

OA.No.170/00106/2017/CAT/Bangalore Bench
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO. 170/00106/2017

DATED THIS THE 02nd DAY OF MARCH, 2018

HON'BLE DR.K.B. SURESH, MEMBER (J)
HON'BLE SHRI PRASANNA KUMAR PRADHAN, MEMBER (A)

Smt.Manjula B.R.
D/o.Ramakrishnaiah D.H
Aged about 28 years
R/a No.661, 4th Cross
4th Main, Gangondanahalli
Mysore Road
Bangalore-560039. Applicant

(By Advocate M/s.Subba Rao & Co.)

Vs.

1. The Comptroller and Auditor General of India
Office of the Comptroller and Auditor
General of India
No.9, Deen Dayal Upadhyaya Marg
New Delhi-110124.
2. The Principal Accountant General (C&CA)
Office of the Accountant General (C&CA)
C Block, New Building
P.B.No.5398
Bangalore-560001. Respondents

(By Advocate Shri M.Vasudeva Rao, Ld.Sr.CGSC)

ORDER

(PER HON'BLE PRASANNA KUMAR PRADHAN, MEMBER (A))

The applicant has filed the present OA seeking the following relief:

- a. *Issue Writ of Certiorari or any appropriate order or writ to quash the order bearing No.Pr.AG(G&SSA)/LEGAL CELL/2016-17/135 dated 14.6.2016 passed by the second respondent which has been produced as Annexure-A14 as the same is illegal, unjust, arbitrary, irrational and in contravention of Articles 14, 16 and 21 of the Constitution of India apart from being contrary to the directions issued by the Hon'ble Tribunal; and*

b. Issue Writ of mandamus or any appropriate order or direction directing the respondents to select and appoint applicant to the post of MTS in pursuance of the Notification dated 16.9.2010 and grant her all consequential benefits such as arrears of salary, increment, seniority from the date of which other selected candidates have been appointed, as if she is selected and appointed along with the other candidates.

2. The applicant had passed SSLC during the year 2003 and completed PUC thereafter. She applied for the post of Multi Taking Staff(MTS) in response to the notification issued by the respondents as published in Employment News dtd.16.9.2010. Out of the total number of 112 posts, 57 posts were reserved for General Category candidates(Annexure-A1). The minimum qualification prescribed was 10th standard as on 1.7.2010. Applications of all the applicants were scrutinized by the 2nd respondent who is the Selecting/Appointing Authority for shortlisting of candidates. However, the method of shortlisting of candidates was neither disclosed in the selection procedure nor was made known to the candidates. When the applicant did not receive any interview letter from the 2nd respondent and came to know that the interview process was in progress, she along with some other candidates have approached this Tribunal in OA.No.215/2011. By an interim order, the 2nd respondent was directed to permit the applicant to appear for interview subject to the result of the OA.No.215/2011. Applicant submits that from the statement objection filed by the respondents, it was revealed that while shortlisting the candidates, the respondents awarded marks for higher qualifications as well as additional weightage was given to the candidates who worked on daily

OA.No.170/00106/2017/CAT/Bangalore Bench wages/contract basis. The applicant has mentioned in detail on various aspects of the selection process which were highlighted during the hearing in the OA.No.215/2011 such as respondents' contention as well as various observation made by the Tribunal in OA.No.295/2011 & 215/2011 etc. However since the said observation has no bearing on the present OA, we do not wish to elaborate the same.

3. The applicant submits that during the hearing in OA.215/2011, the respondents were allowed to publish the selection list of MTS but were directed to keep 12 posts vacant. The respondents were then permitted to select and appoint candidates for remaining posts of MTS after excluding 12 posts. The Tribunal in its final order in OA.No.215/2011 observed that the procedure adopted by the respondents was bad in law but did not set aside the entire selection process as 100 candidates had already been appointed to the posts of MTS by the respondents. It directed the respondents to consider the case of the applicant and 11 others for appointment against the available 12 posts of MTS which are kept vacant pursuant to the interim order. The respondents at that time had approached the Hon'ble High Court of Karnataka in WP.No.8708/2012 along with connected cases against the order passed by the Tribunal. Similarly some of the applicants have also filed WP.No.48794-48803/2012 against the Tribunal's order. All the Writ Petitions were dismissed by the Hon'ble High Court of Karnataka vide order dtd.24.10.2013 holding that there is no ground for

