

.1.

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Applicaton No.180/00838/2018

Wednesday this the 19th day of June 2019

C O R A M :

**HON'BLE Mr.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER
HON'BLE Mr.ASHISH KALIA, JUDICIAL MEMBER**

1. G.Lakshmi, D/o.R.K.Govindan Potti,
Working at Poojapura HPO, Kerala,
Assistant Accounts Office (AAO).
Residing at Lakshmi Nivas, ERA Line,
93 Alumoodu, Neyyattinkara – 695 121.
2. All India Association of Postal Supervisors (GL),
represented by Sankar N.S., S/o.late N.Sivan,
Assistant Circle Secretary,
All India Association of Postal Supervisors,
Kerala Circle Branch now working as Postmaster Gr.I,
Mulgunnathukavu S.O – 680 581 (KL).
3. Shri.K.Kalimuthu, S/o.P.Krishnamurthy,
General Secretary, All India Association
of Postal Supervisors (GL),
having office at CHQ Camp,
Gopalapuram S.O – 600 086 (TN). ...Applicants

(By Advocate Mrs.Leela.R.)

v e r s u s

1. Union of India represented by the Secretary Posts,
Ministry of Communications, Department of Posts,
Dak Bhawan, Sansad Marg, New Delhi – 110 001.
2. The Sr. Deputy Director General of Posts,
F&PA-Admin., Department of Posts,
Dak Bhawan, Sansad Marg,
New Delhi – 110 001.
3. The Assistant Director General (PA-A),
Department of Posts, Dak Bhawan,
Sansad Marg, New Delhi – 110 001.

4. The Chief Post Master General, Kerala Circle,
PMG Junction, Near Planetarium,
Thiruvananthapuram – 695 033. ...Respondents

(By Advocate Mr.N.Anilkumar, SCGSC)

This application having been heard on 30th May 2019, this Tribunal on 19th June 2019 delivered the following :

ORDER

HON'BLE Mr.ASHISH KALIA, JUDICIAL MEMBER

The Original Application has been filed seeking the following reliefs :

1. To clarify and declare that Group B officials in level 6 are eligible for being promoted to the post of AAO as per the Annexure A-2 Recruitment Rules.
 2. To set aside Annexure A-9 communication dated 3.10.2018 as arbitrary.
 3. Declare that the 1st applicant and the others shown in Annexure A-4 are qualified to appear for promotion post of AAO as per Annexure A-2 Recruitment Rules.
 4. Direct the 1st respondent to declare the results of the 1st applicant and the 13 others shown in Annexure A-4 who had approached this court and appeared for the said LDCE 2018 with immediate effect.
 5. Direct the 1st respondent to take immediate steps to post the passed candidates among these 14 officials in the appropriate position after getting their fresh three choices of desired place of posting according to their rank.
 6. To grant such other reliefs as may be prayed for and the court may deem fit to grant and
 7. Grant the costs of this Original Application.
2. The present O.A is filed in individual capacity by Applicant No.1 and Applicant No.3 and in representative capacity through Shri.Sankar.N.S., by All India Association of Postal Supervisors (GL). The brief facts of the case are that the applicants herein are persons in regular service at level 6

.3.

who had applied to the post of Assistant Accounts Officer (AAO) examinations for which was held on 5.7.2018 to 8.7.2018 at various centres. Applicant No.1 and 13 others who were in level 6 and appeared for the exam have been denied the opportunity to even know their results and promotion status. The 3rd applicant has also challenged the Indian Post and Telecommunications Accounts and Finance Service Group 'B' (Accounts Officers and Assistant Accounts Officers) Recruitment Rules 2018 published on 2.4.2018 by which the level 6 officials who were eligible as per Column No.11(2)(vi) of the Recruitment Rules 2018 to apply for the post of Assistant Accounts Officer and even issued hall tickets and permitted to write the examination were subsequently disqualified and their results are withheld causing severe injustice to level 6 officers who had appeared for the above said examination. The 1st applicant submit that as per the Recruitment Rules AAO 2018 published on 2.4.2018 for the post Assistant Accounts Officer vide Column 11 states that :

