

Shri Satya Pal Singh .. Applicant

Vs

Union of India &amp; Ors. .. Respondents

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The Hon'ble Mr.N.V.Krishnan, Vice Chairman (A)

The Hon'ble Mr. B.S.Hegde, Member (J).

For the Applicant: Shri S.S.Tiwari, counsel.

For the Respondents: Shri K.C.Sharma, counsel.

(1) Whether Reporters of local papers may be allowed to see the judgement?

(2) To be referred to the Reporter or not?

JUDGEMENT

(Delivered by Hon'ble Shri B.S.Hegde, Member (J)).

The applicant has filed this application under section 19 of the Administrative Tribunals Act, 1985 in which he has prayed for the following reliefs:-

- (1) Direct the respondents to declare the actual position with regard to the number of vacancies pertaining to departmental quota and examination quota between 1982 to 1990 and from 3-3-1990 to-date.
- (2) Direct the respondents to allow the applicant to appear for the Part-II examination pertaining to Enforcement Officer/Assistant Accounts Officer on regional basis as per the Recruitment Rules notified on 11-1-1992 and give the same benefits of the Examination as of his colleagues for Part II Examination held on 27-4-92 to 29-4-92.

2. The brief facts of the case are that the applicant was appointed as a lower division clerk in the office of Regional Prudent Fund Commissioner, Meerut w.e.f. 2nd September, 1978. He became an upper

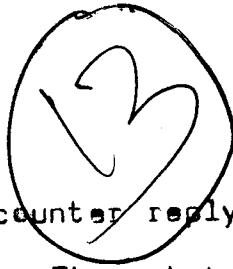
division clerk in 1981. In December, 1990 the applicant appeared in EPFS Part-I Examination of Enforcement/ Assistant Accounts Officer. The results of this examination were declared on a regional basis and the applicant was shown to have passed the same. Having passed in Part-I Examination in December, 1990 which is a competitive one, he became entitled to appear for the qualifying Part-II examination. The applicant's grievance is that he is denied that opportunity by subsequent developments.

3. The applicant states that in the recruitment rules as originally framed on 3-3-90 (Annexure-II) the criteria of eligibility was headquarters/region offices. The recruitment rules were amended on 11-1-1992 in so far as it concerns the eligibility for promotion in the limited departmental examination quota and it was made clear that this will be confined to persons who have rendered service in the respective regions. A copy of the amendment is at Annexure-I.

4. It is alleged that the respondents have now issued a circular dated 28-1-92 (Annexure A-III) to all the Regional Provident Fund Commissioners enclosing a copy of the judgement dated 3-1-92 of this Tribunal in OA 981/91 and four other cases and informed them that, in compliance with the directions contained in that judgement, the revised result on an ~~all~~ India basis of the EPFS Examination Part-I held in 1990 was being released. By another letter of the same date (Annexure A-IV), the concerned authorities were also informed that only candidates declared successful in the revised results of the Part-I examination shall be allowed to appear in the Part-II examination.

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which was held from 27-4-92 to 29-5-92. Admittedly,  
the applicant's name did not figure in the revised  
results published on 28-1-92 showing the names of  
candidates who passed the examination held in December  
1990 on an All India basis. The applicant contends  
that this step taken by the respondents is illegal  
and unauthorised because, before the results were  
published by the Annexure A-III memorandum, the  
relevant recruitment rules were amended by a notification  
dated 27-12-91 which came into force on 11-1-92  
(Annexure -1). The amended rule makes it clear  
that for filling the post of Enforcement Officers/  
Assistant Accounts Officers in the regions by promotion  
to the extent of 25% of vacancies by limited depart-  
mental examination, the only persons who are eligible  
for consideration are the head-clerks/machine operators/  
stenographers Gr.II/legal assistants/Hindi translators  
the  
group II with three years regular service in/their respective  
regions in the scale of Rs.1400-2300 and upper division  
clerks/stenographers Gr.III with 5 years regular  
service in the respective regions in the scale of  
Rs.1200-2040. Therefore, the results are to be published  
on a regional basis. It is, therefore, contended in  
the application that as the relevant rules have thus  
been amended on 11-1-92 making it clear that the  
promotion by limited competitive examination is on a  
regional basis, the respondents had no authority to  
publish, on a later date i.e. 28-1-92, the results  
of the 1990 examination on an all India basis,  
notwithstanding the earlier Annexure R-1 judgement  
dated 3-1-92 of the Tribunal.

