

LIBRARY

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH
KOLKATA

Date of order : 05.10.2018

Coram : Hon'ble Mrs. Bidisha Banerjee, Judicial Member
Hon'ble Dr.(Ms) Nandita Chatterjee, Administrative Member

O.A.350/1737/2017

M.A.350/961/2017

- Sujit Mondal & 43 Others

Vs.

- i) Union of India, through the Secretary, Department of Revenue, Ministry of Finance, North Block, New Delhi 110 070;
- ii) Chairman, Central Board of Direct Taxes, North Block, New Delhi-11070;
- iii) Principal, Chief Commissioner of Income Tax, West Bengal & Sikkim, Aayakar Bhawan, P-7, Chowringhee Square, Kolkata-700068;
- iv) Chandrima Basu, Tax Assistant
- v) Sk. Noor Islam, Tax Assistant
- vi) Prasanta Das, Tax Assistant

O.A.350/1749/2017

M.A.350/974/2017

- Arpan Prokash Roy & 8 Others

Vs.

- i) Union of India, through the Secretary, Department of Revenue, Ministry of Finance, North Block, New Delhi 110 070;
- ii) Chairman, Central Board of Direct Taxes, North Block, New Delhi-11070;
- iii) Principal, Chief Commissioner of Income Tax, West Bengal & Sikkim, Aayakar Bhawan, P-7, Chowringhee Square, Kolkata-700068;
- iv) Abhra Mondal, Tax Assistant
- v) Sk. Noor Islam, Tax Assistant

vi) Prasanta Das, Tax Assistant

O.A.350/1761/2017 - Saikat Halder

Vs.

- i) Union of India, through the Secretary, Department of Revenue, Ministry of Finance, North Block, New Delhi 110 070;
- ii) Chairman, Central Board of Direct Taxes, North Block, New Delhi-11070;
- iii) Principal, Chief Commissioner of Income Tax, West Bengal & Sikkim, Aayakar Bhawan, P-7, Chowringhee Square, Kolkata-700068;
- iv) Soma Jana, Tax Assistant

For the applicant : Mr. A. Chakraborty, counsel
Ms. P. Mondal, counsel

For the respondents : Mr. S. Paul, counsel

O R D E R

Bidisha Banerjee, Judicial Member

Since the applicants are identically aggrieved, pleaded identical facts and have prayed for identical reliefs in these three matters, they are taken up for analogous hearing for disposal of the same by a common order.

2. Having heard Id. counsel for both sides, the M.A.No.961/2017 and M.A.No.974/2017 preferred by the applicants of O.A.No.1737/2017 and O.A.No.1749/2017 respectively, seeking liberty to move joint prosecution, are allowed.

3. For the sake of brevity, the facts pleaded in O.A.No.1737/2017 is delineated below:-

(i) The applicants in this O.A. are presently working as MTS under the Principal Commissioner of Income Tax, West Bengal and Sikkim on being appointed on diverse dates between June to August, 2014. They passed computer skill test in the month of December, 2014.

(ii) Recruitment rules for promotion to the posts of Tax Assistant that was framed in 2015 provides that Group 'C' viz. Multi-Tasking Staff, Lower Division Clerks, Notice Supplier, Record Keeper, Senior Gestetner Operator in Pay Band-1 with five years' regular service in the grade including erstwhile Group 'D' who possesses the following :-

(i) Passed Matriculation or equivalent;

(ii) Have qualified the prescribed departmental examination for Data Entry Scale for 5000 key depression per hour shall be eligible for promotion.

The Recruitment Rules further provide that where juniors, who have completed their qualifying eligibility service are being considered for promotion, their seniors would also be considered provided they are not short of the requisite qualifying or eligibility service by more than half of such qualifying or eligibility service or two years whichever is less and have successfully completed their probation period for promotion to the next higher grade along with their juniors who have already completed such qualifying or eligibility service.

