

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

M.A. No. 1885/2016 in
O.A. No. 3978/2014

New Delhi, this the 3rd day of October, 2017

HON'BLE MR. V. AJAY KUMAR, MEMBER (J)
HON'BLE MS. NITA CHOWDHURY, MEMBER (A)

1. Kamlesh Devi Sat,
W/o Shri Rajpal Singh,
68, Alipur, Delhi-36.
2. Sheela Dileep,
W/o Shri Dileep Kumar,
C-91A, Shalimar Garden,
Ext.II, Ghaziabad, UP
3. Lathika N.Das,
W/o Shri Narayan Das,
C-2, Manas Apartments,
Mayur Vihar Ext. Delhi
4. Sushila Gautam,
W/o Shri Suneel Kumar,
Gali No.3, H.No.131,
Block-A, Shastri Park Ext.,
Nathupura Mode, Delhi-84
5. Saranjeet,
D/o Late Devinder Singh Bedi,
C/o Nehru Yuva Kendra Sangathan,
2nd Floor, Core-IV, Scope Minar,
Laxminagar, Delhi.

.. Applicants

(By Advocate: Shri Rakesh Kumar Singh)

Versus

1. Nehru Yuva Kendra Sangathan (NYKS)
Through the Director General,
(Under Ministry of Youth Affairs & Sports)
Core-4, 2nd Floor, Scope Minar,
Laxmi Nagar, Vikas Marg,
New Delhi-110092.

2. Union of India,
Through the Secretary (Youth Affairs)
Ministry of Youth Affairs & Sports)
Room No.1, C-Wing, Shastri Bhawan,
New Delhi-110001.
3. Union of India,
Through the Joint Secretary (NSS/NYKS),
Ministry of Youth Affairs and Sports,
Room No. 114, C-Wing, Shastri Bhawan,
New Delhi-110001. .. Respondents

(By Advocates: Ms. Lakshmi Gurung)

O R D E R (Oral)

By Mr. V. Ajay Kumar, Member (J)

Heard both the sides.

2. MA 1885/2016 is filed seeking execution of the orders of this Tribunal dated 08.10.2015 in O.A. No.3978/2014. This Tribunal disposed of the aforesaid O.A. as under:

“4. As has been ruled by the Hon'ble Supreme Court in the case of **P.U. Joshi & Ors. vs. The Accountant General, Ahmedabad & Ors.**, 2003(2) SCC 632, indubitably it is not for the courts or Tribunal to interfere with the recruitment rules even when there is no promotional avenues available. Para 10 of the judgment read thus:-

“10. We have carefully considered the submissions made on behalf of both parties. Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of Policy and within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions envisaged in the Constitution of India and it is not for the Statutory Tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views

for that of the State. Similarly, it is well open and within the competency of the State to change the rules relating to a service and alter or amend and vary by addition/subtraction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate. Likewise, the State by appropriate rules is entitled to amalgamate departments or bifurcate departments into more and constitute different categories of posts or cadres by undertaking further classification, bifurcation or amalgamation as well as reconstitute and restructure the pattern and cadres/categories of service, as may be required from time to time by abolishing existing cadres/posts and creating new cadres/posts. There is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a Government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service.”

The vacancies in the grade of Assistant could not be filled up, because sufficient number of UDCs with required length of service were not available. In the wake, there is ramification on promotional avenues of the applicants, as despite being eligible, they are not getting their promotion as UDCs. As has been noticed above, promotion has to be made in accordance with the recruitment rules. Nevertheless, in Rule 9 of the NYKS Rules dated 08.11.2010, a provision has been made that where the Central Government is of the opinion that it is necessary expedient to do so, it may relax any of the provision of the rules with respect to any class or category of post or persons. It is stare decisis that it is not for the courts or tribunals to issue any direction to the executive to relax rule and it is for the executive to take its own decision in this regard. If a situation is such that vacancies in the grade of Assistants are not filled up (in promotion quota) for want of eligible candidates, the respondents on their own may explore the possibility of relaxing the rules as one time measure to ensure that the post in the grade of Assistants (promotional quota) do not remain vacant and the candidates get sufficient opportunity for being considered for promotion. Subject to these directions, the OA is disposed of. It goes without saying that if after the decision of the respondents to be taken expeditiously, preferably within four months, the grievance of the applicants subsists, it would be open to them to work out their claim in accordance with law, if so advised. No order as to costs.”

