



Central Administrative Tribunal Principal Bench, New Delhi

O.A. No.769/2020

Wednesday, this the 27th day of January, 2021

(Through Video Conferencing)

Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. A K Bishnoi, Member (A)

1. Manjesh Porwal, aged 32 years
s/o Shri Ashok Porwal
Deputy Director (Group A)
National Pharmaceuticals Pricing Authority
Department of Pharmaceuticals
Ministry of Chemical and Fertilizers
YMCA Cultural Building
1, Jai Singh Road, Jantar Mantar
New Delhi – 110 001

r/o E-4, Sector 52,
NOIDA 201301, Uttar Pradesh
2. Baljit Singh, aged 40 years
s/o Shri Rajinder Singh
Deputy Director (Group A)
Tarrif Commission
Department of Promotion of Industry and Internal Trade
Ministry of Commerce and Industry
Room No.711, Lok Nayak Bhawan, Khan Market
New Delhi – 110 003

r/o A-174, Upper First Floor
Fateh Nagar, Jail Nagar, New Delhi – 110 018
3. Rangin Murmu, aged 41 years
s/o late Shri Christopher Murmu
Deputy Director (Group A)
Department of Expenditure
Ministry of Finance
Room No.80, North Block,
New Delhi – 110 001

r/o 60-A, Pocket E
GTB Enclave, Delhi – 110 003



4. Arvind Kumar, aged 40 years
s/o Shri Jagdish Prasad
Deputy Director (Cost) Group A
CGST Audit Commissionerate, Ahmedabad
GNFC Tower, Bokadev, SG Highway
Ahmedabad

r/o H-103, Aastha Homes
Near CIMS Hospital, Science City Road,
Sola, Ahmedabad – 380 060

..Applicants

(Mr. Prateek Tushar Mohanty, Advocate)

Versus

1. Union of India through the Secretary
Department of Expenditure
Ministry of Finance
North Block, New Delhi – 110 001
2. Chief Adviser Cost,
Department of Expenditure
Ministry of Finance
2nd Floor, C Wing
Lok Nayak Bhawan, Khan Market
New Delhi – 110 003

..Respondents

(Mr. Gyanendra Singh, Advocate)

ORDER (ORAL)

Mr. Justice L. Narasimha Reddy:

The applicants joined the service of various Public Sector Undertakings (PSUs), such as Bharat Electricals Limited, Dredging Corporation of India and Damodar Vally Corporation as Assistant Director (Cost) in the Junior Time Scale (JTS) of the Indian Cost Accounts Service (ICAS), at different points of time between 2004 and 2012. The Union Public Service Commission (UPSC) issued an advertisement dated 13.04.2013 inviting



applications for the post of Assistant Director (Cost) in JTS, ICAS. The applicants and various others responded. The applicants were selected and appointed in the various Departments of Government of India. They were also extended the benefit of pay protection, at the time of their appointment. However, through O.M. dated 27.08.2019, the respondents have withdrawn the pay protection and proposed to recover the alleged excess amount paid to the applicants. This O.A. is filed, challenging the O.M. dated 27.08.2019.

2. The applicants contend that the reasons mentioned in the impugned O.M. are totally untenable. According to them, no written test is prescribed as part of the selection process for the post of Assistant Director (Cost) in the Government Departments, and the action proposed through impugned O.M. is untenable in law. They also contend that the guidelines issued by the Department of Personnel & Training (DoPT) maintain a clear distinction between the selection of candidates on the basis of interview on the one hand, and those selected on the basis of written test & interview on the other. According to them, there exists the facility of pay protection for the candidates, who were earlier employed in PSUs and are selected for appointment in Government Departments.

3. The applicants submit that online written test was conducted for them only as a step in the short listing process, and



not as the basis for selection. Another contention of the applicants is that no notice was issued to them before the impugned order was passed. Reliance is placed upon the judgment of Hon'ble Supreme Court in **Swaran Lata v. Union of India**, (1979) 3 SCC 165, judgments of Hon'ble High Court of Delhi in **Sanjog Kapoor v. Union of India & others**, 2007 (6) SLR 76 & **Nagendra Kumar Jha v. Union of India & another** (W.P. (C) No.8660/2005) decided on 06.01.2016 and decision of this Tribunal in **Mukesh Rajora v. Union of India & others** (O.A. No.2927/2015) rendered on 12.07.2016.

