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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A.No. 410 of 1994

New Delhi, this the 19th day of March, 1999

HON'BLE MR. JUSTICE S. VENKATRAMAN, VICE CHAIRMAN (J)
HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)

Sh. Budha Lal Meena, S/O Sh. Shukla
Ram, Aged: 41 Years, Permanent R/O
Village Rattangarh, Post Pala, Via Mala
Khera, Distt. Alwar, Rajasthan.

--APPLICANT.

(By Advocate - Sh. A.K. Behra)

Versus

1. Union of India through the Secretary to the Govt. of India, Ministry of Finance, Deptt. of Revenue, North Block, New Delhi.
2. The Secretary, Union Public Service Commission, Dholpur House, Shajahan Road, New Delhi.
3. The Secretary, Ministry of Personnel Public Grievances and Pensions, North Block, New Delhi.
4. Director General, National Academy of Customs, Excise and Narcotics, Pushpa Bhawan, Madangir, New Delhi.

--RESPONDENTS.

(By Advocate - Sh. R.R. Bharti)

O R D E R

Mr. Justice S. Venkatraman :

This is an unfortunate case where the applicant who is a Scheduled Tribe candidate appointed on being selected and appointed in Indian Customs and Central Excise through a competitive examination, gave up his job as Naib Tahsildar, lost the new job also after six years of service on account of his failure to complete paper II (part I) of the departmental examination, though he had passed nine other papers.

2. After joining the service in 1980, the applicant appeared for the Departmental Examination in 1982 and passed all other papers by 1985, except Paper II (Part-I), Customs Law, Tariff and Procedure. It is not disputed that the respondents extended the period of probation of the applicant for enabling him to pass the Departmental Examinations and he was also warned that if he fails to complete the Departmental Examinations, his services were liable to be terminated in accordance with the terms and conditions of the appointment order. The last chance was given to him in 1986 and unfortunately even in that year he could not get through that one paper. In view of this, the services of the applicant were terminated by the President vide letter dated 26.2.1986. An appeal preferred by him against that order was also rejected. The applicant then filed the application before this Tribunal in OA No. 1650/87 raising various grounds. He contended that some other similarly situated officers had been confirmed even though they had not passed the Departmental Examination and that relaxation had to be given to Scheduled Caste and Scheduled Tribe candidate as per OM dated 23.12.1970 issued by the Govt. and that he was eligible for such a relaxation etc. The Tribunal while setting aside the Appellate Order dated 16.10.86 directed the first respondent to dispose of the appeal of the applicant in consultation with the U.P.S.C. by a Speaking order covering not only the points raised in the appeal but also the points raised in the OA with special reference to the precedent cases of three persons of 1986 batch to which the applicant himself belonged.

3. Even after the applicant's appeal was considered in consultation with UPSC, the first respondent did not find it possible to acced to the request of the applicant and his appeal was rejected as per Annexure A-2 order dated 12.2.1993. In this application, the applicant has again questioned not only the correctness of the order of termination of his services as per Annexure A-1 but also the order passed in appeal at Annexure A-2. He has further sought for direction to the respondents to reinstate him and confirm him in Indian Customs and Central Excise Service Group 'A' with continuity in service and seniority and full back wages. (31)

4. Though the applicant has alleged in his application that the respondents have in the casees of officers named in the application have exempted them from passing in a few papers of the Deptt. Examinations and confirmed them, it is seen from the reply of the respondents that it is only in Hindi Paper (Language Papere) such exemption has been given and that no exemption in other papers has been given. There is no other material on record to show that the respondents had given exemption to any other officer who had not succeeded in a paper other than the Language Paper.

5. Learned counsel for the applicant straneously contended that the Govt. itself has issued OM No.8/12/69-Est.(SCT), dated 23.12.1970 stipulating that in the matter of confirmation made through such confirmation examinations, Scheduled Castes/Scheduled Tribes candidates who have not acquired the general

qualifying standards should also be considered for confirmation provided they are not found unfit for such promotions/confirmations and that the qualifying standards in these examinations should be relaxed, that this is a case where the applicant had passed in all nine papers and that even in this one paper, in the first attempt he secured 90 out of 150 marks, though the qualifying limit was 100 and that the respondents had to relax the qualifying standards so far as SC/ST candidates were concerned and if such relaxation had been given, the applicant would have succeeded by virtue of the marks obtained by him. He further pointed out that though this ground had been taken in the previous OA as well as in the appeal wherein even a reference to the judgement of the Hon'ble Supreme Court in Comptroller and Auditor General of India v. K.S.Jagannathan, 1986 (2) SCC 679 had been made and in spite of the specific direction by this Tribunal that every ground raised by the applicant should be considered and a Speaking order be issued, the respondents have not at all referred to this aspect (Annexure A-2). He pointed out that in Jagannathan's case, the Supreme Court had referred even to the OM dated 23.12.1970 and had indicated as to how a relaxation in the qualifying standards will have to be prescribed and that the applicant is entitled to the benefit of that Govt. order, which if given, would entitle him to pass in the one paper in question.

