

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 28/90
~~To Azx Nox~~

199x

DATE OF DECISION 7.12.90

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|---------------------------------------|--------------------------------|
| <u>Ashok Kumar Pant</u> | Petitioner |
| <u>D.C. Joshi</u> | Advocate for the Petitioner(s) |
| Versus | |
| <u>Delhi Administration through</u> | Respondent |
| <u>its Chief Secretary and others</u> | |
| <u>Mrs. Avnish Ahlawat</u> | Advocate for the Respondent(s) |

CORAM

The Hon'ble Mr. S.P. Mukerji, Vice Chairman

The Hon'ble Mr. T.S. Oberoi, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? ☒
2. To be referred to the Reporter or not? ☒
3. Whether their Lordships wish to see the fair copy of the Judgement? ☒
4. Whether it needs to be circulated to other Benches of the Tribunal? ☒

O R D E R
(Hon'ble Shri S.P. Mukerji, Vice Chairman)

In this application dated 8th January, 1990 filed under Section 19 of the Administrative Tribunals Act, the applicant a Pharmacist under the Delhi Administration has prayed that the impugned order dated 22.12.89 (Annexure-A.1) rejecting his application for admission to the S.A.S. examination, 1990 should be set aside and the application form in response to the Circular dated 26.7.89 ~~to~~ be accepted. His further prayer is that the respondents be directed ^{to} permit him to appear the JAD/SAS (Part-I, 1990) and Part-II examination after passing the Part-I and declare his result along with other candidates. By the interim order dated 9.11.1990 this

Tribunal directed the respondents to allow the applicant to appear in the SAS Part I Examination scheduled to be held on 12.1.90 on a provisional basis. The material facts of the case are as follows:

2. The Delhi Administration in its letter dated 11.5.83 promulgated a scheme for conduct of common Junior Accounts Officer Training/Examination. In accordance with this scheme the officials of Subordinate Services Gr.II and Stenographers in the pre-revised scale of Rs.425-700 were eligible to appear in the examination. Apart from this all other officials of the Delhi Administration Subordinate Services and Stenographers in the pre-revised scales of Rs.330-560 and Rs.425-700 who were below the age of 53 years and had rendered three years of service were also eligible to appear in the examination. The applicant has been working as Pharmacist in the scale of Rs.330-560 ever since 16.2.82 and accordingly from 1985 onwards he was eligible to appear in the examination. On the recommendations of the IVth Pay Commission the pay scale of Rs. 330-560 of the Pharmacist was revised to Rs.1200-2040 with effect from 1.1.1986 vide orders issued on 13.9.86. Accordingly the applicant as a Pharmacist was given the revised scale of pay of Rs.1200-2040. It appears that (including strikes) on there was some representation which another notification was issued on 5.10.87 revising inter alia the revised pay scale of Rs.1200-2040 held by the applicant as Pharmacist to Rs.

1350-2200. The respondents on 26.7.89 issued a notice to all Heads of Departments (Annexure.A.2) inviting applications for the common JAO examination to be held in 1990. In this notice "all the officials of the Administration in the scale of Rs.1200-2040 and Rs. 1400-2300" were made eligible to submit their applications. The applicant accordingly applied but his application was not accepted by the impugned order dated 22.12.89 as he "does not fulfil the required eligibility condition of Delhi Administration's scheme on the subject." The underlying reasons for rejection of his application was that the applicant had been given the revised scale of Rs.1350-2200 instead of Rs.1200-2040, in lieu of the pre-revised scale of Rs.330-560. The applicant's contention is that he was eligible in all respects and his application was rejected unilaterally without giving him any opportunity to defend his case. His further contention is that he has been discriminated against in-as-much as other employees who like him were earlier/holding the pay scale of Rs.330-560 have been made eligible. He has also referred to certain candidates who as Pharmacists had been allowed to take the examination in January, 1989.

3. The respondents have relied upon the amendment order dated 21.12.89 (Annexure.A.7 page 48 of paper book) by which categories other than Delhi Administration