4. The respondents filed a detailed counter affidavit. According to them, the benefit of pay protection would be available to the employees of the PSUs and other autonomous bodies, on being selected to Government of India services, if only the selection was exclusively on the basis of interview and that in the instant case, a written test was conducted as part of selection process. The grounds raised by the applicants are denied by the respondents.

5. We heard Mr. Prateek Tushar Mohanty, learned counsel for applicants and Mr. Gyanendra Singh, learned counsel for respondents, in detail.

6. The applicants were earlier, appointed in various Central PSUs in the JTS of ICAS. A notification was issued by the UPSC for selection of Assistant Director (Cost) in JTS in the Departments of Government of India. The Ministry of Finance is



the Nodal Authority. On their being selected and appointed into the Government service, they were extended the benefit of pay protection. It is about five years thereafter, that the Ministry of Finance has reviewed the issue pertaining to pay protection, that was extended to the applicants. The impugned O.M. is brief in purport and it reads:

“This Office received a number of queries from candidates working in PSUS regarding benefit of pay protection in terms of DOPT's OM No. 12/3/2009-Est. (Pay-I) dated 30.03.2010. Since UPSC was earlier selected candidates for the post of Assistant Director (Cost) on the basis of interview only, the benefit of pay protection as per above OM was being given to all such candidates who were working in PSUS, Universities, Semi Government Institution or Autonomous Bodies on their appointment in Government. However, since 2014 batch of ICOAS, UPSC had been organized a Computer Based Recruitment Test (CBRT) and recommending candidates on the basis of the results of CBRT and interview.

2. In view of holding of recruitment test, a question came up whether the benefit pay protection was still admissible to new batches of ICOAS. When UPSC was approached in this regard, they advised vide letter dated 17.03.2017 that the matter regarding pay fixation, being administrative in nature, may be decided by the Ministry / Administrative department in consultation with DoPT.

3. Accordingly, clarification from DOPT was sought through DoE regarding admissibility of the benefit of pay protection to candidates working in PSUS etc., consequent to their appointment in Indian Cost Accounts Service (ICOAS) by UPSC through CBRT and interview.

4. DoE vide ID No. A-12034/2/2017-Ad.I (Pt.) Dated 21.06.2017 informed that "DOPT vide their 4. ID Note No. 124210/2017-Est (Pay-I) dated 19.06.2017 has stated that pay protection is presently available to candidates working in PSUS, etc. appointed in Government on selection through interview only in terms of DOPT's OM No. 12/3/2009-Pay-I dated 30.03.2010 read with OM No. 12/1/96- Estt (Pay-I) dated 10.07.1998 and OM No. 12/1/88-Estt (Pay-I) dated 07.08.1989.

5. In view of above clarification of DOPT, the officers of 2016 and 2017 batch of Assistant Director (Cost) who were working in PSUS, Universities, Semi Government Institution or Autonomous Bodies and sought pay protection have not been given pay protection.



6. it has come to notice that five officers of 2014 batch, who were working in PSUS and appointment in Government on the recommendation of UPSC on the basis of the results of CBRT and interview, were granted pay protection quoting DOPT's OM No. 12/3/2009-Estt. (Pay-I) dated 30.03.2010. However, in view of clarification given by DoPT as stated above, pay protection to 2014 batch officers who have been recruited based on selection through CBRT and interview is not admissible. Details of such officers is as follows:

S.No.	Name of Officer	Date of Order of Pay protection
1	Manjesh Porwal, Deputy Director (Cost) NPPA	26.05.2015
2	Baljeet Singh, Deputy Director (Cost) Tariff Commission	Pay Protection application was not processed by cadre. Pay protection was granted by NPPA.
3	Arvind Kumar, Deputy Director (Cost) GST Audit Ahmadabad.	10.07.2015
4	Pankaj Kumar Meena (Resigned)	25.12.2014
5	Rangin Murmu, Assistant Director (Cost) O/o CAC	02.05.2016

7. In view of the clarification provided by DOPT, the pay protection granted to these officers needs to be withdrawn and their pay to be re-fixed. Also, excess payment has already been made on account of pay protection to be recovered.