3. The respondents vide their reply and compliance affidavit submits that they have passed an office order dated 25.09.2017 wherein they have fully considered the claim of the applicants in terms of the orders of this Tribunal and in the circumstances have passed the following orders:

“AND WHEREAS, the Hon’ble Tribunal has asked authorities to explore possibilities of promoting aggrieved employees by relaxing provisions in RRs wherever possible. Options were proposed which are as under:

- (a) To increase the promotion quota in the post of Assistants (45 sanctioned posts) to 40% by relaxing the existing 10% promotion quota as a onetime measure.
- (b) To count the period of services rendered in the cadre of LDC/UDC combined for considering the qualifying service for promotion to the post of Assistant by a onetime relaxation for existing UDCs and LDCs.
- (c) If relaxation is considered, a LDC with 20 years and more may be considered for promotion to the post of Assistant.

AND WHEREAS, a brief about the case matter along with copy of Court order dated 08.10.2015, legal opinion, copy of Recruitment Rules-2010 and other related papers/documents were submitted to Ministry of Youth Affairs & Sports on 25.04.2017 for decision on relaxation so that a speaking order can be issued in compliance with the Hon’ble CAT order.

AND WHEREAS, Ministry of Youth Affairs & Sports vide letter No.10-3/2015-NYKS, dated 01.06.2017 conveyed that the proposal of NYKS for relaxation of provisions of RRs has been examined by the Ministry as under:-

- (i) The option proposed in Clause (a) of the aforesaid letter by NYKS involves restructuring the percentage of post under Promotion quota and Direct Recruitment quota of Assistant grade which constitutes amending of the RRs rather than relaxation in RRs. NYKS may take up the matter of amendments of RRs as per the rules/guidelines laid down by DoPT. Also, the Hon’ble CAT vide order dated 08.10.2015, has suggested that the relaxation can be considered in the Eligibility Criteria for filling up of vacant post in the grade of Assistants under Promotional quota only. From the proposal sent by NYKS it is seen that at present all the posts under promotional quota are filled up and thus the basis of Clause (a) for relaxing the mode of Recruitment is not in line with Courts order.

(ii) The options proposed under Clause (b) & (c) of the aforesaid letter by NYKS for considering combined service as qualifying service for promotion to the post of Assistant is not in order as per the existing DoPT guidelines/instructions. These options proposed by NYKS had already been examined in the Ministry in consultation with DoPT and the opinion in this regard was conveyed to NYKS vide Ministry's letter dated 29.04.2014.

AND WHEREAS, vide the said letter of the Ministry, NYKS has been advised to take up the matter in ongoing Cadre Review proposal and if the need arises, NYKS may consider amendment of RRs as per the laid down procedure to resolve the stagnation issue in the grade of LDCs & UDCs.

AND WHEREAS, in view of above, it is apparent from the reply of the Ministry, that even after RRs are amended by enhancing the promotion quota in the Assistant grade, the chance of getting promotion by the LDCs & UDCs to the post of Assistant is not possible as the proposed combined service (LDC & UDC period) for qualifying period cannot be considered as per DoPT guidelines.

AND WHEREAS, it is also become apparent that, the suggestion given by the Hon'ble CAT may not be possible by amendment of RRs now. This may only be addressed through Cadre Review Committee (CRC) and amendment of RRs thereafter, subject to approval and implementation of CRC recommendations.

