

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.08.2018

CORAM :

The Hon'ble Mrs.V.K.TAHILRAMANI, CHIEF JUSTICE

AND

The Hon'ble Mr.JUSTICE M.DURAI SWAMY

W.P.No.44361 of 2016
and W.M.P.No.38239 of 2016

S.Santhi .. Petitioner

-vs-

- 1.Union of India,
rep. by its Secretary,
Dept. of Personnel & Training,
Ministry of Personnel, Public
Grievances & Pension, North Block,
New Delhi-1.
 - 2.The Central Administrative Tribunal,
Principal Bench, By its Principal Registrar,
61/35, Copernicus Marg, New Delhi-1.
 - 3.The Central Administrative Tribunal,
Chennai Bench, by its Registrar,
Madras High Court Buildings,
Chennai-104.
- .. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorarified Mandamus to call for the records of the 3rd respondent Tribunal in O.A.No.480 of 2014 dated 22.09.2015 and the order in R.A.No.24/2015 dated 22.06.2016 and quash the same and consequently direct the 2nd respondent to restore the seniority of the petitioner as it stood originally with all attendant and consequential benefits.

For Petitioner : Mr.J.Srinivasa Mohan

For Respondents : Mr.V.Balasubramanian
Spl. Panel Counsel for RR-1 and 2
: R3 - Tribunal

* * * * *

O R D E R

(Order of the Court was made by The Hon'ble Chief Justice)

This petition has been filed by the petitioner against the order of the Central Administrative Tribunal, Chennai Bench, dated 22.09.2015 passed in O.A.480 of 2014 preferred by the petitioner. The said OA was preferred by the petitioner in relation to her seniority. In the said OA the petitioner had challenged O.M.No.PB/1/1/2011-Estt.II dated 17.09.2013 of the second respondent, by which she was informed that her seniority as UDC has been correctly assigned amongst similarly situated persons, keeping in view the relaxation of educational qualification involved in her case. By the impugned order, the said OA came to be dismissed. The Review Application preferred by the petitioner as against the said order, i.e. in R.A.No.24 of 2015, also came to be dismissed by order dated 22.06.2016, which is also impugned in this writ petition.

2.The petitioner was an LDC with Armed Forces Head Quarters (in short 'AFHQ') in the Ministry of Defence in the year 1983. She came on deputation to the Central Administrative Tribunal, Chennai Bench, as LDC in the year 1985. Following the proforma promotion given to her in her parent department in 1988, she was continued on deputation in Central Administrative Tribunal, Chennai Bench, as UDC from 19.02.1988. She was absorbed as UDC with effect from 01.11.1989 and was promoted as Assistant on regular basis with effect from 01.01.1999.

3.The case of the petitioner is that the rank obtained by her in SSC at the time of initial appointment determined the seniority in her parent department. She, along with some other persons from the same department, had joined the Central Administrative Tribunal, Chennai Bench, on deputation followed by absorption in terms of Rule 5 of the Central Administrative Tribunal (Group 'B' & 'C' Miscellaneous Posts) Recruitment Rules, 1989, (hereinafter referred to as 'Recruitment Rules'). According to the petitioner, the inter se seniority of persons from the same source could not be disturbed, however, the first respondent had given seniority to others from her parent department and who were holding similar posts and pushed her name down in the gradation list on the ground that she did not possess the requisite educational qualification for UDC and her absorption was in relaxation of the Recruitment Rules.

4.Learned counsel for the petitioner has invited the attention of this Court to Rule 5 of the Recruitment Rules, which is reproduced as under:

"5.Absorption/regularization of existing employees:

(1)Notwithstanding anything contained in the provisions of these rules, the persons holding the posts of Court Officers/Section Officers, Hindi Translators, Assistant, Junior Librarian, Caretaker, Upper Division/Receptionist/Store-Keeper and Lower Division Clerk on the date of commencement of the rules either on transfer or on deputation basis or as the case may be, on direct recruitment basis and who fulfill the qualifications and experience laid down in these rules and who are considered suitable by Departmental Promotion Committee shall be eligible for absorption/regularization in the respective grade subject to condition that such persons exercise their option for the absorption and that their parent Department do not have any objection to their being absorbed in the Tribunal.

(2)The seniority of officers mentioned in sub-rule(1) shall be determined with reference to the dates of their regular appointment to the posts concerned: Provided that the seniority of officers recruited from the same source and in the posts held by in the parent Department shall not be disturbed."

The learned counsel for the petitioner more specifically placed reliance on Rule 5 (2) of the Recruitment Rules, which states that seniority of officers recruited from same source and posts held in parent department shall not be disturbed. It was pointed out that the petitioner was already an UDC in the service of the second respondent-Central Administrative Tribunal, Principal Bench on the date of commencement of the Recruitment Rules. The seniority of officers absorbed was, therefore, to be determined with reference to regular appointment to the posts concerned.

