

Chief Justice's Court

Case :- WRIT - A No. - 9117 of 2022

Petitioner :- Union Of India Through Comptroller And Auditor General
And 2 Others

Respondent :- Gagan Srivastava

Counsel for Petitioner :- Rajnish Kumar Rai,Udai Chandani

Counsel for Respondent :- Alok Kumar Dave

Hon'ble Arun Bhansali,Chief Justice

Hon'ble Vikas Budhwar,J.

1. Impugned in the present proceedings at the instance of Union of India through Comptroller and Auditor General of India (In short writ petitioners) is an order dated 02.02.2022 of the Central Administrative Tribunal, Allahabad Bench, Allahabad (In short “Tribunal”) passed in Original Application No.385 of 2016, (Gagan Srivastava Vs. Union of India and 4 others) whereby the original applicant preferred by Gagan Srivastava (In short original applicant) was allowed, the orders dated 22.9.2014 and 12.10.2015 passed by the writ petitioners was set aside and a direction was issued to the writ petitioners to accord promotion of the original applicant from the date it falls due in pursuance to the examination which the original applicant cleared and in accordance with the promotion and the seniority assigned to the employees, who may have been appointed as Auditors on promotion as a sequel to the said examination within a period of six weeks of the receipt of the certified copy of the order.

Facts

2. The case of the original applicant before the Tribunal was that he was initially appointed in Group-D category as (MTS) under sports quota on 29.12.2000 and he was confirmed on 29.12.2002. The original

applicant was promoted on the post of Lower Division Clerk (In short L.D.C.) on 29.12.2009.

3. According to the original applicant, he was required to qualify type test within two years of promotion as L.D.C. The typing test was conducted on 11.01.2011, the original applicant participated in the type test examination and he was qualified, results were declared on 16.3.2011 holding him to be successful in the type test. However the results were cancelled on 31.3.2011 requiring the candidates to appear afresh in the type test which was scheduled on 29.4.2011.

4. A charge sheet under Rule 16 of the CCS (CCA) Rules, 1965 was served upon the original applicant with an allegation that the original applicant had resorted to unfair-means. Departmental enquiry was conducted pursuant where to the Disciplinary Authority proceeded to pass an order dated 17.5.2013 withholding the next three increments in time scale for a three years with cumulative effect and not adversely affecting the pension w.e.f. 1.7.2013. The original applicant preferred an appeal before the Appellate Authority which came to be decided on 15.10.2013 reducing the punishment, while withholding of increments in the time scale for one year without cumulative effect and not adversely affecting him pension w.e.f. 1.7.2013.

5. As per the original applicant an office order no.23 dated 23.1.2014 came to be issued by the writ petitioners for holding departmental examination for promotion on the post of Auditor-14. The original applicant claims to have participated in the said selection and the results came to be published on 27.5.2014 declaring the original applicant to be successful. Though, the original applicant was waiting for a formal order of promotion order however, on 22.9.2014 without issuing any show cause notice, an order came to be passed by Deputy Accountant General (Admn.), Allahabad whereby the result declaring him successful for

promotion on the post of Auditor-14 was held null and void since the original applicant was not eligible as he did not qualify the typing test.

6. Aggrieved against the same the original applicant preferred a representation on 29.9.2015 which came to be rejected on 12.10.2015 by the Principal/Accountant General (G & SSA), Allahabad.

7. Questioning the said order, the original applicant preferred O.A. No.385 of 2016 seeking following reliefs:

“(i) to issue a writ, order or direction in the nature of certiorari quashing the impugned office order dated 22.09.2014 passed by respondent no.3 (Annexure No.A-1 to the compilation no.I) by which a result of departmental examination for promotion to the post of Auditors held in March, 2014 has been declared void in respect of the petitioner as well as this Hon'ble Tribunal may further be pleased to quash the order dated 12.10.2015 (Annexure No.A-2 to the compilation through which the ho.I) representation of the petitioner dated 29.09.2015 has been illegally rejected.

