

CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH : BANGALORE

ORIGINAL APPLICATION No. 170/00863-00866/2017

TODAY, THIS THE 17th DAY OF SEPTEMBER, 2018

**HON'BLE DR. K.B. SURESH, JUDICIAL MEMBER
HON'BLE SHRI DINESH SHARMA, ADMINISTRATIVE MEMBER**

1. Smt. Manjula B
D/o Late Byrahanumaiah,
Aged 30 years,
R/at Income Tax Colony, C-117,
Block-8, Near HMT Watch Factory,
Jalahalli,
Bengaluru – 560 013
2. Sri Vinod Nag,
S/o Hamsaraj,
Aged 28 years,
R/at No. 124,
Shri Durganivas,
1st Floor, 2nd Main, RR Layout,
Kenchanapura Cross,
Nagadevanahalli,
Bengaluru – 560 056
3. Smt Shwetha K.R,
W/o Santhosh N
Aged 26 years,
R/at No. A3, 1st Floor, Block-15,
Income Tax Quarters, Jalahalli,
Bengaluru – 560 013
4. Ms Keerthika R
D/o Late M. Raja,
Aged 23 years,
R/at No. 95, 4th Cross, Gowtham Nagar,
Srirampuram,
Bengaluru – 560 021

(By Advocate Shri Aravind V Chavan)

Vs.

1. The Principal Chief Commissioner of
Income Tax (CCA),
Karnataka and Goa Region,
Central Revenue Building,
Queens Road,
Bengaluru- 560 001

2. The Commissioner of Income Tax (Admin)
Karnataka and Goa Region,
Central Revenue Building
Queens Road,
Bengaluru- 560 001
3. Addl. Commissioner of Income Tax (HQ) (Administration)
Karnataka and Goa Region,
Central Revenue Building,
Queens Road,
Bengaluru- 560 001

(Shri V.N. Holla, Senior Panel Counsel)

ORDER

Hon'ble Shri Dinesh Sharma, Administrative Member

Applicants request is for considering them for promotion as Tax Assistants with effect from 3.4.2017. They have based their claim on the Recruitment Rules dated 18.12.2015 (Annexure A-3) and clarification issued in this matter by notification dated 23.04.2016 (Annexure A-2). According to the applicants, Recruitment Rules read with the aforesaid notification would mean that they should be considered for promotion on the basis of their passing computer skill test and without waiting for completing five years as Multi Tasking Staff (MTS). The applicants have also cited decisions of Kerala and Nagpur cadre controlling authorities where they have allegedly promoted persons without their having completed 5 years of regular service at the feeder level.

2. The respondents have denied this claim. According to the respondents, it is nowhere stated that the condition regarding 5 years' service at feeder level is waived by any subsequent notification. The intention behind the clarificatory communication was only to fix seniority between qualified officials of various feeder cadres. The date/year of passing of the computer skill examination would be relevant only on completion of the basic requirement of minimum 5

years regular service in the feeder cadre. The respondents have already given detailed reply to the applicants in response to their representations. Regarding the decisions of other cadre controlling authorities, the respondents have replied that they are not aware of the circumstances under which any such decision was taken by them. They have also alleged that if any such decision is taken by any other cadre controlling authorities, it is in violation of the rules and, therefore, they are not bound to follow the same.

3. The applicants in their rejoinder have reiterated the claim made in their applications.

4. After going through the pleadings and hearing both the sides, it is clear that the decision in this case depends on the interpretation of the Recruitment Rules, 2015 (Annexure A-3) and the clarification dated 23.04.2016 (Annexure A-2). The relevant portion of both these communications are reproduced below:

From Annexure A-3 dated 18.12.2015:

“Promotion:

Group ‘C’, viz., Multi Tasking Staff, Lower Division Clerk, Notice Server, Record Keeper, Sr. Gestetner Operator in Pay Band-I with five years’ regular service in the Grade including in the erstwhile Group ‘D’ having passed i} matriculation examination or equivalent and (ii) having qualified the prescribed departmental examination for data-entry skill for 5000 key depressions per hour.

Note:

‘1. Promotion to the grade of Tax Assistant will be made regionwise.

