
(1973) 12 CAL CK 0006
In the Calcutta High Court
Case No : C.R. 5508/5825 (W) of 1970

Patras Hansda and Another	Vs	APPELLANT
Union of India and Others		RESPONDENT

Date of Decision : 07-12-1973

Acts Referred:

Constitution of India, 1950 — Article 311(2)

Citation : 78 CWN 507

Hon'ble Judges : A.K. Sen, J

Bench : Single Bench

Advocate : A.P. Chatterjee and Samar Kumar Dutta, for the Appellant; N.C. Chakraborty and Samarendra Nath Banerjee, for the Respondent

Judgement

A.K. Sen, J.—These two Rules have been heard together as they involve a common question of law and as one of the orders challenged is the same in both the Rules. The common question that arises for consideration is as to what is the true requirement regarding recruitment of Statistical Assistants in respect of educational and other qualifications for direct recruits as specified therein. The petitioner in C.R. 5508 (W) of 1970 is Patras Hansda. He holds the qualification of being an M.A. in English and had also passed the Bachelor of Arts Examination with Mathematics as one of the subjects. While serving as an Upper Division Clerk in the Collectorate of Central Excise, his case was sponsored by the Regional Employment Exchange, Calcutta for appointment as a direct recruit to the post of a Statistical Assistant on the scale of Rs. 210-425/- in the Central Statistical Organisation (Industrial Statistics Wing) of the Government of India. Being selected he was appointed a Statistical Assistant in the scale of Rs. 210-425/- by an order dated March 22, 1963. The petitioner in the other Rule being C.R. 5825 (W) of 1970 Tushar Kanti Ghosh is a graduate in Science having passed the B. Sc. Examination with Mathematics as one of the subjects. He too was appointed a Statistical Assistant in the scale of Rs. 210-425/- in the same Organisation as a direct recruit by an order dated July 10, 1963. Admittedly though the petitioners are graduates with Mathematics as one of their subjects

neither of them had statistics as one of the subjects when they passed the B.A. or the B.Sc. Examination. Admittedly further when the petitioners were so recruited they were governed by the General Central Service (Class III posts in the Industrial Statistical Wing, Central Statistics Organisation, Calcutta, Cabinet Secretariat) Recruitment Rules, 1959 (hereinafter referred to as the Recruitment Rules). The said Recruitment Rules at the relevant time set out the following minimum qualification for direct recruits to the posts of Statistical Assistants.

A degree in Statistics, or in Mathematics, Economics, or Commerce with Statistics as one of the subjects in case of direct recruits only.

2. After a few years of service when their cases for confirmation were being considered, the respondents came to hold that both the petitioners are lacking in the minimum qualification as specified by the Recruitment Rules as aforesaid. Obviously this they held as according to them the qualifying phrase "with statistics as one of the subjects" in the Rule specifying the educational qualification governs alternatively a degree in Mathematics, Economics or Commerce so that neither of the petitioners having obtained such a degree "with statistics as one of the subjects", they were considered to be lacking in the minimum qualification. On this view on April 24, 1968 the respondents issued an order incorporating the following direction:

The Government of India in the Department of Statistics in consultation with the Ministry of Home Affairs have now decided to retain Shri P. Hansda Shri T.K. Ghosh as Statistical Assistant in this Wing subject to the condition that he obtains a degree/diploma in statistics from a recognised Institution within a period of 3 years from 19.4.68 failing which his services in this Wing will have to be terminated.

3. Petitioners on the other hand thought that they duly possess the requisite qualification as according to them the qualifying phrase "with statistics as one of the subjects" governs the degree in Commerce only and not the degree in Mathematics or Economics. Accordingly both the petitioners objecting to the aforesaid direction dated 24.4.68 preferred representations of their own. On May 17, 1969, the respondents overruled these objections and informed the petitioners that their appeals having been considered in consultation with the Ministry of Home Affairs cannot be acceded.