(ii) to issue a writ, order or direction in the nature of mandamus directing the respondents to act upon the result in respect of the petitioner and to promote him on the post of Auditor and to grant seniority as if no such illegal orders would have ever been passed with fixation of pay and the arrears thereof may be directed to be paid within a period as may be fixed by this Hon'ble Tribunal.

(iii) To issue any other relief which this Hon'ble Tribunal may deem fit and proper under the circumstances of the case.

(iv) To award the cost of the application to the applicant.”

8. This Court entertained the present writ petition on 4.7.2022 while passing the following order:-

“Heard Sri Rajnish Kumar Rai, learned counsel for the Union of India-petitioners and Sri A.K. Dave, learned counsel for the respondent.

Admit.

Considering the short point involved in the present case, we feel it appropriate to hear this matter finally on an early date. List this case in the month of October, 2022.

In the meanwhile, operation and effect of the impugned order dated 2.2.2022 shall remain stayed.

The respondent, if so desires, may file counter.”

9. Before the Tribunal, the writ petitioners herein contested the original application while filing a counter affidavit to which a rejoinder affidavit was filed.

10. The original application came up from consideration before the Tribunal on 2.2.2022 and the Tribunal after hearing the parties allowed the original application while setting aside the orders dated 22.9.2014 and 12.10.2015 directing the writ petitioners to accord promotion to the original applicant from the date it falls due and to accord benefits in accordance with the promotion and the seniority assigned to the other employees who may have been appointed as the Auditor on promotion as a sequel to the said examination.

11. Assailing the order of the Tribunal the present original application has been filed.

Argument of the writ petitioners

12. Sri Udai Chandani, learned counsel for the writ petitioners has sought to argue that the order of the Tribunal cannot be sustained even for a single moment inasmuch as the Tribunal has misconstrued the entire controversy and has adopted an incorrect approach. Elaborating the said submission it is submitted that the Tribunal has completely erred in law in failing to appreciate the fact that the original applicant was not qualified for being accorded promotion as Auditor-14 particularly when though he was working on the post of L.D.C. since 29.12.2009 but, he did not clear the typing test which was mandatory requirement

13. Reliance has been placed upon the circular of the Comptroller Auditor General (CAG) dated 1.8.1989 so as to contend that each and every Group-D employee who has been promoted as a clerk is required to clear the type test within a period of two years from the date of the promotion as clerk and in case he or she does not qualify the typing test then he or she shall not be eligible for increments and increments are only

to be granted once the type test stands cleared. Reliance has also been placed upon the Indian Audit and Accounts Department Clerks Recruitment (Amendment) Rules 2001 so as to contend that one of the eligibility criteria for promotion as a clerk is passing of typing test. Attention has also been invited towards the Indian Audit and Accounts Department (Clerks in accounts in Entitlement Offices and Clerks in Audit Offices) recruitment Rules, 2014 so as to further contend that typing test is mandatory. It is also contended that an inter departmental communication also was issued by the Assistant C&AG (N) on 17.6.2014 addressed to Principal Accountant General (G & SSA) Uttar Pradesh, Allahabad whereby it was clearly provided that only those clerks who have passed typing test are only eligible to appear in the departmental examination.

14. In nutshell, the submission is that since the original applicant did not clear the typing test thus he was not eligible to be accorded promotion on the post of Auditor-14. Additionally, it has been argued that merely because the original applicant was allowed to participate in the departmental examination for promotion on the post of Auditor-14 will not be of any relevance particularly when the Recruitment Rules, Circulars as well as the inter departmental communications provide for passing of the type test. Reliance has been placed upon the judgement in **Union of India and others Vs. Indrajeet and others, Writ-A No.61227 of 2009** decided on 10.12.2019 that passing of the type test is a mandatory requirement. It is also contended that the original applicant does not possess an indefeasible right to be accorded promotion as the same is to be subject to compliance of conditions prescribed in the Recruitment Rules, circulars and departmental letters in that regard. It is therefore, prayed that the order impugned in the present proceeding be set aside and the writ petition be allowed in toto.

