

CENTRAL ADMINISTRATIVE TRIBUNAL**CHANDIGARH BENCH**

**MISCELLANEOUS APPLICATION NO.060/00078/2016 &
ORIGINAL APPLICATION NO.060/00767/2017
Chandigarh, this the 19th day of January, 2018**

**CORAM: HON'BLE MR. JUSTICE M.S. SULLAR, MEMBER (J) &
HON'BLE MS. P. GOPINATH, MEMBER (A).**

Ashok Kumar son of Late Shri Bhagwan Dass, aged 47 years, working as Upper Division Clerk (Adhoc) in the office of Central Administrative Tribunal, Chandigarh Bench, resident of House No. 489, Sector 7A, Chandigarh.

.....APPLICANT

(Argued by: Mr. Rohit Seth, Advocate)

VERSUS

1. Union of India through Secretary to Government of India, Ministry of Personnel, Public Grievances & Pensions, DOP&T, North Block, New Delhi. (Contesting Respondent)

(Argued by : Mr. Ram Lal Gupta, Sr. Central Govt. Standing Counsel)

2. The Principal Registrar, Central Administrative Tribunal, Principal Bench, 61/35, Copernicus Marg, New Delhi.
3. The Registrar, Central Administrative Tribunal, Chandigarh Bench, C.A.T Building, Opposite Hotel Shivalik View, Sector : 17, Chandigarh.

....RESPONDENTS

ORDER (Oral)

JUSTICE M.S. SULLAR, MEMBER (J)

1. The matrix of the facts and the material, which needs a necessary mention, for the limited purpose of deciding the core controversy, involved in the instant Original Application (OA), and explicated from the record, is that the applicant was promoted to the post of Lower Division Clerk vide order dated 31.7.1997 (Annexure A-7). Thereafter, in pursuance of the Central Administrative Tribunal (Group 'B' & 'C' Miscellaneous Posts) Recruitment Rules, 1989 (hereinafter to be referred

to as “Old Recruitment Rules”) (Annexure A-8), he was appointed on the post of Care Taker, vide order dated 5.2.2013 (Annexure A-9), by the competent authority. He was also promoted as Upper Division Clerk, on adhoc basis, w.e.f. 1.3.2017. He possesses the qualification of B.A, LL.B. Admittedly, the applicant is still working as a Care Taker, under the Old Recruitment Rules.

2. During the course of his service as Care Taker, suddenly the Old Recruitment Rules were superseded by new rules, called The Central Administrative Tribunal (Group ‘B’ & ‘C’ Miscellaneous Posts) Recruitment Rules, 2015 (for brevity “impugned new recruitment rules”), (Annexure A-13), adversely affecting existing rights of the applicant.

3. Aggrieved thereby the applicant has preferred the instant OA, challenging the validity and legality of the impugned New Recruitment Rules, Annexure A-13, on a variety of grounds, mentioned therein in the main OA.

4. In the wake of notice, Mr. Ram Lal Gupta, learned Senior Central Govt. Standing Counsel, appeared & accepted notice on behalf of The Secretary to Government of India, Ministry of Personnel, Public Grievances & Pensions, DoP&T, North Block, New Delhi (Respondent No.1), and sought time for filing the written statement. Thereafter, case was repeatedly adjourned for filing reply on the request of learned counsel, but the respondent no.1 (contesting respondent) did not file the reply, despite adequate opportunities, including last opportunity. As consequences thereof, the following order was passed on 12.12.2017 by this Tribunal :-

“Respondent No.1 has not filed reply, despite adequate opportunities, including last opportunity, for the reasons, best known to it.

Another adjournment is requested on its behalf.

Although no cogent ground for adjournment of this O.A is made out, however, in the interest of justice, one more final opportunity is granted to it.

Again adjourned to 19.01.2018, to enable the learned counsel for Respondent No.1, to file reply (last opportunity), with an advance copy to the learned counsel for the applicant. However, today's adjournment is subject to payment of Rs.5000/- as cost, to be paid by the respondents, after deducting from the salary of the erring officer / official, to the C.A.T . Bar Association Fund.

