

**BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CALCUTTA BENCH.**

O. A. No. 350/32 of 2014.

1. Sri Hemanta Pramanik, son of late Joypal Pramanik, aged about 38 years, working as Multi Tasking Staff, office of the Principal Controller of Accounts (Fys), 10-A, S. K. Bose Road, Kolkata- 700 001, residing at Joka, Pramanikpara, Bakhrahat Road, Kolkata- 700 104, West Bengal.
2. Sri Uttam Kumar Goswami, son of late Khitish Ch. Goswami, aged about 43 years, working as Multi Tasking Staff, office of the Principal Controller of Accounts (Fys), 10-A, S. K. Bose Road, Kolkata- 700 001, residing at Vill. & P.O. Arrah, P.S. Kanksa, Durgapur, Dist. Burdwan.
3. Sri Dipak Kr. Barui, son of late Balaram Barui, aged about 41 years, working as Multi Tasking Staff, office of the Principal Controller of Accounts (Fys), 10-A, S. K. Bose Road, Kolkata- 700 001, residing at Joka, D.H. Road, P.S. Thakurpukur, Kolkata- 700 104, West Bengal.

4. Sri Saumitra Halder, son of Amal Krishna Halder, aged about 41 years, working as Multi Tasking Staff, office of the Principal Controller of Accounts (Fys), 10-A, S. K. Bose Road, Kolkata-700 001, residing at 23/1S, Panchanantala Road, Kolkata- 700 029.

5. Sri Swapan Kr. Murmu, son of late Prem Chand Murmu, aged about 41 years, working as Multi Tasking Staff, office of the Principal Controller of Accounts (Fys), 10-A, S. K. Bose Road, Kolkata- 700 001, residing at H-63, Bhukailash Road, Kolkata- 700 023.

6. Sri Pronob Kumar Roy, son of Mihir Kumar Roy, aged about 43 years, working as Multi Tasking Staff, office of the Principal Controller of Accounts (Fys), 10-A, S. K. Bose Road, Kolkata-700 001, residing at Vill. & P.O: Nowpala, Via- Bagnan, Dist. Howrah, Pin : 711 303.

7. Sri Khokan Mahato, son of late Naba Mahato, aged about 37 years, working

as Multi Tasking Staff, office of the Principal Controller of Accounts (Fys), 10-A, S. K. Bose Road, Kolkata- 700 001, residing at 47, Christopher Road, Kolkata- 700 046.

8. Sri Samir Kumar Samaddar, son of late Satish Chandra Samaddar, aged about 47 years, working as Multi Tasking Staff, office of the Principal Controller of Accounts (Fys), 10-A, S. K. Bose Road, Kolkata- 700 001, residing at Manickpur (Iden Park), P.O. Itolgacha, Kolkata- 700 079.

9. Sri Basudeb Mitra, son of late Ramesh Chandra Mitra, aged about 39 years, working as Multi Tasking Staff, office of the Accounts Office, Gun & Shell Factory, Cossipore, Kolkata- 700 002, residing at 4, Talbagan Colony, Kolkata- 700 090.

... Applicants.

1. Union of India through the Secretary to the Govt. of India, Ministry of Defence, South Block, New Delhi- 110001.
2. The Controller General of Defence Accounts, Ulan Batar Road, Palam, New Delhi Cantonment- 110 010.
3. The Principal Controller of Accounts (Factories), Kolkata, 10-A, S. K. Bose Road, Kolkata- 700 001.
4. The Secretary to the Govt. of India, Department of Personnel & Training, North Block, Sansad Marg, New Delhi-1.

... Respondents.

CENTRAL ADMINISTRATIVE TRIBUNAL  
KOLKATA BENCH

O.A.350/32/2014

Heard on 04.09.2019

Date of Order: 13.9.19

Coram: Hon'ble Ms. Bidisha Banerjee, Judicial Member  
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Hemanta Pramanik & Ors.....Applicants

Vrs.

Union of India & Ors. ....Respondents.

