

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 659/87 198
T.A. No.

DATE OF DECISION 4.1.88

Shri Bihari Lal

Petitioner

Shri Rishi Kesh

Advocate for the Petitioner(s)

Versus

Delhi Administration

Respondent

Shri B.R. Prashar for R1 & 2

Advocate for the Respondent(s)

Shri P.H. Ramchandani, R-3.

CORAM :

The Hon'ble Mr. Justice J.D. Jain, Vice-Chairman

The Hon'ble Mr. Birbal Nath, Administrative Member

1. Whether Reporters of local papers may be allowed to see the Judgement? *No*
2. To be referred to the Reporter or not? *No*
3. Whether their Lordships wish to see the fair copy of the Judgement?

24/01/88
(Birbal Nath)
Administrative Member

J.D. Jain
(J.D. Jain)
Vice-Chairman

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

Regn. No. OA 659/87

Date of Decision: 4.1.88

Shri Bihari Lal

... Petitioner/Applicant.

Versus

Delhi Administration

... Respondents.

For Petitioner: Mr. Rishi Kesh, Advocate

For Respondents: Mr. B.R. Prashar for Respondents 1 and 2.
Mr. P.H. Ramchandani for Respondent No. 3.

CORAM: HON'BLE MR. JUSTICE J.D. JAIN, VICE-CHAIRMAN
HON'BLE MR. BIRBAL NATH, ADMINISTRATIVE MEMBER

JUDGMENT:

(Judgment of the Bench delivered by
Mr. Justice J.D. Jain, V.C.)

The sole question for determination in this O.A. under Section 19 of the Administrative Tribunals Act, 1985 is whether the petitioner is entitled to any relaxation in the matter of pass percentage prescribed for the qualifying S.A.S/Junior Accounts Officer Examination, Part II and if so to what extent.

2. The undisputed facts of the case are that the applicant is ~~an~~ employed as U.D.C. in the Directorate of Education, Delhi Administration. In January, 1987, the Controller General of Accounts, Government of India held a departmental qualifying examination called 'Common Junior Accounts Officers' Examination' at the instance of Delhi Administration, Union Territory of Andaman & Nicobar Island and the Cabinet Secretariat of the Government of India and Dandakaranya Project. The said examination is also known as Subordinate Accounts Service Examination. The applicant appeared in Part-II of the said examination. The candidates had to appear in the following three papers.

	Max. Marks	Pass Marks
(i) Public Works Accounts	200	80
(ii) Advanced Commercial Accounts	150	60
(iii) Cost & Management Accounts	100	40
Total	450	180

However, besides the pass marks in individual paper which as seen above, were 40%, the candidates were required to obtain 45% marks in the aggregate which works to 203 marks to enable them to qualify the examination. The applicant secured 68 marks in the first paper, 82 marks in 2nd paper and 22 marks in 3rd paper. Thus, he failed in the first paper by 12 marks and in the third paper by 18 marks. Apart from this, he failed in the aggregate, his total number of marks was 172 as against the requisite number of marks 203 and he was short by 31 marks.

So he was declared unsuccessful in the examination. The grievance of the applicant in the instant application is that he was not given the requisite and permissible relaxation to which he was entitled as a Scheduled Caste candidate as per the instructions contained in the Government of India's decision circulated vide O.M. dated 21.1.77. The said O.M. was duly considered by the Supreme Court in Comptroller and Auditor-General of India, Gian Prakash, New Delhi and another Vs. Gian Prakash, New Delhi and another.

K.S. Jagannathan and another: (1986) 2 S.C.C.679 in the context of S.A.S. Examination held by the Comptroller and Auditor-General of India in December, 1980 along with other relevant O.Ms. and it was held by the Supreme Court that -

contd...

In respect of all subsequent examinations to be held for the Subordinate Accounts Service, the Comptroller and Auditor-General of India will fix a relaxed or lower standard in advance and notify it to the candidates who are going to appear for such examination. In fixing such standard, he will bear in mind the observations made in this judgment and what has been held therein."

3. The contention of the petitioner is that despite specific directions given by the Supreme Court in this behalf the respondent, Controller of General Accounts did not notify in advance the maximum relaxation permissible to the SC/ST candidates appearing in the aforesaid examination. Thus, they were kept ignorant about the relaxation permissible to them in this examination. Not only that the respondents even did not lower/relax the prescribed standard meant for general category candidates in any manner so as to safeguard the interests of Scheduled Castes and Scheduled Tribes who certainly deserve the same. The further contention of the petitioner is that apart from the general relaxation/lowering of pass marks in the case of SC/ST candidates in the said examination, they were also entitled to the grace marks, if any, given by the respondents to general candidates. The crux of the petitioner's case therefore is that if he had been given relaxation in the aggregate inclusive of individual subjects in which he was failing to the extent of 25 marks as laid down by the Supreme Court and in addition, he had been given grace marks he would have certainly qualified the said examination. He has, therefore, sought the relief that he be given besides the grace marks relaxation of 25 marks permissible to SC/ST and he be declared to have passed the said examination.

