

By Speed Post



भारत सरकार

Government of India

राष्ट्रीय अनुसूचित जनजाति आयोग

National Commission for Scheduled Tribes

6th floor, 'B' Wing, Loknayak Bhawan
Khan Market, New Delhi-110 003.

Case No. OPM/1/2016/OUPSC/SEPROM/RU-I

Dated: 01/05/2019

To,

1. The Secretary,
Department of Personnel & Training,
Room No. 112,
North Block,
New Delhi – 110001.
Tel: 23094848, Fax: 23094500.

2. The Secretary,
Ministry of Power,
Shram Shakti Bhawan,
Rafi Marg,
New Delhi – 110001.

Sub: Relaxation in qualifying service for promotion from AD-II to AD-I in Central Electricity Authority- a representation from Shri O.P. Meena, Deputy Director, CEA, R.K. Puram, New Delhi.

Sir,

I am directed to refer to the subject cited above and to enclose a copy of the minutes of Sitting held in the Headquarters of National Commission for Scheduled Tribes on 15.02.2019 at 12.30 PM under the Chairmanship of Shri H. C. Vasava, Hon'ble Member, National Commission for Scheduled Tribes in the matter.

It is, requested that action taken on the suggestions / recommendations of the Commission may please be sent to the NCST at the earliest.

Yours faithfully,

(Rajeshwar Kumar)
Assistant Director
Tel: 011-24641640.

Copy to:

Shri O. P. Meena,
Deputy Director (HPA-II),
Central Electricity Authority, HPA-II Division,
7th floor, Sewa Bhawan, R.K. Puram,
New Delhi – 110066.

Copy for information to:

1. PS to Hon'ble Member (HCV), NCST
2. NIC, NCST (for hosting on Commission's website)

भारत सरकार
Government of India
राष्ट्रीय अनुसूचित जनजाति आयोग
National Commission for Scheduled Tribes

Minutes of the sitting held in the NCST, Lok Nayak Bhawan, New Delhi on 15/02/2019 at 12:30 P.M. under the Chairmanship of Shri H.C. Vasava, Hon'ble Member, NCST in the case of Shri O. P. Meena, Deputy Director (HPA-II), Central Electricity Authority (CEA), HPA-II Division, Sewa Bhawan, New Delhi regarding relaxation in qualifying service for promotion from AD-II to AD-I in CEA.


[F. No. OPM/1/2016/OUPSC/SEPROM/RU-I]

List of participants is annexed.

Representation dated 16/05/2016 received from Shri O. P. Meena, Deputy Director (HPA-II), Central Electricity Authority, HPA-II Division, 7th floor, Sewa Bhawan, R.K. Puram, New Delhi regarding his promotion from pay scale Rs. 7500-12000 (AD-II) to Rs. 8000-13500 (AD-I) in CEA.

The NCST referred that matter to Ministry of Power for facts and comments. The Ministry of Power furnished the report on the action taken by them in the matter. The petitioner was not satisfied with the action taken by the Ministry of Power. Hence, the matter was discussed with the officers of Ministry of Power and the petitioner in a sitting held on 22.09.2016 under the Chairmanship of Shri Rameshwar Oraon, Chairperson, NCST. The Ministry of Power conveyed the comments of DoPT vide letter No. 60016/20/2015-Admin.1 dated 05.12.2016 and stated that it is not possible to accede the request of Shri O.P. Meena for relaxation in qualifying service for promotion form Grade AD-II to AD-I in CEA. A copy of the letter was endorsed to Shri O.P. Meena.

Shri O.P. Meena, again represented to the Commission and requested for justice. The matter was again taken up with the Ministry of Power. The Ministry of Power vide letter No. 60016/20/2015-Admin.1 dated 23.05.2017 has again stated that it is not possible to accede the request of Shri O.P. Meena. A copy of this letter endorsed to Shri O.P. Meena. Shri O.P. Meena again requested the Commission for justice. Hence, the matter was discussed with the officers of DoPT, Ministry of Power and the petitioner in a sitting held on 30.08.2017 under the Chairmanship of Shri H.C. Vasava, Hon'ble Member NCST. In the sitting, the Commission further advised that as discussed in the sitting, the matter may be again referred to DoPT by Ministry of Power on the issue raised by Shri O. P. Meena for their advice in the case.