(iii) An office order dated 13.04.2005, issued by Deputy Secretary(AD.VII), Ministry of Finance, Department of Revenue, Central Board of Direct Taxes, provides for preparation of a common eligibility list in chronological order with reference to passing of the computer skill examination for the purpose of fixation

of inter se seniority of the candidates recommended for promotion as Tax Assistants from various Group 'C' and 'D' posts and to fix their seniority in order of the select lists so prepared by the DPC. The extract being as under:-

"To

New Delhi, dated the April 13, 2005

All Cadre Controlling Chief Commissioners
of Income Tax

Sir,

Sub : Promotion to the post of Tax Assistant-
Preparation of eligibility list therefor and
Fixation of inter-se seniority - reg -

In terms of Recruitment Rules for the post of Tax Assistant, 25% vacancies are reserved to be filled by promotion from various Group 'C' and 'D' posts. Passing of prescribed departmental exam in data entry skill 5000 key depressions per hour is one of the eligibility conditions for promotion to the grade of Tax Assistant. Since it is not feasible to fix separate quota for each of the eligible categories of posts, suggestions received from staff side regarding preparation of a single eligible list of candidates with reference to the date/year of passing of the examination, has been considered in the Board and it has been decided that for the vacancies arising from the year 2005-06 onwards, a common eligibility list in chronological order with reference to passing of the computer skill examination shall be prepared for consideration of the DPC. Inter-se seniority of the candidates recommended for promotion as Tax Assistants shall be fixed in order of the select list so prepared by the DPC.

Kindly acknowledge the receipt of this communication.

Yours faithfully,

(PRAKASH CHAND)
DEPUTY SECRETARY(AD.VII)"

(iv) Since the West Bengal and Sikkim region did not follow the instructions issued on 13.04.2005, as extracted supra, and failed to prepare a common eligibility list with reference to the dates /year of passing the computer skill examination (irrespective of the posts presently held by Group 'C' and Group 'D' employees), the applicants have prayed for the following reliefs:-

"a) An order do issue directing the respondents to prepare a common eligibility list in chronological order with reference to date/year of passing of the computer skill examination as per instruction(irrespective of the posts) and thereafter consider the applicants for promotion to the post of Tax Assistant with due seniority following common eligibility list;

b) Promotion order dated 22.06.2017 to the grade of Tax Assistant is in violation F.No.A-12018/1/2005 Ad VIII dated 13.04.2005 cannot be sustained in the eye of law and therefore the same may be quashed;

c) An order do issue directing the respondents to grant the benefit of promotion to the applicants in the post of Tax Assistant following the Recruitment Rules since they are seniors to the private respondent;

d) Leave may be granted to file this Original Application jointly under Rule 4(5) of the CAT Procedure Rule 1987."

4. At hearing, Id. counsel for both sides submitted in unison on instruction that whether the instructions dated 13.04.2005 should be followed for holding DPC for promotion to the posts of Tax Assistant was sought for by the Principal Chief Commissioner of Income Tax and responding to it on 3/4.10.2018 the Deputy Director of Income Tax(CMD-II), HRD, CBDT intimated that the instructions dated 13.04.2005 had to be followed along with the Recruitment Rules, as amended in 2015, for promotion to Tax Assistants.

5. Since irrefutably and indubitably it seems that the respondents have themselves decided to conduct DPC for promotion to the posts of Tax Assistants in adherence to the instructions of 13.04.2005 and in terms of Recruitment Rules, 2015, we feel that nothing survives for adjudication in the matter.

6. Accordingly we dispose of the O.A.350/1737/2017 with a direction upon the respondents to act in terms of the communication dated 3/4.10.2018 and take necessary steps for compliance of the same.

7. Accordingly, the O.A.No.350/1749/2017 and O.A.350/1761/2017 also would stand disposed of by this common order.

(Dr. Nandita Chatterjee)
Administrative Member
sb

(Bidisha Banerjee)
Judicial Member