Arguments of Original Applicant

15. Countering the submissions of the learned counsel for the writ petitioners, Sri A.K. Dave, learned counsel for the original applicant has submitted that the order of the Tribunal needs no interference in the present proceedings. It is submitted that once it is not in dispute that the original applicant has been selected and appointed on the post of Group-D category as (MTS) on 29.12.2000 and he has to his credit of more three years of working experience then by virtue of the office order no.23 dated 23.1.2014 as well as the CAG's Manual of Standing Orders in particular 9.4.3, the Group-D officials as well as Matriculate Clerks in Accounts and Entitlement who have three years of continuous experience are eligible to be considered from promotion against promotion quota.

16. Submission is that even if the original applicant has not cleared the type test it would not be of any relevance particularly when the candidature of the original applicant can also be considered under Group-D category (MTS). It has also been argued that neither the office order dated 23.1.2014 nor the circular of CAG provides for passing of typing test as a eligibility for being considered for promotion as Auditor-14, thus the claim of the original applicant for being accorded promotion cannot be throttled down, therefore, the writ petition be dismissed and the order of Tribunal be confirmed in toto.

17. Before embarking an enquiry into the tenability of the arguments of the rival parties it would be apposite to reproduce the office order no.23 dated 23.1.2014 as well as circular issued by the CAG.

Office Orders/Circulars

Office Order No.23 dated 23.1.2014

"कार्यालय प्रधान महालेखाकार (जी. एण्ड एस. एस. ए.) उत्तर प्रदेश

इलाहाबाद

कार्यालय आदेश -

विषय लेखा परीक्षकों के लिए विभागीय परीक्षा फरवरी - 2014

उपरोक्त विषयक कार्यालय आदेश 255 (सं० प्र०म०ले० (जी. एण्ड एस.एस.ए) / परीक्षा / बी-1 / 2014 / 2831 दिनांक:- 09.01.2014 द्वारा जारी) के कम में अवगत कराना है कि दिनांक 18, 18 तथा 20 फरवरी - 2014 को आयोजित लेखा परीक्षकों हेतु विभागीय परीक्षा में, भारत के नियंत्रक एवं महालेखा परीक्षक की स्थायी आदेशों की पस्तिका के प्रस्तर 9.4.3 के अनुसार, प्रोन्नति कोटा के विरुद्ध प्रोन्नति किये जाने के लिए विचार किये जाने हेतु तीन वर्ष की सत्त सेवा पूरी कर लेने वाले सभी स्नातक लिपिक एवं/ स्नातक एम०टी०एस० / भी लेखापरीक्षक की इस विभागीय परीक्षा में सम्मिलित होने क पात्र है। अतः उपयुक्त श्रेणी के ऐसे सभी कर्मचारी जो 01 फरवरी - 2014 को तीन वर्ष की लगातार सेवा पूर्ण कर लेंगे वे फरवरी 2014 की विभागीय परीक्षा में सम्मिलित हो सकते हैं।

परीक्षा में सम्मिलित होने हेतु इच्छुक उपर्युक्त श्रेणी के कर्मचारियों के आवेदन निर्धारित प्रपत्र में सम्बन्धित शाखाधिकारी की संस्तुति के साथ दिनांक 31.01.2014 तक परीक्षा अनुभाग में प्राप्त हो जाने चाहिये। विलम्ब से प्राप्त एवं अपूर्ण आवेदन पत्रों पर विचार नहीं किया जायेगा ।

वरिष्ठ उपमहालेखाकार / प्रशासन"

CAG Circulars

"9.4.3 Graduate Group 'D' officials or matriculate clerks in Accounts and Entitlement offices and graduate group 'D' officials or graduate clerks in Audit offices with three years continuous service are also eligible to take this departmental examination for Accountants/Auditors for being considered for promotion against the promotion quota."

Analysis

18. We have heard the learned counsel for the parties and perused the record carefully. It is not in dispute that the original applicant was appointed in Group-D category (MTS) under sports quota on 29.12.2000 and confirmed on 29.12.2002. It is also not in dispute that the original applicant came to be promoted as L.D.C. on 29.12.2000.

