

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORIGINAL APPLICATION NO. 291/804/2012

Order reserved on 26.02.2019

DATE OF ORDER: 14.05.2019

CORAM

HON'BLE MR. SURESH KUMAR MONGA, JUDICIAL MEMBER
HON'BLE MR. A. MUKHOPADHAYA, ADMINISTRATIVE MEMBER

Arun Kumar Sharma S/o Late Shri B.L. Sharma, aged about 47 years, R/o A-8, Shastri Nagar, Jaipur. Presently working as Sepoy, Office of Chief Commissioner, Central Excise, NCR Building, Statute Circle, C-Scheme, Jaipur.

....Applicant

Mr. Anupam Agarwal, counsel for applicant.

VERSUS

1. Union of India through Secretary, Custom & Central Excise Board, Department of Revenue, Ministry of Finance, Govt. of India, New Delhi.
2. The Chief Commissioner, Central Excise (Jaipur Zone), New Central Revenue Building, Statue Circle, C-Scheme, Jaipur-302005.
3. The Additional Commissioner (CCU), Office of Chief Commissioner, Central Excise (Jaipur Zone), NCR Building, Statute Circle, C-Scheme, Jaipur-302005.

....Respondents

Mr. Rajendra Vaish, counsel for respondents.

ORDER

Per: Suresh Kumar Monga, Judicial Member

The pleaded case of the applicant herein is that he was initially appointed as Lower Division Clerk by the respondents on compassionate grounds vide Office Memorandum dated 22.01.1985. A condition was imposed in his appointment letter that he will have to acquire the requisite qualification i.e. Secondary School Examination certificate to hold the post of Lower Division Clerk within a period of two years. It has been averred that he qualified the Prathama in the year 1984,

Madhyama in the year 1985 and Uttama examination in the year 1989. The Central Government had recognized the Madhyama as equivalent to graduation. However, the respondents did not accept the said qualification of the applicant and insisted for qualification of Secondary School Examination. It has further been averred that the applicant's services were terminated by the respondents vide order dated 12.07.1999 on the ground that he could not acquire the requisite qualification for the post of Lower Division Clerk. The said order was challenged before this Tribunal and while disposing of the O.A., the respondents were directed to decide the applicant's representation by way of passing a reasoned and speaking order within a period of two months. Thereafter, the applicant preferred a representation, which was considered and decided by the respondents vide their letter dated 04.09.2000 and the appointment on a Group 'D' post was offered to the applicant on compassionate grounds, which was accepted by him. The applicant was asked to produce the 8th class pass certificate. However, he wrote a letter that said certificate had already been submitted at the time of initial appointment. It has further been averred that at the time of initial appointment, the applicant had submitted his Secondary School Examination 1981 mark-sheet wherein he was shown to have failed in said examination. Thus, as a natural corollary, he should have been deemed to have qualified 8th class examination. It has further been pleaded that the respondents failed to consider him for appointment on Group 'D' post and, therefore, he again approached this Tribunal by way of filing a fresh O.A., which was disposed of on 18.04.2002 with the direction that the applicant should satisfy the department that he

has passed class 8th examination and in case he satisfies the department, the appointment letter shall be issued. The applicant thereafter submitted a representation narrating therein that he has qualified Prathama, Madhyama and Uttama examination, which are recognized by Central Government and as such he should be treated having the requisite qualification. The said representation was rejected by the respondents directing the applicant to produce 8th class examination certificate. Aggrieved by the same, the applicant preferred D.B. Civil Writ Petition No. 2778/2003, which was allowed on 30.07.2009 wherein the respondents were directed to offer appointment to the applicant on a Group 'D' post within a period of 30 days. It has further been averred that the respondents did not challenge the said order passed by the Hon'ble High Court yet they failed to implement the same. However, they issued a Memorandum dated 29/30.08.2011 offering the appointment on the post of Sepoy. The respondents thereafter directed the applicant to appear for physical test, which was protested by him on the plea that he had already been appointed in the year 1985 after undergoing all the process of selection. The respondents again issued order dated 20.09.2011 extending the last date of joining upto 04.10.2011 and under those circumstances, he submitted his joining on 27.09.2011. Since then, he has been continuously working on the said post. In the meanwhile, he had filed D.B. Civil Review Application No. 139/2009 in D.B. Civil Writ Petition No. 2778/2003 for counting his services from 1985 till the date of his joining on Group 'D' post. The said Review Application was decided by the Hon'ble High Court vide order dated 03.03.2012 with the observation

that if a representation is filed by the applicant, the same shall be considered by the respondents sympathetically in accordance with law. Consequently, the applicant submitted a representation dated 22.03.2012, which was followed by a reminder letter dated 09.04.2012. The said representation was rejected by the respondents vide order dated 06.06.2012 (Annexure A/1). Aggrieved by the said order, the applicant has invoked the jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 wherein apart from making a prayer for quashing of order dated 06.06.2012 (Annexure A/1), he has sought a direction to respondents to treat his appointment as Sepoy w.e.f. 22.01.1985 with all consequential benefits with a further direction to make pay fixation, grant seniority and promotion including ACP/MACP treating his date of appointment as 22.01.1985.