For the Applicant(s): Mr. S.K.Datta, Counsel

For the Respondent(s): Mr. P.N.Sharma, Counsel

ORDER

Bidisha Banerjee, Member (J):

The applicants, 9 in numbers, have preferred this O.A. to seek the following reliefs:

"a) An order granting leave to the applicants under Rule 4(5) (a) of the Central Administrative Tribunals (Procedure) Rules, 1987 to move this application jointly.

b) An order holding that any decision for cancellation of the selection including the written examination held pursuant to the Circular dated 27.04.2012 for examination for promotions of educationally qualified MTS (erstwhile Group-D and Record Clerk) to the grade of Clerk is bad in law and arbitrary.

c) An order directing the respondents to publish the result of the written examination held on 18.9.2012 pursuant to the circular dated 27.4.2012 and to grant promotion to the candidates including the applicants those who would be found successful in the said examination to the grade of Clerk.

d) An order directing the respondents to produce/cause production of all relevant records.

e) Any other order or further order....."

2. The grievance of the applicants, in a nutshell, is as under:

As per earlier Recruitment Rules of 1974, the minimum educational qualification for Recruitment to Group-D, was Middle School/Primary Standard. They were even promoted to the grade of Record Clerk on the basis of departmental examination and subsequently promoted to the grade of Clerk. Consequent upon implementation of the 6<sup>th</sup> CPC recommendation, all the erstwhile Group-D and Record Clerks have been placed in Pay Band-I with Grade Pay of Rs. 1800/- In terms of DoP&T O.M. No. AB-14017/32/200-ESTT(RR) dated 07.10.2009, the minimum qualification for recruitment to the post of Clerk has been revised to 12<sup>th</sup> Standard or equivalent and the revised qualification was incorporated in Revised Recruitment Rules for the post of Clerk, published vide SRO 23 dated 15.09.2009, as amended vide SRO 9 dated 19.01.2011.

As per the effective Revised Recruitment Rules of 2009, for the post of Clerk, 10% of the vacancies shall be filled up from amongst Group-C staff, in Pay Band-I with GP Rs. 1800/-, who possess 12<sup>th</sup> Standard or equivalent qualification and have rendered not less than three years regular service in the grade on the basis of a departmental qualifying examination and only 5% of vacancies shall be filled on seniority-cum-fitness basis from Group-C employee, who has three years of regular service in post with the grade pay of Rs. 1800/-.

The existing MTS (erstwhile Group-D and Record Clerk), who were earlier recruited on the basis of educational qualification of 8<sup>th</sup> or 10<sup>th</sup> Standard were deprived of the opportunity to appear in the examination for promotion to the post of Clerk, as minimum qualification of 12<sup>th</sup> Standard was incorporated in Revised Recruitment Rules, which they did not possess. As such, the issue of

allowing erstwhile Group-D and Record Clerk to take departmental examination for promotion to the grade of Clerk were demanded by JCM representatives.

Accordingly, a departmental examination was held on 18.09.2012 for MTS, wherein Group-C staff, who were initially recruited on the basis of qualification viz. 8<sup>th</sup> Standard, were also allowed to take examination as one time measure, by the then CGDA. 695 candidates appeared in the said examination.

Since, relaxation in educational qualification from 12<sup>th</sup> Standard to 8<sup>th</sup> Standard could be done only with the approval of DOP&T, before publishing result of the examination, the case was submitted to the Ministry for obtaining the *ex post facto* approval of the DOP&T for relaxation in educational qualification prescribed in Recruitment Rules in respect of MTS who took examination in terms of such onetime concession. DOP&T vide their LD dated 16.01.2014 did not agree to the proposal for relaxation in qualification, for promotion of unqualified MTS to the grade of Clerk with the observation that the minimum qualification for the post of LDC was revised as per the recommendation of 2<sup>nd</sup> ARC and as accepted by the Government.

The applicants are aggrieved as after going through the rigours of selection process, the selection was abandoned. Hence the applicants preferred the instant O.A. before this Tribunal for declaration of result of the departmental examination held on 18.09.2012 wherein they had participated.

3. Ld. Counsel, Mr. S.K.Dutta appearing for the applicants, would strenuously urge that the relaxation in educational qualification was allowed by C.G.D.A., who was competent to grant such relaxation.

4. Per contra, Ld. Counsel for the respondents, repelling the contention would submit that CGDA was not authorised to grant such relaxation.

