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Central Administrative Tribunal  
Principal Bench

O.A. No. 919 of 1999

New Delhi, dated this the 13<sup>th</sup> November 2001

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)  
HON'BLE DR. A. VEDAVALLI, MEMBER (J)

Om Parkash,  
S/o Shri Viru Ram,  
R/o WZ 139m Ram Nagar  
P.O. Tilak Nagar,  
New Delhi-110018.

.. Applicant

Working as UDC,  
Enforcement Directorate,  
(Foreign Exchange Regulation Act)  
Ministry of Finance,  
Dept. of Revenue,  
6th Floor,  
Lok Nayak Bhawan,  
Khan Market,  
New Delhi.

(By Advocate: Shri R.K. Handoo)

Versus

1. Union of India through  
the Secretary,  
Ministry of Finance,  
Dept. of Revenue,  
North Block,  
New Delhi-110001.
  2. The Director,  
Enforcement Directorate,  
(Foreign Exchange Regulation Act),  
Ministry of Finance,  
Dept. of Revenue,  
6th Floor,  
Lok Nayak Bhawan,  
Khan Market,  
New Delhi-110003.
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3. Shri G.S. Panchal,  
Assistant Enforcement Officer,  
Enforcement Directorate,  
(Foreign Exchange Regulation Act)  
Ministry of Finance,  
Department of Revenue,  
6th Floor, Lok Nayak Bhawan,  
Khan Market,  
New Delhi - 110 003
4. Shri N.K. Vats,  
Assistant Enforcement Officer,  
Enforcement Directorate,  
(Foreign Exchange Regulation Act)  
Ministry of Finance,  
Department of Revenue,  
6th Floor, Lok Nayak Bhawan,  
Khan Market,  
New Delhi - 110 003
5. Shri Raju P. Amlani,  
Assistant Enforcement Officer,  
Enforcement Directorate,  
(Foreign Exchange Regulation Act)  
Ministry of Finance,  
Department of Revenue,  
6th Floor, Lok Nayak Bhawan,  
Khan Market,  
New Delhi - 110 003
6. Shri V. Kalyani,  
Assistant Enforcement Officer,  
Enforcement Directorate,  
(Foreign Exchange Regulation Act)  
Ministry of Finance,  
Department of Revenue,  
6th Floor, Lok Nayak Bhawan,  
Khan Market,  
New Delhi - 110 003
7. Shri S.K. Mandal,  
Assistant Enforcement Officer,  
Enforcement Directorate,  
(Foreign Exchange Regulation Act)  
Ministry of Finance,  
Department of Revenue,  
6th Floor, Lok Nayak Bhawan,  
Khan Market,  
New Delhi - 110 003
8. Shri Sanjeev Sharma,  
Assistant Enforcement Officer,  
Enforcement Directorate,  
(Foreign Exchange Regulation Act)  
Ministry of Finance,  
Department of Revenue,  
6th Floor, Lok Nayak Bhawan,

Khan Market,  
New Delhi - 110 003

9. Shri B. Ramesh,  
Assistant Enforcement Officer,  
Enforcement Directorate,  
(Foreign Exchange Regulation Act)  
Ministry of Finance,  
Department of Revenue,  
6th Floor, Lok Nayak Bhawan,  
Khan Market,  
New Delhi - 110 003

✓ 10. Shri Sudesh Kalse,  
Assistant Enforcement Officer,  
Enforcement Directorate,  
(Foreign Exchange Regulation Act)  
Ministry of Finance,  
Department of Revenue,  
6th Floor, Lok Nayak Bhawan,  
Khan Market,  
New Delhi - 110 003

11. Shri S.P. Padhi,  
Assistant Enforcement Officer,  
Enforcement Directorate,  
(Foreign Exchange Regulation Act)  
Ministry of Finance,  
Department of Revenue,  
6th Floor, Lok Nayak Bhawan,  
Khan Market,  
New Delhi - 110 003

12. Shri C.P. Nair,  
Assistant Enforcement Officer,  
Enforcement Directorate,  
(Foreign Exchange Regulation Act)  
Ministry of Finance,  
Department of Revenue,  
6th Floor, Lok Nayak Bhawan,  
Khan Market,  
New Delhi - 110 003

13. Smt. V. Vijaya,  
Assistant Enforcement Officer,  
Enforcement Directorate,  
(Foreign Exchange Regulation Act)  
Ministry of Finance,  
Department of Revenue,  
6th Floor, Lok Nayak Bhawan,  
Khan Market,  
New Delhi - 110 003

14. Shri V.G. Thomas,  
Assistant Enforcement Officer,  
Enforcement Directorate,  
(Foreign Exchange Regulation Act)

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Ministry of Finance,  
Department of Revenue,  
6th Floor, Lok Nayak Bhawan,  
Khan Market,  
New Delhi - 110 003