5.) It is in this background that the applicant has  
prayed for the reliefs reproduced in para 1.



6. The respondents have filed their counter reply denying the allegations of the applicant. They state that the question whether the results of the examination held in December 1990 should be published on a regional basis or all India basis stands concluded by the judgement of this Tribunal in the case of R.K.Kohli and Others Vs. Union of India & Others in OA 981/91, delivered on 3-1-92 (annexure R-1). Therefore, the result of the EPF Service Part I Examination conducted in December 1990, which is the subject matter of this application also was declared on 28-1-92 on an all India basis, in pursuance of the direction and orders of the Hon'ble Tribunal contained in the judgement referred to above.

7. They also contend that the result of EPFS Part-I examination conducted in December 1990 has already been adjudicated upon and is no more subject to review and, therefore, the principle of res judicata applied to the result of the examination. According to the results declared on 28-1-92, the applicant has not passed the Part-I examination and therefore he has no right to appear in the Part-II examination.

8. The respondents also contend that the amendment dated 11-1-1992 was only a clarificatory one and does not affect the result of Part-I examination conducted in December 1990, because the results were declared strictly in accordance with the directions given by the Principal Bench in the aforesaid case. Therefore, the amendment dated 11-1-1992 can be applicable to the examinations to be conducted for recruitment for which the process had to be initiated after the date of notification of the said amendment.

9. Further, they contend that it is incorrect to state that the amendment to the Rules dated 11-1-1992

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(Annexure-2) was retrospective in operation because it is applicable only prospectively. By this amendment only head clerks, machine operators, stenographers Gr.II legal assistants and Hindi translators Gr.II serving in the respective regions were made eligible to appear in the limited departmental promotion for 25% of the vacancies to the posts of Enforcement Officers/Assistant Accounts Officers. This new eligibility criteria cannot be made applicable retrospectively to the examinations already conducted under the old rules. Further, the results of Part-I examination have been declared on all India basis on the basis of the direction given by the judgement. Therefore, the amendment made on 11-1-92 (Annexure-I) cannot stand in the way of the implementation of the R-I judgement. On the other hand, after the judgement, only a clarification was issued by the amendment dated 11-1-1992 clarifying government's policy that in future the eligibility to appear will be on regional basis. In the circumstances, the respondents contend that the application is bereft of merit and deserves to be dismissed.

10. When the application came for hearing on 5-3-93, the learned counsel for the applicant submitted that only one important legal issue is involved in this case viz., whether the judgement of the Tribunal dated 3-1-92 (Annexure R-1) has been rendered ineffective for implementation because of the fact that the relevant recruitment rules had been amended on 11-1-92 and, therefore, the results of the examination held but in 1990, published after 11-1-92, should be regulated by the provisions of this Amended rule and not by the directions contained in the judgement. His claim to

appear in Part-II of the examination will abide by the finding on this issue. We shall, therefore, consider this legal issue in detail.

11. We can begin by considering the provisions of the recruitment rules. The Employees Provident Fund Organisation Enforcement Officer/Assistant Accounts Officer Recruitment Rules, 1990 (Rules for short) were framed on 21-2-90 and came into force from 3-3-90 (Annexure, II). We are concerned with the schedule annexed thereto. Column 11 of the schedule deals with methods of recruitment. It is not disputed that by entry (ii) in this column, 25% of the vacancies are to be filled up "by promotion on the basis of departmental examination, failing which by direct recruitment." Column 12 specifies who can be considered for recruitment other than by direct recruitment. The heading reads thus "In case of recruitment by promotion/deputation/transfer, grade from which promotion/deputation/transfer to be made" The entry in column 12 against serial No. (ii) under column 11 (i.e. promotion by departmental examination) reads as follows:-

" ii) Promotion (limited departmental examination quota)- 25%.

