

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: BANGALORE**

**REVIEW APPLICATION NO.170/00002/2019 IN ORIGINAL APPLICATION NO.863-
866/2017**

DATED THIS THE 30th DAY OF AUGUST, 2019

HON'BLE DR.K.B.SURESH, JUDICIAL MEMBER

HON'BLE SHRI C.V.SANKAR, ADMINISTRATIVE MEMBER

1. Manjula B D/o Late Byrahanumaiah
Aged about 31 years, R/o C-117
Block-8, Income-tax Colony
Jalahalli, Bangalore-560013.

2. Vinod Nag, S/o Shri Hamsaraj
Aged 29 years, R/o No.124
Shri Durga Nivas, 1st Floor, 2nd Main
RR Layout, Kenchanapura Cross
Nagadevanahalli, Bangalore-560056.

3. Shaweta K.R. W/o. Shri Santosh N
Aged 27 years, R/o A-3, Block-15
Income-tax Colony
Jalahalli, Bangalore-560013.

4. Keerthika R D/o. Late M.Raja
Aged 24 years, R/o No.95, 4th Cross
Gowtham Nagar, Srirampuram
Bangalore-560021.

....Applicants

(By Advocate Sri T.C.Gupta)

Vs.

1. Union of India through the Secretary
Ministry of Finance, Department of Revenue
Government of India
New Delhi-110001.

2. Pr.Chief Commissioner of Income-tax
Karnataka and Goa Region
C.R.Building, Bangalore-560001.

3. Commissioner of Income Tax (Admin)
Karnataka and Goa Region
C.R.Building, Bangalore-560001.

4. Addl. Commissioner of Income Tax (HQ) (Admn)
Karnataka and Goa Region

C.R.Building, Bangalore-560001.

...Respondents

(By Advocate Sri V.N.Holla, Sr.SC for CG)

O R D E R

(PER HON'BLE SHRI C.V.SANKAR, MEMBER (ADMN))

This review application has been filed seeking review of the order dated 17.09.2018 passed in OA.No.863-866/2017 by this Tribunal(Annexure-RA1). In the review application, the applicants have referred to the contentions already made in the OA.No.863-866/2017 such as considering them for promotion as Tax Assistants on the basis of their passing computer skill test and without waiting for completing the five years of service as Multi Tasking Staff(MTS). The applicants enclosed CBDT instructions dtd.13.4.2005, 23.5.2016 & 3.10.2018 as per which promotion to TA is made from the eligibility list prepared on the basis of date of passing computer skill exam and not from the seniority list prepared on the basis of date of selection/joining. They submit that in all other regions except the Bangalore region, eligibility list on the basis of date of passing computer skill exam has been prepared and promotion to TA is being made as per the eligibility list. If eligibility list is prepared on the basis of passing computer skill test, the applicants who have passed computer test on 19.9.2014 will be senior to Shri Noyal Christy who passed the same on 1.7.2016 and they can be considered for promotion to TA even with two years of service as MTS. They have also filed written submission on legal position enclosing therewith the CBDT instructions and letter dtd.18.1.2016, RRs of TA and order of CAT, Kolkata Bench in OA.No.1737/2017.

2. The respondents have filed reply statement reiterating the submissions made in the main reply of OA.863-866/2017 and submit that the objective of the eligibility

list was only for a limited purpose of settling the issue of seniority between the eligible officials of various cadres in the promoted cadre i.e. the cadre of Tax Assistants. The eligibility list does not cause or determine the seniority of the candidates in the respective feeder cadres. As per letter dtd.29.1.2016 issued by the CBDT, the date/year of passing the skill test would come into play only when an official fulfils other eligibility conditions first. It will not determine inter-se seniority in the cadre of MTS. In other words, it would not change the seniority in feeder cadre. Sri Noyal Christy will not lose his seniority in his feeder cadre just because he passed the skill test later than the juniors i.e. applicants. The basic requirement for being considered for promotion to TA is five years of regular service in the feeder cadre i.e. MTS. The CBDT's letters dtd.13.4.2005, 23.5.2016 etc., laid down the procedure to draw the eligibility list and arrangement of the officials in the order of the date/year of passing the Computer Skill Examination. It does not refer to the passing of the Computer Skill Examination as the only eligibility criteria for promotion to the cadre of Tax Assistants. The applicants' assumption that the minimum qualifying period of five years would be exempted on qualification of Computer Skill Test alone is unfounded and cannot be deduced from the Directorate's letters. They failed to submit any details of the beneficiaries in other regions in support or to relate their case. As such the applicants are misleading and mis-interpreting the Directorate's instructions.

3. We have heard the Learned Counsel for both the parties and perused the materials placed on record in detail. In our earlier order dtd.17.09.2018 in OAs.No.863-866/2017, we had covered all the arguments of the applicants and came to the conclusion that the claim of the applicants to consider them for

promotion on the basis of passing of computer skill examination without fulfilling the basic criteria of minimum 5 years of regular service in the feeder grade and without any proof about anyone junior to them having been considered in preference to them is not maintainable and therefore the OA was dismissed. The applicants in the present RA have reiterated the points made earlier and have also highlighted the following points mentioned in the schedule to the Central Board of Direct Taxes, Tax Assistant Group C Posts, Recruitment Rules, 2015 wherein for the 25% promotion quota, the rules state as follows:

Promotion:

Group 'C', viz., Multi Tasking Staff, Lower Division Clerk, Notice Server, Record Keeper, Sr.Gestetner Operator in Pay Band-1 with five years' regular service in the Grade including in the erstwhile Group 'D' having passed i) matriculation examination or equivalent and ii) having qualified the prescribed departmental examination for data-entry skill for 5000 key depressions per hour.