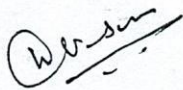

हर्यदभाई वसव
सदस्य/Member
राष्ट्रीय अनुसूचित जनजाति आयोग
National Commission for Scheduled Tribes
भारत सरकार/Govt. of India
नया दिल्ली/New Delhi

A representation dated 20.03.2018 of Shri O.P. Meena, received in the Commission wherein Shri Meena had requested for justice. Accordingly, the matter was taken up with the Ministry of Power and DoPT on 11.04.2018 for furnishing the comments. The Ministry of Power vide letter No. 60016/20/2015-Admin.1 dated 13.03.2018 and 18.05.2018 has furnished the facts and reiterated its earlier comments, copy of the same endorsed to Shri O.P. Meena. Shri O.P. Meena again represented the Commission and requested for justice. Accordingly, the Hon'ble Member, Shri H.C. Vasava, fixed the sitting for 15.02.2019 to discuss the matter with the DoPT, Ministry of Power and the petitioner to resolve the issue.

The Ministry of Power vide letter No. 60016/20/2015-Admin.1 dated 11.02.2019 has furnished the facts on the issue raised in the representation dated 22.05.2018 of Shri O.P. Meena. The Ministry of Power vide letter No. A-60016/20/2015-Admin.1 dated 12.02.2019 addressed to Chairperson, Central Electricity Authority and copy endorsed to NCST had informed that Secretary, CEA deputed to attend the sitting on 15.02.2019 on behalf of Secretary, Ministry of Power. But, none of the officers from CEA appeared before the Commission in the sitting.

The DoPT vide Dy. No. 1355610/2019/CR dated 14.02.2019 has furnished the facts in the matter and the Joint Secretary, (E-1) attended the sitting on behalf of Secretary, DoPT. The JS, DoPT has pointed out the facts given in the letter. In the letter dated 14.02.2019 of DoPT, the DoPT had discussed the background in respect of the case of Shri O.P. Meena and the issue raised in representation dated 17.10.2017 of Shri Meena and justification of Ministry of Power thereon. The views of DoPT had also been mentioned in the background note in the letter. In the conclusion part of the background of the letter, the DoPT has mentioned that:

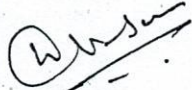
“In the instant case, the relevant notification, [amending the Central Power Engineering (Group A) Service Rules 1990 in line with the instructions issued vide DOPT OM dated 25.05.1998]. regarding Central Power Engineering (Group A) Service Rules 2005 reducing the qualifying service from three years to two years for promotion from AD-II to AD-I were notified on 21.04.2005. Thereafter, any reduced criteria takes affect only after 21.04.2005 and cannot be before that. On the


हरशदभाई वसव/Member
राष्ट्रीय अनुसूचित जनजाति आयोग
National Commission for Scheduled Tribes
भारत सरकार/Govt. of India
नया दिल्ली/New Delhi

demand for relaxation of 10 months, as per then prevalent policy of DoPT, in such cases where alternative methods of recruitments were available in the RRs, a maximum of 6 months relaxation was only permissible and in the instant case the requirement was 10 months. Any relaxation at this late stage now, is unprecedented. However, when the Ministry of Power itself is not in favour of any relaxation, the question of DoPT suo-moto allowing relaxation does not arise”.

The Hon'ble Member asked the petitioner to explain the grievance. The petitioner provided a copy of the representation dated 28.12.2018 submitted to the Commission (Appendix). He stated that the Hon'ble Central Administrative Tribunal (Principal Bench) New Delhi in its judgment dated 21.08.2018 in OA No. 3089 of 2013 between Balbir Singh and Ors Vs Secretary, Ministry of Power and Chairman, Central Electricity Authority and Hon'ble CAT New Delhi in its judgment dated 20.07.2010 in O.A. No. 121/2010 and O.A. No. 151/2010 between Bindu Gupta Vs Chief Secretary, GNCTD and Ors had given directions to consider the cases of petitioners. Hence, his case may please be re-examined by the CEA and Ministry of Power by relaxing the qualifying service for promotion to AD-II to AD-I.