"Departmental candidates who have passed the Subordinate Accounts Service Examination or equivalent examination conducted by Department of Posts and Telecommunications or competent authority specified by the Department. (1) Senior Accountant or Junior Accountant of Department of Posts and Department of Telecommunications with three years or six years regular service in level 6 in the pay matrix (Rs.35400-112400) and in level 5 in the pay matrix (Rs.29200-92300) respectively. (2) All other officials of the Department of Posts or Department of Telecommunications in Group C cadre possessing a bachelor's degree from a recognized university or institute with the following regular qualifying service :

- (1) In level 1 with fourteen years regular service or
- (2) In level 2 with thirteen years regular service or
- (3) In level 3 with eleven years regular service or
- (4) In level 4 with nine years regular service or
- (5) In level 5 with seven years regular service or
- (6) In level 6 with four years regular service.

.4.

3. Accordingly the applicants submits that the officers who are holding service from level 1 to 6 cadres have been permitted to appear for the LDCE for the post of AAO. While Column 9 of the RR AAO 2018 reads that "Two years for direct recruits and promotees. Note : no probation for Group B promotees. During the period of probation, direct recruits shall have to qualify Subordinate Accounts Service Examination or equivalent examination as devised by the department, for confirmation and regular appointment as Assistant Accounts Officer, a copy of the RR is available to Annexure A-2. It is further submitted that Column 11(2)(vi) would clearly indicate that those in level 6 with 4 years experience are eligible for applying to the post of Assistant Accounts Officer.

4. Unfortunately 11(2) however states all officials in Group C cadre in the "prefix". Therefore merely considering the column 11(2) Group 'C' cadre and skipping the column 11 (2)(vi) and column 9 of RR of AAO, such act of the 1st respondent in withholding the results of the candidates who had applied for the exam and written the same is arbitrary and against the principles of natural justice for the reason that the candidates who had applied and have duly submitted their grievance through the 2nd applicant vide Annexure A-6 were not even heard.

5. They made representation on 5.8.2018. However the results were published on 1.10.2018. The Applicant No.1 and 13 others shown in Annexure A-4 who had appeared from level 6 were not considered and the

results were withheld. Feeling aggrieved they have approached this Tribunal through this O.A.

6. Notices were issued and the respondents have filed their detailed reply. It is submitted that the notification of new Recruitment Rules of the Group B cadre of IP & TAFS consisting of Accounts Officers and Assistant Accounts Officers cadre of DoT and DoP, notified on 2.4.2018 was necessitated primarily because of reasons ie., the amalgamation of Group B cadres of DoT and DoP and implementation of recommendations of the 6th CPC. The reason along with background of the new Recruitment Rules are brought out adseratum in the following paras :

1. Prior to the amalgamation of Group B cadre of DoP and DoT with effect from 1.9.2009 there were four sets of Recruitment Rules in operation, two each in DoT for JAO and AAO cadres respectively, viz.

(i) The Department of Telecommunications (Junior Accounts Officer) Group C Recruitment Rules, 1986.

(ii) The Department of Telecommunications (Assistant Accounts Officer) Recruitment Rules, 2000.

(iii) The Department of Posts (Junior Accounts Officer), Group B (Non-Gazetted) Recruitment Rules, 2002 and

(iv) The Department of Posts (Assistant Accounts Officer) Group B Recruitment Rules, 2005.

7. That the applicants those who have entered in to service in a level lower to the Level 6 and got their financial upgradation (MACP) from that lower level to level 6 are considered as Group C cadre and they are eligible for appearing in the LDCE 2018 for AAOs, as MACP is personal to the officials and they remain in Group C cadre only. For instance, applicants entered into the Department as Postal Assistant in Level 4 (GP of

.6.

Rs.2400/-) and have got their financial upgradation (MACP-I) to level 5 with a GP of Rs.2800/- and thereon got their financial upgradation (MACP-II) to Level 6 with a GP of Rs.4200/-.

8. This is clearly mentioned in Recruitment Rules 11(2)(vi). That the applicants who are directly appointed in the Level 6 (ie. GP of Rs.4200/-) are considered as Group B cadre and thus they are not eligible for appearing in the LDCE 2018 for AAOs. For instance, applicants directly entered into the Department as Inspector of Posts in Level 6 (GP of Rs.4200/-) either through LDCE or direct entry and officials who got regular promotion to Level 6, Eg. Postmaster (Grade II). Further, it is submitted that the posts of Senior Postmaster (Level-8) comes under Group B Gazetted, Postmaster Grade III (Level 7) and Postmaster Grade II (Level 6) comes under Group B non-Gazetted and Postmaster Grade I comes under Group C non-Gazetted as per Department of Posts OM No.4-17/2008-SPB II dated 22nd November 2010 (Annexure R-1).