✓ 15. Smt. Pushpa Gupta,  
Assistant Enforcement Officer,  
Enforcement Directorate,  
(Foreign Exchange Regulation Act)  
Ministry of Finance,  
Department of Revenue,  
6th Floor, Lok Nayak Bhawan,  
Khan Market,  
New Delhi - 110 003

16. Shri U.V. Naik,  
Assistant Enforcement Officer,  
Enforcement Directorate,  
(Foreign Exchange Regulation Act)  
Ministry of Finance,  
Department of Revenue,  
6th Floor, Lok Nayak Bhawan,  
Khan Market,  
New Delhi - 110 003

17. Smt. Krishna Jain,  
Assistant Enforcement Officer,  
Enforcement Directorate,  
(Foreign Exchange Regulation Act)  
Ministry of Finance,  
Department of Revenue,  
6th Floor, Lok Nayak Bhawan,  
Khan Market,  
New Delhi - 110 003

18. Shri P.V. Ramana,  
Assistant Enforcement Officer,  
Enforcement Directorate,  
(Foreign Exchange Regulation Act)  
Ministry of Finance,  
Department of Revenue,  
6th Floor, Lok Nayak Bhawan,  
Khan Market,  
New Delhi - 110 003

19. Shri D.J. Mukherjee,  
Assistant Enforcement Officer,  
Enforcement Directorate,  
(Foreign Exchange Regulation Act)  
Ministry of Finance,  
Department of Revenue,  
6th Floor, Lok Nayak Bhawan,  
Khan Market,  
New Delhi - 110 003

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20. Shri T.K. Banerjee,  
Asst. Enforcement Officer,  
Enforcement Directorate,  
Lok Nayak Bhawan, Khan Market,  
New Delhi-110003.

.. Respondents

(By Advocate: Shri H.K. Gangwani)

ORDER

S.R. ADIGE. VC (A)

Applicant is aggrieved by his non-promotion as Assistant Enforcement Officer. He seeks a direction to promote him as Assistant Enforcement Officer, and after such promotion to be placed senior to S/Shri G.S Panchal, R.P. Amlani and N.K. Vats, who he states are junior to him as UDCs/Jr. Stenographers, but were promoted/appointed as AEOs in 1992.

2. Heard both sides.

3. As per Directorate of Enforcement, Enforcement Officer and AEO (Class III Posts) Recruitment (Amendment) Rules, 1974 framed under Article 309 of the Constitution the posts of AEO are selection posts to be filled

- i) 50% by direct recruitment
- ii) 30% by transfer on deputation failing which by direct recruitment
- iii) 20% by transfer failing which by direct recruitment

The 20% transfer quota which is the subject matter of the present O.A. is to be filled from amongst UDCs (Rs.330-560) or Stenographers (Rs.330-560) in the

26

Directorate of Enforcement with five years service in the grade on a regular basis inclusive of the service rendered outside the Directorate and who qualify in an examination held in this behalf, and failing that.....

4. Pursuant to the aforesaid Recruitment Rules, respondents by their letter dated 8.5.81 (Ann. B) framed a Scheme for conducting the selections. The scheme requires a candidate to secure marks as under,

- i) Written test 40% in each paper
- ii) Viva voce 40%
- iii) Assessment of  
CRs 50%
- iv) Aggregate 50%

Pass in the written test once would be sufficient. Such of the candidates who passed the written test, but not the examination as a whole, or who passed the examination as a whole, but could not be appointed for want of vacancies would not be required to take the written test again. Such of the candidates would be at par with the other candidates taking the examination in subsequent year (s) except that they would not be required to take the written test and would only be required to pass the viva voce and the assessment of CRs.

5. As per applicant's own averments in the

2

O.A., he was appointed as UDC in Enforcement Directorate w.e.f. 21.5.82 and completed the requisite five years service on 20.5.87. No qualifying written examination, was held in 1987 and 1988, but he appeared in the written examination in May, 1989 and in the written papers he secured 216/300. He avers that he must have secured the minimum of 40% in the viva voce and 50% in the ACR assessments, but he has no grievance in regard to the 1989 selections, because according to him, all the persons selected that yearwise senior to him in the combined seniority list of UDCs and Jr. Stenographer.

