

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/429/2016

Date of Reserve:29.08.2019

Date of Order:13.11.2019

CORAM:

HON'BLE MR.GOKUL CHANDRA PATI, MEMBER(A)
HON'BLE MR.SWARUP KUMAR MISHRA, MEMBER(J)

Smt.Lovabati Mallick, aged about 47 years, W/o. Arun Kumar Nayak, resident of Dumuduma Housing Board Colony, House No.807, Phase-II, Bhubaneswar-751 019, Dist-Khurda, Orissa, at present working as Office Superintendent in the Office of Executive Engineer, Central Ground Water Board, Division-X, Bhujal Bhawan, Khandagiri Chhak, Bhubaneswar-751 030, Orissa.

...Applicant

By the Advocate(s)-M/s.N.R.Routray

S.Sarkar

U.K.Bhatt

Smt.J.Pradhan

T.K.Choudhury

S.K.Mohanty

-VERSUS-

Union of India represented through:

1. The Chairman, Central Ground Water Board, Ministry of Water Resources (Govt. Of India), Bhujal Bhawan, N.H.-IV, Faridabad, Haryana.
2. Director (Admn), Central Ground Water Board, Ministry of Water Resources (Govt. Of India), Bhujal Bhawan, N.H.-IV, Faridabad, Haryana.
3. Regional Director (SER), Central Ground Water Board, Bhujal Bhawan, Khandagiri Chhak, Dist-Khurda, Bhubaneswar-751 030, Orissa.
4. Executive Engineer, Central Ground Water Board, Division-X, Bhujal Bhawan, Khandagiri Chhak, Dist-Khurda, Bhubaneswar-751 030, Orissa.
5. The Secretary, Ministry of Personnel, Public Grievance and Pension, Deptt. Of Personnel & Training, North Block, New Delhi-1.
6. Smt.Indu Tripathy, at present working as Office Superintendent, O/o. The Executive Engineer, Central Ground water Board, Division No.1, 34, Swamynarayan College Building, Ahmedabad, PIN-380 022, Gujarat.

...Respondents

By the Advocate(s)-Mr.D.K.Mallick

ORDER

PER SWARUP KUMAR MISHRA, MEMBER(J):

In this Original Application under Section 19 of the A.T.Act, 1985, the applicant has sought for the following reliefs:

- i) To quash the order of rejection dated 19.05.2014 under Annexure-A/17.
- ii) To direct the Respondents to provide relaxation of 5% in 3rd paper as granted under Annexure-A/12, A/13, & A/14 and declare her passed.
- iii) To direct the Respondents to promote the applicant to the post of Assistant w.e.f. 05.10.2009 against reserve vacancy and grant consequential service benefits.

2. This Application is an off shoot of an Original Application bearing No.632 of 2009 filed by the applicant before this Tribunal earlier. The applicant in the said O.A. had sought for the following reliefs:

"In view of the submissions set forth in Paras 4 above, the Applicant humbly prays that your Lordship will be graciously pleased to quash Annexure-A/11 to the extent it retains 33% as qualifying mark in each paper for the ends of justice.

AND

Be further pleased to direct the Respondents to extend the relaxation/concession in qualifying mark in each paper for the ends of justice.

AND

Be further pleased to direct the Respondent No.1 to reassess/review the result of Limited Departmental Competitive Examination, 2007 in respect of the Applicant by lowering down the qualifying marks in aggregate and in each paper keeping in view the directives of the OM Dtd. 03.10.2000 at Annexure-A/3.

AND

Be further pleased to direct the Respondent No.1 to reassess review the result of Limited Departmental Competitive Examination, 2009 in respect of the Applicant by lowering down the qualifying marks in paper (General Knowledge of Financial Rules and Service Matters) keeping in view the directive of the OM Dt. 03.10.2009 at Annexure-A/3.

AND

Be further pleased to hold that the Applicant has qualified/passed in the Limited Departmental Competitive Examination 2009 and be pleased to quash Annexure-A/10

(Result Sheets) to the extent it has declared the Applicant as 'failed' for the ends of justice'

AND

Be further be pleased to pass any order/orders direction/directions and relief/relief(s) as the Hon'ble Tribunal deems fit and proper;

AND

For such kind acts, the Applicant, as is duty bound, shall ever pray".