9. That the Applicant No.1 namely, Smt.G.Lakshmi and Smt.P.Geetha and Smt.Sreelatha.P., who are represented by the Applicant No.2 are coming under Kerala Circle and all are holding the post of Group C in Level 6 after getting MACP and all these three applicants were found eligible as per Recruitment Rules and hence allowed to appear in the LDCE 2018 for AAOs and their names have not appeared in the merit list as they did not come out successful in the merit list.

10. Heard learned counsel for the parties at length and perused all the records. The applicants herein have sought clarification whether the Group 'B' officials in the level 6 are eligible for being promoted to the post of Assistant Accounts Officer in level 8 (Rs.47600-151100) General Civil Service Group 'B' Gazetted, Non-Ministerial or not. Let see the Recruitment Rules :

1	2	3	4	5
Assistant Accounts Officer	1208*(2018) *subject to variation dependent on work load	General Civil Service Group B Gazetted, Non-Ministerial	Level 8 (Rs.47600-151100)	Selection post

6	7	8	9
Not exceeding thirty years. (Relaxable for Government servants up to five years' in accordance with the instructions or orders issued by the Central Government). Note : The crucial date for determining the age limit shall be the closing date for receipt of applications from candidates in India (and not the closing date prescribed for those in Assam, Meghalaya, Arunachal Pradesh, Mizoram, Manipur, Nagaland, Tripura, Sikkim, Ladakh Division of Jammu and Kashmir State, Lahaul and Spiti District and Pangi Sub Division of Chamba District of Himachal Pradesh. Union Territory of Andaman and Nicobar Islands or Union Territory of Lakshadweep)	Essential : Bachelor's Degree from a recognized University or Institute. Desirable : Chartered Accountant or Cost and Management Accountant or Company Secretary or Master's in Commerce or Master's in Business Administration (Finance) or Master's in Business Economics from a recognized University or Institute. Note 1 : Qualifications are relaxable at the discretion of the Staff Selection Commission or Competent Authority, for reasons to be recorded in writing, in the case of candidates otherwise well qualified. Note 2 : The qualification(s) regarding experience is/are relaxable at the discretion of the Staff Selection Commission or Competent Authority, for the reasons to be recorded in writing, in the case of candidates belonging to the Scheduled Castes or Scheduled Tribes, if at any stage of selection the Staff Selection Commission or Competent Authority is of the opinion that sufficient numbers of candidates from these communities possessing the requisite experience are not likely to be available to fill up the vacancies reserved for them.	Not applicable.	Two years for direct recruits and promotees. Note : No probation for Group B promotees. During the period of probation, direct recruits shall have to qualify Subordinate Accounts Service Examination or equivalent examination as devised by the Department, for confirmation and regular appointment as Assistant Accounts Officer.

.8.

10	11
<p>By promotion failing which by deputation failing both by direct recruitment.</p>	<p>Promotion :</p> <p>Departmental candidates who have passed the Subordinate Accounts Service Examination or equivalent examination conducted by Department of Posts and Telecommunications or Competent Authority specified by the Department.</p> <p>1. Senior Accountant or Junior Accountant of Department of Posts and Department of Telecommunications with three years or six years regular service in level 6 in the pay matrix (Rs.35400-112400) and in level 5 in the pay matrix (Rs.29200-92300) respectively.</p> <p>2. All other officials of the Department of Posts or Department of Telecommunications in Group C cadre possessing a bachelor's degree from a recognized University or Institute with the following regular qualifying service :</p> <ul style="list-style-type: none"> (i) in level-1 with fourteen years regular service, or (ii) in level-2 with thirteen years regular service, or (iii) in level-3 with eleven years regular service, or (iv) in level-4 with nine years regular service, or (v) in level-5 with seven years regular service, or (vi) in level-6 with four years regular service. <p>Note : 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.</p> <p>Deputation :</p> <p>Officers under various organized Accounts and Audit Services under the Government of India:</p> <ul style="list-style-type: none"> (a)(i) holding analogous post on regular basis in the parent Cadre or Department; or (ii) who has passed the Subordinate Accounts Service or Subordinate Audit Service Examination or equivalent examination in any organized Accounts Cadre under the Government of India. <p>Note 1 : The Departmental officers in the feeder category who are in direct line of promotion will not be eligible for consideration for appointment on deputation. Similarly, deputationist shall not be eligible for consideration for appointment by promotion.</p> <p>Note 2 : Period of deputation including period of deputation in another ex-cadre post held immediately preceding this appointment in the same or some other Organization or Department of the Central Government shall ordinarily not to exceed three years.</p> <p>Note 3 : The maximum age limit for appointment by deputation shall be not exceeding fifty six years as on the closing date of receipt of applications.</p>