6. The OM dated 23.12.70 relied upon by the applicant reads ad under :-

"Subject:- Relaxation of standards in departmental competitive examinations for promotions and in departmental confirmation examinations.

Attention of the Ministry of Finance, etc., is invited to Ministry of Home Affairs, O.M. No. 1/1/70-Est. (SCT), dated the 25th July, 1970 in which it has been provided that in the case of direct recruitment, whether by examination or otherwise, if sufficient number of Scheduled Castes/Scheduled Tribes candidates are not available on the basis of the general standard to fill all the vacancies reserved for them, candidates belonging to these communities may be selected to fill up the remaining vacancies reserved for them provided they are not found unfit for appointment to such post or posts. A question has been raised whether relaxations in the qualifying standards could be granted to SC/ST candidates on the same basis in promotions made through departmental competitive examinations and in departmental confirmation examinations where such examinations are prescribed to determine the suitability of candidates for confirmation. The matter has been carefully considered and it has been decided that in promotions/confirmations made through such examinations, Scheduled Castes/Scheduled Tribes candidates who have not acquired the general qualifying standards in such examinations could also be considered for promotion/confirmations provided they are not found unfit for such promotions/ confirmations. In other words, the qualifying standards in these examinations could be relaxed in favour of SC/ST candidates in keeping with the above criterion."

7. Though in K.S.Jagannathan's case (supra) the Supreme Court was dealing with the question of fixing the lower qualifying standard for promotional examination and though in view of the subsequent judgement of the Hon'ble Supreme Court in Indra Sahni's case and S.Vinod Kumar & Anr. v. Union of India & Ors., 1996 JT Vol.8 643, the Govt. has withdrawn OM dated 23.12.70 so far as it relates to promotion, that OM continues to be in force in respect of relaxation of standards in confirmation

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examination. As such, the method of giving relaxation as indicated in Jagannathan's case would be applicable so far as the confirmation examinations are concerned.

8. We wanted to know from the respondents' counsel as to whether there was any reason for not applying the OM dated 23.12.70 so far as the departmental examinations prescribed in the respondents' department for the purpose of confirmation. We also wanted to know whether there are any statutory rules which stipulated that if a probationer fails to pass the departmental examination by securing the qualifying marks, his probation period cannot be declared to have been completed satisfactorily. He submitted that there were no statutory rules in that regard and that, however, the appointment order itself made it clear that he would have to qualify in the departmental examinations within the probationary period. He did not contend that the O.M. dated 23.12.1970 was not applicable to the instant case. Even in the speaking order passed in pursuance of the direction given by the Tribunal, no reference is made to the claim of the applicant that he was entitled to relaxation of the standards as per O.M. dtd 23.12.1970. In the reply filed in this case, the respondents have not asserted that the O.M. in question was not applicable to the departmental examinations which the applicant had to pass. On the other hand, in the reply, the respondents have stated that as per terms and conditions of appointment he had to pass the prescribed departmental examinations within the probationary period of two years and that that period could be extended at the discretion of the Government if he did not qualify for confirmation.

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within that period by completing the training satisfactorily and passing the departmental examinations. In effect, it is not disputed that for purposes of confirmation it is essential to pass the departmental examinations, though passing the departmental examinations does not automatically entitle him to confirmation, as he has to fulfil another condition also, namely, satisfactory work. As such, the fact the departmental examinations are prescribed for purposes of confirming the candidate in the service is not disputed.

9. When once it is found that these departmental examinations had to be passed for confirmation, there is no reason as to why the O.M. dated 23.12.1970 should not be applied to these departmental examinations. In fact, in the reply the respondents have pleaded that the instructions contained in the O.M. dated 23.12.1970 were kept in view while extending the period of probation of the applicant and allowing him repeated opportunities to pass the departmental examinations in full. This shows that the respondents do not dispute the applicability of the above O.M. to the case on hand.