19. Record reveals that the original applicant appeared in the typing test on 11.1.2011 and he was declared successful on 16.3.2011 however the result came to be cancelled on 31.3.2011. Thereafter a charge sheet under Rule 16 of the CCS (CCA) Rules, 1965 came to be issued with an allegation that the applicant has indulged in unfair-means. The same led to passing of the order dated 17.5.2013 imposing the punishment of

withholding of next three increments in time scale for three years with cumulative effect and not adversely affecting his pension w.e.f. 1.7.2013. The order of the Disciplinary Authority was carried in appeal and thereafter the Appellate Authority passed an order dated 15.10.2013 reducing the punishment by withholding of one increment in the time scale for one year without cumulative effect and not adversely affecting his pension w.e.f. 1.7.2013. Thereafter, an office order dated 23.1.2014 came to be issued by Senior Deputy Accountant General/(Admin) whereby recruitment exercise by way of a departmental examination for promotion to the post of Auditor-14 was scheduled to be held on 18th, 19th, & 20th February, 2014. The eligibility stood prescribed in the office order 23.1.2014 which was as per para 9.4.3 of the CAG circular prescribed that a Graduate Group D Official or a Matriculate Clerk in Accounts/Entitlement having three years of service were made eligible to participate in the departmental examination for Accounts/Auditors for being considered for promotion against promotion quota.

20. The bone of contention between the parties is whether the original applicant could have been denied promotion in the wake of the fact that he did not clear the type test.

21. The contention of the original applicant on one hand is that though the original applicant had not qualified the typing test as a clerk then to his claim for being accorded promotion on the post of Auditor-14 can be considered from the feeding cadre relatable to Group-D category (MTS), however, on the other hand the argument of the learned counsel for the writ petitioners is that since the original applicant had applied for promotion as a clerk, thus, his claim can only be considered provided he clears the type test.

22. Notably, a conjoint reading of the office order and the CAG circular reveals that the criteria for promotion on the post of Auditor-14 is that a

Group-D employee (MTS) or Group-C employee (Clerk) is to be graduate having three years of continuous service. There is nothing on record either in the Recruitment Rules or the circulars/inter departmental communications issued by the writ petitioners whereby it was forbidden that the candidature of the original applicant cannot be considered as a Group D employee (MTS).

23. Admittedly, in the present case, we find that the original applicant has to his credit more than three years of continuous service as a Group D employee (MTS) as he had been working as MTS from 29.12.2000 till 28.12.2009 whereafter he was promoted as L.D.C. Thus, there is no reason so as to deny consideration of the claim of the original applicant for being promoted as Auditor-14 while considering his claim as a MTS.

24. Nonetheless, the office order no. 23 dated 23.1.2024 as well as the CAG circular nowhere provide for acquisition of the qualification of passing of the type test by a clerk. What is more amazing is that in the case of Group-D category (MTS) there is no such requirement of clearing the typing test.

25. So far as the judgement in **Indrajeet (Supra)** is concerned the same would not apply particularly once the said case was of a Group-D employee of Railways and the question which arose in the said case was passing the type test for being accorded regular promotion as a clerk. In the present case at hand the appointment/promotion of the original applicant in Group-C post has not been questioned.

26. A conspectus of the said factual situation clearly leads to the situation whereby the original applicant cannot be denied promotion as an Auditor-14 simply because he is a clerk who has not qualified a type test which is not a mandatory requirement as per the Recruitment Rules or the circulars/inter departmental communications. Even otherwise the promotion of the original applicant as L.D.C. is also not in question and

the original applicant is not asking for any increments, there is no justification to deny promotion to the original applicant on the post of Auditor-14.

27. Viewing the case from all the points of angles, we are of the firm opinion that the Tribunal has not committed any manifest illegality so as to warrant interference in the present proceedings.

28. Resultantly, the writ petition stands **dismissed**. Interim order is vacated.

Order Date :- 4.10.2024

piyush

(Vikas Budhwar, J) (Arun Bhansali, CJ)