3. This Tribunal vide order dated 24.10.2011 disposed of the said O.A. in the following terms:

"6. After going through the various arguments advanced by the parties with reference to the pleadings, materials placed in support thereof and the provisions of the A.T.Act, 1988, no explanation or reason is forthcoming as to why she kept quiet after having failed in the examination, 2007 and after becoming unsuccessful what step she had taken till filing of this O.A. Hence, we are of the concerned view that in so far as reviewing the result of 2007 examination it is clearly hit by Section 20 and 21 of the A.T.Act, 1985. Hence this prayer of the applicant is rejected.

In so far as the prayer of the applicant to quash her result in the examination 2009 and issue of direction to the Respondents for recalculation by allowing relaxed standard of mark as provided in Annexure-A/3, it is the specific case of the Respondents that relaxation of 5% has been allowed in aggregate to SC/ST candidates but the applicant's claim is for allowing such relaxation in each and every paper. Respondents' stand is that they have allowed the concession marking pursuant to the instruction under Annexure-R/V & A/11. It is the further stand of the Respondents that even by allowing concession marking in each and every paper, the Applicant could not have been selected on the face of the marks secured by Smt.Tripathy who has been promoted to the post of Assistant. Though the applicant is aware that there was only one post against which Smt.Tripathy has been promoted and in case the applicant succeeds she will replace by affecting the interest of the other, she has not made her as a party to this OA. Be that as it may, we have gone through the instructions under Annexure-A/3, A/11 & R/V so also instructions of other departments relied on by the applicant in her rejoinder. But we are not convinced that the Respondents are under obligation to apply the instructions or the procedure adopted by other Departments. The instruction under Annexure-A/3 is not explicitly clear that concessional marking

should have been made in each and every paper. But at the same time we cannot lose sight of the fact that there cannot be different interpretations of the DOP&T instruction under Annexure-A/3. In view of the above, we leave the matter to the Respondent No.1 to examine the matter of giving relaxed standard in the Limited Departmental Competitive Examination to the SC/ST with reference to Annexure-A/3 keeping in mind the instructions of the other departments relied in the rejoinder by the applicant and communicate the decision to the applicant in a well reasoned order within a period of 120 days from the date of receipt of copy of this order".

4. Being dissatisfied with the above orders of this Tribunal, the respondents approached the Hon'ble High Court of Orissa in W.P.(C) No.3576 of 2013. Vide order dated 24.1.2014, the Hon'ble High Court disposed of the said Writ Petition as follows:

"In view of the aforesaid order of the Tribunal, we do not find any reason for the Union of India to be aggrieved by the same, which was directed to take a decision within a stipulated time.

We, therefore, find that there is no cause of action of the Union of India to file the present writ petition. The writ petition, therefore, does not consider any merit. The petitioners are directed to comply with the order of the Tribunal within a further period of two months from today by considering the case of the petitioner as directed by the Tribunal".

5. In the above background, the Respondent No.1 passed order dated 19.05.2014 (A/17) complying with the direction of this Tribunal, as affirmed by the Hon'ble High Court. For the sake of clarity, the relevant part of the order is extracted hereunder:

"4. Facts of the Case in brief:

i) Smt. Lovabati Mallick, UDC had appeared in the Limited Departmental Competitive Examination for the post of Assistant against one vacancy occurred during 2008-09. As per result declared vide letter No.20-01/2009-Min.Estt.6207 dated 1.10.2009, she had secured total 124 marks in aggregate, out of which 53 marks against

1st paper, 41 marks against 2nd Paper and 30 Marks against 3rd Paper in that examination.