5. We heard the Ld. Counsels and perused the materials on record.

6. The issue that fell for consideration herein is the competence of CGDA to grant relaxation in educational qualification as one time measure, to erstwhile Group-C who possessed qualification less than what was prescribed in the Revised Recruitment Rules that held the field when selection notice was floated in 2012.

7. The discernible facts are as under:

(i) The erstwhile Recruitment Rules dated 23<sup>rd</sup> July 1971 (Annexure-A/3) stipulated the eligibility criteria for promotion to the post of LDC, as under:

5706. THE GAZETTE OF INDIA: OCTOBER 23, 1971/KARTIKA 1, 1893 [PART II—

No. 1/1/50 dt 7.6.74 (PL see last page of this part)  
SCHEDULE I

Sl. No.	Name of the post	No. of posts	Classification	Scale of pay Revised scales post	Whether selection or recruitment	Age limit for direct recruitment	Educational & other qualifications for direct recruit	other
1	2	3	4	5	6	7	8	

XXX

XXX

XXX

5. Lower Division Clerks  
Central Civil Services  
Class III  
Ministerial  
(Non-Gazetted)  
Rs. 110—3— Not applicable  
131—4—155  
EB—4—175  
—5—180.  
Between 18 to 21 years.  
Matriculation or equivalent qualification.

XXX

XXX

XXX

[S. 3(ii)] THE GAZETTE OF INDIA: OCTOBER 23, 1971/KARTIKA 1, 1893 5707

## CLASS III SERVICE

Whether age and educational qualifications prescribed for direct recruits will apply in case of	Period of probation if any	Methods of recruitment (i.e. whether by direct recruitment or promotion or by deputation/transfer and percentage of vacancies to be filled by the various methods)	In case of recruitment by promotion/transfer grade from which promotion/deputation/transfer to be made.	If a D.P.C. exists for recruitment by promotion or transfer to be made.	Circumstances in which UPSC is to be consulted in what is making its composition	Remarks

10 11 12 13 14 15

XXX XXX XXX

Not applicable Two years 10% by promotion transferred from the grade of Record Key Punch Operators from the grade of Record Clerks with not less than three years' service as such subject to passing a Departmental test and being adjudged fit.

90% by recruitment from the following grades.

- (i) 10% by recruitment from educationally qualified Class IV employees subject to the conditions given below :—
- (a) Selection will be made through a Departmental examination confined to class IV employees who fulfil the requirement of minimum educational qualifications.
- (b) The maximum age limit for admission to this examination will be 40 years (45 years for Scheduled Caste/Scheduled Tribe Candidates).

(ii) The Recruitment notice dated 27.04.2012 (Annexure-A/4) was floated for holding examination for promotions of educationally qualified MTS (Erstwhile Group-D & Record Clerk) to the grade of Clerk with the eligibility criteria as under:

"(i) Group-C staff holding the grade pay of Rs. 1800/- and who possess 12<sup>th</sup> class pass or equivalent qualification and have rendered 3 years regular service in the grade as on 1.8.2012.

Further, the competent authority has also relaxed the educational qualification for appearing in the said exam as a special chance/one time measure for those individuals, who were earlier recruited in GP 'D' post and posses the education qualification of VIII<sup>th</sup> or X class pass."

Such notice was issued consciously keeping in view the Revised Recruitment Rules of 2009 which made the erstwhile Group-D, who had entered service with Matriculation or less eligible, to be considered but as a onetime measure.

(iii) Departmental Examination was held in September 2012, when the Revised Recruitment Rules of 2009 were holding the field.

(iv) Clause 5 of the Revised Recruitment Rules of 15.12.2009 that deals with "Power to Relax" stipulates as under:

"5. Power to relax: Where the Central Government is of the opinion that it is necessary or expedient so to do, it may, by order, for reasons to be recorded in writing and in consultation with the Union Public Service Commission relax any of the provisions of these rules with respect to any class or category of persons."

In the said clause "Central Govt." should be construed to mean the Ministry and not the CGDA and that too the power could be exercised in consultation with the UPSC, which was not done in the present case.

