

**(2018) 05 CAT CK 0068**

**In the Central Administrative Tribunal**

**Case No : Original Application No. 3111 Of 2017**

Brahmprakash Sharma

APPELLANT

Vs

Union of India and others

RESPONDENT

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**Date of Decision : 16-05-2018**

**Acts Referred:**

Administrative Tribunals Act, 1985 — Section 19  
Constitution Of India, 1950 — Article 14, 16

**Citation : (2018) 05 CAT CK 0068**

**Hon'ble Judges :** Raj Vir Sharma, J; Praveen Mahajan, Member (A)

**Bench :** Division Bench

**Advocate :** Hanu Bhaskar

**Final Decision :** Dismissed

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## **Judgement**

Raj Vir Sharma, J

1. This Original Application under Section 19 of the Administrative Tribunals Act, 1985, was filed by the applicant on 6.9.2017 seeking the following reliefs:

"" (I) To direct the respondents to consider 01.08.2014 as the cutoff date in CGLE 2014 for reckoning age & educational qualification of the applicant.

(II) To award all consequential benefits to the applicant.

(III) To award exemplary cost on the respondents for causing undue harassment.

(IV) To pass any further relief or reliefs as this Hon"ble Tribunal may deem fit and proper in the facts and circumstances of the case."

2. Resisting the O.A., the respondents have filed a counter reply verified by Mr.S.C.Kashyap, Under Secretary, Staff Selection Commission (respondent nos. 1 and 2). The applicant has filed a rejoinder reply refuting the stand taken by the respondents in their counter reply.

3. We have carefully perused the records and have heard the applicant in

person and Mr.Hanu Bhaskar, learned counsel appearing for the respondents.

4. Brief facts of the case giving rise to the present O.A., which are relevant for the purpose of deciding the controversy and are not disputed by either side, are as follows:

4.1 The notice of Combined Graduate Level Examination, 2014 (hereinafter referred to as "CGLE-2014"), issued by the respondent-Staff Selection Commission (hereinafter referred to as "SSC"), was published in the Employment News/Rozgar Samachar, dated 18.1.2014, inviting applications from eligible persons for recruitment to different posts in various Ministries/ Departments/ Organizations. In the notice of CGLE-2014, the closing date for receipt of applications was mentioned as 14.2.2014, and the dates for Tier I examination were mentioned as 27.4.2014 and 4.5.2014 and that of Tier II Examination were mentioned as 30.8.2014 (Paper III) and 31.8.2014 (Papers I and II). Paragraph 6 of the notice of CGLE-2014 stipulated that the candidates must possess the essential qualifications "as on 1st January, 2014".

4.2 The applicant responded to the notice of CGLE-2014 and applied as an UR candidate for selection and recruitment, by 14.2.2014, i.e., the closing date for receipt of applications. He acquired the essential qualification, i.e., B.A. Degree on 5.3.2014. On the basis of Admit Card and intimation received from the respondent-SSC, he appeared at the recruitment examination and interview. Based on the final result of CGLE-2014, the respondent-SSC selected the applicant for the post of Inspector (Examiner) under Post Code M and nominated him to the Central Board of Excise & Customs, New Delhi. Physical Test, Medical Test, and Document Verification were conducted by the office of Principal Commissioner of Customs (General), Mumbai, under the Central Board of Excise & Customs, on and from 10.2.2016 and 12.2.2016. Thereafter, he came to know over phone from the office of Principal Commissioner of Customs (General), Mumbai, that he did not acquire the essential qualification on or before 1.1.2014 as per the notice of CGLE-2014 issued by the respondent-SSC.

4.3 Thereafter, the applicant made various representations requesting the respondents and other authorities to reckon "1.8.2014", instead of 1.1.2014, as the cut-off date for reckoning the essential qualification prescribed for the CGLE-2014 and, accordingly, to give him appointment on the post of Inspector (Examiner), for which he was duly selected and nominated by the respondent-SSC. There being no response, the applicant filed the present O.A. seeking the reliefs as aforesaid.

