

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH**

...

Original Application No. 290/00380/2015

With Misc. Application No.290/00034/2016

RESERVED ON : 21.05.2019
PRONOUNCED ON : 24.05.2019

CORAM:

**HON'BLE MRS. HINA P.SHAH, MEMBER (J)
HON'BLE MS. ARCHANA NIGAM, MEMBER (A)**

1. Hema Ram S/o Shri Mangi Lal, aged about 23 years, R/o Old bus Stand, Sayla, District Jalore. (Office Address:- Working as Postal Assistant at Jodhpur HO)
2. Hari Kishan S/o Shri Parsa Ram Meghwal, aged about 29 years, R/o- Vill+ PO-Narsar, via Bhopalgarh, District-Jodhpur (Office Address:- Working as Postal Assistant at Gotan Sub Post Office).
3. Nema Ram S/o Shri Sangram Ram Beda, aged about 38 years, R/o Vill+ Post Kurdayhan District-Nagaur (Office Address Working as Postal Assistant, Jodhpur HO)

...Applicants

(By Advocate: Shri S.P.Singh)

Versus

1. Union of India through the Commissioner, Kendriya Vidyalaya Sansthan HQ. 18 Institutional Area, Shaheed Jeet Singh Marg, New Delhi- 110 016.
2. Addl. Commissioner (Admn), Kendriya Vidyalaya Sansthan HQ, 18, Institutional Area, Shaheed Jeet Singh Marg, New Delhi-110 016.
3. The Deputy Commissioner (Admn), Kendriya Vidyalaya Sansthan HQ 18, Institutional Area, Shaheed Jeet Singh Marg, New Delhi- 110 016.

...Respondents

(By Advocate: Shri Avinash Acharya)

ORDER

Per Mrs. Hina P.Shah

The applicants are presently working as Postal Assistant in the Postal Department and are in the pay scale of Rs. 5200-20200 with grade pay of Rs. 2400. They have rendered more than 4 years of service. Pursuant to advertisement No.8 dated 25.08.2014, they have applied for the post of Assistant in Kendriya Vidyalaya Sangathan (KVS) in the pay scale of Rs. 9300-34800 with grade pay of Rs. 4200 for which the qualification was – Graduate with 3 years' experience as UDC in Central/State Government/Autonomous Bodies/ Public Sector Undertakings. The respondents denied appointment to the applicant as they were holding the post of Postal Assistant and not UDC. Aggrieved by non-consideration of their candidature for appointment to the post of Assistant, they have filed the present OA seeking direction for appointment on the post of Assistant and treating the post of Postal Assistant equivalent to the post of UDC for the candidature to the post of Assistant in KVS.

2. The matter was heard on 15th September, 2017. After hearing the matter, the Bench was of the opinion that a

reference to the Larger Bench is required and in para 9 and 10 observed as under:-

"9. In the present case, we find that a clarification has been issued vide letter dated 6.10.2015 (Ann.A/12) by the Department of Posts in response to an RTI query that the post of Postal Assistant in the Postal Department is equivalent to that of UDC in other Departments. It is also mentioned therein that both these posts are in the same pay band and carry same grade pay. This clarification issued by the Department of Posts, has not been considered by the Ahmedabad Bench.

10. Since a coordinate bench of this Tribunal has already returned a judicial finding on the issue, we are unable to adjudicate this OA. We are, therefore, of the view that this matter may be placed before the Hon'ble Chairman, Central Administrative Tribunal for constituting a Larger Bench for adjudicating the controversy involved."

3. Thereafter the matter was heard by the Larger Bench on 6.12.2018 and vide its judgment dated 5th April, 2019, in para 10 to 24, the Larger Bench observed as under:-

"10. The vexed question of equivalence of status of two different posts on the basis of equivalent pay scales and the nature of respective duties on those posts, has confronted the Courts for a long time. No person has a right of appointment but has a right only to be considered against the vacancies if he fulfills the eligibility criteria prescribed under the recruitment rules. Laying down eligibility for a post, falls within the exclusive domain of the legislature / rule making authority and cannot be a subject matter of judicial review unless found to be arbitrary, unreasonable or has been fixed / prescribed without keeping in mind the nature of services for which the appointments are to be made or it has no rational relation to the object sought to be achieved by the Statute. It is always permissible for the Government / rule making authority to prescribe appropriate qualifications / eligibility in the matter of appointments / promotions to different posts. Even if a person joins the service, he merely acquires a status and the rights / obligations thereto are not to be determined by the consent of the parties but by the Statute or statutory rules, which may be framed and altered unilaterally by the Government / rule making authority. Reference in this regard may be made to a judgment of the Hon'ble Supreme Court in the matter of **State of Jammu & Kashmir vs. Shiv Ram Sharma &**

Ors., AIR 1999 SC 2012. Paragraph 6 of the said judgment reads thus: -

"6. The law is well settled that it is permissible for the Government to prescribe appropriate qualifications in the matter of appointment or promotion to different posts. The case put forth on behalf of the respondents is that when they joined the service the requirement of passing the matriculation was not needed and while they are in service such prescription has been made to their detriment. But it is clear that there is no indefeasible right in the respondents to claim for promotion to a higher grade to which qualification could be prescribed and there is no guarantee that those rules framed by the Government in that behalf would always be favourable to them. In *Roshan Lal Tandon v. Union of India*, (1968) 1 SCR 185 : (AIR 1967 SC 1889), it was held by this Court that once appointed an employee has no vested right in regard to the terms of service but acquires a status and, therefore, the rights and obligations thereto are no longer determined by consent of parties, but by statute or statutory rules which may be framed and altered unilaterally by the Government."

