

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI.

O.A. No. 1005/90
T.A. No.

DATE OF DECISION 9-12-1994

Shri BIRBAN TEJAN & Anr. Applicant(s)
(Shri N.S. Verma, Advocate for the Applicant)

Versus

Union of India Respondent(s)
(Shri M.L. Verma, Advocate for the Respondent)
(For Instructions)

1. Whether it be referred to the Reporter yes or not?
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not?

Pray
(C.J. Roy) (S.K. D.
MEMBER (J))

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ON

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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No. 1005/90

New Delhi this 9th day of December, 1994.

Shri N.V. Krishnan, Vice Chairman(A).

Shri C.J. Roy, Member(J).

1. Birban Tejan,
S/o Shri Babu Singh,
J21/231, West Sagarpur,
New Delhi.

2. Ghasi Ram,
S/o Late Shri Lekh Raj,
61/38, Pragati Nagar,
Meerut (UP).
Applicants.

By Advocate Shri N.S. Verma.

Versus

1. Union of India, through
Secretary to the Govt. of India,
Min. of Defence (Finance),
New Delhi.

2. The Controller of Defence Accounts,
West Block V, R.K. Puram,
New Delhi.
Respondents.

By Shri M.L. Verma, Advocate.

ORDER

Shri C.J. Roy, Member(J).

The applicants who belong to a Scheduled Caste, state that in respect of the SAS Examination (Part-II) held by the second respondent in October, 1986, they have not been given proper marks, with result they have been declared to have failed in the examination. Their claim is that, in the light of the judgement of the Supreme Court in Comptroller and Auditor General of India Vs. K.S. Jagannathan & Anr. (1986(2) SCC 679), they are entitled to be given additional marks, not exceeding 25, in which case they would have passed the examination.

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2. The basic facts necessary for adjudication are as follows.

2.1 The applicants took the SAS examination (Part -II) in October 1986 and obtained marks as shown below.

Applicant No.	Roll No.	S.A.S. Examination Part II								Aggregate	
		Marks obtained in		Paper V		Paper VI		Paper VII			
		Paper V	Paper VI	Paper VII	Paper VIII	Paper VII	Paper VIII	Paper VII	Paper VIII		
1	968	39	78	47	41	100	100	100	100	500	
2	1210	60	80	33	40	100	100	100	100	213	

2.2 It is stated that para 16 of Annexure 'D' to the Office Manual, Part -I of the Defence Accounts Department fixes the standard for passing this examination. It is stated that the standard so fixed by para 232 of the Manual is 40% for each individual subject and 45% in the aggregate.

2.3 It is seen from the table at para 2.1 that in respect of the four papers the maximum marks is 500. As the qualifying marks to be obtained in each individual paper is 40%, the marks to be obtained in paper V and paper VI, each carrying 150 marks, is 60, while the qualifying marks in papers VII and VIII, each carrying 100 marks, is 40. Further, the qualifying marks in the aggregate should be 45% of 500 which is 225.

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2.4 In so far as the first applicant is concerned, the table at 2.1 shows that he has qualified in papers VI, VII and VIII but he has secured only 39 marks in paper V against the qualifying marks of 60. He has also not qualified in the aggregate as he has secured only 205 marks. However, if 21 marks are added to paper V - which is the claim made by the applicant on the basis of the Supreme Court's judgement in Jagannathan's case - he will not only qualify in paper V but would also get qualifying marks in the aggregate.

2.5, In so far as the second applicant is concerned, he has qualified in papers V, VI and VIII. In paper VII, he has secured only 33 marks, while the qualifying marks are 40. Further, in the aggregate also, he has secured only 213 marks instead of 225. If 7 marks are given to him in paper VII, he would get qualifying marks of 40. In that case, the aggregate marks would become 220, which is still short of the qualifying marks. Therefore, 5 more marks have to be given to the aggregate also, so that he can get qualifying marks in the aggregate also. The applicant claims that he should, therefore, be given 7 more marks in paper VII and in addition 5 more marks in the aggregate, making a total of 12 which is required to be done in terms of the Supreme Court judgement in Jagannathan's case.

2.6 The applicant No. 1 made a representation on 1.7.1989 (Annexure A-4) which was rejected by the respondents on 5.10.1989 (Annexure A-6). Likewise, the representation dated 2.8.1989 of the second applicant (Annexure A-5) was rejected on 20.8.1989 (Annexure A-7).

2.7 Hence, the applicants have sought the following directions in this O.A.

"(1) to declare the applicants to have passed the SAS Examination Part-II held in October 1986, or give appropriate orders or directions to the respondents to that effect, by grant of concession of -

(i) 21 marks in paper V, to applicant No. 1, and

(ii) 7 marks in Paper VII and 5 marks in the aggregate (that is to say 12 marks in all) to applicant No.2."