4. In the meantime, however, on February 5, 1969, both the petitioners were temporarily promoted as Statistical Assistants (Selection Grade) on the scale of Rs. 325-575/- with effect from 23.11.68. But petitioner T.K. Ghose was reverted from the said post on April 1, 1970, when the permanent incumbent came to replace him. Petitioner Patras Hansda, however, continued to officiate in the Selection Grade.

5. The Recruitment Rules as aforesaid originally provided for no power of relaxation. With effect from June 27, 1970, a new Rule was brought in on amendment to the effect following,

3A. Power to Relax: Where the Central Government is of opinion that it is necessary or expedient so to do, it may by order, for reasons to be recorded in writing, relax any of the provisions of these rules with respect to any class or category of persons or posts.

6. It is obvious that such amendment was brought in to regularise appointment of persons like the petitioners and accordingly in exercise of the powers invested by the aforesaid Rule 3A of the said Recruitment Rules the appointments of the petitioners were regularised. Such regularisation was made by an order dated October 3, 1970, which is set out hereunder:

ORDER

In exercise of the powers conferred by Rule 3A of General Central Services (Class III posts in the Industrial Statistics Wing, Central Statistical Organisation, Calcutta Cabinet Secretariat) Recruitment Rules, 1959 as introduced by General Central Service (Class III posts in the Industrial Statistics Wing, Central Statistical Organisation, Calcutta Cabinet Secretariat) Recruitment (Amendment) Rules, 1970 published in the Cabinet Secretariat, Department of Statistics Notification No. 18/21/ 65-Estt. I/II, dated the 15th June, 1970 Shri P. Hansda and T.K. Ghose are appointed to officiate as Statistical Assistants in the Central Statistical Organisation (I.S. Wing) Calcutta, on regular basis with effect from the 27th June, 1970 in relaxation of the educational qualifications prescribed in the Recruitment Rules for the post.

7. This is the order which is being challenged by both the petitioners in both the Rules. That apart petitioner Patras Hansda has been reverted from the Selection Grade to the post of a Statistical Assistant in the scale of Rs. 210-325/- by an order dated October 21, 1970. There is no dispute that such reversion was necessitated due to the loss of seniority his service being counted for the purpose of seniority with effect from 27.6.70 the date of regularisation. In C.R. 5508 (W) of 1970 therefore, over and above the order dated October 3, 1970, the petitioner is. challenging the aforesaid order of reversion dated October 21, 1970.

8. The Rules are being contested by the respondents and they have filed their oppositions. The facts set out hereinbefore are not in dispute. The respondents, however, contend that the petitioners were erroneously appointed as Statistical Assistants in 1963 when they were not possessing the minimum qualification for such appointment under the Recruitment Rules as aforesaid. Because of such ineligibility their appointment had to be regularised by the impugned order dated October 3, 1970 which according to the respondents would effect the seniority of the two petitioners and consequently the chances of their further promotion. Otherwise according to the respondents their earlier services will count for other service benefits.

9. Mr. Chatterjee appearing on behalf of the petitioners, has contended that the impugned order dated October 3, 1970, is erroneous being based on an

erroneous interpretation of that part of the Recruitment Rules which specifies the educational qualifications for direct recruits like the petitioners, Mr. Chatterjee has sought to interpret that part of the Rule to mean that a degree in either of the three subjects viz. Statistics, Mathematics or Economics is an alternate qualification to a degree in Commerce "with statistics as one of the subjects". According to him the qualifying phrase "with statistics as one of the subjects" qualifies the term Commerce only and not Mathematics or Economics. In the case of Patras Hansda, Mr. Chatterjee has also challenged the order of reversion which according to him having been made without any disciplinary proceeding or without any show cause notice is illegal and violative of principles of natural justice; such reversion according to him amounts to a penalty.