- ii) In pursuance to the guidelines issued by the DOP&T vide OM No.46012/23/96-Estt.(Res.)/Vol.II dated 3.10.2000, a Notification was issued by this office vide Circular No.29-02/2009-Min.Estt. dated 11.09.2009, vide which it was decided that 5% relaxation in qualifying marks will be granted to SC/ST candidates in the total aggregate marks prescribed for un-reserved candidates in the Limited Departmental Competitive Examination, for the post of LDC/UDC/Assistant i.e., 33% marks in each paper and 35% aggregate under relaxed standard for SC/ST candidates. The criterion of minimum passing marks of 33% in each paper and 40% aggregate prescribed for un-reserved candidates for the above mentioned Limited Departmental Competitive Examination would continue.
- iii) The criteria for giving relaxation upto 5% is applicable on aggregate marks obtained by a candidate, belonging to SC/ST category against the above Examination and not against each paper separately.

The case of Smt.Lovabati Mallick has been considered by the Respondent No.1 (Chairman, CGWB), but her request could not be acceded to in view of the fact that, she has obtained 30 marks in the 3rd Paper against the prescribed minimum qualifying requirement of 33 marks in each Paper in the Limited Departmental Competitive Examination for which the relaxation of 5% is not applicable in case of individual paper of the said examination".

6. Aggrieved with this order, the applicant has approached this Tribunal in this O.A. seeking for the reliefs as mentioned above.

7. The main thrust of the O.A. is that the Respondent No.1 while passing the impugned order dated 19.05.2014 (A/7) did not keep in mind the instructions of other Departments as relied upon by the applicant vide A/11, A/12 & 13 in the rejoinder to O.A.No.632 of 2009 and therefore, the order as passed is in violation of the orders dated 24.12.2011 of this Tribunal in the O.A. as have been upheld by the Hon'ble High Court in W.P.(C) No. 3576 of 2013.

8. Applicant has filed M.A.No.339 of 2016 praying for condonation of delay in filing the present O.A. It has been pointed out that against the orders of this Tribunal dated 14.10.2011 in O.A.No.632/2009, the Respondent-Department approached the Hon'ble High Court by filing W.P.(C) No.3576/2013 and the Hon'ble High Court vide order dated 24.01.2014 dismissed the said Writ Petition. Alleging non-compliance of the orders of this Tribunal, the applicant had also filed C.P.(C) No.23/2013 before this Tribunal. According to applicant after dismissal of the above said Writ Petition and during pendency of CP No.23/2013, the Respondents passed order dated 19.05.2014 and filed the same as a measure of compliance of the orders of this Tribunal in the show cause to the C.P. Ultimately, vide order dated 10.11.2014, this Tribunal vide order dated 10.11.2014 dropped the Contempt Petition. In Paragraphs-5 to 7 of M.A.No.339/2016, the applicant has submitted as under:

"5. That, the petitioner humbly and respectfully submitted here that though the compliance order is of dtd. 19.05.2014 but for filing this Original Application will be start from the date of dismissal of Contempt Petition. According to the petitioner the period of one year for filing of this Original Application comes to 10.11.2015 and the delay in approaching this Hon'ble Tribunal starts from 11.11.2015 to till the date of filing this Original Application.

It is pertinent to mention here that this matter relates to retrospective promotion of the petitioner to the post of Assistant and the same is because of filing of O.A.No.143/2010 and 632/2009 as well as orders of this Hon'ble Tribunal passed in her favour.

6. That, the petitioner humbly and respectfully submitted here that though in the meantime she had already promoted to the post of Assistant and now holding the post of Office Superintendent because of the merger. It is further respectfully stated that once she will be promoted retrospectively w.e.f. 05.10.2009 then her future promotional avenues will be more.

7. That, the petitioner humbly and respectfully submitted here that this being a promotional matter the cause of action is a recurring one and the delay in filing is neither intentional nor deliberate, for which the same may be condoned by exercising power conferred U/S. 21(3) of the A.T.Act, 1985".
9. Opposing the prayer of the applicant, respondents have filed a detailed counter. According to respondents, the instructions/guidelines issued by DoP&T from time to time are to be followed by each Department of Central Government. But the Department is not bound to follow the decision/instruction of other Department except DoP&T. Therefore, they have not taken into consideration the instruction of the other Department while issuing speaking order dated 19.05.2014 in pursuance of the direction of this Tribunal in O.A.No.632/2009.
10. Heard the learned counsels for both the sides and perused the records including the rejoinder, additional affidavit and filed by the applicant and reply to rejoinder filed by the respondents.
11. It is the case of the applicant that as per A/12, A/13 & A/14, issued by the Ministry of Communications & IT, Department of Posts and office of the Comptroller & Auditor General of India, New Delhi, respectively, relaxation of 5% marks is permissible on each and individual paper and even though the respondent no.1 should have taken into account this aspect of the matter while passing the order under A/17 while complying with the direction of this Tribunal in O.A.No.632/2009, but for the reasons best known, he did not take the same into account.
12. Admittedly, the applicant in the examination held on 10th and 11th July, 2009 for promotion to Assistant under LDCE quota had secured 124 marks in aggregate out of total marks of 300. However, she failed in Paper-III having secured 30 marks only. On the other hand, Smt.Indu Tripathy (Res.No.6), who had