10. The O.M. dated 23.12.1970 does not stipulate that more opportunities should be given to the SC/ST candidates to pass the examinations. The purport of that O.M. is that the same standard of evaluation which is applied to the general category candidates should not be applied to the SC/ST candidates and that some relaxation in the standard of evaluation should be given to those candidates. In fact, that O.M. indicates that even though the SC/ST candidates have not acquired

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the general qualifying standards they should also be considered for confirmation provided they are not found unfit for such confirmation. In Jagannathan's case (supra), the mode of relaxing the standard for SC/ST candidates has been dealt with and the Supreme Court has held as hereunder :

"24. What is, therefore, required to be done under the said Office Memorandum dated January 21, 1977, is to fix a general qualifying standard for all candidates appearing in departmental competitive examinations for promotion and in departmental confirmation examinations as also to fix a relaxed or lower qualifying standard for the candidates belonging to the Scheduled Castes and the Scheduled Tribes in respect of each examination, so that if a sufficient number of candidates belonging to the Scheduled Castes and the Scheduled Tribes do not qualify according to the general standard, they can be considered for promotion in the light of the relaxed or lower qualifying standard where there are a number of vacancies in the posts falling in the reserved quota and not enough candidates belonging to the general qualifying standard. In this connection, it should be borne in mind that the Office Memorandum dated December 23, 1970, referred to in the said Office Memorandum dated January 21, 1977, states that it was provided by Office Memorandum No.1/1/70-Est.(SCT) dated July 25, 1970, that in the case of direct recruitment, whether by examination or otherwise, "if sufficient number of Scheduled Castes/Scheduled Tribes candidates are not available on the basis of the general standard to fill all the vacancies reserved for them,, candidates belonging to these communities may be selected to fill up the remaining vacancies reserved for them provided they are not found unfit for appointment to such post or posts", and that it had been decided to make a similar relaxation in the case of promotion made through departmental competitive examinations and in departmental confirmation examinations. When these two qualifying standards are fixed, the difference between the general qualifying standard and the relaxed or lower qualifying standard will form the zone of consideration when the result of each examination is ascertained according to the general qualifying standard. The candidates who appear for departmental competitive

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examinations for promotion and departmental confirmation examinations know in advance the general qualifying standard because such standard is prescribed. This naturally postulates that the relaxed or lower qualifying standard should also be fixed in advance and made known so that the candidates belonging to the Scheduled Castes and Scheduled Tribes will know before they appear for the examination to what extent they can expect relaxation for themselves, provided that the other conditions prescribed by the said Office Memorandum dated January 21, 1977, are fulfilled...."

11. In the instant case, the respondents have not prescribed any lower standard for evaluating the performance of the SC/ST candidates in the departmental examinations. Giving a number of opportunities to the SC/ST candidates to secure the same qualifying marks as is prescribed for general category candidates is not what is contemplated under the above O.M. In the instant case, the applicant had in the first attempt secured 90 out of 150 marks in the particular paper as against the prescribed qualifying marks of 100. It is no doubt true that in the latest examination he secured only 66 marks. If the respondents had followed the instructions in the above O.M. when the applicant secured 90 marks, he would have been eligible for being declared as having passed in the examination. Merely because the respondents failed to follow those instructions and the applicant was forced to again appear for the same examination, and he secured lesser marks, cannot deprive him of the benefit which he was entitled to under the above O.M.

12. Though in the normal circumstances we would have directed the respondents to consider giving benefit of O.M. dated 23.12.1970 and then pass appropriate orders, it is seen that in this case the applicant was

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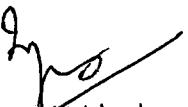
removed from service as long back as 1986 and even though this Tribunal had directed the respondents to consider all the grounds urged by the applicant in the earlier O.A. and the appeal and though the applicant had raised the plea that he was entitled to the benefit of the above O.M., the respondents did not consider that plea and again affirmed the earlier order of removal from service. If after such a long lapse of time, we again direct the respondents to consider the case of the applicant in the light of the above O.M., the applicant may not get any relief and the period of his agony may prolong. While passing the earlier order, this Tribunal had directed that in case the representation of the applicant was accepted and he was reinstated in service, he would regain his seniority and continuity of service without arrears of pay during the period of his removal which would be considered as dies non. We feel that on the facts and circumstances of the case, we should give a direction to the respondents to give the applicant the benefit of the above O.M. in respect of the one paper in question and on that basis to consider the issue of declaring his probationary period having been completed satisfactory.

13. For the above reasons, this application is allowed and the impugned orders are set aside. The respondents are directed to give the applicant the benefit of OM dated 23.12.1970 in respect of paper II (part I) of the departmental examination which he took in first attempt and secured 90 marks by giving requisite

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relaxation and then to pass appropriate orders with regard to the issue of satisfactory completion of the probationary period. This shall be done within 3 months from the date of receipt of a copy of this order. If the respondents pass an order declaring the applicant to have completed his probationary period satisfactory then the applicant shall be reinstated without back wages, ^{fin.} him continuity of service from the date of his removal till the date of his reinstatement treating the period as ^{but then} ~~does~~ reg. No costs.


(K. Muthukumar)
Member (A)


(S. Venkataraman)
Vice Chairman

/as/