5. In the above backdrop, it has been contended by the applicant that in terms of the DoP&T's O.M. No.AB.14017/70/87-Estt.(RR), dated 14.7.1988, the respondent-SSC ought to have fixed "1.8.2014" (instead of 1.1.2014) as the crucial/cut-off date for reckoning the essential qualifications of candidates of CGLE-2014. The cut-off date "1.1.2014" for reckoning the essential qualifications of candidates fixed by the respondent-SSC in the notice of CGLE-2014, being in

clear violation of the DoP&T's O.M. dated 14.7.1988(ibid), was bad and illegal and hence liable to be changed to and/or considered as "1.8.2014". Having acquired the essential qualification by 1.8.2014, he was entitled to be appointed to the post of Inspector (Examiner) under CBEC, for which he was selected and nominated by the respondent-SSC. It has also been contended by the applicant that the Recruitment Rules for the post of Inspector (Examiner) do not lay down any cut-off date for reckoning the essential qualification of candidates for selection and appointment to the said post. As he has acquired the essential qualification and has been selected and nominated for appointment to the post of Inspector (Examiner), the respondent-CBEC has acted arbitrarily and illegally in not issuing the offer of appointment to him. Therefore, appropriate direction should be issued by the Tribunal to the respondents to treat "1.8.2014" as the cut-off date in CGLE 2014 for reckoning age and educational qualification of the applicant and to issue him offer of appointment accordingly.

6. Per contra, it has been contended by Mr.Hanu Bhaskar, learned counsel appearing for the respondents, that the terms and conditions of the notice of CGLE-2014 are sacrosanct and binding on all concerned, and that when, in terms of the stipulation contained in the notice of CGLE-2014, the applicant has been found as not possessing the essential qualification as on the cut-off date, i.e., 1.1.2014, there is no infirmity or illegality in the decision taken by the respondent-CBEC not to issue offer of appointment to the applicant. It has also been submitted by Mr.Hanu Bhaskar that the admission of the applicant in the recruitment examination, and selection and nomination made by the respondent-SSC in favour of the applicant were provisional and subject to his satisfying the eligibility conditions as stipulated in the notice of CGLE-2014. Having accepted the terms and conditions of the notice of CGLE-2014, including the cut-off date "1.1.2014" for reckoning essential qualification, the applicant cannot be allowed to challenge the fixation of the said cut-off date or to ask for a direction from this Tribunal to the respondents to treat "1.8.2014" as the cut-off date for reckoning essential qualification in his case. It has also been contended by Mr.Hanu Bhaskar that reliance of the applicant on the DoP&T's OM dated 14.7.1988(ibid) is wholly misplaced, inasmuch as it has dealt with the subject of crucial date for determining age limits of candidates for competitive examinations conducted in parts by UPSC/SSC and not with the subject of deciding the crucial date for reckoning essential qualification of candidates.

7. After having given our thoughtful consideration to the rival contentions, we have found no substance in the contentions of the applicant.

8. The O.M. No.AB.14017/70/87-Estt.(RR) dated 14.7.1988 was issued by the Department of Personnel & Training on the subject of crucial date for determining age limits of candidates for competitive examinations conducted in parts by the UPSC/SSC. Paragraphs 1 & 2 of the O.M. dated 14.7.1988, ibid, read thus:

"As the Ministry of Defence, etc., are aware, according to the instructions contained in para 2 of this Department's O.M.No.42013/1/70-Estt.(D) dated 4th

December, 1979, the crucial date for determining the age limits for competitive examinations held for recruitment by UPSC/SSC etc. in the first half of the year is the first day of January of the year in which the examination is held; and if the examination is held in the second half of the year, the crucial date will be the first day of August of the year in which the examination is held.

