

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on : 26.04.2016
Pronounced on : 30.05.2016

+ **W.P.(C) 13/2015**

MANOJ KASHYAP & ORS. Petitioners

Through: Mr Deepak Verma and Mr R.P. Sharma,
Advocates

Versus

UNION OF INDIA & ORS. Respondents

Through: Mr. Kirtiman Singh, CGSC with Mr
Pranav Agrawal and Mr Waize Ali Noor,
Advocates for UOI.
Mr. R.V. Sinha, Advocate for private
respondents.

+ **W.P.(C) 2620/2015**

BIJU P.K. AND ANR. Petitioners

Through: Ms Usha Nandini and Mr Biju P. Raman,
Advocates

Versus

UNION OF INDIA & ORS. Respondents

Through: Mr. Kirtiman Singh, CGSC with Mr
Pranav Agrawal and Mr Waize Ali Noor,
Advocates for UOI.
Mr. R.V. Sinha, Advocate for private
respondents.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J

1. OA No.148/2014 was filed by Assistant Registrars working on ad-hoc basis in the Income-tax Appellate Tribunal, Mumbai (ITAT, Mumbai). OA No.149/2014 was filed by Senior Hindi Translator working at ITAT, Allahabad. The grievance of the applicants in OA No.148/2014 was that by the letter under challenge dated 7th March, 2013 existing vacancies in the post of Assistant Registrar were being filled by way of promotion under the existing rules, namely, the Income-Tax Appellate Tribunal (Class-I and Class-II posts) Recruitment (Amendment) Rules, 1975 ('1975 Rules' for short). The applicants in OA No.148/2014 were originally appointed on the post of Lower Division Clerk and promoted to the post of Upper Division Clerk/ Head Clerk/ Assistants and Superintendents. For convenience, we would in this appeal refer to them as UDCs.

2. To their contrary, the Hindi Translator/ Senior Hindi Translators sought enforcement of appointment to the post of Assistant Registrar, as per the extant rules i.e. 1975 Rules and had filed OA No.149/2014 against the inordinate delay in holding the Departmental Promotional Committee (DPC for short) for consideration for promotion to the post of Assistant Registrar. For the sake of convenience the applicants in OA No.149/2014 have been referred to as Translators.

3. As the issues involved in OA No.148/2014 filed at Mumbai and OA No.149/2014 filed at Allahabad were connected and contradictory reliefs were sought, they were transferred to the Principal Bench of the Tribunal at New Delhi under Section 25 of the Central Administrative Tribunals Act, 1985.

4. By the impugned common order dated 7.11.2014, OA No.148/2014 filed by the UDCs stands allowed and OA No.149/2014 filed by the

Translators has been dismissed. The Tribunal has directed the Union of India and the President of ITAT, to ensure that the proposed amendments to the 1975 Rules, if not carried out already, were carried out as early as possible. Thereafter, the vacancies in the posts of Assistant Registrar would be filled in accordance with the amended Rules as expeditiously as possible. The President, ITAT would allow the UDCs to continue on ad hoc basis at the post of Assistant Registrar till the said posts were filled on regular basis in accordance with the amended Recruitment Rules.

5. The 1975 Rules were notified vide GSR 2326 dated 3rd July, 1975. They have been enacted in exercise of power conferred by the proviso to Article 309 of the Constitution. The relevant portion of the said Rule relating to appointment / promotion to the post of Assistant Registrar reads as under:

Name of post	No. of posts	Classification	Scale of pay	Whether selection post of non-selection post	Age limit for direct recruits	Educational and other qualifications required for direct recruits	Whether age and education qualification prescribed for direct recruits will apply in the case of promotees.
1	2	3	4	5	6	7	8
Assistant Registrar	23	General Central Services (II) Gazetted.	Rs.650-30-740-35-810, EB, -40-1000-Eb-40-1200	Selection	40 years (Relaxable for Government Servant	Essential:- i) Degree in Law of recognized University or equivalent. ii) 3 years administrative experience	NO.