(v) The Office of CGDA issued the following note to seek *ex post facto* sanction:

"Ministry of Defence (Finance)  
DAD-Coord

*Sub: Relaxation in Examination for promotion of educationally qualified MTS to the grade of clerk.*

*Office of CGDA UO Note No. AN/XI/1101/Exam/2012 dated 22.08.2013 which is self explanatory is placed at page 1-2/ante.*

xxx

xxx

xxx

.....The Department has mentioned that on persistent demand from JCM, it was decided to hold the examination giving one time relaxation in educational qualification and the individuals recruited in Group 'D' with 8<sup>th</sup> or 10<sup>th</sup> standard qualification when allowed to appear in the examination as a special case/one time measure.

3. Accordingly the said examination was held by the Department on 18.09.2012 on the basis of relaxation, wherein, 695 candidates appeared. Out of 695 candidates, 65 candidates fulfilled the eligibility criteria as per RR i.e. 12<sup>th</sup> standard pass. Department has stated that the modules and syllabus of the said examination was as per the last examination held in September, 2010 wherein eligibility criteria of the candidates was 12<sup>th</sup> standard pass and no relaxation in syllabus was given to the candidates. The evaluation of the examination have been carried out and the result is yet to be declared because as per para 5 of SRO 23 dated 15.09.2009 (existing Recruitment Rules for Clerk), power to relax any of the provisions contained in Recruitment rules with respect to any class or category with respect to any class or category of person rest with the Government in consultation with the Union Public Service Commission.

4. Since, the relaxation of the relevant provisions of the RRs has not been obtained by the Department prior to conduct of the Department examination; the Department has sought ex-post facto approval of the DOP&T as a onetime measure for relaxation in qualification for appearing in the departmental examination in the present case to declare the result of the examination.

5. We may request DOP&T to consider the case favourably and accord their approval to the proposal made by the Department in para 10 of the note dated 22.08.2013 at page 2."

(vi) Under identical circumstances, in an application filed by candidates, who were eligible in terms of Revised Recruitment Rules having cleared XII Standard, the Chandigarh Bench, in O.A. 1611/CH/2013, permitted such higher secondary qualified Group-C officers to be appointed and the said order was implemented without being assailed before any higher forum.

The relevant extract of the order goes thus:

".....The stand of the respondent department in not declaring the result of the persons who fulfil the eligibility criteria of +2 for appearing in the qualifying examination does not appear to be backed by any logic as it is clear from the submissions made in the

written statement that DOPT had not agreed for relaxation of the educational criteria. Hence only the persons, who were 10+2 at the time when they applied for appearing in the examination, can be considered to be eligible to have appeared in the examination held on 18.9.2012.

8. In view of the foregoing discussion, the OA is allowed and the respondents are directed to take action to declare the result of the eligible candidates who were +2 at the time of applying to appear in the exam, and, who appeared in the examination held on 18.9.2012, within one month of the date of a certified copy of this order being served upon respondents No. 2 and 3. No costs."

(vii) Revised notification for holding examination for promotion of educationally qualified MTS to the grade of Clerk has been issued already on 29.10.2015 with eligibility criteria as under:

"(i) Group-C staff holding the grade pay of Rs. 1800/- and who possess 12<sup>th</sup> class pass or equivalent qualification and have rendered 03 years regular service in the grade as on 01.01.2016."

The said notification has been challenged by the present applicants but no stay was ever granted by the Tribunal.

8. In the aforesaid backdrop, having noted that relaxation in educational qualification was not sought for from the "Central Govt." prior to initiating the recruitment process in 2012, and, therefore, in clear violation of the Recruitment Rules of 2009 that held the field at the relevant time, and having noted that the DOPT has refused to relax the standards *ex post facto*, and having noted that the applicants were not even declared selected, in view of the law laid down in **Jatinder Kumar Vs. State of Punjab, AIR 1984 SC 1850**, that "a candidate acquires no right to appointment by being selected or empanelled because the recommendations of the Service Commissions are directory in nature and the persons selected by the Commissions have no right to appointment and on that score no mandamus lies" and in **Shankarshan Dash Vs. Union of India, AIR 1991**

SC 1612, that "it is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied", we find no infirmity in the action of the respondents.

The O.A. is, accordingly, dismissed. No costs.

(Dr. Nandita Chatterjee)  
Member (A)

(Bidisha Banerjee)  
Member (J)

RK