12	13
<p>Group 'B' Departmental Promotion Committee (for considering promotion) consisting of :</p> <ol style="list-style-type: none"> 1. Deputy Director General (Postal Accounts and Finance) – Chairman. 2. Director (Staff Establishment Accounts), Department of Telecommunications – Member. 3. Director (Budget and Administration), Department of Posts – Member. <p>Group 'B' Departmental Confirmation Committee (for considering confirmation) consisting of :</p> <ol style="list-style-type: none"> 1. Deputy Director General (Postal Accounts and Finance) – Member. 2. Director (Staff Establishment Accounts), Department of Telecommunications – Member. 3. Director (Budget and Administration), Department of Posts – Member. 	Consultation with Union Public Service Commission not necessary.

11. On a plain reading of the Recruitment Rules it is clear that the requirement of age limit is 30 years (relaxable for Government servants up to five years. Essential education qualification is Bachelor's Degree from a recognized University or Institute and desirable qualifications is CA, CMA, CS, M.Com, MBA, MBE from a recognized University or Institute. For promotion the departmental candidates who have passed the Subordinate Accounts Service Examination or equivalent examination conducted by Department of Posts and Telecommunications, Senior Accountant or Junior Accountant of Department of Posts and Department of Telecommunications with three years or six years regular service in level 6 in the pay matrix (Rs.35400-112400) and in level 5 in the pay matrix (Rs.29200-92300) respectively are eligible along with Group 'C' employees from level-1 to level-6.

.10.

12. The Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training vide order dated 9.11.2017 has clarified that Central Civil Post carrying the pay in the Pay Matrix at the level from 10 to 18 falls under Group 'A', Central Civil Post carrying the pay in the Pay Matrix at the level from 6 to 9 falls under Group 'B' and Central Civil Post carrying the pay in the Pay Matrix at the level from 1 to 5 falls under Group 'C'. Thus as per impugned order at Annexure A-9 dated 3.10.2018 the level 6 officials who were eligible as per Column No.11(2) (vi) of the Recruitment Rules 2018 to apply for the post of Assistant Accounts Officer were disqualified and their results are withheld. The impugned order reads as under :

" I am directed to refer to your ibid letters regarding non-allowing of the candidate in level 6 and to intimate that as per Column 11, part ii of the RRs of AAO, all other officials of DoP and DoT in Group 'C' cadre possessing a bachelor's degree from a recognized University or Institute with regular service, as mentioned therein, are only eligible to appear in the LDCE-2018. Therefore, official in Group 'B' cadre other than in SA cadre, as mentioned in Column 11 part i), are thus not eligible as per the ibid Rrs."

13. On further reading of the Recruitment Rules Column 11(1) states that the Senior Accountant or Junior Accountant having three years or six years regular service in level-6 in the pay matrix (Rs.35400-112400/- and in level-5 in the pay matrix (Rs.29200-92300/-) and Column 11(2) states all other officials of the DoP and DoT in Group 'C' cadre are eligible from level-1 to level-6. Though the word Group B is absent in the Recruitment Rules but certain pay scales of Group B (Rs.35400-112400/- and Rs.29200-92300/-) as per DoPT order dated 9.11.2017 were made eligible for promotion/selection to the post of Assistant Accounts Officer in the pay scale (Rs.47600-151100/-).

.11.