2.8 The main ground on the basis of which this application is made that the respondents have not properly implemented the guidelines given in the OM dated 21.1.1977 of the Department of Personnel and Administrative Reforms (Annexure A-2) dealing with the relaxation of the standard in the case of SC/ST candidates in qualifying examinations for promotion. In particular, it is complained that the respondents have not given effect to the judgement of the Supreme Court in Jagannathan's case (Supra) in which directions have been given after considering this O.M.

3. The respondents have filed a reply contesting these claims. Inter alia, they have stated as follows in reply to para 4.9 and paras 4.17-4.24 of the O.A:

"4.9. The SAS examination being conducted by the defence Accounts Deptt. is a qualifying examination for promotion to the grade of SO(A). With reference to GOI DP&AR OM dated 21.1.77 whenever a qualifying examination is held suitable relaxation in the qualifying standards is to be allowed to the SC/ST candidates after taking into consideration all relevant factors mentioned in the OM.

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4.17-4.24. The Supreme Court of India vide judgement dated 1.4.1986 had directed the C&AG of India to allow a relaxation of upto a total of 25 marks in individual paper or in aggregate to SC/ST candidate of his deptt. who appeared in SAS Part II examns held during 1980 to 85 for the reasons stated therein. As the Defence Accounts Department is not under the administrative control of C&AG the above judgement is not against the DAD. It may be submitted that the relaxation in qualifying standards of SC/ST candidates is allowed with reference to GOI DP&AR OM dated 21.1.77 (copy placed at Annexure A) which does not provide for advance notification of the extent of relaxation proposed to be allowed to the SC/ST candidates. However, when the Supreme Court orders dated 1.4.1986 against the C&AG of India came to our notice this Deptt. has started notifying the extent of relaxation proposed to be allowed to the SC/ST candidates in advance from the examination held from 1987 onwards. It may further be submitted that the CGDA being the head of the Deptt. had decided to relax the qualifying standards of SC/ST candidates of the 1986 examination by 5% marks in individual papers or in aggregate (which works out to 25 marks in all) after considering all the aspects mentioned in the OM dated 21.1.77. As the applicants could not qualify even under the relaxed standards fixed for SC/ST candidates in that the applicant No. (1) could secure only 39 marks in paper V and the applicant No. (2) could secure only 33 marks in paper VII as against the required 52 marks and 35 marks respectively adopted for the SC/ST candidates after taking into account the extent of relaxation they were declared failed in the examination".

4. The applicant has filed a rejoinder reiterating the claims made in the OA and contending them. The respondents are bound to follow the judgement of the Supreme Court in Jagannathan's case.

5. The learned counsel for the applicants pointed out that the respondents have already granted relaxation in respect of the Part-II examination in 1989 upto a total number of 25 marks either in individual papers or in aggregate.

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6. The learned counsel for the respondents submitted that this was done on the direction given by the Allahabad Bench of the Tribunal in Ramdin and Anr. Vs. Union of India & Others, 1989(9) ATC 522.

7. We have carefully considered the rival contentions. Admittedly, after the Supreme Court's judgement in Jagannathan's case, the respondents have relaxed the standard for SC/ST candidates. Whereas the qualifying marks in individual papers is fixed at 40% generally, in the case of scheduled castes, this has been reduced to 35%. In other words, SC/ST candidate is required to score only 35% of the marks in each of the four papers. Likewise, whereas the qualifying marks in respect of the aggregate marks to be obtained is 45% i.e. 225, in the case of SC/ST this has been fixed at 40% (i.e. 200). It is, therefore, contended that if a SC candidate does not obtain 35% of the marks in each individual paper or 40% of the marks in the aggregate, he cannot qualify. There is no judgement or order which requires that additional marks should further be given to him as claimed by the applicants.

8. Therefore, the only question before us is whether the additional marks claimed by the applicants are due to them in terms of the above judgement.

9. The guidelines dated 21.1.1977 issued by the Department of Personnel (Annexure A-2) contained the following instructions:

"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

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reservation for Scheduled Castes and Scheduled Tribes in accordance with this Department's Office Memorandum No. 27/2/71-Estt (SCT), dated 27.12.1972, and where a qualifying examination is held to determine the fitness of candidates for such promotions, suitable relaxation in the qualifying standard in such examinations should be made in the case of Scheduled Caste/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".