10. Mr. Chakraborty on the other hand, appearing on behalf of the respondents, has strongly contested both the points so raised by Mr. Chatterjee. According to Mr. Chakraborty a degree in Statistics is alternate to a degree in Mathematics, Economics or Commerce but in each of such cases. "With statistics as one of the subjects". According to Mr. Chakraborty therefore the phrase "with statistics as one of the subjects" in its turn qualifies the three alternates viz. Mathematics, Economics or Commerce. It has next been contended by Mr. Chakraborty that petitioner Hansda's reversion is not a penalty but follow as a matter of course on the revision of the seniority following regularisation of his service with effect from 27.6.70 by virtue of the impugned order dated October 3, 1970.

11. In my opinion, the entire dispute centres round the true construction of that part of the Recruitment Rules which lays down the educational qualifications. If the respondents are correct in their interpretation as to the requirement of that part of the Rule, in that event, reversion of petitioner Hansda resulting from regularisation of the earlier error cannot at all be considered to be a penalty which would invoke either the disciplinary rules or the principles of natural justice. Admittedly petitioner Hansda was officiating in the Selection Grade from which he has been reverted. He had no right to the post and his reversion, being the result of regularisation of his appointment in the basic grade with effect from a date long subsequent to his initial appointment, follows as a matter of course. It has now been held by the Supreme Court that under similar circumstances for correction of administrative errors even confirmation orders can be recalled. Reference may be made to the decision of the Supreme Court in the case of (2) State of Punjab Vs. Jagdip Singh and Others, . Next I proceed to consider the real dispute as to the requirement of the Rule and its interpretation. Here both on the grammatical construction and on the intent underlying the Rules it is difficult to accept the interpretation suggested by Mr. Chatterjee. The post is the post of a Statistical Assistant which would naturally involve statistical work. The primary qualification provided is a degree in statistics so that when a degree in Mathematics, Economics or Commerce is authorised as an alternate it would naturally be intended that statistics would be one of the subjects within the course. This in my opinion, can reasonably be construed to be the intent of the framers of the Rules. That apart, on the grammatical construction it is difficult to

accept the contention of Mr. Chatterjee that a degree in Mathematics or Economics is an alternate qualification to a degree in statistics as also alternate to a degree in Commerce "with statistics as one of the subjects." Such a construction cannot follow on the use of the words "or" and "in" before "Mathematics, Economics" on the other hand, on the grammatical construction a degree in statistics is an alternate to what follows viz. a degree "in Mathematics, Economics or Commerce with statistics as one of the subjects." "The words Mathematics, Economics or Commerce are alternate to each other but all of them being equally governed by the qualifying clause "with statistics as one of the subjects." In my opinion, if the meaning or the requirement was intended to be as suggested by Mr. Chatterjee then the syntax would have been "a degree in statistics, Mathematics or Economics or Commerce with statistics as one of the subjects." On the existing punctuation and construction I must accept the interpretation contended for by Mr. Chakraborty and not the one suggested by Mr. Chatterjee. That being the position, it must be held that the petitioners' initial appointment was not within the sanction of the Rules so that it came within the sanction on the issue of the order of regularisation dated October 3, 1970. Petitioners could not be given any retrospective regularisation as the amendment itself came into effect from June 27, 1970. It is no doubt their misfortune that in the entire process they have lost some places in the seniority but this could not be helped in the circumstances and on the provision of the Rules. Loss of such seniority cannot be paid to be violative of Article 311 (2) of the Constitution as suggested by Mr. Chatterjee when it had to be effected to regularise appointment; of the petitioners which was earlier not within the sanction of the Rules. Reference may be made to the decision of the Supreme Court in the case of (1) Shitla Sahai Srivastava Vs. General Manager, North Eastern Railway, , principles enunciated wherein well support the steps taken or the order made by the respondents in the present case.

On the conclusions as above these applications fail and the Rules are discharged.

There will be no order as to costs.

Let the operation of this order remain stayed for three weeks.