

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn.No. OA-1521/88

Date of decision: 15.05.1992.

Shri Jainti Prasad and Anr. Applicants

Versus

Union of India & Ors. Respondents

For the Applicants None

For the Respondents Shri P.H. Ramchandani, Counsel

CORAM:

The Hon'ble Mr. P.K. Kartha, Vice-Chairman (Judl.)

The Hon'ble Mr. I.K. Rasgotra, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgment? *Yes*

2. To be referred to the Reporters or not? *No*

(Judgement of the Bench delivered by Hon'ble
Mr. P.K. Kartha, Vice-Chairman)

The applicants in this application belong to the Scheduled Caste community. At the time of filing of the application, Applicant No.1 was working in the Pay & Accounts Office, Department of Fertiliser, while Applicant No.2 was working in the same capacity in the office of the Chief Controller of Accounts, Ministry of Finance. They have prayed that they be declared successful in the Junior Accounts

Officers (Civil) Exam. Part II held in October, 1987 by assessing their suitability on the basis of relaxed standard to the extent needed, keeping in view the total cadre strength of Junior Accounts Officers and the meagre representation therein of the Scheduled Castes/ Scheduled Tribes and the directives and orders of the Hon'ble Supreme Court.

2. The first applicant joined service in 1962 as U.D.C./ Auditor. Consequent upon departmentalisation of Accounts, his designation changed to Junior Accountant w.e.f. 7th July, 1976 in the Department of Fertiliser. He earned his promotion as Senior Accountant w.e.f. 1st August, 1977.

3. The second applicant joined service as L.D.C. in the Delhi Telephones in January, 1968. He later joined as Auditor/UOC in the Office of Accountant General, Central Revenues, w.e.f. 22nd January, 1973. Consequent upon the departmentalisation of Accounts in October, 1976, he joined the office of the Deputy Controller of Accounts, as a Junior Accountant. He earned his promotion as Senior Accountant w.e.f. 25th May, 1987.

4. The applicants passed the Junior Accounts Officer (Civil) Examination Part I, held in 1983 and 1985, respectively.

5. The applicants took the Junior Accounts Officer (Civil) Examination, Part II, held in October, 1987.

The maximum marks, pass marks and the actual marks obtained by each of Applicants, in each of the papers are indicated below:-

Name	Specialised Accounts Rules and PR	P.W., Supply A/Cs	Advanced Commer- cial Accounts	Cost Manage- ment Accounts	Total
	150/60	200/80	150/60	100/40	600/270
S/Shri					
Jainti Prasad	57	98	* 98 E	21	274
P.S. Chahlia	64	85	87	22	258

*Exempted from appearing in this paper in any subsequent Examination.

6. Thus, the first applicant has a shortfall of 3 marks in the first paper and of 19 marks in the fourth paper to qualify in Part II of the aforesaid Examination. However, he secured 274 marks as against 270 marks prescribed for qualifying in the aggregate total marks.

7. The second applicant had a shortfall of 18 marks to qualify in the Paper IV (Cost and Management Accounts). There is also a shortfall of 12 marks in the total aggregate marks, inasmuch as he secured 258 marks as against 270 marks required.

8. The applicants have relied upon the Department of Personnel and A.R. instructions issued vide their O.M. No. 36021/10/70-Estt. (SCT) dated the 21st January, 1977 addressed to all the ministries/departments conveying the

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decision of the Government of India that in promotions made on the basis of seniority subject to fitness, in which there is reservation for Scheduled Caste/Scheduled Tribes, in accordance with that Department's Office Memorandum No. 27/2/71-Estt. (SCT) dated the 27th November, 1972, and where a qualifying examination is held to determine the fitness of candidates for such promotion, suitable relaxation in the qualifying standard in such examinations should be made in the case of Scheduled Caste/Scheduled Tribe candidates. It was made clear that the extent of relaxation should be decided on each occasion whenever such examination is held, taking into account all the relevant factors, including:

- (i) the number of vacancies reserved;
- (ii) the performance of the Scheduled Caste/Scheduled Tribe candidates as well as the general candidates in that examination;
- (iii) the minimum standard of fitness for appointment to the post; and
- (iv) the overall strength of the cadre and that of the Scheduled Castes and Scheduled Tribes in that cadre.

9. The applicants have alleged that the respondents did not follow the aforesaid instructions inasmuch as no relaxed

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standard was fixed in favour of the Scheduled Caste/Scheduled Tribe candidates who took the Junior Accounts Officer (Civil) Examination held annually, for filling up the reserved vacancies notwithstanding the fact that the conditions or considerations for prescribing relaxed standard for the S.C./S.T. candidates are fully satisfied.

10. The applicants have contended that the number of vacancies reserved for the S.C./S.T. candidates on the basis of such examination is very small. According to the Gradation List as on 1.9.1984, issued by the Second Respondent, the total strength of the cadre of Junior Accounts Officer (Civil) is 1871 wherein only 103 S.C. and 6 S.T. officers were in position in the post of Junior Accounts Officers.

11. The applicants have stated that they have secured more than the minimum qualifying marks in two and three papers, respectively and the deficiency in the qualifying marks in the Fourth Paper is to the extent of 19 and 18 marks, respectively, whereas deficiency in the qualifying marks in the first paper is only of 3 marks in respect of the first Applicant, who has secured more than the required total aggregate marks, viz., 274 as against 270 required for the purpose. The second Applicant secured only 12 marks less in the total aggregate marks.

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The overall performance of both the applicants in the Examination cannot be said to be below ~~the~~ mark as to declare them totally unfit for appointment to the post of Junior Accounts Officer.