After discussions, the Hon'ble Member recommended that the representation dated 28.12.2018 of Shri O.P. Meena (Appendix) may be re-examined by CEA and Ministry of Power. The CEA may take up the matter with Ministry of Power for obtaining the advice/ views of the DoPT. The action taken/ to be taken by CEA on the representation dated 28.12.2018 of Shri Meena may be sent to the Commission within 30 days from receipt of the proceedings of the sitting, for deciding further course of action.


हरशदभाई वसवा/Harshadbhai Vasava
सदस्य/Member
राष्ट्रीय अनुसूचित जनजाति आयोग
National Commission for Scheduled Tribes
भारत सरकार/Govt. of India
नई दिल्ली/New Delhi

भारत सरकार
राष्ट्रीय अनुसूचित जनजाति आयोग

(OPM/1/2016/OUPSC/SEPROM/RU-I)

List of participants in the sitting held on 15/02/2019 at 12:30 P.M. under the Chairmanship of Shri H.C. Vasava, Hon'ble Member, NCST in the case of Shri O.P. Meena, Deputy Director, CEA, R.K. Puram, New Delhi regarding relaxation in qualifying service for promotion from AD-II to AD-I in Central Electricity Authority.

I National Commission for Scheduled Tribes

1. Shri H. C. Vasava, (In chair)
Hon'ble Member
2. Shri Rajeshwar Kumar,
Assistant Director
3. Shri R.S. Misra,
Senior Investigator
4. Shri Manoj Mishra,
PS to Member

II Secretary, Department of Personnel & Training, New Delhi

1. Ms. G. Jayanthi,
Joint Secretary (E-I)
2. Shri K. Prakasam,
Under Secretary
3. Shri Raju Saraswat,
Under Secretary

III Secretary, Ministry of Power, New Delhi

IV Petitioner

1. Shri O.P. Meena

To,

Hon'ble Chairperson,
National Commission for Scheduled Tribes,
Lok Nayak Bhawan, New Delhi.

Subject: To Grant One Time relaxation in Qualifying Service similar to earlier granted One Time relaxation considering pay commission recommendations - regarding.

- Ref : (i) Ministry of Power letter No. A-60016/20/2015-Admn.I dated 19.11.2018.
(ii) Hon'ble CAT (PB), New Delhi judgement (OA No. 3089/2013 dated 21.08.2018)
(iii) Hon'ble CAT (PB), New Delhi judgement (OA No. 121/2010 & 151/2010 dated 20.07.2010).
(iv) DOPT OM No. AB.14017/2/1997-Estt.(RR) dated 25.05.1998.
(v) DOPT OM No. AB.14017/64/2008-Estt.(RR) dated 24.04.2009.
(vi) CEA letter No. 19/2/2018-Adm.I (CEA) dated 07.02.2018.
(vii) CEA letter No. 2/2/2016-Adm.I (CEA) dated 22.06.2016.
(viii) CEA letter No. 3/3/2016-Admn.I (CEA) dated 09.11.2016.
(ix) Ministry of Power letter No. A-60016/20/2015-Admn.I dated 05.12.2016.
(x) Ministry of Power letter No. A-60016/20/2015-Adm.I dated 13.03.2018 & 18.05.2018.

Respected Sir,

With due regard, it is humbly submitted that the undersigned is **not satisfied with the reply/action taken** conveyed vide Ministry of Power letter no. A-60016/20/2015-Adm.I dated 19.11.2018 in respect of undersigned's representation dated 22.05.2018. In this regard, in continuation to earlier representations, I would like to submit the following facts for your kind consideration and sympathetic action please:

The undersigned's matter regarding relaxation in Qualifying Service considering pay commission recommendations (DOPT OM dated 25.05.1998) (File No. OPM/1/2016/OUPSC/SEPROM/RU-I) is under consideration in National Commission for Scheduled Tribes (NCST), New Delhi since May, 2016 and second sitting was held on dated 30.08.2017.

In a matter of Pay commission recommendations in respect of Non Functional Upgradation (NFU), one time relaxation was granted in respect of Qualifying Service required for NFU by Central Electricity Authority/Ministry of Power, New Delhi considering the DOPT OM dated 24.04.2009 (sixth pay commission recommendations) since the amendment of CPES (Group-A) Service Rule based on DOPT OM dated 24.04.2009 was under process. As such, it is humbly submitted that similarly, one time relaxation in undersigned's matter may also be granted considering fifth pay commission recommendations (DOPT OM dated 25.05.1998) since the amendment of CPES (Group-A) Service Rule based on DOPT OM dated 25.05.1998 was under process.