2. The respondents by way of filing a joint reply have joined the defence and opposed the applicant's claim with the assertions that a Memorandum dated 08.07.1991 was issued to applicant to show cause as to why his services be not terminated as he did not possess the requisite educational qualification for the post of Lower Division Clerk. The applicant in his reply dated 09.07.1991 requested the respondents to treat the Prathama / Madhyama Examination as equivalent to the Higher Secondary School Examination. He further submitted that had he been informed earlier in this regard, he would have acquired the requisite qualification of matriculation within the prescribed time limit. While considering his request sympathetically, he was granted two years' more time to acquire the requisite

qualification vide letter dated 21.01.1992. After the said period of two years was over, he was again asked by the respondents vide letter dated 16.03.1994 to submit the certificate of requisite educational qualification. In response thereto, he submitted a letter dated 23.03.1994 informing therein that the matter was pending adjudication before the Central Administrative Tribunal. This Tribunal while disposing of O.A. No. 46/1993 directed the respondents to allow the applicant to acquire the requisite qualification within a period of two years from the date of passing of the said order. After expiry of the period of said two years, the applicant was again asked to submit the certificate of requisite educational qualification by the respondents vide office letter dated 15.07.1998 and in response to said letter, he informed that he had appeared in Secondary School Examination conducted by the National Open School, New Delhi and had cleared two out of five papers. He was again asked to submit the certificate of requisite educational qualification vide office letters dated 17.12.1998, 01.03.1999 and 16.03.1999 but he failed to submit the same. Thereafter, a show cause notice dated 01.04.1999 was issued to the applicant as to why his services be not terminated. He was also given opportunity to appear in person before the Additional Commissioner (P&V), Central Excise, Jaipur on 29.04.1999, 31.05.1999 and 10.06.1999 but he failed to appear before him. Consequently, the services of the applicant were terminated vide office order dated 12.07.1999. Thereafter, the applicant had submitted an appeal dated 10.08.1999 before the Commissioner, which was rejected and the applicant was informed accordingly vide office letter dated 19.08.1999. The applicant filed O.A. No.301/2000

before this Tribunal, which was disposed of on 19.07.2000 with a direction to respondents to decide his representation, if he files the same within 15 days, by way of passing a reasoned and speaking order within a period of two months. Consequently, the applicant submitted a representation dated 28.07.2000. The said representation was disposed of by the respondents vide order dated 04.09.2000 in the light of Government of India's instructions and he was informed that he cannot be reinstated in service as Lower Division Clerk. However, he was given an option to consent for appointment on a Group 'D' post on compassionate grounds. He submitted his willingness vide letter dated 03.01.2001 for his appointment as Sepoy Group 'D'. Thereafter, his physical test was conducted on 14.02.2001 and he was found fit in the said physical test. Vide letter dated 17.02.2001, he was asked to submit the duly filled forms with regard to his antecedents alongwith original certificates of educational qualification. He filled up the form with regard to his antecedents and submitted the same on 24.02.2001. As regards the original educational certificate, he mentioned that the same has already been furnished to the department. Since the requisite 8th class pass certificate was not available in the service record of the applicant, therefore, he was again asked to submit the same in original vide office letter dated 23.03.2001. Thereafter, repeated reminders were issued to him on 18.04.2001, 27.07.2001 and 27.08.2001 but he reiterated his earlier version. The applicant filed an O.A. No. 150/2001 before this Tribunal, which was disposed of on 18.04.2002 with the observation that if the applicant satisfies the respondents with regard to his qualification of 8th class examination, the