Subordinate Services Grade II and Grade III Stenographers have been made ineligible to appear in the SAS examination. The amendment was made because according to them the Accounts cadre had been built up sufficiently. They have further stated that the scale of Pharmacist enjoyed by the applicant at Rs. 330-560 stood revised to Rs. 1350-2200 with effect from 1.1.86 whereas other posts in pre-revised scale of Rs. 330 -560 have been given the revised scale of Rs. 1200-2040. Since only those who were given the revised scale of Rs. 1200-2040 corresponding to the pre-revised scale of Rs. 330-560 were eligible the applicant being in different revised scale of Rs.1350-2200 was not eligible. They have, however, conceded that the applicant's pre-revised scale of Rs. 330-560 had been earlier revised to Rs. 1200-2040 with effect from 1.1.86 but later on ^{again} revised to Rs. 1350-2200 retrospectively with effect from 1.1.86 vide order dated 5.10.87. They have further clarified that only those officials in the scale of Rs. 1350-2200 who had earlier appeared upto the examination held in 1989 and could not qualify the said examination were allowed to appear in the examination held in 1990 according to the amended scheme. They have also conceded that a Pharmacist named by the applicant had appeared in the 1989 examination but no fresh candidates as Pharmacist and working in the pay scale of Rs.1350-2200

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has been allowed to appear in the examination as per the amended rules.

4. In the rejoinder the applicant has stated that by the amendment dated 21.12.89 (Annexure.A.7) a discrimination has been made between the ex-cadre officials in the revised pay scale of Rs. 1350-2200 and ex-cadre officials in the revised scale of Rs. 1200-2040 in-as-much as the former have been debarred from ^{the} 1990 examination whereas the latter from 1991. He has alleged that the amendment has been ^{effected} by the respondents to punish the ex-cadre employees of the Administration who went on strike in 1987 for revision of their pay scale. He has challenged the vires of the amendment of 1989 as in violation of Article 14 of the Constitution. He has also argued that when the applications were invited for the 1990 examination on 1.9.89 the applicant was eligible to appear in the examination and his eligibility cannot be taken away by giving retrospective effect to the order issued on 21.12.89.

4. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. The scheme of SAS examination which had been issued on 11.5.83 was amended on 21.12.89 (Annexure.A.7) in following terms:

"In the Scheme appended to this Administration letter No.F.20/3/79-AC, dated 11.5.83 for the existing para 6(i) the following shall be substituted, namely-

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"In addition to the officials who are selected for training for the S.A.S./J.A.O. (Common) Examination, the said examination will also be open to officials belonging to Delhi Administration Subordinate Services Cadre and Stenographers in pay scale of Rs.330-560 (Revised to Rs.1200-2040) and Rs.425-700 (Revised to Rs.1400-2300) provided they are not more than 53 years of age and have rendered at least three years of service in the respective scales of pay as on 1st April of the year in which the training in S.A.S. of the batch with whom they will be appearing is started. However, the officials working in the pay scales of Rs. 1350-2200 and Rs.1400-2600 belonging to cadres other than Delhi Administration Subordinate Services & Stenographers who have appeared in the S.A.S/J.A.O.(Common) Examination in Part-I or Part-II on the basis of the examination/examinations held upto the year 1989 and could not qualify the said examination will be eligible to avail themselves of the chances for appearing in the S.A.S/J.A.O.(Common) Examination as per Rules of the Scheme for training for S.A.S.Examination. Similarly the officials working in the pay scales of Rs.1200-2040 and Rs. 1400- 2300 belonging to the cadres other than the Delhi Administration Subordinate Services and Stenographers who having appeared in Part-I or Part II of the S.A.S/J.A.O (Common) examination held upto the year 1990 and could not qualify the said examination shall be eligible to avail themselves of the chances for appearing in the S.A.S/J.A.O.(Common) Examination as per Rules of the scheme for training for S.A.S. Examination."

It may be recalled that before the amendment, all ex-cadre officials in the scale of Rs.330-560 and Rs.425-700 were eligible to appear in the examination so far as pay scales were concerned. With effect from 1.1.86 these two pay scales were revised to Rs.1200-2040 and Rs.1400-2300 respectively. Some ex-cadre officials like the applicant who were in the scale of Rs.330-560 or Rs.425-700 and had been given the revised scale of Rs.1200-2040 and Rs.1400-2300 agitated and got the revised pay scales modified to Rs. 1350-2200 instead of Rs.1200-2040 and Rs.1400-2600 instead of Rs.1400-2300 even though they had been in the pre-revised scales of Rs.330-560 and Rs.425-700 before.