10. This OM came up for consideration by the Supreme Court in Jagannathan's case (Supra). That appeal was in respect of the Subordinate Accounts Service Examination Part-II held in the Department of Audit Accounts in the year 1980. It was found that Comptroller and Auditor General had issued an instruction dated 18.12.1967 (i.e. before issue of the Annexure A-2 instruction) that the maximum extent of relaxation should be only 3% in aggregate and 2% in any of the two papers. No such instruction appeared to have been issued following the issue of the Annexure A-2 instructions by the Department of Personnel. The Supreme Court noticed that the Comptroller General gave a general relaxation of 5 marks in the aggregate, inclusive of 5 marks in one or more subjects, to all candidates so that with the award of this grace marks some more candidates could pass. In so far as scheduled caste/scheduled tribe candidates are concerned, they were given 8 grace marks in the aggregate, inclusive of 5 marks in one or more subjects. This resulted in five scheduled caste/scheduled tribe candidates passing, out of which three candidates had already passed by virtue of the grace marks given generally to all the candidates. As the total marks was 500, it was noticed that

the grace marks given for scheduled caste candidates was only 8 i.e. 1.35%, which is inclusive of the grace mark of 5 given to general candidates. Hence, the grace marks meant for scheduled caste/scheduled tribe candidate was only 3. It is in this context that the Supreme Court, after considering in depth the constitutional arrangements made for the protection of the interest of the SC/ST, held that the Comptroller General did not follow the Annexure A-2 instructions in spirit. In this context, reference was made in para 27 of that judgement to the practice obtaining in the Department of Posts and Telegraphs, wherein it was laid down that while the general candidates should get 40% in each individual paper and 45% in the aggregate, the standards can be lowered upto 33% in individual papers and 38% in the aggregate i.e. by 7% for SC/ST. Likewise, the practice obtaining in the Railways was referred to in para 28. A direction was given by the Railway Board in respect of promotions made on seniority-cum-suitability basis that a concession of 10 marks may be granted to SC/ST in the suitability test, written or oral in categories where safety is not involved. Therefore, the Supreme Court gave the following directions in respect of the earlier examination.

"For Part II examination of the Subordinate Accounts Service Examination (Ordinary) and all subsequent Part II Examinations of the Subordinate Accounts Examination (Ordinary) held thereafter until today 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 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.

The respondents and all other candidates belonging to the Scheduled Castes and the Scheduled Tribes who will pass the said examinations as a result of the above relaxation are declared to have passed such examinations and to have been promoted to the Subordinate Accounts Service in the vacancies reserved for the members of the Scheduled Castes and the Scheduled Tribes with effect from the date when the final declaration of the results of each such

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examination was made and will be paid such salary and shall be entitled to all other benefits on the basis of such promotion with effect from the said date. So far as seniority is concerned, however, they will not rank above those who have already passed and have been promoted but will be placed in the seniority list after all those who have passed in Part II of the Subordinate Accounts Service Examination (Ordinary) held so far, ranking inter se according to the rules relating to seniority set out in paragraph 184 of volume I of the Comptroller and Auditor General's Manual of Standing Orders (Administrative)." (emphasis added)

In regard to future examination, it directed as follows:

"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 judgement and what has been held therein."

11. The learned counsel for the applicant relies on the former directions to contend that the applicants in the present case are also entitled to relaxation of 25 marks.

12. We have carefully considered this submission. We are unable to agree with the interpretations sought to be placed by him.

13. It is to be noted that in the case before them the relaxation was given by addition of 8 marks to the aggregate inclusive of 5 marks in one or more subjects. In the present case, the relaxation given to scheduled caste is different and provides that they will be deemed to have qualified even if they secured a lesser percentage of marks, the concession amounting to 5%. Secondly, the direction regarding relaxation by awarding marks not exceeding 25 related to the Part-II examinations held by the Comptroller Auditor General until the

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date of that judgement i.e. 1.4.1986. In regard to the future examinations, no specific direction as to how the relaxation should be given was given in the directions. As mentioned by the respondents, they took note of this judgement in respect of the examinations held in October, 1986, i.e. after the judgement, and it granted the relaxations.

14. We are of the view that the respondents have fixed a reasonable amount of concession of 5% in each of individual paper and 5% in the aggregate. Therefore, this percentage of marks cannot be considered niggardly or illusory because, in *itself*, Jagannathan's case, the Supreme Court, restricted the concession by grant of additional marks to only 25 which is 5% of the aggregate marks.

15. The relaxation fixed by the respondents can, no doubt, be converted into an alternative scheme of granting additional grace marks or the marks they actually require, whichever is less, to get the qualifying marks, both in individual paper and in the aggregate. If that pattern had been adopted, the instruction would be that general candidates have to score 50% marks in the aggregate, provided that in each of the subjects they should have scored atleast 40% marks and if SC/ST candidates have not scored such qualifying marks, they would be given, in addition to the marks ~~carried~~ ^{Scored} by them, 5% in each paper and/or in the aggregate or the actual marks required by them to score the minimum qualifying marks, provided that the total marks awarded, both for individual papers and the aggregate, shall not exceed 25.

