

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
(Circuit Bench at Nainital)

Civil Misc. Application No. 331/00071/2018

IN

Transfer Application No. 331/00007/2017

Dated: This the 26th day of July, 2019.

PRESENT:

HON'BLE MS. AJANTA DAYALAN, MEMBER (A)
HON'BLE MR. RAKESH SAGAR JAIN, MEMBER (J)

Vilas Dabral and others . . . Applicants

By Adv: Kishor Kumar

V E R S U S

Union of India and others . . . Respondents

By Adv: Shri D.S. Shukla

Order on MA No. 71/2018 (Amendment Application)

Delivered by Hon'ble Ms. Ajanta Dayalan, Member(A)

This amendment application has been moved in TA No. 331/7/2017. Originally 6 persons filed Writ Petition no. 422/2006 in Hon'ble High Court of Uttarakhand . The main prayer in the Writ Petition was as follows: -

- I. Issue a writ, order or direction in the nature of mandamus directing to the respondent to cancel the entire result declared on 10-3-2006 and a fresh result of selected candidates may be declared forthwith after prepared a merit list amongst all the selected candidate appeared from the different secondary switching areas and till then none of the selected candidates who were declared to be selected by the result declared on 10-3-2006 may not be sent for 10 weeks training as mentioned in the circular dated 21-3-2006 i.e. (Annexure No. 4)'

2. The matter related to examination conducted in 2006 and prayer on behalf of 6 petitioners was for cancelling the entire result declared on 10.03.2006 and fresh result of selected candidates to be declared forthwith after preparing a combined list for different secondary switching areas. No stay order was granted in the Writ Petition. Counter was also filed in 2006. However, the Writ Petition was pending in the High Court and it was dismissed in default on 21.11.2013 (Annexure to Registrar's forwarding letter dated 23.11.2017). Thereafter, the restoration application was moved alongwith delay condonation application. Vide order dated 22.11.2017 of the Hon'ble High Court Uttarakhand, the delay was condoned and the restoration application was allowed. The case was simultaneously transferred to Circuit Bench at Nainital of this Tribunal.

3. Now, after transfer of the case from Hon'ble High Court in 2017, amendment application has been moved by the applicants in November 2018. The prayer, as per the amendment application, is to include the following before earlier prayers in OA: -

'(1)A To declare the condition note three of the schedule of Telecom Technical Assistants Recruitment Rules so far as it provides that the Telecom Technical Assistants will be secondary switching area cadres and the unit of requirement shall be the respective secondary switching area in league with the clarification dated 03.03.2006 as violative to Article 14 and 16 as well as the law laid down by the Apex Court and further quash all the promotion orders of the private respondents along with its effect and operation also after calling the entire records from the respondents including the promotion order which is power and possession of the respondents.

(1)B. To direct to the respondents to review all the promotions made pursuant to the result dated 10.03.2006 of limited departmental competitive examination of TTA under 40% quota and directed to the respondents to consider the case of the applicants for promotion on the basis of their higher merit

marks along with all consequential benefits including seniority and other service benefits.

(1)C To award suitable compensation as the Hon'ble Tribunal deem fit and proper for suffering of mental and financial agony due to the tortures act of the respondents and direct to recover from the erring officers.'

4. Thus we see that in the present prayer even the Recruitment Rules are being challenged whereas there was no such request in the Writ Petition. The applicants are also seeking review of all promotions made since declaration of result of examination in 2006 and consider the case of the applicants for promotion on the basis of their relative merits based on revised result as requested by them in the Writ Petition.

5. During arguments, the counsel for the respondents stated that the case has already become stale and dead. The applicant should have agitated about amendment if they were keen way back in 2006 or immediately thereafter. The nature of prayer will also substantially change through this amendment application if it is allowed.

6. We note that nature of prayer as per the amendment application is widely different from prayer in the Writ Petition. The applicants are now seeking modification of Recruitment Rules itself whereas no such prayer was originally there in the Writ Petition.

7. In addition during arguments, we were further informed by the respondents' counsel, and these submissions have not been negated by the applicants' counsel, that all the applicants appeared in subsequent examinations. Some of the applicants were even declared successful and are working on regular basis in the respondents' department. Others have failed to clear the subsequent examination(s). Irrespective of this, the fact is that any modification in Recruitment Rules now being sought by the applicants cannot be with retrospective effect, else the candidates who

have succeeded in subsequent exams with the same Rules would be adversely affected. In fact, if this prayer is allowed, success of successful applicants in this TA/MA in subsequent exams will itself come into question.

8. Most importantly, we note that the amendment application has been moved by the applicants only in the year 2018 whereas the Writ Petition was filed before Hon'ble High Court in 2006 itself. All the facts being brought out in the amendment application now relate to the year 2006 and earlier. So the applicants should have moved amendment application much earlier before the Hon'ble High Court itself during pendency of the Writ Petition. The applicants sought to keep quite from 2006 to 2018 and now after 12 years, they are choosing to move an amendment application. They are also praying for review of all promotion orders made during last 12 years. Further, they are praying for amendment of Recruitment Rules at this stage.

9. We, therefore, do not find any merit in the amendment application and the same is dismissed.

10. List this T.A. along with O.A. No. 331/56/2015 on 21.08.2019.

(Rakesh Sagar Jain)

Member (J)

Anand...

(Ajanta Dayalan)

Member (A)