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revision. The Delhi Administration in their wisdom wanted to exclude the ex-cadre officials from appearing in the SAS Examination as the Accounts cadre had been more or less become sufficiently established. During the transitional period they allowed the ex-cadre officials in the normal revised scales of Rs.1200-2040 and Rs.1400-2300 to appear in the examination held up to the year 1990 but other ex-cadre officials who were given the special revised scales of Rs.1350-2200 and Rs.1400-2600 were allowed to appear in the examination upto 1989. The applicant who had been given the special scale of Rs.1350-2200 fell in this category. However, he did not avail of the various chances to appear in the examination right from 1985 to 1989 but applied for the 1990 examination for which application had been invited on 26.7.89 (Annexure.A.2). In that notice the normal revised scales of Rs.1200-2040 corresponding to Rs.330-560 and the pay scale of Rs.1400-2300 corresponding to the pre-revised scale of Rs.425-700 were only mentioned. The applicant, was however in the special revised scale of Rs.1350-2200 and hence his application was not entertained. The applicant's plea is that like the pay scale of Rs.1200-2040, his special scale of Rs.1350-2200 was also in lieu of the pre-revised scale of Rs.330-560 and therefore he was also eligible. He has challenged the amendment of the Scheme, the order^{on} which was issued on 21.12.89

on the ground that the amendment cannot be given retrospective effect and those in the special revised scale cannot be discriminated against, by being deprived of the opportunity of appearing in the 1990 examination which has been allowed to other ex-cadre officials who were in the normal pre-revised scale of Rs.1200-2040. We see considerable force in the argument of the applicant. The applicant himself had been given the normal revised scale of Rs.1200-2040 which was subsequently further modified to Rs.1350-2200. Thus no discrimination can be justified between ex-cadre officials who were all in the pre-revised scale of Rs. 330-560 but were given the two different revised scales of Rs.1200-2040 and Rs.1350-2200 during the transition period. It is true that the Delhi stration is fully within their powers to the eligibility conditions but the eligibility

ditions cannot be modified with retrospective in order to deprive eligible officials of the of appearing in the Examination. In P. Mahendra Vs. State of Karnataka and Ors, 1990(1) SLR SC 307 the Hon' Court has held that the right to be considered applying through an advertisement/issued before amending the Recruitment Rules cannot be taken away by retrospective amendment to those Rules. In the instant case us the amendment issued in December, 1989 was s

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on the ground that the amendment cannot be given retrospective effect and those in the special revised scale cannot be discriminated against, by being deprived of the opportunity of appearing in the 1990 examination which has been allowed to other ex-cadre officials who were in the normal pre-revised scale of Rs.1200-2040. We see considerable force in the argument of the applicant. The applicant himself had been given the normal revised scale of Rs.1200-2040 which was subsequently further modified to Rs.1350-2200. Thus no discrimination can be justified between ex-cadre officials who were all in the pre-revised scale of Rs. 330-560 but were given the two different revised scales of Rs.1200-2040 and Rs.1350-2200 during the transition period. It is true that the Delhi Administration is fully within their powers to modify the eligibility conditions, but the eligibility conditions cannot be modified with retrospective effect in order to deprive eligible officials of the chance of appearing in the Examination. In P.Mahendran and Ors. Vs.State of Karnataka and Ors, 1990(1) SLR SC 307 the Hon'ble Supreme Court has held that the right to be considered by applying through an advertisement/issued before amendment of the Recruitment Rules cannot be taken away retrospectively by subsequent amendment to those Rules. In the instant case before us the amendment issued in December, 1989 was subsequent

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to the notice inviting applications issued on 26.7.89. Though this notice also does not mention the revised pay scale of Rs.1350-2200 of the applicant as one of the eligibility pay scales, yet the fact remains that Pharmacist in the pay scale of Rs. 1350-2200 as admitted by the respondents had been allowed to take the 1989 examination. Therefore, there is no reason why the applicant also should not be considered eligible for the 1990 examination for which the notice was issued in July, 1989 which ^{has to} remain ^{the} unaffected by amendment of the Scheme issued on 21.12.89. Without going further into the vires of the amendment discriminating between two pay scales derived from the same pre-revised scales, we allow this application on the ground that the amendment cannot be given retrospective effect to debar the applicant from appearing in the 1990 examination for which notice for applications was issued in July, 1989.

5. In the facts and circumstances, we allow this application with the direction that the applicant was eligible to appear in the examination held in 1990 and accordingly is eligible to appear in Part-II of the examination in 1991 also. The applicant has been allowed to appear provisionally in the 1990 examination, the results of the same so far as the applicant is concerned should be announced forthwith. The applicant's eligibility for appearing in the 1991 examination is ^{to} ^{his result} abide ^{this judgment}.

6. In the circumstances, there will be no order as to costs.

T.S. Oberoi 7.12.90
(T.S. Oberoi)
Member (Judicial)

S.P. Mukerji 7.XII.90
(S.P. Mukerji)
Vice Chairman

7.12.90

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