6. The next selections in 20% quota were held in November, 1991 - January 1992 on the basis of which besides others, S/Shri Panchal, Amlani and Vats were promoted as Assistant Enforcement Officer. As applicant had cleared the written test, he was not required to take the same again, but as selections were made on the basis of the aggregate marks obtained in the written test plus viva voce and the ACR assessments, and as applicant did not get higher enough marks in the aggregate to secure a place in the list of selected candidates against the available vacancies, he could not be promoted it must be remembered that S/Shri Panchal, Amlani and Vats secured high enough marks in the aggregate to be promoted against available vacancies and it is for this reason that they were promoted in 1992. Even if

7

applicant qualified in a later selectin he cannot supercede those who had qualified in the earlier selection.

7. The next selection was held on 16.4.96. Here again as applicant had alreyady secured 216/300 in the written test. He did not have to participate in the written test again, but was subjected to viva voce in which he secured 30% marks, and assessment of CRs, in which he secured 65% marks. As applicant did not secure the minimum 40% marks in viva voce, he was not selected.

9. Thereafter the next selections were held on 16/17.12.97. The selection proceedings which we have perused, reveal that applicant's performce in the written papers of 72 (216/300), were carried into these selections also. In the viva voce, he secured 45% and in the ACR assessments he secured 70%. In all he secured  $72+45+70=187$  marks, and was placed at 16th position. The first six candidates who secured between 233 and 210 marks were offered appointment against 6 existing vacancies, while serials 7 to 15 (both inclusive) were kept on the panel to be appointed against future vacancies. The person immediately above applicant was one Shri T.R. Banerjee. Sl. No. 15 who had secured 189 marks in all.

10. From the foregoing it is clear that

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vacancies of Assistant Enforcement Officer in the 20% quota to which applicant is aspiring are filled up as per Recruitment Rules promulgated under Article 309 of the Constitution, by means of selection consisting of written test, viva voce and assessment of ACRs. It is not denied that applicant participated in the selections held in 1989, 1992, 1996 and 1997 but could not secure a high enough position on the basis of the aggregate marks to be appointed against any of the vacancies which became available in each of these years. It is well settled that no Government employee has an enforceable, legal right to be promoted to a particular post or grade. He has only an enforceable right to be considered for promotion if he is eligible and falls within the zone of consideration and in the instant case there is no doubt that applicant was considered in each of the aforesaid selections.

11. On behalf of applicant's counsel it was urged during hearing that respondents have been taking different stands as to whether the posts of Asst. Enforcement Officer are to be filled on selection basis i.e. on the basis of merit-cum-seniority, or on the basis of seniority. In this connection attention has been invited to Chief Enforcement Officer's Memo dated 10.1.89 (copy taken on record) in which it has been stated that the Dept. of Revenue have opined that after consulting DOPT it has been decided that applicant in the transfer quota

vacancies in the grade of EO/AEO made in order of seniority. As stated above the relevant Recruitment Rules themselves (copy at Annexure A), framed under Article 309 of the Constitution state unambiguously in Col. 5 of the schedule annexed therewith that the post of AEO is a selection post. It is well settled that in the case of filling up of selection posts it is merit that is given primary consideration, and a more meritorious but junior candidate falling within the zone of consideration for appointment would steal a march over, his less meritorious but senior colleagues. It is the Recruitment Rules which would prevail over the contents of Memo dated 10.1.89 and that Memo is, therefore, of no advantage to applicant.

12. During hearing applicant's counsel also raised the point that undue weightage had been given to performance in the viva voce under the selection scheme and relied upon certain rulings to challenge his non-promotion on account of inadequate marks in the viva voce. In this connection he drew particular attention to the high marks he had secured in the written test and argued that this showed that the marks for the viva voce had not been accorded fairly.

13. Written examinations and viva voce test are different aspects of a candidate's capabilities. While in a written examination the candidate's theoretical knowledge is broadly tested, in a viva voce his

— alertness, grasp of problem, ability to react and respond to situation<sup>2</sup> etc. are gauged. A candidate who has done well in the written examination need not <sup>necessarily</sup> do well in the viva voce. Further more we note that the selection scheme came into effect in 1987 i.e. two decades ago. It is not denied that applicant participated in the selection under the aforesaid scheme as many as four times. Having participated in the selection scheme, and unfortunately not being successful, he cannot now challenge the selection scheme. Further more, if he was aggrieved by the scheme, he should have specifically impugned the circular dated 8.5.81 (Annexure B) containing the scheme, praying that it be quashed and set aside, which he has not done.

14. In the result applicant has not been able to make out a case to warrant judicial interference. However, we call upon respondents that when next they hold selection for the post of Asst. Enforcement Officer and applicant participates in the same, his case should be considered sympathetically in accordance with rules and instructions on the subject.

15. The O.A. is disposed of in terms of Para 14 above. No costs.

*A. Vedavalli*

(Dr. A. Vedavalli)  
Member (J)

*S.R. Adige*

(S.R. Adige)  
Vice Chairman (A)