4. The application is vehemently opposed by the respondents who contend that the SAS Part II Examinations are conducted by the Controller General of Accounts and the result as approved by him is sent to the Delhi

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Administration for announcement. However, the Supreme Court judgment was not applicable to the common Junior Officers Accounts/Examination conducted by the Controller General of Accounts and it was applicable only to examinations conducted by Comptroller and Auditor-General of India. They point out that a careful perusal of the aforesaid judgment would show that the subject-matter of S.A.S. Examination conducted by the Comptroller and Auditor-General of India in 1980 for its own employees in the aforesaid judgment of the Supreme Court was applicable to a particular examination held by Comptroller and Auditor-General of India and did not apply to all S.A.S. Examinations. Further according to them the examination in question had nothing to do with the examination conducted by C & A.G. and is covered by a different set of Rules; it also applies to a totally different cadre. Hence, there was no provision in the Delhi Administration Accounts Service Grade II Rules, 1982 which governed the holding of the examination in question for/warding grace marks to a Scheduled Caste candidate appearing in the S.A.S. Part I and Part II Examinations either in a particular paper or in the aggregate. Lastly, it is contended that even assuming the same yard-stick, i.e., the relaxation by 5% marks is to be applied to the SC/ST candidates in the present case, the petitioner cannot be declared to have qualified the examination because his total marks fell short of 31 marks and even applying the relaxed norms he would have at best obtained 195 marks, still 8 marks below the prescribed limit of aggregate marks, viz., 203. It may be useful to reproduce below the Government of India's O.M. dated 21st January 1977 on which reliance is heavily placed

by the petitioner for ready reference:-

Subject: Relaxation of standards in the case of Scheduled Caste/Tribe candidates in qualifying examinations for promotion to the higher grade on the basis of seniority subject to fitness.

"The undersigned is directed to refer to this Department's Office Memorandum No.8/12/69-Estt(SCT), dated December 23, 1970 in which it has been provided that in promotions made through departmental competitive examinations and in departmental confirmations examinations, if sufficient number of Scheduled Caste/Scheduled Tribe candidates are not available on the basis of the general standard to fill the vacancies reserved for them, candidates belonging to these communities who have not acquired the general qualifying standard should also be considered for promotion/confirmation provided they are not found unfit for such promotion/confirmation. A question has been raised whether relaxation in qualifying standards should be granted to Scheduled Castes and Scheduled Tribes subject to fitness, where fitness is decided on the basis of qualifying examination. The matter has been carefully considered and it has now been decided that in promotions made on the basis of seniority subject to fitness in which there is reservation for Scheduled Castes and Scheduled Tribes in accordance with this Department's Office Memorandum No.27/2/71-Estt.(SCT), dated November 27, 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 Cast/Scheduled Tribe candidates. The extent of relaxation should, however, be decided on each occasion whenever such an examination is held taking into account all relevant factors including (i) the number of vacancies reserved, (ii) the performance of Scheduled Caste/Scheduled Tribe candidates as well as general candidates in that examination, (iii) the minimum standard of fitness for appointment to the post, and also (iv) the overall strength of the cadre and that of the Scheduled Castes and Scheduled Tribes in that cadre."

5. On a critical examination of this O.M. and also O.Ms. dated 23rd December, 1970 and 27th November, 1972 adverted to therein, their Lordships of the Supreme Court observed that

"The said Office Memorandum dated January 21, 1977, thus postulates two qualifying standards- one, a general qualifying standard and the other, a relaxed or lower qualifying standard for candidates belonging to the Scheduled Castes and the Scheduled Tribes. Paragraph 4 of the said Office Memorandum dated February 8, 1968, reproduced earlier, shows that in the case of direct recruitment through a qualifying examination a minimum standard is generally to be fixed and that in such cases, a lower minimum qualifying standard should be

fixed for the candidates belonging to the Scheduled Castes and the Scheduled Tribes, taking into account the minimum standard necessary for the maintenance of efficiency of administration, and that if the minimum qualifying standard for general candidates is reviewed at a later date, the lower minimum qualifying standard applicable to the Scheduled Castes and Scheduled Tribes candidates should also be reviewed.

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 Scheduled Castes and the Scheduled Tribes to fill such vacancies according to the general qualifying standard.

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 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 the 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. The relaxed or lower qualifying standard cannot be fixed for all time or for a number of years. It must of necessity be fixed for each examination because it has to be fixed taking into account the reserved vacancies remaining unfilled and the overall strength of the cadre end of the Scheduled Castes and the Scheduled Tribes in that cadre.