8. The concerned Departments / Offices are requested to forward the service books of respective officers to this Office for taking further action in this regard.”

7. From a perusal of the same, it becomes clear that the respondents were aware of about the distinction of a selection made purely on the basis of interview on the one hand, and the one, which is made on the basis of a written test & interview put together, on the other. The successive orders issued in this behalf were taken note of. Even the applicants do not dispute that the pay protection would be available to the officials, who worked in



the PSUs, only when their selection to the post in the Government was on the basis of interview alone. Their contention is that no written test was prescribed for their selection and accordingly, the pay protection provided to them, was legal and proper.

8. A small area of controversy is about the online test that was conducted for the batch of applicants. It has to be verified whether such a written examination would constitute the basis for selection.

9. We have thoroughly verified the advertisement as well as the relevant Recruitment Rules. There is no stipulation that a written test would be conducted as part of the selection process. For example, in case of Civil Services Examination, the written tests are held at two stages, namely, the preliminary and main. There is no stipulation of that nature for the post of Assistant Director (Cost). The test, which was held in respect of the applicant, was part of the short listing criteria. It is fairly well known that the UPSC reserves to itself, the right to take recourse to short listing criteria. This may include the one of taking into account, the higher qualifications or experience or conducting a written test. All this is only for the purpose of short listing.

10. For example, if the available posts are 5 and about 300 applications are received from candidates, who hold the prescribed qualifications. When no written test is prescribed for selection, it would be difficult for the selecting agency to interview



all the eligible candidates. In such cases, the recourse can be taken to any of the short listing criteria. For instance, if the prescribed qualification is Post Graduation in a particular discipline, the possession of Ph.D can be taken into consideration. Similarly, if the prescribed experience is 3 years, the length of experience can be enhanced to 5 or 8 years. Another method is to conduct the test, for the exclusive purpose of short listing the candidates and not for assessing their merit in relation to the post in question. Time and again, the Courts have conceded this facility to the UPSC whenever the measures were challenged as constituting alteration of the qualifications or the selection process.

11. Once the online test was conducted only for the purpose of short listing the candidates and the marks obtained therein did not constitute the basis for assessing the relative merit, it cannot be said that the selection of the applicants was on the basis of a written test. A subtle distinction needs to be maintained between two situations. The first is where a written test is conducted as part of selection process. If it is followed by interview, the merit of the candidates is decided on the basis of the aggregate of marks secured in the written test and interview. The second situation is where the written test is conducted as a measure of short listing criteria. In such cases, once the performance of the candidates is taken as the basis for short listing, the relevance of the examination, and equally, the marks secured therein, disappears. Those, who are shortlisted, would be subjected to interview. The



marks, which were secured by them in the examination conducted for short listing, do not figure anywhere in the final selection process. In the instant case, the second process was adopted.

12. Another aspect is that if the written test is conducted as part of selection process, it is conducted irrespective of the number of applications, that are received. Conversely, in a given recruitment year, if the number of applications is almost proportionate to the number of vacancies, the necessity to conduct any written test for the purpose of short listing, may not arise. As observed earlier, no written test is prescribed as part of selection process for the post of Assistant Director (Cost). It was incidental that online test was conducted in the year 2014, exclusively for the purpose of short listing.

13. We find that the subtle distinction, referred to above, was not taken into account by the respondents. The impugned O.M. cannot be sustained in law. Further, the respondents did not issue any notice to the applicants before passing the impugned O.M.

14. We, therefore, allow the O.A., and set aside the impugned O.M. dated 27.08.2019. There shall be no order as to costs.

(A K Bishnoi)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

January 27, 2021
/sunil/