12. According to the respondents, while approving the results, they considered all the relevant factors and allowed 15 marks as grace to those S.C./S.T. candidates who failed in one subject only but already obtained the minimum of 270 marks in the aggregate. In the same examination, the respondents allowed only 3 marks as grace to the candidates belonging to the general category who failed in one subject and had already obtained the minimum of 270 marks in the aggregate. Against 59/38 reserved points for S.C./S.T. candidates, 11 S.C. and 1 S.T. candidates were successful. The S.C. candidates have been promoted against the available vacancies at the stations opted by them and one S.T. candidate who opted for Madras station, has not been so far promoted for want of vacancy at that Station.

13. We have gone through the records of the case carefully and have heard the learned counsel for the respondents. Neither the applicants nor their counsel appeared even though the case has appeared in the cause list for hearing peremptorily.

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14. In the instant case, the question as regards the extent of relaxation that can be given to the S.C./ST candidates in the departmental examination has been considered by another Division Bench in its referral order dated 23.11.1990. In C.A.G. and another Vs. K.S. Jagannathan and another, 1986 (2) S.C.C. 679, the Supreme Court observed that the relaxed or lower qualifying standard must be fixed and made known to candidates before every examination and also the extent of relaxation to be granted and factors to be considered. The question arose in Subordinate Accounts Service Examination(Ordinary) Part II in the Department of Audit and Accounts. The Supreme Court held that the relaxation to S.C./S.T. candidates, by way of grace marks after ascertaining results to the extent of 25 marks out of a total of 500 marks, were held to be illusory, contrary to the requirements of the 1977 O.M. and violation of Article 335 of the Constitution. The Supreme Court observed:-

"There will be a relaxation of 25 marks in all of the candidates belonging to the Scheduled Castes and the Scheduled Tribes, that is, this relaxation will cover not only the pass marks to be given in the aggregate but will be inclusive of the pass marks to be given in each individual paper so that the total number of marks covered by such relaxation will not exceed 25."

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15. Subsequently, in the case of Bihari Lal Vs. Delhi Administration (OA-659/87), the question was raised before this Tribunal as to whether the petitioner is entitled to any relaxation in the matter of pass percentage prescribed for the qualifying SAS/Junior Accounts Officer Examination, Part II and if so, to what extent.

16. In the judgement of the Tribunal in Bihari Lal's case dated 4.1.1988, reference was made to the decision of the Supreme Court in K.S. Jagannathan's case and it was observed that "there can be no manner of doubt that the relaxation of 25 marks (225 marks in the instant case on the basis of 5% of aggregate marks has to be evenly distributed over every separate paper, keeping in view the total marks required for each paper."

17. In the referral order dated 23.11.1990, the Division Bench disagreed with the interpretation given by the Division Bench in Bihari Lal's case and referred the following question to a larger Bench for consideration:-

"Whether the expression ; there will be a relaxation of 25 marks in all for candidates belonging to the Scheduled Castes and the Scheduled Tribes, that is, this relaxation will cover not only the pass marks to be given in each individual paper so that the total number of marks covered by such relaxation will not exceed 25 marks, stipulates the allocation of grace marks percentagewise or markswise per paper or subject or only where the candidate secures a minimum marks in each paper or subject in the Subordinate Accounts Service Examination".

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18. The Full Bench, in its judgement dated 15.3.1991, in OA-1521/88 and OA-1333/90 (Jainti Prasad and Others Vs. Union of India and Others) observed that 25 marks contemplated in the Supreme Court judgement are not sacrosanct. The O.M. of 1977 does not fix any percentage or particular number of marks; it only lays down the criteria of relaxation. It has to be fixed consistently with the requirements of efficiency after taking into account all the relevant factors in each examination. The number of marks of relaxation have to vary from examination to examination. The Full Bench observed that it is incumbent on the Executive authority to fix in advance of the examination each time a relaxed standard of minimum pass marks. A candidate who does not even secure the relaxed standard of minimum pass marks, does not deserve to be given any grace marks and must fail.

19. The Full Bench did not agree with the contention of the applicant in OA-1330/92 that all the 25 marks must be allotted to a particular candidate for any paper in which he has failed. It also did not agree with the contention of the respondents or the view expressed in ~~Q~~ that these 25 marks ~~Q~~ Bihari Lal's case must be spread out equally or percentage-wise per paper or subject.

20. Accordingly, the Full Bench concluded that "appropriate marks out of 25, or the maximum prescribed or, if necessary, all the prescribed marks may be allotted in a particular paper or in the aggregate only to such candidates who secure a relaxed minimum standard in the concerned paper or in the aggregate, as the case may be by the Executive Authority in advance to help them to reach the minimum general standard and thereupon to be considered for promotion".

21. The case has been listed before us to dispose it of in the light of the opinion given by the Full Bench.

22. In the instant case, the respondents had considered all the relevant factors and allowed 15 marks as grace marks to those S.C./S.T. candidates who failed in one subject only, but already obtained the minimum of 270 marks in the aggregate. They had also given only 3 marks as grace to candidates belonging to general category who failed in one subject and who had already obtained the minimum of 270 marks in the aggregate. Though applicant No.1 had secured more than the marks in the aggregate prescribed (274 against 270 prescribed), he was short of 22 marks (3 in the first paper and 19 in the fourth paper). Applicant No.2 did not secure the marks in the aggregate prescribed (258 as against 270 prescribed).

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He was also short of 18 marks in the fourth paper.

We see no unreasonableness in the relaxed standards prescribed by the respondents. The applicants are, therefore, not entitled to the reliefs sought by them. The application is, accordingly, dismissed. There will be no order as to costs.


(I.K. Rasgotra)
Administrative Member


15/5/82
(P.K. Kartha)
Vice-Chairman (Judl.)