						in a responsible capacity in a government or Semi government organization or commercial concerned of repute. (Qualifications relaxable at commission's discretion in case of a candidate otherwise well qualified) <u>Desirable</u> Knowledge of government rules and regulations.	
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Period of probation if any	Method of Recruitment whether by direct recruitment or by promotion or by deputation, transfer and percentage of the vacancies to be filled by	In case of recruitment by promotion/deputation/transfer, grades from which promotion/deputation/transfer to be made.	If DPC exists, what is its composition?	Circumstances in which the U.P.S.C. is to be consulted in making recruitment.
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	various methods.			
9	10	11	12	13
2 years	50% by direct recruitment and 50% by promotion failing which by direct recruitment.	Superintendent with three years regular service in the grade failing which 6 years regular combined service in the grades of Superintendent and Asstt. Superintendent failing which Assistant Superintendent and translators (Hindi/English) with 6 years regular service in the respective grades, failing which Assistant Superintendent with 10 years regular combined service in the grades of Assistant Superintendent Head Clerk and Senior Stenographer failing which Head Clerk and Sr. Stenographer with 10 years regular service in the respective grade.	Class II Departmental Promotion Committee	Not Applicable.

6. Under the 1975 Rules, the post of the Assistant Registrar is to be filled up 50% by direct recruitment and 50% by promotion, failing which by direct recruitment. We are concerned with the posts to be filled up by promotion. The essential qualifications prescribed in the case of direct recruits is a degree in law from a recognized university or equivalent and three years' administrative experience in a government or semi-

government organization or commercial concern of repute. Column 8 of the 1975 Rules, however, states that educational qualifications prescribed for direct recruits will not apply in the case of promotees. Qualifications are relaxable at the Commission's, i.e. UPSC's, discretion, in case of a candidate qualifying otherwise.

7. For promotion to the post of Assistant Registrar, a hierarchy has been prescribed. Superintendents with three years regular service in the grade are first in the hierarchy, and have to be considered first. Failing which, Superintendents with six years combined regular service in the grades of Superintendents and Assistant Superintendents have to be considered. Failing which, Assistant Superintendents and Translators (Hindi & English) with six years regular service in the respective grades have to be considered at the third stage. Failing which, Assistant Superintendents with ten years regular combined service in the grades of Assistant Superintendents, Head Clerk, Senior Stenographers have to be considered at the fourth stage. Failing which, at the fifth stage, Head Clerk and Senior Stenographer with ten years regular service in the respective grade have to be considered. The aforesaid stage-wise hierarchical system is mandatory and has to be followed under the 1975 Rules. The words 'failing which' are significant and postulate that only when suitable, eligible candidates are not available, those placed in the next Category in the hierarchy would be considered. Simultaneous consideration of candidates in the lower hierarchy when employees are available in the upper Category is not envisaged.

8. The translators, as noticed above, would fall in the third Category and would be eligible in case the promotional post of Assistant Registrar cannot be filled for lack of suitable or eligible candidates in the first or

second Category.

9. Recruitment for the post of ‘Translator’ in the ITAT was governed by the Income Tax Appellate Tribunal Translators (Hindi/English) Recruitment Rules, 1972. These rules prescribed a minimum educational qualification of a Law Degree from a recognized University with Hindi as a subject at the degree level. However, as it was proving difficult to find law graduates to fill these posts, the Ministry of Law and Justice, Department of Legal Affairs amended these rules vide notification dated 13.09.2000 and the requirement of a degree of law was omitted. However, the 1975 Rules remained un-amended and translators were not removed from the list of posts eligible for promotion to the post of Assistant Registrar.

10. In 2008, a three member ‘Committee’ was formed by the ITAT on the subject of holding a DPC (for short DPC) meeting for filling up the vacancies of Assistant Registrar meant for promotion quota and, after due deliberations, the committee proposed that *“as far as appointments under the promotion quota are concerned, the vacancies may be filled up under the present Recruitment Rules. The vacancies have arisen in various financial years from 2003-04 to 2008-09. Therefore, these promotions will have to be made on the basis of existing Recruitment rules and a separate DPC for each year will have to be held....”*

11. The petitioners submit that this proposal was accepted and that a decision was taken to convene the DPC for the post of Assistant Registrar as per the 1975 Rules; that Respondent No. 2/ITAT sent a letter dated 03.03.2010 to Respondent No. 1/ Ministry of Law & Justice to this effect. In reply, the Ministry sought information from the ITAT, for conducting of the DPC. Instead of furnishing the information sought, ITAT sent a

proposal to Respondent No.1 for the amendment of the 1975 Rules to the extent that the post of Hindi translators is removed as a feeder Category for promotion to the post of Assistant Registrar on the ground that the requirement of a Law degree was no longer applicable for them and that other avenues of promotion had been made available to them. However, a decision was taken resulting in the petitioners filling the vacant posts of Assistant Registrars on an ad-hoc basis. Later, after consultation with Respondent No. 3/ Department of Personnel & Training, Respondent No. 1/Ministry of Law & Justice conveyed its decision to the ITAT vide letter dated 07.03.2013 that all existing vacancies for the post of Assistant Registrar would be filled up through promotion under the provisions of the 1975 Rules. The relevant portion of the letter dated 07.03.2013 has been reproduced hereunder:

2. This Department had also requested DoPT to furnish their considered views as to whether any amendments to the Recruitment Rules shall apply retrospectively or prospectively. Department of Personnel & Training have stated that any amendments in Recruitment Rules are given effect only prospectively, except in rare cases. Therefore, the existing vacancies of Assistant Registrar will be filled up through promotion under the existing provisions of the Recruitment Rules.