As per directions of Hon'ble CAT, New Delhi judgement dated 21.08.2018 (copy enclosed at Annex-I), "the cases of applicants will be considered considering the DOPT OM dated 23.04.2009". The process of amendment of CPES (Group-A) Service Rule was completed in year 2015 based on above DOPT OM dated 24.04.2009.

In addition, in one of the similar case regarding amendment of Recruitment Rule based on pay commission recommendations for upgraded post, Hon'ble CAT (PB), New Delhi judgement dated 20.07.2010 (OA No. 121/2010 & 151/2010 dated 20.07.2010) (copy enclosed at Annex-II) following observations has been made:

Point-5 - "entitles to claim protection of loss" for delay in amendment of recruitment rule.

Point-11 - "No doubt recruitment rules in vogue are to be considered but once there has a mandate and on acceptance of the revision of pay scale by the Delhi Govt./MCD, they cannot approbate and reprobate simultaneously by not amending the recruitment rules and not enhancing the age (revision of Qualifying Service in this case) and thereby reliance on the old

Received from petitioner
in sitting.
Ch. J. J. J.

30
25/12

service rule is not a good administration and is also not fair and reasonable in the circumstances"

The deemed date considered in respect of undersigned (i.e. 16.12.2005) in seniority list of AD-I circulated vide CEA letter dated 21.11.2016 may be considered as 01.01.2004 as there was no representation of ST category since long and ST category slot was vacant on 01.01.2004 in post of AD-I.

In review DPC held in year 2016, the Service rule was changed from CPES (Group A) Service rule, 2005 (Qualifying Service-02 years) to CPES (Group A) Service rule, 1990 (Qualifying Service-03 years) inspite of the fact that the post of AD-II had already been upgraded as per recommendations of 5th pay commission as well as at present, CPES (Group A) Service rule, 1990 has already been superseded by CPES (Group A) Service rule, 2015 after several amendments.

The Qualifying Service (3 years) considered in review DPC is not justified/fair as well as not correlating as the actual pay scale drawing at the crucial date of eligibility for year 2004-05 (i.e. 01.01.2004) was 5th Pay Commission pay scales. As such, the Qualifying Service may please be considered as 02 years as per recommendations of Fifth pay commission (DOPT OM dated 25.05.1998).

In view of above, it is humbly requested that the one time relaxation in Qualifying service considering the DOPT OM dated 25.05.1998 (Fifth pay commission recommendations) as granted in above mentioned matter of sixth pay commission recommendations may please be granted and matter may be reviewed considering the above mentioned Hon'ble CAT, New Delhi judgement dated 21.08.2018.

Thanking you,

Your's faithfully



(O.P.Meena)

Deputy Director (HPA),
Central Electricity Authority,
7th Floor, Sewa Bhawan,
R. K. Puram, New Delhi

Mobile: 9968140551.

Encl: As above

Amara I

Central Administrative Tribunal
Principal Bench

OA No.3089/2013

New Delhi, this the 21th day of August, 2018

Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Ms. Aradhana Johri, Member (A)

1. Balbir Singh, D-104
Tagore Garden Extn.
New Delhi-110027.
2. Chandan Roy, 25-B
Supriya Appts
A-, Paschim Vihar
New Delhi-11003.
3. M.S. Kaushika, Neelachal 1323/7
Shambhu Dayal Mandir Marg
Sonapat, Haryana.
4. Rakesh Bhanot, B-21
Rana Pratap Bagh
Delhi-110007. ..Applicants

(By Advocates: Shri A.K. Ojha and Ms. Richa Ojha)

Versus

1. Secretary, Ministry of Power
Shram Shakti Bhavan
New Delhi-110001.
2. Chairman, Central Electricity Authority
Ministry of Power
Sewa Bhavan, RK Puram
New Delhi. ..Respondents

(By Advocate: Shri Ashok Kumar)

ORDER (ORAL)**Justice L. Narasimha Reddy:-**

The applicants joined the service of Central Electricity Authority, Ministry of Power, New Delhi on various dates. Applicant Nos. 2, 3 and 4 became Group 'A' officers in the year 1991 and members of 1992 batch. Applicant No.1 became Group 'A' officer in the year 1992 and member of 1993 batch. They also held the positions of Deputy Directors in the organization from various dates, after becoming Group 'A' officers.