2. Some doubts have been expressed as to what should be the crucial date for determining the age limits in respect of examinations which are held in two parts on two different dates of the year. For instance, the preliminary examination of the Civil Services Examination is normally held in the first half of the year and the Main examination is held in the second half of the year. In this case the position has been clearly indicated in the rules for this examination that the later of the two dates would be the crucial date. If, however, both parts of an examination fall in the first half of the year, the crucial date for determining the age limits will normally be the 1st of January. Similarly, if both parts of an examination fall in the second half of the year, the crucial date for determining the age limits would be the 1st of August. The position in this regard is clarified in the following illustrations:-

#### Illustrations

Name of Examination

Date on which first part of Exam. Held

Date on which second part of Exam. Held

Date for determining the age limits (Minimum and Maximum)

Exam.A

1-3-1988

25-8-88

As on 1-8-88

Exam.B

1-9-88

1-3-89

As on 1.1.89

Exam.C

1-3-88

1-5-88

As on 1-1-88

A plain reading of the above DoP&T's OM makes it clear that the question of

fixing the crucial date for reckoning essential qualifications of candidates has not been dealt with therein. Therefore, the applicant's claim to consider ? 1.8.2014" as the cut-off date for reckoning the essential qualification in his case on the basis of the DoP&T's O.M. dated 14.7.1988 (ibid) is untenable.

9. A process of selection and appointment to a public office should be absolutely transparent, and there should be no deviation from the terms and conditions contained in the employment notice/ Advertisement issued by the recruiting agency, as well as from the rules applicable to the recruitment process in any manner whatsoever, for a deviation in the case of a particular candidate amounts to gross injustice to the other candidates not knowing the fact of deviation benefitting only one or a few. The procedure should be same for all the candidates. In *Bedanga Talukdar vs. Saifuddin Khan*, (2011) 12 SCC 85, the Hon"ble Supreme Court has observed that the selection process has to be conducted strictly in accordance with the stipulated selection procedure which needs to be scrupulously maintained. There cannot be any relaxation in the terms and conditions of the employment notice/advertisement unless such power is specifically reserved in relevant rules and/or in advertisement. Even where power of relaxation is or is not provided in relevant rules, it must be mentioned in the advertisement. Such power, if exercised, should be given due publicity to ensure that those candidates who become eligible due to relaxation are afforded equal opportunity to apply and compete. Relaxation of any of the conditions stipulated in the employment notice/advertisement without due publication is contrary to the mandate of equality in Articles 14 and 16 of the Constitution of India. In the instant case, acceptance of the applicant's plea for changing the crucial date for reckoning the essential qualification in his case would amount to directing the respondents to act contrary to the terms and conditions contained in the notice of CGLE-2014. The Tribunal is required to enforce the rule of law, and not to issue a direction which is contrary to what has been injected by law. Therefore, the respondents cannot be said to have acted arbitrarily and unreasonably in not acceding to the applicant's claim to change the crucial date for reckoning his essential qualification. The applicant was fully aware about the crucial date ?1.1.2014" for reckoning the essential qualifications stipulated in the notice of CGLE-2014 when he applied for selection and recruitment. He admittedly acquired the essential qualification (B.A. degree) only on 5.3.2014, i.e., subsequent to the crucial date ?1.1.2014" stipulated in the notice of CGLE-2014. Therefore, he was wholly ineligible to apply for selection. The selection and nomination made by the respondent-SSC in favour of the applicant for appointment to the post of Inspector (Examiner) under CBEC on the basis of wrong particulars furnished by the applicant at all stages of selection process about his possessing the essential qualification as on the crucial date, i.e., 1.1.2014, would not confer on the applicant any right, much less an enforceable right, to claim change in the crucial date stipulated in the notice of CGLE 2014 or to claim appointment on the basis of the said selection and nomination. If at all the applicant felt that the fixation of crucial date ?1.1.2014" for reckoning the

essential qualification was bad and illegal, he could have challenged the notice of CGLE-2014 before competent forum at the appropriate time. The applicant not having done so, and having applied for selection in response to the notice of CGLE-2014 by misrepresenting the fact of his having possessed the essential qualification as on the cut-off date "1.1.2014", is estopped from questioning any of the terms and conditions stipulated in the notice of CGLE-2014 after it was detected by the respondent-CBEC during verification of documents that he was ineligible to apply for selection and recruitment pursuant to the notice of CGLE-2014 due to his not possessing the essential qualification as on the crucial date, i.e., 1.1.2014.

10. In the light of our above discussions, we have no hesitation in holding that the O.A. is devoid of any merit and liable to be dismissed. Accordingly, the O.A. is dismissed. No costs.