appeared the said examination had secured 233 marks out of 300 and stood first and resultantly, she was promoted as Assistant. It is the case of the applicant had she been awarded 5% marks under the relaxed standard on Paper-III, she could have qualified in the examination. According to respondents, even by giving the benefit of relaxation of 5% marks on each and every paper, the applicant could not have obtained the merit position compared to Respondent No.6, who had secured 233 marks in aggregate out of 300, i.e., 75% marks on each paper. Since this, point has already been considered by this Tribunal in the earlier round of litigation, it is no more open to be adjudicated any further. However, as regards the claim of the applicant for awarding 5% marks on each and individual paper in line with the orders issued by the Department of Posts and the office of the Comptroller & Auditor General of India vide A/12, A/13 and A/14, it is the case of the respondents that they are guided only by instructions issued by the DOP&T on the subject of relaxation/concession in promotion for SC/STs through Limited Departmental Competitive Examination and in this connection, they have pointed out that consequent upon clarification sought from the DOP&T, it was clarified that there are no further instructions/guidelines regarding relaxation/concession in promotion for SC/ST candidates through LDCE and therefore, keeping in view the DoP&T OM No.36012/96-Estt. (Res.) Vol.II dated 03.10.2000, it was decided by the competent authority that 5% relaxation in qualifying marks will be granted to SC/ST candidates on the total aggregate marks prescribed for un-reserved candidates in the LDCE for the posts of LDC/UDC/Assistant, i.e., 33% marks in each paper and 35% aggregate under relaxed standard for SC/ST candidates. In this respect, circular dated 30.09.2009 issued by the Respondent-Organization stands in countenanced. There is no

doubt that 5% relaxation in qualifying marks is to be awarded to SC/ST candidates on the total aggregate marks as prescribed for unreserved candidates in the LDCE, i.e., 40%. In other words, whereas the candidates belonging to SC/ST in order to pass the LDCE are required to secure 35% in aggregate, candidates belonging to UR category are to secure 40%, the minimum pass marks being 33% on each paper for both all the categories. Admittedly, the applicant having secured 30 marks in Paper-III got disqualified in the LDCE. It is a fact on record that following the instructions of DOP&T, the Respondents have issued their own circular dated 30.09.2009 in the matter of awarding relaxed standard of marks to SC/ST candidates in the LDCE and while passing the impugned order, they have not kept in mind the instructions of the other Department, as directed by this Tribunal in the earlier round of litigation. As already indicated above, it is the standpoint of the respondents in their counter-reply that they are not bound to follow the decision/instruction of other Departments except the DoP&T. In this connection, we would like to note that the Tribunal cannot force the Respondents to adhere to certain instructions issued by the other Departments, leaving aside their own instructions on the subject. However, having regard to the factual matrix of this case, we are of the opinion that the applicant has no indefeasible right to quote certain circulars/instructions of other Department to suit her convenience by setting apart the circulars/instructions issued by the Respondents under whom she is employed. However, it is to be noted that the applicant in the instant O.A. has not questioned the legality and validity of circular dated 30.09.2009 issued by the Respondents in the face of circulars issued by other Departments vide A/12, A/13 and A/14. Therefore, we are not inclined to accede to grant any relief to the applicant as sought for in the O.A.

13. Having regard to what has been discussed above, the O.A. is held to be without any merit and the same is dismissed with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER(A)

BKS

(GOKUL CHANDRA PATI)
MEMBER(J)