2. The Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training (DoP&T for short) issued Office Memorandum dated 24.04.2009 to the effect that whenever an IAS officer of the State of Joint Cadre is posted at the Centre, to a particular grade carrying a specific grade of pay in Pay Band 3 or Pay Band 4, the officers belonging to batches of Organised Group 'A' services who are senior by two years or more and have not been promoted to that particular grade, as the I.A.S. officer was, would be entitled to be extended the benefit of that grade, on Non Functional Upgradation

(NFU for short). This was subject to the condition that the Screening Committee must examine the eligibility criteria of the persons becoming so eligible, including that of 'benchmark' for upgradation to a particular grade.

3. On 01.07.2010, the DOP&T issued an Office Memorandum furnishing the particulars of the IAS officers of various batches who have been appointed or posted as Directors and indicating the batches of organized Group 'A' Service, that are eligible to be considered for NFU. The applicants contend that according to the Memorandum dated 01.07.2010, Group 'A' officers of 1992 and 1993 batches became eligible to be extended the benefit of the post of Director or equivalent w.e.f. 01.07.2008 and 01.07.2009 respectively, but the same has not been extended to them.

4. On a representation submitted by the applicants, the concerned department informed them that their cases were not considered since, by the time the occasion has arisen, the applicants retired from service and accordingly were not extended the benefit of NFU.

One such communication is dated 23.07.2013 issued to one of the applicants by the name Rakesh Bhanot(Applicant No.4). The said communication is challenged in this OA, claiming the relief in the form of a direction to the respondents to extend the benefit of NFU to the applicants, with effect from the dates on which they became eligible.

5. The respondents filed counter affidavit, opposing the O.A. They contend that the DoP&T issued the Office Memorandum dated 01.07.2010 indicating the names of the IAS officers, who were promoted or posted to the post of Director, and the batch of Group 'A' officers, who are entitled to be considered. It is stated that the benefits of said Office Memorandum were not extended to the applicants since they retired from service. It is also stated that on an application of eligibility criteria, the applicants were found to be ineligible since they did not have nine years of service in the post of Deputy Director.

6. Heard Shri A.K. Ojha, learned counsel for the applicant and Shri Ashok Kumar, learned counsel for the respondents.

7. The entire claim of the applicants rests upon the Office Memorandum dated 24.04.2009 issued by the DoP&T, which reads as under:-

"No.AB.14017/64/2008-Estt.(RR)
Government of India
Ministry of Personnel, Public Grievances and Pensions
Department of Personnel and Training
New Delhi, the 24th April, 2009

Office Memorandum

Subject:- Non Functional upgradation for Officers of Organised Group 'A' Services in PB-3 and PB-4

Consequent upon the acceptance of the recommendations of the Sixth Central Pay Commission, the following orders are issued:-

- (i) Whenever an Indian Administrative Services Officer of the State of Joint Cadre is posted at the Centre to a particular grade carrying a specific grade pay in Pay band 3 or Pay Band 4, the officers belong to batches of Organised Group A Services that are senior by two years or more and have not so far been promoted to that particular grade would be granted the same grade on non-functional basis from the date of posting of the Indian Administrative Service Officers in that particular grade at the Centre.
- (ii) Grant of higher scale would be governed by the terms and conditions given in Annex-I.
- (iii) Appropriate amendments in the Service Rules may also be carried out.
- (iv) Establishment Division of this Department will issue orders from time to time, in consultation with the Establishment Officer, intimating the batch of the officers belonging to the Indian Administrative Service who have been posted at the Centre in the various grades of PB-3 and PB-4 as well as the date of posting of the first officers belonging to the batch.

2. Grant of higher scale (i.e. pay band and/or grade-pay) under these instructions would be w.e.f. 1.1.2006, wherever due and admissible."

8. The Office Memorandum is to the effect that if an IAS officer of a particular batch has been posted to a grade, which carries the pay in Pay Band 3 and Pay Band 4, such of the Group 'A' officers, who are senior by two years or more in terms of batch, shall be eligible to be extended the NFU, subject to screening by the Committee. Even if a particular Group 'A' officer has figured in the batch, and is senior by two years or more to the IAS officer, who was posted to an office carrying the pay of Pay Band 3 or 4, he has to be cleared by the Screening Committee. This is evident from Clause 3 contained in Annexure A-1 attached to Office Memorandum dated 24.04.2009.