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16. The cases of the applicants can be examined on this basis. The first applicant requires 21 additional marks in paper V to reach the qualifying minimum of 60 marks. This amounts to 13 1/2%, whereas the maximum additional mark that can be given is only 5% i.e. 7 1/2 marks. Therefore, the first applicant cannot claim the benefit even on this basis. In so far as the second applicant is concerned, he requires 7 additional marks in paper VII to reach the qualifying marks of 40. This represents 7% additional marks while the maximum can be given as only 5 additional marks which will take the marks to 38. He, therefore, fails even on application of this principle.

17. The learned counsel for the applicant, however, submits that the maximum marks that can be given to individual papers is 25 in all and within this ceiling, there is no restriction as to how many marks may be given in one paper. In other words, the first applicant and the second applicant can respectively be given 21 marks in paper V and 7 marks in paper VII which they require to get the normal non relaxed qualifying marks in individual papers and additional marks need not be restricted to 5% of the maximum marks allowed to that paper, i.e. 7 1/2 marks in respect of paper V and 5 marks in respect of paper VII. We are unable to agree. No such conclusion can be drawn from the judgement of the Supreme Court. There is a purpose in specifying the maximum limit of relaxation namely 5%. This is to ensure that the standard is not so diluted as to impair efficiency.

18. The learned counsel for the applicant, however, points out that in a case concerning the second respondent, the Allahabad Bench of this Tribunal has given a decision in the

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case of Ramadin (Supra) directing relaxation of 25 marks to be given instead of the relaxation already given. We have seen that judgement and find that it is distinguishable. That relates to the SAS Part-II examination held in July, 1985 i.e. before the judgement was delivered by the Supreme Court in Jagan Nathan's case. As can be seen from para 3 of the judgement, ^a that a relaxation of 3% was allowed by the orders of the CGDA. It is not clear whether this 3% relaxation is for each individual papers or only in the aggregate. It is further stated that the cases of SC/ST candidates who appeared in the examination ~~till~~ ^{between} 1980 and 1985 were reviewed by the CGDA in Feb, 1987 based on the ratio of the Supreme Court's judgement but he rejected their claims on the ground that the relaxation has already been given. The Bench, however, considered that in an exceptional situation, to which a reference has been made later on, the award of 25 marks to reach the qualifying standard would be justified. Paras 9 and 10 of their judgement are relevant in this connection. That situation does not obtain in the present case. Relaxation of 5% in individual paper and 5% in the aggregate have already been announced. The Supreme Court has held that, if even after this relaxation the SC candidates did not qualify and reserved vacancies continued to exist, this will not be a justification to relax the standard further. In this connection, the observations of Supreme Court in para 24 of the judgement are relevant.

"The relaxed or lower qualifying standard is the minimum upto 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. How many are to be promoted must depend upon the number of vacancies which remain unfilled on the basis of the general qualifying standard. For instance, if the general qualifying standard is 45% and the relaxed or lower qualifying standard has been fixed at 35% and if on the basis of the general qualifying standard only

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ten reserved vacancies remain unfilled, then ten candidates who obtain less than 45% but have obtained 35% or more should be selected in order of merit. If, however, there are fifteen reserved vacancies which remain unfilled according to the general qualifying standard and only ten candidates belonging to the Scheduled Castes and the Scheduled Tribes have obtained 35% or more, the standard cannot be further lowered below 35% to enable the remaining five candidates also to be selected for promotion".

20. The last point urged by the learned counsel for the applicant is that the relaxed standards were not notified in advance. As mentioned earlier, examination was held after the Supreme Court judgement was delivered but before the Department got notice of it. Further, the directions of the Supreme Court are only to the extent that the SC/ST candidates are also entitled to know in advance what relaxed standard would apply to them. We are unable to read in the judgement of the Supreme Court that if the relaxed standard is not notified in advance, the examination has to be quashed or any such consequence would follow.

21. To conclude, we are of the view that the fixation of lower standard of 35% in individual paper and 40% in the aggregate for the SC/ST candidates is in full compliance of the Annexure A-2 instruction and that this cannot be considered to be an unreasonable or illusory concession in the light of the judgement of the Supreme Court in Jagannathan's case (Supra). Having judged such candidates on these lower standards, they are not entitled to be given any additional marks. As the applicants have failed to secure the qualifying marks of the lower standard, they cannot ~~claim~~ more marks to be added.

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22. We, therefore, see no merits in the O.A. It is dismissed. No costs.

W.S.R. 9/12/94
(C.J. ROY)
MEMBER (J)

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(N.V. KRISHNAN)
VICE CHAIRMAN (A)