5.Mr.V.Balasubramanian, learned Special Panel Counsel appearing for respondents 1 and 2, submitted that the educational qualification prescribed for the post of UDC is

a Degree and the petitioner had been absorbed in the service of the Central Administrative Tribunal, Chennai Bench, in relaxation of the educational qualification, hence the petitioner could not be given seniority over those who had qualification of degree, even though those persons were from her parent department. In response, learned counsel for the petitioner claimed that the petitioner holds a Diploma in Commercial Practice, which is equivalent to a Degree. She could, therefore, not be regarded as a person absorbed in service of the Central Administrative Tribunal, Chennai Bench, in relaxation of the Recruitment Rules. As far as this contention is concerned, Mr. Balasubramanian submitted that possession of a Diploma could not be considered equivalent to a Degree.

6. Though the petitioner had contended that the State Board of Technical Education and Training of Tamil Nadu had clearly spelt out that Diploma in Commercial Practice awarded by them was an "alternate qualification" for direct recruitment to the post of Junior Assistants in Tamil Nadu Secretariat Service and to the post of Assistant in Board of Revenue in Tamil Nadu Ministerial Services, however, a Diploma being an 'alternate qualification' does not make it equivalent to a Degree. This is more so in view of the fact that the claim of the petitioner that Diploma in Commercial Practice is equivalent to a Degree is not supported by any documentary evidence. There is no declaration by any competent authority that a Diploma in Commercial Practices is equivalent to a Degree. As a matter of fact, the clarification from the Directorate of Technical Education is qualified by the words "the Diploma is not equivalent to a Degree". This reinforces that the two are not equivalent. Therefore, the claim of the petitioner that she was not absorbed in relaxation of the requisite qualification cannot be accepted.

7. The petitioner's seniority had to be refixed in the year 2010, as one Smt. A. Thomeena, Section Officer, at Central Administrative Tribunal, Bangalore Bench, had in her representation pointed out that the petitioner was her junior in AFHQ-Clerical Service and that she did not have the necessary educational qualification for being absorbed as UDC as on 01.11.1989. The petitioner was, therefore, issued with a notice and granted an opportunity to show cause why she should not be assigned seniority in the grade of UDC at an appropriate place along with other officials who were absorbed in relaxation of the Recruitment Rules. After considering the reply of the petitioner, the second respondent-Central Administrative Tribunal, Principal Bench, assigned her the seniority that was allowed to other persons similarly placed among those who were absorbed with

effect from 01.11.1989. We may also make a mention that a revised final seniority list was issued in terms of the decision of the Central Administrative Tribunal, Ahmedabad Bench, in D.J.Panchal vs. Union of India & Ors., reported in [2006 (1) SLJ 130 CAT].

8.The Tribunal, in the case of D.J.Panchal, supra, had examined the issue of seniority threadbare in the light of various rulings of the Supreme Court. In D.J.Panchal's case, supra, it was held that persons who were appointed/absorbed in relaxation of rules cannot have any right of seniority over those who had been appointed in fulfillment of the requisite qualification. All persons who were appointed on regular basis would, therefore, rank above those who were appointed in relaxation of the rules. The provision that the inter se seniority of persons from the same source shall not be disturbed in the process of such absorption would only be applicable to persons from the same stream, i.e., regularly appointed or appointed in relaxation of rules. Thus, the proviso to Sub-Rule (2) of Rule 5 would not help the petitioner in any manner. In our opinion, persons appointed in relaxation of the rules cannot claim advantage over those regularly appointed on the ground of length of service or date of appointment to a post in the parent cadre. Thus, as regards the issue regarding the manner of application of provision of Rule 5 (2) to the persons appointed/ absorbed at the same time is with regard to the persons who fulfill the qualification and experience as laid down in the Recruitment Rules.

9.It is seen that the second respondent has made a classification on the basis of persons who are absorbed in fulfillment of requisite qualification and experience and those who are absorbed in relaxation of the said Rules. This cannot be said to be an unreasonable or arbitrary classification. In view of this fact, the grievance that some persons from AFHQ, New Delhi, who were her juniors, have been placed senior to her in Central Administrative Tribunal as per the revised draft seniority list as on 01.01.1992 and thereafter, holds no ground, because they were placed senior to her in Central Administrative Tribunal in view of the fact that they held a Degree and the petitioner did not hold a Degree and had only qualification of SSC and Diploma in Commercial Practices.

