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**CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
KOLKATA**

OA No. 350/00967/2014

Date of Order: 15.10.2015

PRESENT:

THE HON'BLE MR. JUSTICE G. RAJASURIA, JUDICIAL MEMBER
THE HON'BLE MS. JAYA DAS GUPTA, ADMINISTRATIVE MEMBER

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**BISWAJIT DAS
V/S
DEFENCE**

For the Applicant : Mr.S.K.Datta, Counsel

For the Respondents: Mr.B.P.Manna, Counsel

ORDER

JUSTICE G.RAJASURIA, JM:

Heard both.

2. This OA has been filed seeking the following reliefs:

"(a) An order quashing and/or setting aside the letter dated 3.4.2013, Part II order dated 3.4.2013 vide Annexure-A/12 and Annexure-A/13 respectively to this application and all other consequential orders including re fixation of pay of the applicant in the post of MTS;

(b) An order directing the respondents to restore the status of the applicant as LDC from the date it was withdrawn by way of impugned amendment and to grant her all consequential benefits including difference of pay and allowances seniority in the post of LDC ignoring such amendment etc.

(d) An order directing the respondents to produce/cause production of all relevant records;



(2)

(d) Any other order or further order/orders as to this Hon'ble Tribunal may seem fit and proper. "

3. Indubitably and indisputably, incontrovertibly and unassailably, the germane facts absolutely necessary for the adjudication of this could succinctly and precisely be set out thus:

The Applicant, in response to his application for compassionate appointment was called for the interview and typewriting test vide communication dated 30th April, 2010 (Annexure-A/1). As per Annexure-A/2, attestation forms were given to her for being filled up and accordingly, she also complied with the formalities of filing up all the attestation forms. As per Annexure-A/3 the communication dated 26.10.2010, the offer of appointment was given to him whereupon, the applicant accepting the same joined the service. Subsequently, as per communication dated 3.4.2013, the applicant was informed that he did not have had her minimum educational qualification of pass in 12th standard for being appointed as LDC and that he was a matriculate even then he was appointed to the post of LDC erroneously and that taking into consideration his qualification he was given appointment as MTS. After giving a representation on 22.05.2013 to the Respondent authority concerned, applicant filed this OA seeking the aforesaid relief.

The learned counsel for the applicant citing the decision of the Hon'ble Apex Court in **P. Mahendran and others Vs State of Karnataka and others**, reported in AIR 1990 SC 405 would develop his argument that the decision of the Full Bench of the Hon'ble Apex Court in the said decision, is squarely applicable to the facts and

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circumstances of this case as the selection process was commenced during April, 2010, whereas the amendment to the RRS pertaining to LDC came into vogue with effect only in August, 2010 only.


It is an undisputed fact that at the time of commencement of the selection process during the month of April, 2010, the then existed RRs contemplated for the post of LDC, only the matriculation as educational qualification. As such, the applicant had matriculation qualification and accordingly he was appointed, but only as an afterthought the departmental authorities simply removed the applicant from the post of LDC warranting interference at the hands of the CAT.

Per contra, the learned counsel for the respondents placing reliance on the communications dated 9.2.2010, 11.12.2009 and also the amended RRs (Annexure-A/18) would pyramid his argument which could briefly and tersely be set out thus.

The actual appointment order was issued after the commencement of the amended RRs prescribing higher qualification to wit a pass in 12th standard examination but the applicant had only matriculation qualification which was below 12th standard qualification and as such, the appointment order was cancelled and he was given compassionate appointment as MTS taking into account his educational qualification i.e. matriculation. Absolutely, there is nothing wrong in the decision taken by the respondent authorities and it is buttressed and fortified by the aforesaid communications and RRs.

Accordingly, he would pray for the dismissal of this OA.

5. The points for consideration is as to -



(i) whether the amended RRS as contained in Annexure-A/18 would have prospective or retrospective effect;

~~(ii)~~

(ii) Whether the appointment order issued to the applicant on 15.11.2010 could be termed as the one in violation of the RRS, even though admittedly, the selection process was commenced anterior to the amendment to the RRS; *(recent must rule)* ^{2nd}

(iii) Whether the respondent authorities are justified in terminating his service as LDC and giving employment as MTS.

5. ^{2nd} Both the points are taken up together for discussion and adjudication as they are interlinked and intertwined with one another.