3. ITAT is accordingly requested to furnish DPC proposal for promotion to the post of Assistant Registrar, considering the following eligibility criteria, as mentioned in column No. 11 of the Income Tax Appellate Tribunal (Class I and Class II posts) Recruitment Rules, 1975:-

- (i) Superintendents with 3 years regular service in the grade; failing which*
- (ii) Superintendents with 6 years regular combined service in the grades of Superintendent and Assistant Superintendent*

*(Now re-designated as Office Superintendent); failing which
(iii) Assistant Superintendent and translators (Hindi/English) [Now re-designated as Senior Hindi Translators] with 6 years regular service in the respective grades; failing which
(iv) Assistant Superintendent with 10 years regular combined service in the grades of Assistant Superintendent, Head Clerk and Senior Stenographer; failing which
(v) Head Clerk with 10 years regular service.*

4. ITAT is also requested to furnish Draft Recruitment Rules suggesting necessary amendments in the Income Tax Appellate Tribunal (Class I and Class II posts) Recruitment Rules, 1975, as per the instruction issued after 6th Pay Commission by the DoPT vide its O.M. dated 24.03.2009.”

12. The Court would note that in their joint reply to the OA, the official respondents have admitted that as per the un-amended 1975 Rules, the petitioners would be entitled to be appointed as Assistant Registrars as has already been advised to them by the Ministry of Law & Justice vide order dated 07.03.2013. The relevant portion of the counter-reply filed on behalf of respondent nos.1 and 2 viz. Ministry of Law and Justice and the ITAT reads as under:

“...Since existing Recruitment Rules provide Hindi Translators to be considered for promotion, the issue of double channel of promotion is not true as the Recruitment Rules for the promotion to the post of Hindi Officer/Assistant Director (O.L.) is still not finalized by the Ministry and therefore, this ground of the applicant has no force.”

13. The aforesaid conclusion was arrived at by the Ministry of Law and Justice while examining the DPC proposal to consider promotions to the post of Assistant Registrar in the ITAT which is annexed at page 206 of the paper book. It reads as under:

“.... Sub: DPC proposal to consider promotion to the post of Assistant Registrar in the Income Tax Appellate Tribunal on promotion basis – reg.

Under consideration is a proposal received from the Income Tax Appellate Tribunal for convening the meeting of DPC to consider promotion to the posts of Assistant Registrars in the ITAT against promotion quota. The same may kindly be perused at Page 151-155/ Corrs. ITAT was also requested to review the ACRs of the eligible officers in terms of DoPT's OM No. 21011/1/2010-Estt.A dated 13th April, 2010 (page 52/Corrs.), the reply to which have been received vide letter dated 17.08.2010 (page 55/Corr.).

2. There are at present 38 sanctioned posts of Assistant Registrars in the ITAT. As per the Income Tax Appellate Tribunal (Class I and Class II posts) Recruitment Rules, 1975 (Page 11-18/Corrs.), 50% of the posts of Assistant Registrars are to be filled up by direct recruitment and 50% by promotion failing which by direct recruitment.

3. Total sanctioned strength of the cadre of Assistant Registrars in the ITAT is 38, divided between Direct Recruits and Promotees in 50% share each. Thus promotion quota is 19 posts, which has further been sub-divided community wise as under:

Unreserved – 16 (sixteen)

Schedule Caste – 02 (Two)

Schedule Tribe – 01 (One)

Total – 19 (Nineteen)

4. As per the Recruitment Rules for the post of Assistant Registrar, ITAT, the eligibility criteria for promotion to the post of Assistant Registrar is as under:

(i) Superintendents with 3 years regular service in the grade; failing which

(ii) Superintendents with 5 years regular combined service in the grades of Superintendent and Assistant Superintendent (now re-designated as Office Superintendent); failing which

(iii) Assistant Superintendent and translators (Hindi/English) [Now re-designated as Senior Hindi Translators] with 6 years regular service in the respective grades; failing which

(iv) Assistant Superintendent with 10 years regular combined service in the grades of Assistant Superintendent, Head Clerk and Senior Stenographer; failing which

(v) Head Clerk with 10 years regular service.