respondents shall issue his appointment letter. The applicant again submitted a representation dated 18.05.2002 reiterating his earlier version but did not submit any proof to satisfy the respondents that he has qualified 8th class examination. Therefore, the applicant was informed that his case for appointment on Group 'D' post would be considered only if he submits certificate of 8th class examination. Instead of submitting the 8th class pass certificate, he kept on writing letters dated 31.06.2002, 24.09.2002, 11.11.2002 and 04.12.2002 reiterating his earlier version of having already submitted the 8th class certificate at the time of his initial appointment as Lower Division Clerk in 1985. Whereas, as per record, no such certificate was found to be submitted by the applicant. Thereafter, a copy of judgment dated 30.07.2009 was received from the Hon'ble High Court of Rajasthan, Jaipur Bench passed in D.B. Civil Writ Petition No. 2778/2003 wherein while allowing the said writ petition, a direction was issued to give appointment to the applicant within a period of 30 days. The said order was an ex-parte order. It has further been averred that the respondents never received any copy of the Writ Petition. Thereafter, an offer of appointment was made to the applicant for the post of Sepoy on 29/30.08.2011. It has further been submitted that the applicant vide his letter dated 08.09.2011 submitted that he had filed a Writ Petition bearing SBCWP No. 139/2009 before the Hon'ble High Court of Rajasthan for consideration of service benefits, fixation of salary, grant of increment etc. and also for counting the period of his service w.e.f. 25.01.1985. The applicant was informed that the offer of appointment on the post of Sepoy will take effect from

the date of joining and thereafter he joined the services as Sepoy on 27.09.2011. It has further been pleaded that in compliance of order dated 03.03.2012 passed by the Hon'ble High Court of Rajasthan in D.B. Civil Review Petition (Writ) No. 139/2009, the representations dated 22.03.2012 and 09.04.2012 were considered sympathetically and those were rejected vide order dated 06.06.2012 (Annexure A/1). With all these assertions, the respondents have prayed for dismissal of the Original Application.

3. Heard learned counsel for the parties.

4. Shri Anupam Agarwal, learned counsel for the applicant vehemently argued that it was not a fresh appointment of the applicant on a Group 'D' post as neither he was asked to undergo any training nor any probation period was insisted upon. The applicant's services were in continuation of his earlier services and, therefore, his services rendered on the post of Lower Division Clerk cannot be ignored and those are liable to be counted for the purpose of grant of pay fixation, seniority and promotion including ACP/MACP. Learned counsel further submitted that the applicant had rendered his services for more than 14 years on the post of Lower Division Clerk and those cannot be ignored arbitrarily. He further argued that the action of the respondents while rejecting the applicant's representation vide order dated 06.06.2012 is discriminatory as well because in similar circumstances, the respondents have granted the benefit of past services to one Shri B.L. Meena.

5. Per contra, Shri Rajendra Vaish, learned counsel for the respondents argued that the applicant's appointment as Sepoy on Group 'D' post was a fresh appointment, which was given to him on compassionate grounds looking towards his family circumstances. He further submitted that services of the applicant as Lower Division Clerk were terminated because he was not having the requisite educational qualification to hold the said post. Since he was not having the requisite educational qualification to hold the post, therefore, services rendered on the said post cannot be counted for any other purposes. Learned counsel further submitted that the order dated 12.07.1999 terminating the services of the applicant as Lower Division Clerk has attained finality and it is not a case where he has been ordered to be reinstated in service. He, thus, submitted that the respondents are justified in rejecting the applicant's representation vide order dated 06.06.2012 (Annexure A/1).

6. Considered the rival contentions of learned counsel for the parties and perused the record.

7. Admittedly, the applicant was offered appointment on the post of Lower Division Clerk on compassionate grounds vide Office Memorandum dated 22.01.1985 in terms of Ministry of Home Affairs OM No. 14014/1/77-Estt. (D) dated 25.11.1978 read with Ministry's letter F. No. A-12012/54/84-Ad.III.B dated 14.11.1984 on the condition that he will have to acquire the requisite qualification i.e. matriculation within a period of two

years as he was not holding the said qualification at that time. Accepting the terms and conditions of said Office Memorandum, the applicant had joined as Lower Division Clerk on 25.01.1985. There is no dispute with regard to the fact that he could not qualify the matriculation examination within the stipulated period of two years. The Office Memorandum dated 08.07.1991 was issued by the respondents to applicant to show cause as to why his services be not terminated as he failed to acquire the requisite qualification for the post of Lower Division Clerk. The reply submitted by the applicant to said Office Memorandum on 09.07.1991 was sympathetically considered by the respondents and he was given 02 years' more time to acquire the requisite educational qualification but he still failed to acquire the same within the extended period of 02 years. Meanwhile, the applicant had filed O.A. No. 46/1993, which came to be disposed of by this Tribunal on 11.07.1996 and while keeping in view the applicant's circumstances, he was given 02 years further extension to acquire the requisite qualification. Still the applicant failed to acquire the said requisite qualification and, therefore, the respondents were left with no other alternate but to terminate his services vide order dated 12.07.1999. The applicant's termination order became the subject matter of challenge before this Tribunal in O.A. No. 301/2000. At the time of preliminary hearing of the said O.A., learned counsel for the applicant submitted that the O.A. may be disposed of finally by giving a direction to respondents to dispose of the applicant's representation if he files the same within a period of 15 days. In view of the said statement made by learned counsel for the applicant, this Tribunal disposed of O.A. No. 301/2000 on