AND WHEREAS, the grievances of LDCs were taken in the consideration at the Ministry which reviewing the recommendation of the Cadre Review Committee (CRC) on priority and it was decided not to merge the post of LDC with MTS as Office Assistant and it has been modified to be merged with the upper post of UDC, Steno-II and Computer Operator as "Administrative Assistant" in the Grade pay of Rs.2400/-.

AND WHEREAS, it is also submitted that, the financial up-gradation under ACP/MACP Scheme has been granted to the applicants of this OA-3978/2014, MA-3459/2014 which are as under:

1. Smt. Kamlesh Devi Sat (DOJ-22.03.1993): 2nd Financial up-gradation granted w.e.f. 22.03.2013 with Grade Pay of Rs.2800/-. The 3rd up-gradation is due in 2023.
2. Smt. Sheela Dileep (DOJ-11.03.1993): 2nd Financial up-gradation granted w.e.f. 11.03.2013 with Grade Pay of Rs.2800/-. The 3rd up-gradation is due in 2023.
3. Smt. Lathika N. Dass (DOJ-01.12.1995): 1st financial up-gradation under the ACP Scheme was granted w.e.f. 01.12.2007 in the Grade Pay of Rs.2400/-. Meeting of the Screening Committee was conducted on 17.06.2017 for granting 2nd financial up-gradation under the MACP Scheme in the Grade Pay of Rs.2800/- w.e.f. 01.12.2015.

However, the order for the financial up-gradation is yet to be issued.

4. Smt. Sushila Gautam (DOJ-22.01.1996): 1st financial up-gradation under the ACP Scheme was granted w.e.f. 22.01.2008 in the Grade Pay of Rs.2400/-. Meeting of the Screening Committee was conducted on 17.06.2017 for granting 2nd financial up-gradation under the MACP Scheme in the Grade Pay of Rs.2800/- w.e.f. 22.01.2016. However, the order for the financial up-gradation is yet to be issued.

5. Smt. Saranjeet (DOJ-09.02.1996): 1st financial up-gradation under the ACP Scheme was granted w.e.f. 09.02.2008 in the Grade Pay of Rs.2400/-. Meeting of the Screening Committee was conducted on 17.06.2017 for granting 2nd financial up-gradation under the MACP Scheme in the Grade Pay of Rs.2800/- w.e.f. 01.12.2015. However, the order for the financial up-gradation is yet to be issued.

NOW THEREFORE, in view of above and in compliance of the Hon'ble CAT order dated 08.10.2015, it is conveyed that, the respondents have explored the possibility of relaxing the rules as one time measure and the same was not possible as consideration of combining service as qualifying service for promotion to the post of Assistant is not in order as per the existing DoPT guidelines/instructions. However, considering stagnation in the promotion of the applicants in the OA, certain steps have been taken by the respondent (NYKS) to extend relief to their grievances by granting financial up-gradation and merging with the higher post in the Cadre Review of NYKS.

This issues with the approval of the competent authority.”

4. Ms. Lakshmi Gurung, learned counsel appearing for the respondents, submits that in the given circumstances, the respondents, after applying their mind, have granted the financial benefits to the applicants, as it was not possible to give them one time relaxation as per the rules and, accordingly, prays for dismissal of the MA.

5. Shri Rakesh Kumar Singh, learned counsel for the applicants, while fairly submitting that in view of the orders of this Tribunal

and the office order dated 25.09.2017, though they cannot insist any action against the respondents, however, submits that the orders of the respondents are illegal and against the rules and also do not fully redress the grievance of the applicants.

6. However, in the circumstances and in view of the orders of the Tribunal in the O.A. and the orders passed by the respondents, we are satisfied that the respondents have executed the orders of this Tribunal. Accordingly, the MA is disposed of. However, the applicants are at liberty to question the order dated 25.09.2017, if they are still aggrieved, in accordance with law.

(Nita Chowdhury)
Member (A)

(V. Ajay Kumar)
Member (J)

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