The officers in the lower grades are required to be considered only which the officers in the higher grade are not suitable/ eligible for promotion to the post...”

The Ministry took into account that:

“...7. The zone of consideration for the available 12 vacancies is 24. The following officials are now eligible for promotion to the post of Assistant Registrar as per the various eligibility criteria prescribed in the Recruitment Rules for this post notified on 31st July, 1975 and may be reported to the DPC as under:

Category	Eligibility Criteria as per Recruitment Rules	Name of Official	Date when became eligible for promotion
Category I	Superintendents with 3 years regular service in the grade	None	N.A.
Category II	Superintendents with 6 years regular combined service in the grades of Superintendent and Assistant Superintendent: (Now re-designated as Office Superintendent)	None	N.A.
Category III	Assistant Superintendent and Translators (Hindi/English) [Now re-designated as Senior Hindi Translators] with 6 years regular service in the respective grades	1. Kumari Rajni, P.G. Sr. Hindi Translator	23.08.2007
		2. Manoj Kashyap, Sr. Hindi Translator	1.10.2007
		3. Biju P.K. (OBC), Sr. Hindi Translator	11.10.2007
		4. Anupama Verma (SC) Sr. Hindi Translator	03.12.2007
		5. Manish Kumar Bhoi (OBC), Sr. Hindi Translator	27.12.2007
		6. Madhuraj Singh Narwaria, Sr. Hindi Translator	11.09.2009
Category 4	Assistant Superintendent with 10 years regular combined service in the grades of Assistant Superintendent, Head Clerk and Senior Stenographer; failing which	1. S.K. Rai, Supdt.	02.03.2008
		2. G.B. Dhuri, Supdt.	09.05.2010
		3. D. K. Srivastava, Supdt.	19.06.2010

		4. A.K. Sharma, Office Superintendent	19.06.2010
		5. M.S. Pal, Office Superintendent	23.07.2011
Category 5	Head Clerk with 10 years regular service	None	NA

No other candidate is eligible (as on 01.11.2011) as the names of officials retired/ having below benchmark grading, even after review, have been excluded.

8. The ITAT has proposed to exclude Senior Hindi Translators from consideration on the plea that Recruitment Rules for the post of Assistant Registrar are proposed to revised. This is not possible at this stage as all Recruitment Rules are prospective only and vacancies occurred are to be filled with existing Recruitment Rules, in which no change has been approved/ notified so far.....”

14. The proposal for filling up the posts shows that out of the five feeder cadres, except for categories 1 & 2, the other three categories were to be considered sequentially in the DPC exercise. In categories 1 and 2 no one was eligible for consideration. Strangely, the candidates in Category-III were not proposed to be considered although they had a higher educational degree - of graduation, whereas those in Category - IV were proposed to be considered although they were not graduates but only matriculates. The minimum recruitment qualification for Head Clerk, Senior Stenographer, Assistant Superintendent is only 10 years regular combined service in the grades of Assistant Superintendent, Head Clerk and Senior Stenographer whereas qualification service for Hindi Translator is 6 years regular service in that grade although they

have a much higher educational qualification, i.e., of graduation. It is apparent that there was an emergent need to man the posts of Assistant Registrars. Therefore, it would be in the interest of the ITAT to appoint from the eligible persons to the posts of Assistant Registrars. Seeking to exclude Senior Hindi Translators simply because there was a proposal pending for many years to amend the Rules cannot come in the way of the Senior Hindi Translators being considered by the DPC for promotion to the post of Assistant Registrar. The right of the respondents not to fill up the posts is unexceptionable. However, to fill the posts by ad hoc appointments from persons in Category IV, while declining the same to those Category III is contrary to the mandate of the extant Rules which mandate that Category IV employees would be considered only if a Category III employee cannot be promoted. Hence breach of the prescribed hierarchy and sequence for consideration for promotion is not only illegal and arbitrary, it is also discriminatory and falls foul of Articles 14 and 16 of the Constitution. Therefore, whenever the said proposed amendments are notified, they would be, applicable only from the date of the notification, unless the new rules are retrospective. Meanwhile, the vacancies which have arisen for the year 2003 will have to be filled up as per the extant rules. Apropos the currently vacant posts of Assistant Registrars, starting from the year 2003 onwards they would need to consider all eligible candidates under the 1975 Rules, including Senior Hindi Translators. Indeed, in the note dated 01.11.2011 it has been recorded as under:

“The ITAT has proposed to exclude Senior Hindi Translators from consideration on the plea that Recruitment Rules for the post of Assistant Registrar are proposed to revised.

