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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI.

REGN. No. OA 2140/89

Date of decision: 20.2.92

Shri Jai Parkash ... Applicant

versus

Union of India & Ors. ... Respondents

CORAM: THE HON'BLE MR. D. K. CHAKRAVORTY, MEMBER (A)
THE HON'BLE MR. J. P. SHARMA, MEMBER (J)

For the Applicant ... Sh. S. S. Duggal,
Counsel.

For the Respondents ... Sh. Chand Kishore,
UDC.

JUDGEMENT (ORAL)

(DELIVERED BY HON'BLE SH. J. P. SHARMA, MEMBER)

The applicant appeared in the Junior Accounts (Civil) Examination SAS Part-I held in 1985 and qualified in the same. Thereafter, he appeared in S.A.S Part-II Junior Accounts Officer examination. The applicant appeared in three papers. In the paper of Public Works and Accounts he secured 79% marks. In the second paper of Advanced Commercial Accounts he secured 75% marks but in the third and/last paper of Cost Management Accounts he secured 30% marks. As a consequence of this, in the final results published by the respondents on 10.2.86, the name of the applicant was shown amongst unsuccessful candidates along with three others with roll Nos. 8, 14 & 17 in the list wherein the name of 13 successful candidates were also shown. The case of the applicant is that if one candidate has obtained more than 40% marks in the aggregate and has obtained less marks in another subject, grace marks upto 10 in that particular paper may be given to enable him to qualify in the said examination, i.e., to attain at least 40% marks.

2. The respondents contested this position and stated that there has been no ^{such} policy and the applicant has not been discriminated.

3. We have heard the learned counsel for the applicant. The departmental representative Shri Chand Kishore, UDC, is present but the learned counsel for the respondents is not present.

4. The learned counsel for the applicant argued firstly that there is already a judgement of this Tribunal in OA 659/87 dated 4.1.88 (Bihari Lal Vs. Delhi Administration) where a similar matter came up for consideration. However, that matter pertains to a Scheduled Caste candidate and was regarding the examination of 1987. Ultimately, the said OA was dismissed because even after giving 10 grace marks, the said applicant could not achieve the qualifying marks. The learned counsel has pointed out an observation in paragraph 9 at page 9 of the aforesaid judgement. Normally, the ratio of a judgement has to be accepted as a precedent. In that case there is an observation by the Bench regarding grant of grace marks, so it is not a binding force. Moreover, the applicant before us is not of reserved category and there are different considerations for Scheduled Castes and Scheduled Tribes.

5. The learned counsel for the applicant also argued that there is a practice prevalent in the office of the Controller of Accounts of giving grace marks but in this particular year of 1986 this policy has not been followed. Even taking this argument as such, though rebutted in the counter of the respondents, there are no specific instances of individual candidates of that particular year being granted grace marks.

In fact, the applicant could claim discrimination and arbitrariness only if any of the candidates in 1986, who took the examination along with the applicant, would have been granted grace marks. The result sheet filed by the applicant (Annexure G) itself shows that out of the 4 failed candidates, one of them was having in the aggregate much more marks than the applicant, i.e., 319, was not granted grace marks. This is also not a case of discrimination.

6. It has also come^{notice} during the course of the hearing that the applicant has already passed the Part-II S.A.S. Examination in 1987 and, therefore, the only relief he wants to claim is that by virtue of grant of 10 grace marks he should be declared to be successful in the year 1986. The grant of grace marks after the applicant has already qualified and passed in 1987 examination would not be proper and equitable as the ~~similarly~~^{other} situated persons of 1986 shall stand ignored even two of those who obtained more marks than the applicant. This will be arbitrary and unjust.

6. Further, we find that the applicant in the year 1986 was informed that the representation cannot be forwarded. But he did not take any recourse to these proceedings if he desired to assail of his non-consideration for grant of grace marks as is evident by the letter dated 17.3.86 (Annexure B). The learned counsel has, however, referred to the legal notice given to the respondents but that to our mind will not bring the matter within the limitation as the reply given to that was only that the matter had been considered and rejected. In view of the authority of S.S.Rathore Vs. State of Madhya Pradesh (AIR 1990 SC 10) repeated representations do not extend the limitation provided under Section 21 of

the Administrative Tribunals Act, 1985. After the non-consideration of his representation in 1986, for which he was informed by the memorandum dated 17.3.86 (Annexure B), the applicant very well knew that his case is not being considered for grant of grace marks. Even the applicant took the next year's examination of 1987 and thereby contented himself obviously with the reply given by the memorandum dated 17.3.86. This application, therefore, does not appear to be bona fide and is hit by limitation.

7. However, we have considered the entire matter on merits also. The learned counsel of the applicant also argued that he may be given some more time to show whether any other candidate who appeared in the S.A.S. Part-II Examination, 1986 was given grace marks or not. However, we do not find any substance in this contention in view of the result sheet itself filed by the applicant at page 21 (Annexure G) where there is a list of 13 successful candidates below which there is a list of 4 unsuccessful candidates.

8. In view of the above facts, we find that this application is barred by limitation as well as devoid of merit and is dismissed leaving the parties to bear their own costs.

J.P. Sharma
(J.P. SHARMA)

MEMBER (J) 20.2.92

D.K. Chakravorty
(D.K. CHAKRAVORTY)
MEMBER (A)