11. The eligibility criteria should not be arbitrary or unreasonable and if it is found so, it becomes liable to be quashed as it falls within the mischief of Article 14 of the Constitution of India, which provides for equality before law and equal protection of law. The scope of Articles 14 and 16 of the Constitution has been widened by judicial interpretation to mean not only the right to be not discriminated but also protection of any arbitrary or irrational act of the State. Arbitrariness is an anathema to rule of equality.

12. The question does arise as to whether it is within the domain of this Tribunal to determine the equivalence of status of two different posts in different cadres on the basis of equal pay scale and the respective nature of duties on those posts. Admittedly, the post of a Postal Assistant in the Department of Posts and the post of an Upper Division Clerk in the Government are in the same pay band with same grade pay and on the basis of said equality, Shri Singh, learned counsel for the applicants argued that the status of two posts is equal and, therefore, the applicants should be treated eligible for the post of Assistant in K.V.S. We are not inclined to accept the said argument of learned counsel for the applicants as the same would lead to departure from the Statutory rules wherein the essential qualification for the post of Assistant has been laid down as graduate with 03 years' experience as UDC in Central/State Govt./Autonomous Bodies/Public Sector Undertakings. Though the applicants

are in the same pay band with same grade pay and having the same status of Upper Division Clerk in terms of the same pay band and same grade pay but that does not mean that the experience acquired by the applicants as Postal Assistant is also equivalent to the experience earned on a post of Upper Division Clerk.

13. Equally untenable is the argument of learned counsel for the applicants, while relying upon Annexure A/13 letter dated 17th November, 2015, when he submitted that the nature of duties of Postal Assistant are similar to that of Upper Division Clerk in the Government.

14. More often functions of two posts may appear to be the same or similar, but there may be difference in degrees in the performance. The quantity of work may be the same, but quality may be different that cannot be determined by relying upon assertions made by the parties in their respective pleadings. The equivalence of posts or equivalence of pay or the nature of duties or the similarity of nature of duties must be left to the Executive Government / rule making authority. It must be determined by the expert bodies only. They would be the best judge to evaluate the nature of duties and to equate the status of two posts. If there is any such determination by an expert Body or Commission or a Committee, the Court should normally accept it. Reference may be made in this regard to **State of U.P. and Others vs. J.P. Chaurasia and others**, 1989 SCC (L&S) 71) : (1989) 1 SCC 121.

15. Here in the case in hand, the recruitment rules have prescribed the essential qualification for the post of Assistant as graduate with 03 years' experience as UDC in Central/State Govt./Autonomous Bodies/Public Sector Undertakings. While issuing the advertisement, apart from depicting these qualifications, it has further been clarified and insisted upon by the respondents in the said advertisement under the heading of important instructions to the candidates that 'UDC in the pay band of Rs. 5200-20200 with grade pay of Rs. 2400 having 3 years regular service in Central/State Govt./Autonomous Body of Central/State Govt. and Public Sector Undertaking are eligible for the post of Assistant in KVS'. Looking towards those unequivocal terms laid down in the advertisement in consonance with the recruitment rules, nobody can be permitted to take departure and to lay a claim on the post of Assistant merely on the basis that he is in the same pay band with same grade pay as is being granted to Upper Division Clerk in the Government. The experience earned on a different post i.e. Postal Assistant cannot, in any manner, be declared to be equivalent by this Tribunal to the post of Upper Division Clerk in the Government. It is an exercise which can only be undertaken by an expert body or by the rule making authority after taking into consideration various factors.

16. The argument of learned counsel for the applicants that since the applicants are in the same pay band with same grade pay and, therefore, they should be considered equivalent to the post of Upper Division Clerk in the Government and their status should also be considered equivalent to the post of Upper Division Clerk in the Government ignoring the factum of experience earned by them on different posts, can hardly be accepted because it is nothing else but to accept that all Dogs and Cats are mammals, therefore, all Cats are Dogs (see Constitutional Law of India by H.M. Seervai, 4th Edition (1), page 439 paragraph 9.9).

