

(2018) 09 CAT CK 0101

In the Central Administrative Tribunal

Case No : Miscellaneous Application No. 3387 Of 2018, Original Application No. 829, 2993 Of 2018

Kallol Dutta

APPELLANT

Vs

Union Of India and Others

RESPONDENT

Date of Decision : 18-09-2018

Acts Referred:

Citation : (2018) 09 CAT CK 0101

Hon'ble Judges : V. Ajay Kumar, J; Pradeep Kumar, Member (A)

Bench : Division Bench

Advocate : Padma Kumar S, Hanu Bhaskar

Final Decision : Disposed Of

Judgement

V. Ajay Kumar, J

1. The applicant, a Senior Accountant in the respondent- Department of Posts, filed the OA seeking the following reliefs:-

"8.1 To set aside and quash the impugned Notification dated 02.04.2018 issued by the Ministry of Communication (Department of Postal Accounts Wing), Government of India and all other orders passed in Recruitment Process for the post of Assistant Accounts Officer/Accounts Officer.

8.2 To set aside the Examination Notification dated 19.04.2018 which was issued subsequent to the order dated 17.04.2018 passed by this Hon'ble Tribunal where the impugned Notification dated 02.04.2018 was directed not to give effect.

8.3 To set aside the impugned Office Memorandum dated 10.05.2018 issued by the Deputy Director General (Finance & PAA) by way of speaking order.

8.4 To declare that the combine departmental examination for the post of AAO amongst all other officials, i.e. the operating side of the Postal Department may be declared as illegal.

8.5 To pass any other relief(s) to which the applicant may be entitled and as may be deemed fit and proper.

8.6 To pay the cost of the application."

2. It is the case of the original applicant in the OA that the respondents issued the impugned Annexure-A Notification dated 02.04.2018 for publication of the Indian Posts and Telecommunications Accounts and Finance Service Group 'B, (Accounts Officers and Assistant Accounts Officers) Recruitment Rules, 2018, in supersession of the earlier rules and he is aggrieved with the said rules to the extent of filling up 100% vacancies of Assistant Accounts Officers through Departmental Competitive Examination without leaving space for seniority-cum-fitness quota. It is his further case that as per the new impugned Recruitment Rules, the ad hoc promotee Assistant Accounts Officers have also to qualify the Departmental Examination in order to get promoted and the inaction of the respondents in not conducting the Departmental Examination for promotion for a period of 24 years have resulted in a situation whereby the applicant and other similarly situated employees are compelled to appear in the Departmental Examination for promotion at the fag end of their service.

3. On 14.06.2018, the Calcutta Bench of this Tribunal, before which the OA was pending at that time, after hearing both sides, passed the following impugned order:-

"10. I am of the view that in the present juncture if no interim order is granted, the applicant may suffer irreparable loss as much as if the examination is going to be held, the very aspect of the adjudication of sustainability of the amended Recruitment Rules dated 02.04.2018 will be frustrated. The balance of convenience is in favour of the applicant. As such the respondents are hereby directed not to give effect to the notification dated 02.04.2018 and consequential notification dated 19.04.2018, till the next date. However, liberty is granted to the respondents to make an application for vacation/modification/alteration/cancellation of the interim order passed today.

11. List on 10.08.2018".

4. Thereafter, in MA No.432/2018 filed by the respondents, the Calcutta Bench of this Tribunal vide its order dated 29.06.2018, modified earlier interim order dated 14.06.2018, as under:-

"16. In the aforesaid backdrop the interim relief of the respondents is modified to the extent that the respondents are allowed to proceed with the selection notification and conduct the examination proposed to be held on 5th - 6th July, 2018. Let no results be published without the leave of this Tribunal and the selection would be subject to the outcome of the OA".

5. Thereafter, on filing of the PT No.131/2018 by the respondents decided on 13.07.2018 by this Tribunal, the OA was transferred to this Tribunal and numbered as OA No. 2993/2018. The respondents filed the instant MA

No.3387/2018 seeking to vacate/modify the above referred order dated 29.06.2018.

6. Heard Shri Hanu Bhaskar, the learned counsel appearing for the applicants/ original respondents and Shri Padma Kumar S., the learned counsel for the respondent/original applicant and perused the pleadings.

7. Though the original applicant stated in the facts of the OA that he is also the President of the Bhartiya Postal Accounts Offices Employees Association, West Bengal Circle, but the instant OA had been filed by him in his individual capacity. Hence, the OA cannot be treated as the one filed by any officers/employees Association representing common cause along with individual causes.

8. It is not the case of the respondent/original applicant that as on the date of issuance of the impugned rules, he was within the zone of consideration for promotion to the post of Assistant Accounts Officer, by virtue of his seniority and that he was deprived of his right of consideration for promotion to the said post, all of a sudden, by virtue of the impugned orders. It is his admitted case that, by virtue of the impugned rules, he was compelled to pass Departmental Examination to enable him to qualify for consideration for promotion.

9. On the other hand, it is the case of the applicants/original respondents that by virtue of the interim orders dated 29.06.2018, promotions in respect of more than 1000 vacancies are stalled and the entire administration is crippled. It is also their case that the impugned rules were issued after due deliberations and consultations with all the concerned Unions of the officers/employees and after obtaining due approvals of the concerned Ministries.

10. In these facts and circumstances, we are of the view that the balance of convenience is in favour of modifying the interim order dated 29.06.2018 and that there is no irreparable loss caused to the original applicant, even if the said order is vacated.

11. Accordingly, the interim order dated 29.10.2018 is modified to the extent that the respondents shall proceed to declare the results and the promotions made in pursuance of the same, are subject to the result of the OA. The respondents however, shall duly mention in the said appointment/promotion orders that the same are subject to the result of the OA No.2993/2018. It is further made clear that any of the observations made hereinabove, shall not have any bearing on the final hearing of this OA or any other identical OA pending on the file of any other Bench of this Tribunal. Accordingly, the MA stands disposed of.