"3. All the prescribed eligibility criteria and promotional norms including 'benchmark' for upgradation to a particular grade pay would have to be met at the time of screening for grant of higher pay-scale under these orders."

9. For the purpose of extending the benefit of NFU to various Group 'A' officers, the authentic information has

been furnished by the DoP&T in this behalf. The gist thereof is as under:-

S. No.	Batch and Level in IAS	Date of posting of the officer in the grade in the Central Staffing Scheme	Batch of Organized Group 'A' Service to be considered for Non-functional upgradation
1.	1992 as Director	01.07.2006	1990 and earlier w.e.f. 01.07.2006
2.	1993 as Director	08.08.2007	1991 and earlier w.e.f. 08.08.2007
3.	1994 as Director	01.07.2008	1992 and earlier w.e.f. 01.07.2008
4.	1995 as Director	01.07.2009	1993 and earlier w.e.f. 01.07.2009
5.	1997 as Deputy Secretary	05.04.2007	1995 and earlier w.e.f. 05.04.2007
6.	1998 as Deputy Secretary	24.08.2007	1996 and earlier w.e.f. 24.08.2007
7.	1999 as Deputy Secretary	01.07.2008	1997 and earlier w.e.f. 01.07.2008
8.	2000 as Deputy Secretary	01.07.2009	1998 and earlier w.e.f. 01.07.2009

The table indicates that the officers of Group 'A' of 1992 and 1993 batches became eligible to be extended NFU from 01.07.2008 and 01.07.2009 respectively (Sl. Nos.3 and 4 of the table). It is not in dispute that three of the applicants belong to 1992 batch and one of them belongs to 1993 batch.

10. The plea raised in the counter affidavit is to the effect that the applicants retired from service by the

time their cases were considered and they did not have the stipulated length of service of nine years in the post of Deputy Director.

11. So far as the first objection is concerned, there is ample material to indicate that the benefit of NFU was extended to even such of the officers, who retired from service if they had acquired the eligibility while in service. The applicants acquired such eligibility before they retired. The applicants have also furnished the particulars of retired officers, who have been extended the benefit in various departments. Therefore, this plea cannot be accepted.

12. The second one is as regards the eligibility criteria. It is pleaded that according to the Recruitment Rules of the respondent-corporation, an officer would become eligible to be appointed as Director only on completion of nine years of service in the post of Deputy Director. Here again, the record does not support the contention of the respondents. Even in the concerned year, the respondents requested the DoP&T to relax the rules in this behalf and accordingly the Rule, which stipulated

nine years of service in the post of Deputy Director, was relaxed to the effect that it can be 13 years of service in Group 'A' that includes four years in the post of Deputy Director. It is not in dispute that the applicants fulfilled that condition. The plea that the relaxation was one time measure is also not true. The correspondence that has been undertaken in this behalf discloses that the relaxation was extended for the subsequent years also. Therefore, by the time the applicants became eligible to be considered for being extended NFU, the relaxation was very much in force. Accordingly, they became eligible to be considered for extension of that benefit. The only aspect that remains to be considered was an exercise by the Screening Committee, to assess their fitness.

13. We, therefore, allow the OA setting aside the impugned orders and directing the respondents to consider the cases of the applicants for extending the benefits of NFU in accordance with the DoP&T Office Memorandum dated 23.04.2009, duly constituting a Screening Committee for the purpose of assessing their fitness. Depending upon the outcome of such exercise, consequential benefits, shall also be extended. This

exercise shall be completed within four months from the date of receipt of this order.