Note :

1. *Promotion to the grade of Tax Assistant will be made region wise.*
2. *For the purpose of reckoning five years' regular service in the grade, the service rendered by an inter-region transferee in the old region shall not be counted in the new region which he has joined on such transfer, if the transfer is on the request of the officer concerned.*
3. *Where juniors who have completed their qualifying or 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.*
4. This Tribunal had earlier specifically considered that the minimum qualification for the feeder category staff namely Multi Tasking Staff, Lower Division Clerk, Notice Server, Record Keeper, Sr.Gestetner Operator will be 5 years regular service in the grade including in the erstwhile Group D. As per Note-3 in the schedule, where juniors who have completed their qualifying or eligibility service

are being considered for promotion, their seniors would also be considered subject to certain periods mentioned in the said schedule of the recruitment rules. The RA applicants would claim that one Sri Noyal Christy M who was promoted w.e.f. 3.4.2017 had passed the computer skill test in the year 2016 and since they had passed the computer skill test in the year 2014 itself, he automatically becomes their junior and therefore they are also eligible for being promoted as Tax Assistants from April 2017 onwards even though they had only about 2 years and some months of service having been recruited in the year 2014 and not completed the 5 years of service. Since the plea was not considered by this Tribunal, they have now questioned the very presence of Note-3 in the schedule relating to the juniors and seniors etc. As strongly contended by the respondents, the recruitment rules specify not only the computer test but also the service of 5 years. Only those persons in the feeder categories who have completed 5 years of regular service will come into the pool of persons found suitable for further promotions. Since specific quotas are not fixed for the different types of feeder categories, the department had taken a view vide Annexure-A1 that for preparing a common eligibility list to be considered by the respective DPCs for promotion to Tax Assistant, the year of passing of computer skill test would be the criterion for fixing the relative inter-se seniority of the feeder category persons who are to be considered. The Annexure-A1 order and the subsequent confirmation of the same vide further proceedings including the orders of this Tribunal in the Kolkata Bench cited at Annexure-A3 would all confirm the same position. The point to be highlighted is that various persons in the feeder category should first have to cross the line of minimum service of 5 years when they are considered for promotion to the post of Tax Assistant vide Note-1 of the schedule in the said

Rules of 2015. Once they are in the suitable list based on the number of years of service, only those who pass the computer skill test would be considered for being promoted to the post of Tax Assistant by the concerned DPC. The inter-se seniority of all these suitable persons who have the minimum years of service would be fixed according to the year in which they passed the computer skill test and the DPC will have to consider the cases accordingly. The respondents have also strongly contended that the computer skill test is not only the criterion for being promoted as Tax Assistant even though they have not specifically stated as to what are the other criteria adopted by the respective DPC's for considering the cases of the feeder category persons for promotion. This may include absence of any adverse entry or any charge memo and satisfactory service etc. The confusion has been created by the Note-3 in the schedule. We do not understand the logic of having this Note-3 since the seniority and juniority in the feeder categories is fixed based on the method of recruitment, year of recruitment and the rules specifying as to how the seniority has to be worked out in the feeder categories. If this is the case, we do not understand as to how some juniors could have completed the qualifying service while the seniors would not have completed. If the juniors completed the qualifying service, ipso facto the seniors would have also completed the service but for exceptional cases like long unauthorised absence, being under suspension etc. The review applicants have emphasised on this note giving them the handle to question the respondents. As was clearly made out in the order of this Tribunal which is under review now, Sri Noyal Christy M had joined the department in the year 2011 and was senior to the applicants. This has also not been denied by the applicants themselves since they had joined the department only in the year 2014. We, therefore, deem that

the RA lacks merit and therefore dismissed. We also direct the respondents to look at the Note-3 of the schedule to the Recruitment Rules which has created this ambiguity and see if it can be elaborated or nullified if no purpose is served in keeping that note.

5. The RA is disposed of with the above orders. No costs.

(C.V.SANKAR)
MEMBER (A)

(DR.K.B.SURESH)
MEMBER (J)

/ps/

Annexures referred to by the applicant in RA.No.2/2019

Annexure-RA1: Copy of order dtd.17.9.2018
Annexure-RA2: Copy of instruction dtd.13.4.2005
Annexure-RA3: Copy of instruction dtd.23.5.2016
Annexure-RA4: Copy of instruction dtd.3.10.2018

Annexures with written submission filed by the applicant:

Annexure-A1: Copy of the CBDT instruction dtd.13.4.2005, 23.5.2016 and 3.10.2018
Annexure-A2: Copy of Recruitment Rules of TA
Annexure-A3: Copy of CAT Bench, Kolkata order dtd.5.10.2018 in OA.No.1737/2017
Annexure-A4: Copy of the CBDT letter dtd.18.1.2016

Annexures with written arguments note filed by the respondents:

-NIL-
