ble Dr. Brahm Avtar Agrawal, Member (J)

1. Armed Forces HQ Clerical Services Association
Ministry of Defence, Government of India
Through: its General Secretary
Shri Din Dayal Shukla
DPR/ PR(X), Room No.273/B
South Block, New Delhi-110011
 2. Shri Bibekanand Jha, UDC
(Aged about 37 years)
S/o Shri D.N. Jha
Dte. of Ops (VIP), IHQ of MoD (Air)
Room No. 550A
Vayu Bhawan, New Delhi
 3. Shri Rajesh Jha, UDC
(Aged about 36 years)
S/o Shri Padmanand Jha
CW-4/ AG Br., IHQ of MoD (Army)
Room No. 206/B
South Block, New Delhi
 4. Shri Kundan Kumar, UDC (Aged about 37 years)
S/o Shri Janardan Das,
CW-3/AG Br.
IHQ of MoD (Army)
South Block, New Delhi
 5. Shri Shravan Kumar Khosla, UDC
S/o Shri Shyam Narayan Khosla
DGEME (EQPT)/ MGO Br.,
IHQ of MoD (Army)
B-Block, New Delhi-110011
- ... Applicants

(Through Shri Rahul Kumar, Advocate)

Versus

1. The JS (Trg) & CAO
Ministry of Defence

`E' Block,
New Delhi-110011

2. The Defence Secretary,
Ministry of Defence
South Block,
New Delhi-110011
 3. The Secretary
Department of Personnel and Training
Ministry of Personnel, Public Grievances & Pensions
Govt. of India,
North Block, New Delhi-110001
 4. The Secretary
Union Public Service Commission
Dhaulpur House
Shahjahan Road,
New Delhi
- ... Respondents

(Through Shri Rajesh Katyal for respondents 1-3
Shri D.S. Mahendru, for respondent 4)

ORDER

Mr. P.K. Basu, Member (A)

When the matter was called out on 8.09.2016, learned counsel for the applicants sought adjournment. We noted that this is a 2012 matter, which has been adjourned on requests date after date. Therefore, no adjournment was allowed and the OA reserved for orders under Rule 15 of the CAT (Procedure) Rules 1987.

2. The applicants in this case are Lower Division Clerks (LDCs)/ Upper Division Clerks (UDCs) in the Ministry of Defence and belong to clerical service of Armed Forces Headquarters. They seek the following reliefs:

- 8.1 Quash and set aside the impugned RR called as 'Armed Forces Headquarters Civil Service (Amendment) Rules, 2011; Para 5 (i) & (ii) and Para 6 (i) & (ii) on page No. 5 & 6, in column 3 under Schedule IV, Rule 7 (1), by which promotional avenues of the applicants within the service/ cadre have been jeopardized.
- 8.2 Direct the respondents to notify fresh amendment of the relevant portion of the impugned RR w.e.f. recruitment year 2011 by making provision of method and percentage of direct recruitment at the level of Assistant and Section Officer in accordance with para 2 of the Cadre Restructuring Order No.24315/CR/CAO/CP dated 22 Feb 2008, where it is clearly mentioned that "the direct recruitment quota at the level of Assistant will be 25% and at the level of Section Officer, it will be 50%';
- 8.3 Direct the Respondents to reframe and notify the impugned RR by providing complete and permanent ban on carry forward provision of unfilled vacancies at Section Office level for 03 consecutive recruitment years for filling up through Direct Recruitment;
- 8.4 Direct the Respondents to reframe and notify the impugned RR by substituting the note of para 5 in column 3 under Schedule IV, Rules 7 (1) with a provision that in case sufficient number of candidates are not available in year to fill vacancies through

Direct Recruitment at Section Officer Level, the deficiency shall be made up by promotion only;

8.5 Direct the Respondents to notify amendment in paras 5&6 of the impugned RR substituting the relevant word 'Non-Selection' in place of 'Selection' in order to maintain guidelines of DOP&T on the subject matter;

8.6 Direct the respondents to reframe and notify fresh Recruitment Rules of 'Armed Forces Headquarters Civil Service & Clerical Service' as per the pattern of Central Secretariat Services (CSS) in order to maintain well established historical parity of AFHQs [AFHQ Civil Service & AFHQ Clerical Service] with CSS [Central Secretariat Civil Service & Central Secretariat Clerical Service] upto the level of Section Officer;

8.7 Impose exemplary cost on the Respondents for causing undue harassment and loss to the employees.

3. From the relief clause, it will be apparent that the applicants have basically challenged the Armed Forces Headquarters Civil Service (AFHCS) (Amendment) Rules, 2011 primarily on the ground that it is not in consonance with the earlier Cadre Restructuring Order dated 22.02.2008 as well as model Recruitment Rules (RRs) for Multi Tasking Staff in Group 'C'. Further, framing different RRs for the posts of Section Officer and Assistant, which are promotional grades for LDCs/

UDCs, is arbitrary and malafide, harming the career prospects of the applicants. It has been alleged that the amendments in RRs of 2011 have put the applicants in a disadvantageous position and violative of Articles 14 and 16 of the Constitution.

4. Learned counsel for the respondents stated that this Tribunal in OA 2316/2012, **AFHQ Assistants (DR) Association and others Vs. UOI and others**, vide order dated 29.04.2016, had considered exactly a similar issue. The aforesaid OA had been filed challenging curtailment of right of consideration for promotion of Assistants to the grade of Section Officer through Limited Departmental Competitive Examination (LDCE) as also that the AFHCS (Amendment) Rules, 2011 are arbitrary and unconstitutional. The Tribunal had gone into the report of the Committee on Cadre Review of September 2005 in detail as also the instructions of Department of Personnel and Training (DoP&T) in this regard. After detailed examination of the issue, the Tribunal came to the conclusion that RRs of 2011 do not suffer from violation of Articles 14 and 16 of the Constitution of India and, therefore, in the light of the judgments of the Hon'ble Supreme Court in the following cases, the Tribunal dismissed the OA:

- (i) **Ekta Shakti Foundation Vs. Govt. of NCT of Delhi**, AIR 2006 SC 2609
- (ii) **Director, Lift Irrigation Corporation Ltd. and others Vs. Pravat Kiran Mohanty and others**, (1991) 2 SCC 295

It is thus argued that since the present case is similar in nature, it needs to be dismissed in view of the order of the Tribunal in AFHQ Assistants (DR) Association (supra).

5. We have gone through the submissions of the applicants as well as the respondents and perused the judgments cited.

6. We are of the opinion that the same reasoning which persuaded us to dismiss the case of AFHQ Assistants (DR) Association (supra) applies in the present case also as the respondents have taken a policy decision after detailed deliberations in the interest of several cadres of the organization and a balanced approach optimizing efficiency of the organization as well. The Hon'ble Supreme Court has already laid down the law in Ekta Shakti Foundation (supra) and Director, Lift Irrigation Corporation Ltd. (supra) that Courts/Tribunals should not interfere in policy matters unless it detects arbitrariness or discrimination or non-application of mind by the executive.

7. As stated, the respondents have brought in 2011 amendment in RRs in the overall interest of the organization and taken a balanced approach optimizing efficiency of the organization as well and we have not been able to detect any arbitrariness or discrimination or non-application of mind by the respondents. The OA is, therefore, dismissed. No costs.

(Dr. Brahm Avtar Agrawal)
Member (J)

(P.K. Basu)
Member (A)