interference in the order passed by this Tribunal in OA.No.215/2011. Thereafter, the applicant made representation to the respondents to implement the order of the Tribunal(Annexure-A10). Due to non-implementation of the order, the applicant also filed contempt petition. However, during the pendency of the contempt proceedings, the applicant received an order dtd.7.1.2014(Annexure-A12) rejecting her case. Aggrieved by the said order, the applicant has filed the OA.No.1681/2014 before this Tribunal. Some of the candidates whose case was not considered by the respondents have also filed applications before this Tribunal. This Tribunal vide order dtd.6.8.2015(Annexure-A13) disposed of all the applications directing the 2nd respondent to consider the case of the applicant afresh along with other candidates who were interviewed but did not find place in the merit list by taking into consideration weightage for SSLC qualification and the marks awarded to them in the interview. In case two or more candidates are found to have scored same marks then in their case the marks secured by them in SSLC examination should be obtained and taken into consideration to decide the inter-se merit i.e., person securing higher marks in SSLC examination shall be placed higher in the merit list. Aggrieved by the order of the Tribunal, the applicant as well as some other applicants have filed Writ Petitions No.49963-67/2015 but the said WPs were dismissed by the order of the Hon'ble High Court dtd.10.3.2016. Based on the direction passed by the Tribunal, the 2nd respondent issued an endorsement dtd.14.6.2016 rejecting the candidature of the

OA.No.170/00106/2017/CAT/Bangalore Bench applicants(Annexure-A14). Aggrieved by the said order, the applicant has filed the present OA.

4. The applicant submits that while issuing the endorsement dtd.14.6.2016, the respondents have not disclosed the marks secured by the last selected candidate. The applicant contends that she is entitled for selection to the post of MTS based on the marks secured by her in SSLC and interview. There has been no comparison of marks of the applicant with other selected candidates and hence without such comparison, rejecting the case of the applicant for selection to the post of MTS appears to be arbitrary. Therefore, the applicant submits that she should be granted the relief as sought for.

5. The respondents have in their reply statement submitted that in terms of the order passed by the Tribunal dtd.6.8.2015 in OA.No.1681/2014, the respondents had to compare the case of the applicant along with all the candidates who were interviewed but did not find a place in the merit list by taking into consideration the marks awarded to them for SSLC which is the minimum educational qualification, and the marks awarded to them in interview. Only in the case of candidates who have scored same marks, the candidate who has obtained more marks in SSLC examination should be placed higher in the inter-se merit. The merit list for the available vacant posts had to be prepared based on this principle. Aggrieved by the Tribunal's order dtd.6.8.2015, the respondents have filed Writ Petition

No.2019/2016(S-CAT) before the Hon'ble High Court of Karnataka. The applicants have also filed Writ Petition No.49963-49967/2017(S-CAT) before the Hon'ble High Court of Karnataka. During the hearing of the Writ Petitions, the respondents had brought to the notice of the Hon'ble High Court that even if the office adheres to the revised parameters detailed in the Tribunal's order dtd.6.8.2015, the applicant does not find a place in the rank list prepared for the 26 vacant posts. All the Writ Petitions filed by both the respondents and applicants have been dismissed by the High Court vide order dtd.10.3.2016(Annexure-R1). Following the dismissal of the Writ Petitions, the applicant was intimated by the 2nd respondent vide communication dtd.14.6.2016 saying that her case was considered as per the revised parameters laid down by the Tribunal's order but she could not find a place in the rank list. Therefore, they submit that the contention of the applicant does not merit any consideration.

6. The applicant has filed a rejoinder in which she submitted that the respondents have not prepared the merit list based on the marks secured by the candidates in the qualifying examination. The respondents have not produced the merit list prepared for the said 26 posts nor produced the percentage of marks secured by the candidates in SSLC examination for the said 26 posts. Therefore, it cannot be held that the respondents have prepared the merit list strictly in pursuance of the selection principles laid down by the Tribunal.

7. The respondents have filed an additional reply statement reiterating the position already highlighted in the reply statement.

8. We have heard the Learned Counsel for both sides. The Learned Counsel for the applicant while elaborating detail background of the case emphasized on the fact that the marks secured by the candidates in the SSLC examination should have formed the basis for undertaking the selection process. He mentioned that many of the candidates who have been selected and appointed under General Category in the fresh assessment have scored much lower marks in the SSLC examination as compared to the applicant. He also mentioned that the statement produced by the respondents showing the marks secured by all the candidates in General category and the marks secured by the applicant would clearly indicate that the applicant had secured more marks than other selected General category candidates. Hence, the applicant should have been considered for selection. He contended that the procedure adopted by the respondents is clearly unjustified and hence the same should be set aside and the applicant be considered for appointment.