2. For the purpose of reckoning five years’ regular service in the grade, the service rendered by an inter-region transferee in the old region shall not be counted in the new region which he has joined on such transfer, if the transfer is on the request of the officer concerned.

3. Where juniors who have completed their qualifying or eligibility service are being considered for promotion, their seniors would also be considered, provided they are not short of the requisite qualifying or eligibility service by more

than half of such qualifying or eligibility service or two years whichever is less and have successfully completed their promotion period for promotion to the next higher grade along with their juniors who have already completed such qualifying or eligibility service.”

From Annexure A-2 dated 23.05.2016:

“2. Subsequent to the Notification of the Recruitment Rules of Tax Assistant dated 18.12.2015 superseding the previous RRs, clarification has been sought by the field regarding the manner of preparation of eligibility list for promotion to Tax Assistant in light of the new RRs. In this regard, I am directed to convey that the directions laid down in Board Instruction dated 13.04.2005 issued vide F.No.A-12018/1/2016-Ad.VII regarding preparation of a single eligible list of candidates with reference to the date/year of passing of the computer skill examination may be followed.”

5. A plain reading of these two does not lead to an incontrovertible conclusion that the requirement about 5 years' service has been done away with by the later communication. As clarified by the respondents, this communication was only with respect to preparation of a single eligible list of candidates and it does not water down the eligibility requirement of 5 years' service. The respondents have also categorically denied that any one junior to the applicant has been considered while ignoring their case. The example of the person given in one of the applicant's representation (Annexure A-10) also show that Shri Noyal Christy M, who has been promoted, had completed 5 years' service in the MTS cadre while the applicant had completed only about 2 years 10 months. From this it is clear that the applicant is not senior to Shri Noyal Christy M in the MTS cadre unless the seniority was to be determined on the basis of the date of passing of the computer skill examination. The document produced by the applicants along with their rejoinder, a circular by Principal CCIT, Mumbai dated 15.5.2018 (Annexure A-11) itself makes it clear that it is an eligibility list and not a seniority list. Thus the claim of the applicants to consider them for promotion on the basis of passing of computer skill examination without fulfilling the basic criteria of minimum 5 years regular

service in the feeder grade and without any proof about anyone junior to them having been considered in preference to them, is not maintainable.

6. The OA, therefore, fails and is accordingly dismissed. No orders as to costs.

(Dinesh Sharma)
Administrative Member

(Dr. K.B. Suresh)
Judicial Member

Cvr.

Annexures filed by the applicant in OA:

Annexure-A1: Copy of the appointment notification of applicants 1 to 3 as MTS dated 10.11.2012

Annexure-A2: Copy of the notification dated 23.05.2016 issued by the Director of Income Tax

Annexure-A3: Copy of the notification dated 18.12.2015 issued by CBDT

Annexure-A4: Copy of the Kerala Region Promotion Order dated 01.06.2017

Annexure-A5: Copy of the Nagpur Region Promotion Order dated 13.10.2017

Annexure-A6: Copy of the representation of applicant No. 1 dated 16.08.2017

Annexure-A7: Copy of the representation of applicant No. 2 dated 16.08.2017

Annexure-A8: Copy of the representation of applicant No. 3 dated 17.08.2017

Annexure-A9: Copy of the representation of applicant No. 4 dated 18.08.2017

Annexures with reply filed by the respondents:

Annexure-R1: Copy of the letter dated 08.08.2017

Annexure-R2: Copy of the letter dated 16.08.2017

Annexure-R3: Copy of the HRD Directorate letter dated 18.01.2016

Annexures with rejoinder filed by the applicant:

Annexure-A10: Copy of the applicant's representation dated 14.07.2017

Annexure-A11: Copy of the promotion order issued from MTS to Tax Assistant order dated 01.06.2018

Annexure-A12: Copy of the promotion order issued from MTS to Tax Assistant order dated 13.10.2017

Annexure-A13: Copy of the promotion order issued from MTS to Tax Assistant order dated 01.06.2017

Annexure-A14: Copy of the notification issued by the Department of Revenue dated 13.04.2005

Annexure-A15: Copy of the clarification letter issued by the Directorate of Income Tax dated 23.05.2016.