10.It is pertinent to note that it is not the contention of the petitioner that any person absorbed/appointed in a subsequent year in fulfillment of the qualification or otherwise has been granted the higher seniority over her. It is only those who were absorbed at

the same time as the petitioner who have been placed above her based on the aforesaid classification. No doubt, the learned counsel for the petitioner placed reliance on the decision of the Supreme Court in *Rajkishore Vishwakarma & Ors. vs. Union of India & Ors.*, reported in (1997) 11 SCC 619, however, the facts in the said case being entirely different from that of the present case, the said decision would be of no help to the petitioner.

11.The learned counsel for the petitioner thereafter submitted that the petitioner was not aware of the fact that she had been absorbed in relaxation of educational qualification and she could be put to disadvantage after several years of service in the Central Administrative Tribunal, Chennai Bench, by disturbing her seniority retrospectively. Thus, it was submitted that had she been informed at the relevant time of the fact that she was being absorbed in relaxation of the requisite educational qualification, which would place her below those who possess the necessary educational qualification, she would have made an informed choice to go back to her parent cadre where she had already been granted proforma promotion.

12.As far as the above contention is concerned, the fact remains that the Recruitment Rules clearly require a Degree as an essential qualification for appointment as UDC. The petitioner cannot be heard to say that she was unaware of the Recruitment Rules. Even if her seniority had initially been fixed without any discrimination in relation to educational qualification, it was inevitable that the matter would be agitated at some stage and she should have kept this in mind while consenting to be absorbed in the services of the Central Administrative Tribunal at Chennai Bench. Thus, this contention also has no merit.

13.The Tribunal has considered all the contentions raised by the petitioner and in view of the facts of this case, it cannot be said that the order impugned suffers from any infirmity or illegality and thus, warrants no interference of this Court.

The writ petition is, accordingly, dismissed. No costs. Consequently, W.M.P.No.38239 of 2016 is also dismissed.

Sd/-
Assistant Registrar(CS iv)

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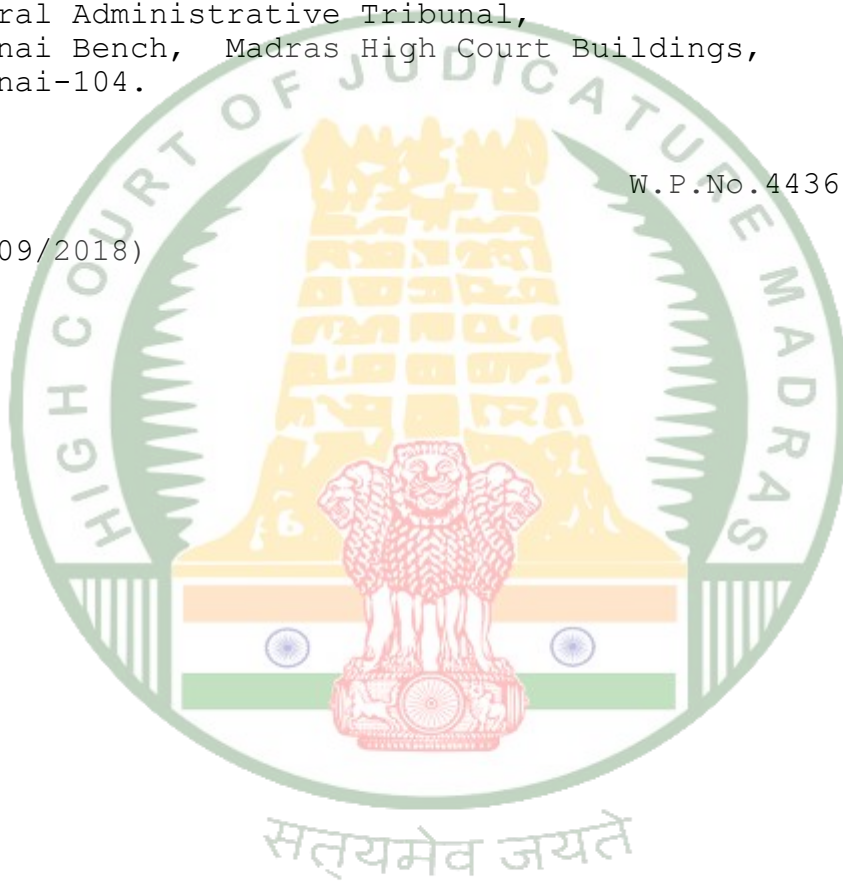
Sub Assistant Registrar

To

- 1.The Secretary to Govt. of India,
Dept. of Personnel & Training,
Ministry of Personnel, Public
Grievances & Pension, North Block,
New Delhi-1.
- 2.The Principal Registrar,
Central Administrative Tribunal,
Principal Bench, 61/35, Copernicus Marg,
New Delhi-1.
- 3.The Registrar,
Central Administrative Tribunal,
Chennai Bench, Madras High Court Buildings,
Chennai-104.

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ASK(18/09/2018)



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