17. The argument of learned counsel for the applicants that in view of the information supplied by Department of Posts under Right to Information Act, 2005 vide letter dated 06th October, 2015 (Annexure A/12), the status of two posts has been declared equivalent in terms of the pay band of Rs. 5200-20200 with grade pay of Rs. 2400 and, therefore, the action of the respondents while rejecting the applicants' candidature is illegal, being highly misplaced, does not find favour with us. A perusal of letter dated 06th October, 2015 (Annexure A/12) reveals that the Department of Posts, while issuing said letter, simply mentioned that posts of Postal Assistant/Sorting Assistant and Technical Postal Assistant in the Department of Posts are in pay band of Rs. 5200-20200 with grade pay of Rs. 2400. The said letter nowhere discloses this fact that the post of Postal Assistant was ever equated with the post of Upper Division Clerk in the Government.

18. We are also not inclined to accept the argument of learned counsel for the applicants when he alleges discrimination by referring one Nema Ram's case, who was given offer of appointment by the respondents on the post of Assistant as the Tribunal cannot be a party to perpetuate a practice adopted by the respondents contrary to the recruitment rules.

19. In our considered view, the appointing authority cannot deviate from the provisions of recruitment rules and is bound to strictly adhere with the requisite qualifications and experience for the post while making recruitment.

20. It has been categorically held by the Hon'ble Supreme Court in **M. Tripura Sundari Devi's** case (supra) that appointment made in disregard to the terms set up in the advertisement cannot be permitted since it is a matter not confined only between the appointing authority and appointee concerned, therefore, it amounts to a fraud on public. The observations made by the Hon'ble Supreme Court in the said judgment reads, thus:-

"6.when an advertisement mentions a particular qualification and an appointment is made in disregard of

the same, it is not a matter only between the appointing authority and the appointee concerned. The aggrieved are all those who had similar or even better qualifications than the appointee or appointees but who had not applied for the post because they did not possess the qualifications mentioned in the advertisement. It amounts to a fraud on public to appoint persons with inferior qualifications in such circumstances unless it is clearly stated that the qualifications are relaxable. No court should be a party to the perpetuation of the fraudulent practice.”

21. In **Saifudaullah Khan**’s case (supra), the Hon’ble Supreme Court has held that the selection process has to be conducted strictly in accordance with the stipulated selection procedure and when a particular schedule is mentioned in an advertisement, the same has to be scrupulously maintained and there cannot be any relaxation in the terms and conditions of the advertisement unless such a power is specifically reserved. The operative portion of the said judgment as contained in paras 29 and 30 reads, thus: -

“29. In our opinion, it is too well settled to need any further reiteration that all appointments to public office have to be made in conformity with Article 14 of the Constitution of India. In other words, there must be no arbitrariness resulting from any undue favour being shown to any candidate. Therefore, the selection process has to be conducted strictly in accordance with the stipulated selection procedure. Consequently, when a particular schedule is mentioned in an advertisement, the same has to be scrupulously maintained. There cannot be any relaxation in the terms and conditions of the advertisement unless such a power is specifically reserved. Such a power could be reserved in the relevant statutory rules. Even if power of relaxation is provided in the rules, it must still be mentioned in the advertisement. In the absence of such power in the rules, it could still be provided in the advertisement. However, the power of relaxation, if exercised, has to be given due publicity. This would be necessary to ensure that those candidates who become eligible due to the relaxation, are afforded an equal opportunity to apply and compete. Relaxation of any condition in advertisement without due publication would be contrary to the mandate of equality contained in Articles 14 and 16 of the Constitution of India.

30. A perusal of the advertisement in this case will clearly show that there was no power of relaxation. In our

opinion, the High Court committed an error in directing that the condition with regard to the submission of the disability certificate either along with the application form or before appearing in the preliminary examination could be relaxed in the case of Respondent 1. Such a course would not be permissible as it would violate the mandate of Articles 14 and 16 of the Constitution of India.”

22. Rightly, while relying upon the principles laid down by the Hon’ble Supreme Court in the aforesaid two judgments, the Ahmedabad Bench of this Tribunal has declined to interfere with the select list impugned in the **Akulkumar**’s case (supra).

23. In the case in hand, we find that in the advertisement No. 08 (Annexure R/1), the essential qualifications for the post of Assistant have been unequivocally laid down as graduate with 03 years’ experience as UDC in Central/State Govt./Autonomous Bodies/Public Sector Undertakings and we find that those qualifications are in consonance with the recruitment rules. We do not find any power with the appointing authority to relax the said recruitment rules and nothing can be read beyond, which is not enshrined in the rules.

24. In view of the above, it is held that this Tribunal cannot declare the post of Postal Assistant as equivalent to Upper Division Clerk (UDC) for considering the candidature to the post of Assistant in KVS. “

4. In view of the findings recorded by the Larger Bench to the reference made, we do not find any infirmity in the action of the respondents rejecting candidature of the applicants to the post of Assistant. The OA is accordingly dismissed with no order as to costs.

5. The interim direction already issued stand vacated and the MA No.34/2016 is rendered infructuous.

(ARCHANA NIGAM)
ADMV. MEMBER
R/

(HINA P.SHAH)
JUDL. MEMBER