9. The Learned Counsel for the respondents, on the other hand, submitted that the Tribunal in its order dtd.6.8.2015 had laid down the principle based on which the respondents had reconsidered the case of all the applicants who did not find place in the 1st selection list of 100 candidates. There were 16 more

vacancies which had arisen in addition to the 10 posts that were kept vacant earlier. Hence, the entire exercise was done for the remaining candidates and based on the principle laid down by the Tribunal, the selection process was undertaken. Even though many of the candidates were graduates or 12th pass, all of them were given weightage only for SSLC examination. The revised weightage for SSLC and the interview score were added based on which the selection was made. Where two persons have secured equal marks then the percentage of marks secured by them in SSLC was considered to decide inter-se merit. Therefore, the selection was done strictly in accordance with the direction given by the Tribunal and the contention made by the applicant does not have any basis.

10. We have carefully considered the facts of the case and submission made by either side. Though the applicant had referred in detail to various observations made in the earlier OA.No.215/2011, the same is no longer relevant as the matter was considered in detail by this Tribunal in OA.No.748/2014 & connected cases and vide order dtd.6.8.2015, the respondents were directed to consider the matter afresh based on the principle outlined in the said order. Both the applicants and the respondents had approached the Hon'ble High Court in Writ Petitions against the order passed by this Tribunal but the Hon'ble High Court in its order dtd.10.3.2016 dismissed all the Writ Petitions upholding the order of the Tribunal. Hence, a fresh exercise was undertaken by the respondents. Now the issue to

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 be considered is whether the fresh selection was correctly done
 in accordance with the principles spelt out in the order of the
 Tribunal in OA.No.748/2014 or not.

11. The Tribunal in its order dtd.6.8.2015 in OA.No.748/14 & connected cases held vide para-19 to 22 as follows:

19. In this context, the issue now remains as to what principle should be adopted by the respondents to consider the cases of the applicants once again vis-a-vis the candidates selected but not appointed so far i.e. not within first 100. It appears from the records submitted by the respondents that the persons in the merit list at Sl.No.101 belong to OBC, 102 & 103-ST, 104 under Physically Handicapped category and 105 to 112 are ex-serviceman category. When the vacancy for General category was not available in the 12 vacancies kept apart by the respondents, it is not clear how any of the applicants belonging to General category could have been accommodated if they were found to be more meritorious than other General category candidates since vacancy in General category was not actually available. The Ld.Counsel for respondents mentioned during the hearing that out of the 100 selected candidates 5 candidates (3 belongs to General category and 2 belongs to OBC) did not report/accept the offer of appointment. Out of the 95 filled posts, 9 posts have fallen vacant due to resignation of 7 candidates (4 belongs to General category and 3 belongs to OBC category), termination of 1 SC candidate from service and death of 1 ST candidate. Thus it seems that in addition to 12 posts that were kept vacant, 14 more posts have fallen vacant (7 Gen, 5 OBC, 1 SC and 1 ST) due to various grounds mentioned above. Therefore it appears that vacant posts are now available in all the categories for fresh consideration of applicants vis-a-vis other waitlisted candidates. It may also be noted that there may be other candidates in General category who had secured higher marks (may be getting advantage of weightage on account of higher qualification) than the applicants but did not find a place in the merit list as the marks secured by them was lower than the candidates in the merit list i.e. within the first 100 candidates who have already been appointed. Therefore such candidates are also to be taken into reckoning when the case of the applicants are considered afresh.

20. The applicants have contended that the marks secured by the candidates in SSLC i.e. the eligible educational qualification should be taken into consideration for shortlisting. But the fact remains that the applicants were not asked to indicate the marks obtained in SSLC in their application forms. Hence it would not be appropriate to introduce a new element when the shortlisting had already been done, candidates called for interview on that basis and interview completed. Hence the fresh decision should be taken based on available record.

21. Therefore after due consideration, we are of the view that it would be appropriate if the cases of applicants are considered by the 2nd respondent afresh along with all the candidates who were interviewed but did not find place in the merit list i.e. within the first 100(who have already been appointed) by taking into consideration the marks awarded to them for the SSLC which is the minimum educational qualification and the marks awarded to them in interview. In case two or more candidates are found to have scored

same marks then in their case the marks secured by them in SSLC examination should be obtained and marks in SSLC examination shall be taken into consideration to decide the inter-se merit i.e. person securing higher marks in SSLC exam shall be placed higher in the merit list. The merit list for the available vacant posts under different categories shall be prepared based on this principle and the selected persons shall be considered for appointments in accordance with said merit list. Hence the case of the applicants shall be considered vis-a-vis others accordingly and decided. This exercise should be completed within a period of one month from the date of receipt of a copy of this order.