19.07.2000 with a direction to respondent no. 2 to decide the applicant's representation within a period of two months if he submits the same within a period of 15 days. Thereafter, the applicant had submitted representation dated 28.07.2000 and looking towards his family circumstances, an offer for appointment to a Group 'D' post on compassionate grounds was given to him. The applicant's willingness for appointment as Sepoy was considered by the respondents and accordingly a physical test was conducted on 14.02.2001 in which he was found fit. Thereafter, he was directed to submit a duly filled up form with regard to his antecedents alongwith original certificates of educational qualification i.e. 8th pass and a date of birth certificate as well. He submitted with the respondents a duly filled up form with regard to his antecedents on 24.02.2001 but he failed to furnish the certificate of 8th class examination. Instead of submitting the requisite certificate, the applicant filed O.A. No. 150/2002 before this Tribunal, which was disposed of on 18.04.2002 with the direction that if the applicant satisfies the department that he is 8th class pass, his appointment letter shall be issued. Thereafter, the applicant had filed D.B. Civil Writ Petition No. 2778/2003 before the Hon'ble High Court of Rajasthan, Jaipur Bench, which was allowed on 30.07.2009 with a direction to respondents to appoint him on Group 'D' post within a period of 30 days. Consequent thereto, the applicant was offered the appointment on the post of Sepoy on 29/30.08.2011 (Annexure A/7). The applicant, still not satisfied, filed D.B. Civil Review Petition No. (Writ) No. 139/2009 in D.B. Civil Writ Petition No. 2778/2003 with a prayer that his services be counted for all purposes from 1985 to the date of joining on

Group 'D' post. The Hon'ble High Court of Rajasthan declined to allow the applicant's prayer. However, he was given a liberty to file a representation before the respondents. The said Review Petition was disposed of on 03.03.2012 with the observation that if such a representation is filed within a period of three weeks, the same shall be considered sympathetically by the respondents and an order shall be passed in accordance with law within a period of three months thereafter. Consequent thereto, the applicant had submitted a representation dated 22.03.2012 (Annexure A/12), which has been rejected by the respondents vide order dated 06.06.2012 (Annexure A/1).

8. Admittedly, the applicant was not having the requisite educational qualification to hold the post of Lower Division Clerk. He was given the appointment on compassionate grounds, which one cannot claim as a matter of right as the same is an exception to recruitment rules. He was granted time again and again to acquire the requisite educational qualification but he remained unsuccessful to acquire the same. Since he was not eligible to hold the post, therefore, his services were terminated vide order dated 12.07.1999. The said order became the subject matter of challenge in O.A. No. 301/2000. On a statement made by the applicant's counsel that he shall move a representation before the respondents and a direction be issued to them to consider the same sympathetically, the said O.A. was disposed of on 19.07.2000 with a direction to respondents to decide the applicant's representation if he submits the same within a period of 15 days. The termination order dated 12.07.1999 attained the finality. Thereafter, looking towards

the applicant's family circumstances, he was offered fresh appointment on certain terms and conditions on a Group 'D' post on which he joined on 27.09.2011. The applicant, who was not even eligible to hold the post of Lower Division Clerk because of lack of requisite educational qualification, in our considered view, cannot be allowed to claim the benefit of said service on a fresh appointment offered on a lower post on compassionate grounds.

9. The argument of learned counsel for the applicant that the applicant's appointment on the post of Sepoy was not a fresh appointment as neither he was asked to undergo any training nor any probation period was insisted upon, does not find favour with us. A perusal of appointment letter dated 29/30.08.2011 (Annexure A/7) reveals that it was issued by the respondents on fresh terms and conditions and compassion was shown looking towards the applicant's circumstances. By any stretch of imagination, the said order cannot be termed to be an order reinstating the applicant's services.

10. Equally untenable is the argument of learned counsel for the applicant when he argued that the action of the respondents is discriminatory because in one Shri B.L. Meena's case, identical benefit has been granted by the respondents. A perusal of the record reveals that Shri B.L. Meena was possessing the minimum educational qualification for the post on which he was appointed.

11. In the conspectus of discussions made hereinabove, we do not find any infirmity or illegality in the order dated 06.06.2012

(Annexure A/1) passed by the respondents and, therefore, the Original Application deserves to be dismissed.

12. Accordingly, the Original Application is dismissed. However, there shall be no order as to costs.

(A. MUKHOPADHAYA)
ADMINISTRATIVE MEMBER

(SURESH KUMAR MONGA)
JUDICIAL MEMBER

Kumawat