

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.NO.2583/2003

Thursday, this the 23rd day of October, 2003

Hon'ble Shri Justice V.S.Aggarwal, Chairman
Hon'ble Shri S. A. Singh, Member (A)

1. Ms.Anupma Jain.
W/o Sandeep Jain.
Working as DPA Grade "A".
O/o Commissioner of Income Tax,
(Computer Operation)
R.K.Puram,
New Delhi.

R/o C-59, Takshilla Apartment,
57, I.P.Extension,
Delhi 110092.

2. Mrs.Bandana Sharma.
W/o Dinesh Kumar Sharma.
Working as DPA Grade "B".
O/o Commissioner of Income Tax,
R.K.Puram,
New Delhi.

R-10, F-16, New Raj Nagar,
Ghaziabad,
U.P.201002.

..Applicants

(By Advocate: Shri K.Venkatraman)

Versus

1. Union of India.
Through The Secretary,
Ministry of Finance,
Department of Revenue,
North Block,
New Delhi 110001.
2. The Chairman,
Central Board of Direct Tax,
North Block,
New Delhi 110001.
3. The Chief Commissioner of Income Tax,
Central Revenue Building,
I.P.Estate,
New Delhi.
4. Director Income Tax (System),
ARA Building,
Jhandewalan Extension,
New Delhi.

..Respondents

O R D E R (ORAL)

Shri Justice V.S. Aggarwal:

Applicant Nos. 1 and 2 were appointed as Data Processing Assistant Grade 'A' and 'B' respectively. Applicant No.1 was selected as DPA Grade 'A' on basis of examination in January, 1997 and she joined in March, 1997 to the said post. Applicant No.2 was appointed as DPA Grade 'B' on basis of same examination. They are presently working as Data Processing Assistants Grade 'A' and 'B' respectively.

2. It appears that certain persons in the matter titled Dal Chand and Others Vs. Union of India & Others filed OA 925/2002. It was decided on 22.5.2003. This Tribunal had allowed the said application and quashed the order of 23.10.2001. Further directions were given to consider the applicants in the above said original application for promotion as Programme Assistants/Console Operators on basis of the Rules of 1990.

3. Some other persons similarly situated like the applicants had preferred a RA-188/2003 in the above said OA 925/2002. Therein this Tribunal had disposed of the said petition making the following observations:

19. The contention put forth that the applicant having accepted the promotion under Grade 'D' and DEO cadre has become extinct. 1990 rules which had been superseded cannot be followed to consider the case of the applicant in OA cannot be countenanced. Once the 1995 rules are not legally effective and non-existent the earlier rules of 1990 relating to promotion to PACO which were duly

As Aggarwal

notified and issued under due process of law and are not declared ultra vires hold, the filed and would be operative till the recruitment rules without DPA grade- A are validly notified and come into being after due process of law till then the vacancies, which had arisen admittedly in 1988, of PACO are to be filled as per the old recruitment rules in the light of the settled position of law and particularly in the light of a decision of the Apex Court in Y.B. Rangaiah vs. J.S.Rao, 1983(3) SCC 284. We do not find any error apparent on the face of the record or discovery of a new material which even after due diligence could not be produced by the contesting parties. the review cannot be used as a mode to re-argue the matter. Our view is fortified by the following decisions:

1. Chandra Kanta & Anr. vs. Sheik Habib
AIR 1975 SC 1500.
2. Meera Bhanja vs. Nirmala Kumari
Choudharv AIR 1995 SC 455
4. K.Ajit Babu & Ors. Vs. Union of India
& Ors. 1998 (1) SLJ 85 (SC)
5. Subhsh vs. State of Maharashtra
SCSLJ 2002(1) 28

20. However, we find that though the appointment of review applicant was made in pursuance of a notification but the recruitment rules for DPA grade-A having non-existent and not valid in law, the applicant has no indefeasible right to claim any appointment under the rules. However, as the appointment has been made long back in 1995 in the interest of justice and not to unsettle the settled position and the fact that the review applicant is not at fault, his appointment and continuance is not disturbed. However, his interest would be safeguarded when the recruitment rules 1995 are validly and legally issued, to treat the aforesaid period on ad hoc officiation or any decision to this regard taken by the Government. With these observations, we do not find any merit in the RA, which is accordingly dismissed. no costs."

4. By virtue of the present application, the applicants seek a direction to the respondents that after obtaining approval from the competent authority, to process the case of the applicants, by getting the Income Tax Department (Data Processing Assistant Grade 'A' and 'B') Recruitment

UAg

Rules, 1995 duly notified.

5. It must be mentioned at the threshold that it is a matter to be decided administratively as to when the particular recruitment rules have to be notified or not. It is for the concerned Department/Ministry to consider the needs, based on their experience and requirements and thereupon notify the Rules. Therefore, as for present, we are of the opinion that this is not a matter in which this Tribunal would interfere.

6. At this stage, applicants' learned counsel contends that in any case they have requested respondent no.2 for issuance of the required Notification and to this extent at least a direction may be issued to process their matter in accordance with law.

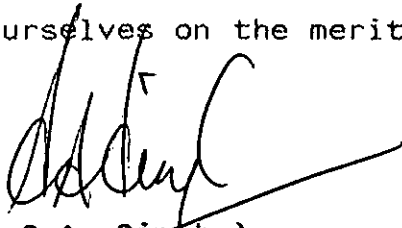
7. Taking stock of the totality of facts and sequence of events that have been mentioned above, we dispose of the present application with the following directions:-


- a) the relief claimed in paragraph 8 (ii) of the petition cannot be granted; and
- b) Respondent No.2 is directed to consider representation of the applicants dated 10.6.2003 and 10.10.2003 respectively and pass an appropriate order in accordance with law preferably within four months of the receipt of a certified copy of the present order.



6
(5)

8. We make it clear that we are not expressing ourselves on the merits of the matter.


(S.A. Singh)
Member (A)


(V.S. Aggarwal)
Chairman

/sunil/