

**Reserved**

**CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH**  
**JABALPUR**

**ORGINAL APPLICATION NO.202/00941/2016**

Jabalpur, this Monday, the 5<sup>th</sup> day of March, 2018

**HON'BLE MR.NAVIN TANDON, ADMINISTRATIVE MEMBER**  
**HON'BLE MR.RAMESH SINGH THAKUR, JUDICIAL MEMBER**

Mahesh Rajak S/o late Shri Mohanlal Aged 47 years,  
Occupation-Unemployed R/o Type-2/360,  
Shastri Nagar, Thatipur (M.P.) Pin Code No.474001 - **APPLICANT**

(By Advocate – Shri Vijay Tripathi)

**Versus**

1. Comptroller and Auditor General  
Through Auditor General, Audit Bhawan,  
Gwalior (M.P.) Pin Code 474001

2. Senior Accounts Officer, Recruitment,  
Audit Bhawan, Gwalior (M.P.) Pin Code-474001 - **RESPONDENTS**

(By Advocate – Shri P.Shankaran)

*(Date of reserving the order:01.03.2018)*

**ORDER**

**By Navin Tandon, AM-**

The applicant is aggrieved by order dated 19.08.2016 (Annexure A-1) wherein his services have been terminated for not acquiring certificate of passing of Class-X Examination within two years of his appointment.

2. The facts of the case are that the applicant was initially recruited with the respondents as daily wager in the year 1987. The applicant was

temporarily appointed on MTS post on 03.07.2012 (Annexure A-3) wherein following conditions were mentioned:-

- (i) These applicants have to pass Class-X examination through a recognized Education Board/Open School within two years.
- (ii) Failure to do so would result in termination of the services.
- (iii) .....

**2.1** The applicant appeared in Madhya Pradesh Open High School Examination, and the result in the internet (Annexure A-4) showed him as passed in May,2013 result. However, subsequently, internet started showing him as a failed candidate. Subsequently, he was declared pass as per Annexure A-6 in June, 2016. However, in the meantime the respondents issued the impugned order (Annexure A-1) and terminated his services.

**3.** Following relief has been sought for by the applicant in this Original Application:-

“8.1 The order impugned Annexure A/1 may kindly be quashed. Any other order which this Hon’ble Tribunal deems fit in the facts and circumstances of the case may also kindly be granted.”

**4.** The applicant has submitted that the Hon’ble High Court of Madhya Pradesh in the matters of **Om Prakash and others Vs. Union of India and others**, Writ Petition No.4678/2014 (S) vide order dated 17.11.2014 (Annexure A-8), has quashed the orders of cancellation of

appointments of similarly placed persons and directed the respondents to reinstate the petitioners of the said cases forthwith as MTS employees.

The Hon'ble High Court further held that the petitioners are entitled to avail the facility of passing 10<sup>th</sup> Board Examination in five years.

**5.** The respondents in their reply have submitted that owing to applicant's failure to pass matriculate examination within the stipulated period, his services were terminated in accordance with the terms and conditions of his appointment and, therefore, the instant Original Application deserves to be dismissed on this count alone.

**6.** Heard the arguments of both the parties and perused the documents.

**7.** The learned counsel for the applicant submitted that this case is squarely covered by the decision of the Hon'ble High Court in the matters of **Om Prakash** (supra) wherein 8 similar petitions were heard together and were decided by a common order. The facts of the present case are similar. It has been brought out in the order that the newly recruited non-matriculate MTS were extended the period for qualifying Class-X examination from two years to five years by CAG's Circular dated 09.04.2012. The CAG on 20.09.2012 again issued a clarificatory note

that the relaxation of five years of acquiring the qualification would not be applicable in the case of newly recruited matriculate MTS. The petitioners in the writ petitions qualified the matriculate qualification after two years but within five years. The said petitions were allowed by the Hon'ble High Court and the petitioners were reinstated.

**8.** The respondent-department approached the Hon'ble Supreme Court which upheld the judgment of the Hon'ble High Court with the following directions (in Civil Appeals Nos.6915-6921 of 2015 vide order dated 27.11.2017):-

- “(i) The respondents shall be taken back in the service and the past service shall only be counted for the purpose of pension, if any.
- (ii) The respondents shall not claim any seniority over the persons, who have already been regularised or appointed.
- (iii) The respondents shall not be entitled to any back wages”.

**9.** The learned counsel for the respondents submitted that since the appointment letter mentions the conditions of acquiring the qualification within two years from the date of issue of appointment letter, therefore, the respondent-department is right in terminating the appointment letter.

**10.** We have perused the orders passed by the Hon'ble High Court and Hon'ble Supreme Court in the aforementioned cases. We find that the

case of the present applicant is fully covered by these judicial pronouncements.

**11.** Accordingly, the impugned order dated 19.08.2016 is quashed and set aside. The Original Application is allowed with the following directions:-

- (i) The applicant shall be taken back in service and the past service shall only be counted for the purpose of pension, if any.
- (ii) The applicant shall not claim any seniority over the persons, who have already been regularised or appointed.
- (iii) The applicant shall not be entitled to any back wages.

**12.** The respondents are directed to comply with the above directions within a period of one month of the communication of this order. No costs.

**(Ramesh Singh Thakur)**  
**Judicial Member**

rkv

**(Navin Tandon)**  
**Administrative Member**