14. There shall be no order as to costs.

(Aradhana Johri)
Member(A)

(Justice L. Narasimha Reddy)
Chairman

/vb/

Bindu Gupta vs Govt. Of Nct Of Delhi on 20 July, 2010

Central Administrative Tribunal - Delhi
Bindu Gupta vs Govt. Of Nct Of Delhi on 20 July, 2010

Central Administrative Tribunal
Principal Bench, New Delhi

O.A.No.121/2010

And

O.A.No.151/2010

This the 20th day of July 2010

Hon^{ble} Shri Shanker Raju, Member (J)
Hon^{ble} Dr. Veena Chhotray, Member (A)

OA 121/2010

Bindu Gupta
Wife of Shri Dinesh Kumar Goel
Daughter of Shri Shyam Lal Gupta
Resident of the address:
Flat No.225, Pocket B-9
Sector 3, Rohini,
Delhi-85
.Applicant
(By Advocate: Shri Tarun Sharma)

Versus

1. Govt. of NCT of Delhi
through its Chief Secretary
Having office at:
Delhi Secretariat
Players Building, I P Estate
New Delhi-2
2. Lieutenant Governor of Delhi
Raj Niwas, Civil Lines
Delhi-54
3. Delhi Subordinate Services Selection Board
through its Secretary
Having office at:
3rd Floor, UTCS Building
Institutional Area
Vishwas Nagar, Shahdara,
Delhi-25
4. Directorate of Education Govt. of NCT of Delhi

through its Secretary
Having office at:
Delhi Secretariat, Players Building,
I P Estate, New Delhi-2

5. Municipal Corporation of Delhi
through its Commissioner
Having office at:
Town Hall
Chandni Chowk, Delhi-6

..Respondents

(By Advocates: Shri Vijay Pandita for respondents 1 to 4 □
Shri Umesh Joshi for respondent 5)

OA 151/2010

Poonam
Wife of Shri Neeraj Gupta
Daughter of Shri Deep Chand Mittal
Resident of the address:
C-1/24, Brij Puri
Delhi-94
.Applicants
(By Advocate: Shri Tarun Sharma)

Versus

1. Govt. of NCT of Delhi
through its Chief Secretary
Having office at:
Delhi Secretariat
Players Building, I P Estate
New Delhi-2
2. Lieutenant Governor of Delhi
Raj Niwas, Civil Lines, Delhi-54
3. Delhi Subordinate Services Selection Board
through its Secretary
Having office at:
3rd Floor, UTCS Building
Institutional Area
Vishwas Nagar, Shahdara, Delhi-25
4. Directorate of Education □ Govt. of NCT of Delhi
through its Secretary
Having office at:
5, Sham Nath Marg, Delhi
5. Municipal Corporation of Delhi
through its Commissioner
Having office at:
Town Hall, Chandni Chowk, Delhi-6

..Respondents

(By Advocates: Shri Vijay Pandita for respondent 1 to 4
Shri Ravi Kant Jain for respondent 5)

O R D E R

Shri Shanker Raju:

These OAs, which are grounded on common facts and founded on identical question of law, are being disposed of by this common order.

2. Right of employment itself is not a fundamental right but in terms of Articles 14 and 16 of the Constitution of India, similarly situated has a fundamental right to be considered for employment on fair and equitable basis as per the rules, as ruled by the Apex Court in Anuj Garg & others v. Hotel Association of India & others, (2008) 3 SCC 1. Article 16 of the Constitution envisages equality for opportunity for all reasons in the matter relating to appointment, as held by the Apex Court in State of Bihar v. Upendra Narayan Singh & others, 2009 (1) SCC (L&S) 1019.
3. Applicant in OA-151/2010, aged about 30 years, is eligible qualification-wise for appointment as direct recruitment to the post of Assistant Teacher (Primary) with Govt. of NCT of Delhi as well as Municipal Corporation of Delhi (MCD) in the pay band of Rs.9300-34800 with grade pay of Rs.4200/- whereas the applicant in OA-121/2010, who is already working in MCD on contract basis as Primary Teacher, is also equally eligible. The recruitment rules for the post of Primary Teacher in Directorate of Education provide the maximum age limit of 20 to 27 years for direct recruits for the post of Assistant Teacher (Primary) with general relaxation clause in paragraph 5 of the rules, which are to be exercised by the Government in writing by recording reasons with respect to class and category of persons, whereas recruitment rules for the post of Primary Teacher in MCD envisage the same age with a relaxation clause akin to the above. It is pertinent to note that these recruitment rules were subject matter before the High Court of Delhi in Sachin Gupta & others v. Delhi Subordinate Selection Board & others (WP (C) No.7297/2007) decided on 28.8.2008 wherein reducing the age from 32 years to 42 for males and females respectively has been upheld but with an exception to certain categories. An office memorandum dated 30.11.1988, which was issued by the Delhi Administration (Services Department), laid down consolidated guidelines for framing/amending the notification of recruitment rules in Delhi Administration and as per the notification, the age limit for Groups [C] and [D] posts is between 18 and 25 years and for the posts in the scale of pay having a maximum of Rs.2900 or more but less than Rs.4000/-, the age limit is 30 years. However, by the consolidated guidelines issued on 21.12.1998 under Central Civil Services and Civil Posts (Upper Age-limit for Direct Recruitment) Rules, 1998, which came into being on 1.4.1989, the age limit in the civil post has been increased by two years. Accordingly, for Group [B] posts, the age limit, as in vogue, is 32 years. With the acceptance of the recommendations of 6th CPC by the DOPT on 9.4.2009, a post of temporary teacher with a grade pay of Rs.4200/- in the pay band of Rs.9300-34800 in PB-II has been designated as Group [B] and has been accepted by the respondents. An OM issued by DOPT dated 24.3.2009 had laid down to the Departments and Ministries in respect of Groups [A] and [B] posts the consequential changes, including the maximum age limit for appointment on direct recruitment basis within six months from 24.3.2009 by taking up the matter with UPSC and DOPT.