22. Therefore after detailed consideration of the facts and circumstances of the cases and in the light of the observations in the preceding paras, we set aside the order dt. 07.01.2014 passed by the 2nd respondent in respect of the applicants. The respondents are directed to consider the matter afresh based on the principle outlined in the earlier para within a period of one month from the date of receipt of a copy of this order.

12. It was clearly held by the Tribunal in its order dtd.6.8.2015 and mentioned above that the respondents should take into consideration the weightage to SSLC only irrespective of whether he/she has higher qualification and the marks awarded to them in interview for deciding inter-se merit. In case two or more candidates have finally scored the same marks then in their case the marks secured by them in SSLC examination should be taken into consideration for deciding the inter-se merit and the person securing higher marks in SSLC exam shall be placed higher in the merit list. It appears that the respondents have selected the candidates for 26 posts (10 vacancies were kept vacant and 16 vacancies were created subsequently) in total. Out of 26 vacancies, 13 were for General Category, 10 for OBC and 3 for ST. The applicant belongs to General Category. Out of the General category candidates who have been finally selected, 12 persons had scored total 42 marks i.e. 27 marks for SSLC qualification and 15 marks for interview. The applicant had scored 41 marks i.e. 27 marks for SSLC qualification and 14 marks for interview. Only one General category selected

OA.No.170/00106/2017/CAT/Bangalore Bench candidate Shri.Deepak Kumar Singh had also scored 41 marks i.e. same as the applicant. But he had scored 70% marks in SSLC as against 61.76% marks secured by the applicant. Accordingly, Shri.Deepak Kumar Singh having secured higher percentage of marks in the SSLC examination was placed higher in the merit vis-à-vis the applicant. We also note that Shri.Deepak Kumar Singh was not given additional weightage for higher qualification even though he was a graduate. Therefore, the selection process adopted by the respondents does not seem to suffer from any irregularity.

13. The applicant had kept on harping on the fact that the marks secured by the candidates in SSLC examination should have been given more weightage. However, we had considered this aspect in our order dtd.6.8.2015 and had observed that the applicants were not asked to indicate the marks obtained in SSLC in their application forms. Hence it would not be appropriate to introduce a new element when the shortlisting had already been done, candidates called for interview on that basis and interview completed. Therefore, this point of doing the selection based on the marks secured in SSLC as highlighted by the applicant is no relevant. It had to be considered as to whether the respondents have taken up the selection afresh based on the principle laid down by the Tribunal in its order dtd.6.8.2015. On examining the entire matter and perusal of the records, we are of the view that the fresh selection has been done in accordance with the order dtd.6.8.2015 passed by the

Tribunal and there is nothing irregular or unjustified in the process.

14. Therefore, on detailed consideration of the facts and circumstances of the case, we hold that the contention made by the applicant does not merit any further consideration and hence the OA being devoid of merit stands dismissed. No order as to costs.

(P.K. PRADHAN)
MEMBER(A)

(DR. K.B. SURESH)
MEMBER (J)

/ps/

Annexures referred to by the applicant in OA.170/00106/2017

Annexure-A1: True copy of Notification dated 16.9.2010

Annexure-A2: True copy of the application submitted by the applicant

Annexure-A3: True copy of the Model Recruitment Rules dated 30.4.2010 framed by the Government of India

Annexure-A4: True copy of SSLC Marks Card of the applicant

Annexure-A5: True copy of II PUC Marks Card of the applicant

Annexure-A6: True copy of Certificate of Diploma in Accounting and Software of the applicant

Annexure-A7: True copy of order dated 28.7.2011 passed by this Hon'ble Tribunal in OA.No.295/2011

Annexure-A8: True copy of order dated 11.8.2011 of this Tribunal in other OAs.

Annexure-A9: True copy of Order dated 7.9.2011 passed in Application No.215/2011

Annexure-A10: True copy of the order dated 17.1.2012 passed in OA.No.215/2011

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Annexure-A11: True copy of the order passed in WP.No.48794-48803/2012 along with other Writ Petitions dated 24.10.2013

Annexure-A12: True copy of order dated 7.1.2014

Annexure-A13: True copy of order passed in OA.No.1681/2014 connected with 748/2014 and other connected matters, dated 6.8.2015

Annexure-A14: True copy of Order/Endorsement dated 14.6.2016 issued by the second respondent

Annexures with reply statement:

Annexure-R1: Copy of the order of Hon'ble High Court of Karnataka, Bengaluru in WP.No.51950/2015 & connected cases

Annexures with rejoinder:

-NIL-

Annexures with additional reply statement:

-NIL-