This is not possible at this stage as all Recruitment Rules are prospective only and vacancies occurred are to be filled with existing Recruitment Rules, in which no change has been approved/notified so far.”

15. A reading of paragraph 14 reflects and it is accepted that no one from Category I and II was eligible for being considered for the post of Assistant Registrar under the 1975 Rules. Interestingly, paragraph 11 records that Translators (Hindi / English) with six years' regular service in the regular grade were eligible. Similarly, about five persons in Category IV i.e. Assistant Superintendents with ten years regular combined service in the grades of Assistant Superintendents, Head Clerk and Senior Stenographers were also eligible. However, Category IV employees would only be considered in case Category III employees are not selected and appointed as Assistant Registrar i.e. even after such consideration their remain some vacancies.

16. The question of filling up the post of Assistant Registrar is different from filling up posts from Category IV employees on an ad hoc basis after by-passing and ignoring the claim of Category III employees, who are eligible for consideration. Any attempt to do so, would fall foul of the Statutory Rules i.e. 1975 Rules and would be contrary to Articles 14 and 16 of the Constitution. It is apparent that there was an emergent and necessary need to man the post of Assistant Registrar, but the official respondents acted in an illegal manner by making ad-hoc appointments of Category IV employees who were not eligible for consideration for promotion, as there were Category III employees with six years regular service available in the grade. The official respondent had the option not to fill up the post, though such action could also be challenged, but they

cannot fill up the posts contrary to the extant rules in the hope that the 1975 Rules would undergo an amendment.

17. Normally, amendments to Recruitment Rules are not retrospective. Vacant posts prior to the amendment would be governed by the earlier rules and posts that fall vacant post the amendment would be governed by the new rules. When we apply the said principle to the vacant posts of Assistant Registrar starting from the year 2003, we cannot ignore the claim of the eligible Translators to be considered under the 1975 Rules. Indeed this position in law was understood as per the internal note dated 1st November, 2011 prepared by Department of Legal Affairs, Ministry of Law and Justice.

18. We, therefore, have no hesitation in issuing the writ of certiorari and setting aside the direction of the Tribunal to the official respondents to first amend the Rules and thereafter fill-up the posts of Assistant Registrars as per the amended Rules. The facts of the present case show an unusual and peculiar situation. The Translators in Category-III, who were eligible for consideration for promotion under 50% promotion quota, were ignored and regular DPCs were not convened. At the same time, the official respondents were confronted with a situation where they required the posts of Assistant Registrar to be occupied, and had given *ad hoc* promotions to those in Category-IV, obviously without holding of the regular DPCs or following the procedure in the recruitment rules. In fact, those in Category-IV could not have been considered and were ineligible for promotion or even *ad hoc* promotion as long as there were eligible candidates in Category-III, i.e., Translators. In this situation, the argument that the official respondents were entitled and cannot be directed to not fill-up vacant posts of Assistant Registrar under the 50% promotion quota

cannot be countenanced and has to be rejected. The conduct of the official respondents beyond doubt and debate establishes that the posts of Assistant Registrars were required to be filled-up, as indeed they were by ineligible candidates, *albeit* on an *ad hoc* basis. The right to not fill-up vacant posts, which we believe is not an absolute and unquestionable right, would not curtail and prevent us from passing this order in the aforesaid situation. In the given facts, we deem it proper and appropriate to issue the writ of mandamus and directions to the official respondents to consider the eligible Translators including Senior Hindi Translators for promotion to the post of Assistant Registrar, by holding a DPC in accordance with law. The said DPC will fill-up the posts of Assistant Registrar as per the extant recruitment rules, i.e., 1975 Rules. The year-wise vacancies will be ascertained and those eligible and within the zone of consideration will be considered as per the extant 1975 Rules.

19. As the promotions have not taken place in accordance with law since 2003 onwards, we deem it appropriate to direct that regular DPC be convened within a period of six months from the date of receipt of a copy of this order by the official respondents.

20. With the aforesaid observations and directions, the present writ petitions are disposed-off. In the facts of the case, there will be no order as to costs.

NAJMI WAZIRI, J

SANJIV KHANNA, J

MAY 30, 2016