The relaxed or lower qualifying standard is the minimum up to which the discretion under the said Office Memorandum dated January 21, 1977, is to be exercised. This should not be construed to mean that all who qualify according to the relaxed or lower qualifying standard are to be promoted."

6. Obviously, the foregoing observations were made by their Lordships for the guidance of the concerned authorities who are required to conduct competitive/ qualifying examinations for the purposes of direct recruitment/promotion etc. and were not confined to only the examinations held by the Comptroller and Auditor-General of India. On a plain reading of Office Memoranda dated January 21, 1977, December 23, 1970 and November 27, 1972, it is manifest that they bear on relaxation of standards in the case of SC/ST candidates in qualifying examinations for promotion to the higher grades on the basis of seniority subject to fitness and departmental competitive examinations etc. for promotion and confirmation. Obviously, the respondents have not carefully perused the said judgment and without applying their mind to this aspect of the matter, they have ventured to say that the guidelines laid down by the Supreme Court in the said judgment are only applicable to the examinations conducted by Comptroller and Auditor-General of India and not other departmental examinations. To say the least, therefore, this stand of the respondents is absolutely untenable.

7. As for the merits of the case, admittedly, no relaxed or lower qualifying standard for candidates belonging to SC/ST candidates was prescribed in the instant case and no relaxation in the matter of pass marks or lowering of pass marks was even done. Under

the circumstances, we have no hesitation in observing that the respondents have totally failed to discharge their constitutional and statutory obligations in the light of the observations made by the Supreme Court in the aforesaid judgment. As a consequence thereof, only 3 out of 5 SC/ST candidates who had appeared in the instant examination, could qualify the same and that too on the basis of the general standards of pass percentage prescribed for everyone. This lapse on the part of the respondents must, therefore, be deprecated with all the force at one's command.

8. The matter, however, does not rest there because even allowing the relaxed/lowered standards as suggested by the Supreme Court, the petitioner fails to qualify the examination. The Supreme Court allowed relaxation of 25 marks in the case of an examination in which the total prescribed marks were 500. It also clarified that the relaxation of 25 marks would be inclusive of relaxation to be given in each individual subject. There can be no manner of doubt that the relaxation of 25 marks (22.5 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 prescribed for each paper. Thus, the relaxed/lowered standard for qualifying the examination so far as ^a SC/ST candidate is concerned would be 70 marks, 52.5 marks and 35 marks for Papers I, II and III respectively and the pass marks for the aggregate would come down to 180 marks. Hence, the petitioner would still short fall of 2 marks in Paper-I, 13 marks in Paper II and 8 marks in the aggregate.

So, the question would arise whether the petitioner would be entitled to any grace marks also over and above the lowered/relaxed standard deemed to have been prescribed for the SC/ST candidates.

9. In order to verify this fact we called for the relevant file from the respondent-Delhi Administration and we have perused the records maintained in the Principal Accounts Office, Delhi Administration in respect of common examination Part-II analogous to Junior Accounts Officer (Civil) Examination conducted by the Controller of General Accounts in 1987, i.e. the one in question. It shows that moderation was done by awarding grace marks in the case of about a dozen candidates by the respondents by awarding upto 10 marks in one subject or in the aggregate as the case may be. However, no moderation was given to any candidate who had failed to pass two subjects. So allowing the grace marks to the petitioner on the same pattern, the petitioner will be deemed to have passed in the aggregate and also in Paper No.I provided all the 10 marks are added to marks obtained by him in Paper No.I. However if the 10 marks are added to the marks obtained by him in Paper III, he would be still falling short of 3 marks to qualify the same. We do not think, it would be in the interests of justice to depart from the norm adopted by the respondents in this respect as it would not be conducive to maintenance of minimum standard necessary for keeping the efficiency of administration. ~~xxxxxxxxxx~~ We are of the considered view that there is a limit to which the standard can be lowered for qualifying any departmental examination.

The Supreme Court observed, in this context, as under in the aforesaid case:-

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"How much one may desire to better the prospects and promote the interests of the members of the Scheduled Castes and the Scheduled Tribes, no sane-thinking person would want to do it irrespective of the considerations of efficiency, or at the cost of the ~~proper~~ proper functioning of the administration and the government machinery."

To be candid such a course would be abhorrent to judicial mind, it will be indeed startling to pass a candidate who has secured only 22 marks as against the minimum qualifying marks of 35 by awarding as many as 13 grace marks, i.e. more than 50 per cent of what he has actually secured on his own merit. That is besides giving two grace marks in Paper No. I also. We do not think that there would be any justification for such a course as it may amount to laying down a precedent which may boomerang on the efficient working of the department in the long run.

10. For the foregoing reasons we dismiss this application as being devoid of any merit.

g/04/01/88

(Birbal Nath)
Administrative Member

J. D. Jain
(J. D. Jain)
Vice-Chairman