4. It is no more res integra as per the reply filed by the respondents that a proposal to amend recruitment rules has already been forwarded to the competent authorities. MCD and Govt. of Delhi vide circular dated 8.6.2009 on classification of posts under CCS (CCA) Rules, 1965 and revision of pay scale forwarded for an amendment of service rules. The Chairman, DSSSB forwarded proposal of filling up 520 vacancies of Assistant Teacher (Primary) on 18.5.2009, which resulted in an advertisement issued by the respondents, the closing date of which was 15.1.2010. In the aforesaid, without making consequential changes on revision of pay scale, the respondents on the basis of old recruitment rules prescribed the age limit between 20 to 30 years treating the post as Group [C] whereas the nomenclature had already been changed. Applicants in these circumstances when applied have been found to be over-aged but with the interim directions issued by this Tribunal, they have been provisionally admitted for selection process.

5. Learned counsel for applicants states that in the light of Office Memoranda, as referred to ibid, decision of High Court of Delhi in Sachin Gupta (supra) would not come in the way of the applicants, as the vires of the old rules is upheld but the issue of amending the recruitment rules on re-classification of post of Primary Teacher as Group [B] and consequential enhancement in the age is not in conflict. Accordingly, it is stated that the applicants are entitled to claim protection of loss being equally treated with other similarly situated persons and the administrative action of the respondents by delaying in amendment of the recruitment rules has prejudiced their fundamental right on fair consideration for public employment.

6. On the other hand, learned counsel for respondents - Govt. of NCT of Delhi vehemently opposed the contentions. Shri Vijay Pandita, learned counsel states that the recruitment rules in vogue are put in effect, which is in accordance with the decision of the Apex Court in Y.V. Rangaiah & others v. V.J. Sreenivasa Rao & others, AIR 1983 SC 852.

7. Learned counsel states that as the amendment in recruitment rules for the post of Assistant Teacher (Primary) is under process, the existing rules shall prevail. Learned counsel, insofar as the Office Memoranda issued by DOPT are concerned, states that being administrative instructions it would not override the statutory rules and further stated that applicants being over-aged cannot be considered for appointment.

8. We have carefully considered the rival contentions of the parties and perused the records.

9. It is trite in law that till the recruitment rules are amended, the same would apply. However, the administrative authority when is directed to act in a particular manner, fairness demands that power vested cannot be abused, as held by the Apex Court in Meerut Development Authority v. Association of Management Studies & another, 2009 (6) SCALE 49. Administrative authority is not beyond the purview of law. The power must be exercised in non-discriminatory manner, as ruled by the Apex Court in Food Corporation of India & others v. Ashis Kumar Ganguli & others, (2009) 7 SCC 734. Administrative instruction should be interpreted in a manner to avoid its contents to be redundant as ruled by the Apex Court in Director, Central Bureau of Investigation & another v. D. P. Singh, (2010) 1 SCC 647. It is trite that earlier in the matter of recruitment what has been promulgated by the DOPT and followed by Delhi Administration in their office memorandum dated

Let a copy of this order be kept in each file. J

(Dr. Veena Chhotray)
Member (A)

(Shanker Raju)
Member (J)

/sunil/