6. At the outset, we would like to refer to the decision of the Hon'ble Apex Court in P.Mahendran and others (supra). An excerpt from it would run thus:

"5. It is well-settled rule of construction that every statute or statutory Rule is prospective unless it is expressly or by necessary implication made to have retrospective effect. Unless there are words in the statute or in the Rules showing the intention to affect existing rights the Rule must be held to be prospective. If a Rule is expressed in language which is fairly capable of either interpretation it ought to be construed as prospective only. In the absence of any express provision or necessary intendment the rule cannot be given retrospective effect except in matter of procedure. The amending Rule of 1987 does not contain any express provision giving the amendment

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retrospective effect nor there is anything therein showing the necessary internment for enforcing the Rule with retrospective effect. Since the amending Rule was not retrospective, it could not adversely affect the right of those candidates who were qualified for selection and appointment on the date they applied for the post, moreover as the process of selection had already commenced when the amending Rules came into force. The amended Rule could not affect the existing rights of those candidates who were being considered for selection as they possessed the requisite qualifications prescribed by the Rules before its amendment moreover construction of amending Rules should be made in a reasonable manner to avoid unnecessary hardship to those who have no control over the subject matter."

7. In addition to that we would like to *suo motto* refer to the decision of the Hon'ble Apex Court in the case of State of Rajasthan Vrs. R.Dayal & Ors, 1997 (1) AISLJ 496. An excerpt from it would run thus:

"Therefore, it is not in dispute and cannot be disputed that while selecting officers, minimum requisite qualifications and experience for promotion specified in the relevant column, should be taken into consideration against vacancies existing as on 1st April of the year of selection. But since the Rules came to be amended and the amendment became effective with immediate effect and clause (11-B) of Rule 24-A indicates that options have been given to the Government or the appointing Authority, as the case may be, to revise the select list as existing as per the law as on the date of the appointment or as may be directed by a competent court, selection is required to be made by the concerned DPC. An appointment made, after selection as per the procedure, to the vacancies existing prior to the amendment, is valid. But the question is: whether selection would be made, in the case of appointment to the vacancies which admittedly arose after the amendment of the Rules came into force, according to the amended Rules or in terms of Rule 9 read with Rules 23 and 24-A, as mentioned hereinbefore? This Court has considered the similar question in paragraph 9 of the judgment above cited. This Court has specifically laid that the vacancies which occurred prior to the amendment of the Rules would be governed by the original Rules and not by the amended Rules. Accordingly, this Court had held that the posts which fell vacant prior to the amendment of the Rules would be governed by the original Rules and not the amended Rules. As a necessary corollary, the vacancies that arose subsequent to the amendment of the Rules are required to be filled in accordance with the law existing as on the date when the vacancies arose. Undoubtedly, the selection came to be made prior to the amendment of the Rules in accordance with

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(6)
law then existing since the anticipated vacancies also must have been taken into consideration in the light of Rules 9 of the Rules. But after the amended Rules came into force, necessarily the amended Rules would be required to be applied for and given effect to. But, unfortunately, that has not been done in the present case. The two courses are open to the Government or the appointing authority, viz., either to make temporary promotions for the ensuing financial year until the DPC meets or in exercise of the power under Rule 24-A (11-B), they can revise the panel already prepared in accordance with the Rule and make appointments in accordance therewith."


8. It is clear from the decisions referred to supra that any amendment is prospective and not retrospective unless it is stated so in the amendment itself.

9. Over and above that our mind is reminiscent and redolent of the following legal maxims:

- (a) ***Lex prospicit, non respicit*** (The law looks forward not backward)
- (b) ***Nova constitution futuris formam imponere debet, non praeteritis*** (A new enactment ought to impose form on what is to come, not on what is past. A new regulation should not apply retrospectively but from its enactment)

The sum and substance of the above legal maxims are self explanatory that any law should be taken as prospective unless the law itself specifies that it is retrospective.

10. Here Annexure-A/18 the amended rule would highlight that the amendment shall come into force from the date of publication in the official gazettee and it is quite obvious that the publication was made only on September 1, 2010. As such, it is incontrovertibly clear that the said amendment of the RRs pertaining to LDC contemplating higher qualification of a pass in 12th standard came into vogue w.e.f. 1st



September, 2010 whereas the selection process commenced as early as in the month of April, 2010 as detailed and delineated, expressed and expatiated supra. As such, a fortiori, we are having no hesitation in holding that the respondent authorities were not justified in terminating his service from the post of LDC and giving appointment to him as MTS as per the communication dated 3rd April, 2013 (Annexure-A/12) not to put too fine a point on it, the said order is set aside by directing that the applicant has to be reinstated in the post of LDC with immediate effect and for the purpose of clarity we are also to point out that from the date of his termination from the post of LDC till the date of restoring him to the post of LDC the entire period shall be counted as the one spent in the grade of LDC. However, we do not direct any arrears to be paid for the said period. Accordingly the matter be processed.

11. This OA is accordingly disposed of. No costs.

(Jaya Das Gupta)
Admn. Member.

(Justice G.Rajasuria)
Judicial Member