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5. Strangely enough, today again, neither respondent no.1 has paid the previous adjournment cost of Rs.5,000/-, nor filed the written statement, nor any cogent explanation is forthcoming on record, in this regard, on behalf of contesting Respondent No.1, for the reasons best known to it.

6. Be that as it may, during the pendency of the main matter, the applicant has moved a Miscellaneous Application (MA) No.060/00078/2018, for placing on record copies of judgments of Hon'ble Apex Court, in cases of (1) **J.C. Yadav Vs. State of Haryana**, (1990) 2 SCC 189 (Annexure MA-1); (2) **Ashok Kumar Uppal Vs. State of J&K**, (1998) 4 SC 179 (Annexure MA-2), **Union of India vs. Tushar Ranjan Mohanty**, (1994) (5)SCC 450 (Annexure MA-3) and **B.L. Gupta and Another Vs. M.C.D.** (1998) 9 SCC 223 (Annexure MA-4), and to dispose of the main case in terms thereof.

7. Notice of the MA was issued to the respondent no.1.

8. Having heard the learned counsel for the parties, having gone through the material available on record with their valuable help, and for the reasons mentioned therein, the M.A is allowed. The pointed judgments, Annexures MA-1 to MA-4 are taken on record.

9. What cannot possibly be disputed here is that the applicant was initially promoted to the post of LDC, vide order dated 31.7.1997 (Annexure A-7). In pursuance of the Old Recruitment Rules, (Annexure

A-8), he was appointed on the post of Care Taker, vide order dated 5.2.2013 (Annexure A-9), by the competent authority. He possesses the qualification of B.A, LL.B. Meanwhile, he was also promoted as Upper Division Clerk, on adhoc basis, w.e.f. 1.3.2017. It is not a matter of dispute that he is still working as Care Taker. The Respondent No.1 has superseded the Old Recruitment Rules (Annexure A-8), with impugned New Recruitment Rules of 2015 (Annexure A-13), adversely affecting the already existing rights of the applicant, which is not legally permissible, in view of the ratio of law laid down in the indicated judgments.

10. Moreover, it is now well settled principle of law and the ratio of law laid down by the Hon'ble Supreme Court in the case of **Tushar Ranjan Mohanty (supra)**, that already vested right, in an employee, acquired by virtue of the Old Recruitment Rules, cannot be taken away by the new amended rules retrospectively. Sequently, it was held by Hon'ble Apex Court in the case of **Y.V. Rangaiah V. J. Sreenivasa Rao, P.Ganeshwar Rao v. State of A.P.** AIR 1983 SC 852 and **A.A. Calton vs. Director of Education**, 1983 SCC (3) 280, that the vacancy, which had occurred prior to the amendment of the rules, would be governed by the old rules and not by the amended rules.

11. Likewise, Hon'ble Apex Court has ruled in **B. L. Gupta and Another V. M.C.D.** (1998) 9 SCC 223, that the old vacancies, which had arisen prior to the amendment of the old rules, would be governed by the old rules only. It was also held that the amended rules would be operative prospectively and not retrospectively.

12. Therefore, the impugned new amended Recruitment Rules of 2015 (Annexure A-13), would naturally operate prospectively and will not take away any existing rights of the applicant, for the post of Care Taker, already vested under the old Recruitment Rules, Annexure A-8, including

his right of consideration of absorption, in the regular cadre. The ratio of law laid down in the in the indicated judgments, *mutatis mutandis*, is applicable to the present controversy and is the complete answer to the problem in hand.

13. Thus, without entering into the legality or validity or otherwise of the impugned amended new Recruitment Rules (Annexure A-13) at this stage, the O.A. is disposed of in the manner and terms, depicted herein above.

14. Needless to mention and it is reiterated that the already existing rights of the applicant, on the post of Care Taker, will not be adversely affected, in any manner, by the impugned new Recruitment Rules of 2015. However, the parties are left to bear their own costs.

(P. GOPINATH)
MEMBER (A)

(JUSTICE M.S. SULLAR)
MEMBER (J)
19.01.2018

HC*