14. In Column 9 of the Recruitment Rules it is mentioned in the note that : "**No probation for Group B promotees**". So the intention of the framer of the Recruitment Rules is very clear that those categories which falls under Group B posts at level-6 is also eligible for promotion to AAO post. By no stretch of imagination the persons belonging to level-6 in Group B in the pay scale Rs.35400-112400/- be denied the opportunity to appear in the examination just because their pay scales falls under Group B when Recruitment Rules permits them to appear. The impugned order denying opportunity to the seniormost applicants who are in Group B at level-6 payscale of Rs.35400-112400/- is not sustainable in the eyes of law. Once the Legislature has clearly spelt out while framing the Recruitment Rules, the above said category is eligible for above said exam.

15. The learned counsel for the respondents submitted that only Group C employees at level 1-6 who have reached by getting MACP but they remains in Group C are eligible for LDCE for promotion to the post of AAO. This contention of the respondents is dehors the Recruitment Rules which are statutory in nature. Because Recruitment Rules clearly stipulates as under :

"Senior Accountant or Junior Accountant of Department of Post and Department of Telecommunications with three years or six years regular service in Level 6 in the pay matrix (Rs.35400-112400/-) and in Level 5 in the pay matrix (Rs.29200-92300) respectively."

16. That vide Gazette Notification dated 9.11.2017 the Senior Accountant in pay scale of Rs.35400-112400/- falls in Group B. But no amendment has been incorporated in the Recruitment Rules dated 2.4.2018

.12.

by mentioning that only Group C post from level 1 to 6 alone are eligible for the post of AAO. So the above Senior Accountant in Group B in level 6 in pay scale of Rs.35400-112400 are also eligible. The Recruitment Rules are framed under Article 309 of the Constitution of India. The Recruitment Rules cannot be interfered even by the Court of Law. What to talk about the executive instructions. The Recruitment Rules should be read as it is, no interpretation contrary to it is tenable as held by the Hon'ble Apex Court in the matter of **Mallikarjuna Rao & Ors. v. State of Andhra Pradesh & Ors. (1990) AIR 1251.**

17. In the facts and circumstances of the case, we are of this view that there is merit on the side of the applicants and present Original Application succeeds. Resultantly, we set aside the impugned order dated 3.10.2018 and clarify that Group B officials in level 6 are eligible for being promoted to the post of AAO as per the Recruitment Rules dated 2.4.2018 – Annexure A-2 – and directed respondents to declare the results of the applicants and qualified candidates in LDCE of AAO be given posting according to their merit. There shall be no order as to costs.

(Dated this the 19th day of June 2019)

**ASHISH KALIA
JUDICIAL MEMBER**

**E.K.BHARAT BHUSHAN
ADMINISTRATIVE MEMBER**

asp

List of Annexures in O.A.No.180/00838/2018

1. Annexure A1 - True copy of the resolution dated 3.10.2018.
 2. Annexure A2 - True copy of the relevant pages of Recruitment Rules 2018 of Indian Post and Telecommunications Accounts and Finance Service Group 'B' (Accounts Officers and Assistant Accounts Officers) published on 2.4.2018.
 3. Annexure A3 - True copy of the S.O.3578(e) order dated 9th November 2017 by the Ministry of Personnel, Public Grievances and Pension.
 4. Annexure A4 - True copy of the 14 aggrieved officials list.
 5. Annexure A5 - True copy of the relevant pages of Recruitment Rules 2002 Department of Posts, Junior Accounts Officer, Group 'B' (Non-Gazetted) published on 10th January 2002.
 6. Annexure A6 – True copy of the representation ref. No.AIAPS/GS/AAO LDCE dlgs dated 5.8.2018 submitted by the 2nd applicant before the Deputy Director General, Department of Posts.
 7. Annexure A7 – True copy of the relevant pages of merit list F.No.301(08)/PA Admn.III/2012 to 2114 dated 1.10.2018.
 8. Annexure A8 – True copy of the relevant pages of promotion and posting order F.No.301(08)/PA Admn.III/2115 to 3165 dated 1.10.2018 issued by the 1st respondent.
 9. Annexure A9 – True copy of the communication No.301(18/2018/PA Admn.III/3218 dated 3.10.2018 issued by the 1st respondent.
 10. Annexure R1 – True copy of the Department of Posts O.M.No.4-17/2008-SPB II dated 22nd November 2010.
 11. Annexure R2 – True copy of the Directorate's Order No.301(27)/2018/PA Admn.III/3607-09 dated 29th October 2018.
-