Assistants/Head Clerks/Machine Operators/ Stenographers (Grade II) Junior Tech. Assistants/Legal Assistants/Hindi Translators (Gr.II) with 3 years' regular service in the scale of Rs.1400-2300 and U.D.Cs/Stenographers (Grade III) with 5 years regular service in the scale of Rs.1200-2040 serving in Headquarters and Regional Offices."

This entry (ii) under column 12 was substituted from 11-1-92 by the following entry in accordance with Rule 2 of the Employees Provident Fund Organisation Enforcement Officer/Assistant Accounts Officer (Second Amendment) Rules, 1991- Amending Rules., for short (Annexure I).

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" (ii) Promotion(Limited departmental examination quota) - 25%

Head Clerks/Machine Operators/Stenographers (Gr.II)/Legal Assistants/Hindi Translators (Gr.II) with 3 years' regular service in the scale of Rs.1400-2300 and Upper Division Clerks/Stenographers (Gr.III) with 5 years' regular service in the scale of Rs.1700-2040 serving in the respective Regions."

12. The provisions of the unamended entry (ii) in column 12 of the Rules came for interpretation in OA 981/91 and batch of cases. The judgement of the Tribunal is at Annexure R-I. Those cases related to the very Part-I examination in respect of which this OA is filed. As seen from para (2) of the Annexure R-I judgement, the applicants therein were aggrieved by the declaration of the results of the examination regionwise and sought a direction to quash those results and publish the same on an all India basis. It was held in para 11(d) of the judgement that the declaration of the results of Part-I examination regionwise is not valid under the approved scheme of the examination and that it is also against the specific provisions in the recruitment rules. It was also held that the results of the Part-I examination which is competitive have to be declared "on the basis of marks obtained by the candidates, irrespective of whether they belong to the Central Office or Regional Offices."

13. In view of this judgement, we put it to the learned counsel of the applicant whether the Annexure A.III results dated 28-1-92 can be questioned at all without challenging the Annexure R-I judgement of the Tribunal, because these results were issued in pursuance of the direction given in that judgement. He was also asked to clarify whether, in the circumstances, the proper course of action was to file this fresh OA or to seek a review of that judgement on the ground that

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he was not impleaded as a party and the judgement has affected him adversely, without giving him an opportunity of being heard.

14. The learned counsel for the applicant clarified that his immediate grievance is neither the R-1 judgement nor even the all India results published in pursuance of the direction therein. He submitted that the judgement could very well have been implemented by declaring the results on an all India basis, if there had been no other development. The important objection raised in this OA is that this cannot be done after the relevant recruitment rules were amended with effect from 11-1-92 by the Annexure A-1 notification. If the Annexure A-III results had been so published before the rules were thus amended, perhaps, the only course open to him would have been to seek a review of the judgement and obtain an order to keep the results in abeyance till the review was decided. He clarified that he is not asking for such relief now.

15. The relevant rules have now been amended from 11-1-92 and, as, admittedly, the rules as so amended make it abundantly clear that the eligibility for appearing in the limited departmental examination would be on the basis of service rendered on a regional basis, the results would also, necessarily, have to be published on a regional basis. The learned counsel for the applicant contends that after the amendment of the rule from 11-1-92, it was not open to the respondents to publish the result of the limited departmental examination held in 1990 on an all India basis, albeit the R-1 judgement. The results should have been published only on a regional basis.

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16. In support of this contention, the learned counsel for the applicant has relied on the decision of the Supreme Court in AIR 1990 SC 1923, DV Kapur Vs. UOI. Strangely enough, he further relies on the very judgement - AIR 1992 SC 1126 AV Nachane Vs. UOI - which is cited by the respondents for their contention that the amending rule does neither has retrospective effect nor does it nullify the R-1 judgement and, therefore, the direction given in that judgement had to be complied with by publication of the results on an all India basis. Shri S.S. Tiwari pointed out that, in this judgement, the Supreme Court has held that the rules framed by the Life Insurance Corporation though intended to restrict bonus retrospectively will have only prospective effect and that the Life Insurance Corporation could follow these Rules for the periods subsequent to the date on which the rules were framed. He urges that he is not asking for any retrospective application of the amending Rule. His position is that in regard to publication of rules, the only rule that holds the field after 11-1-92 is the amending rule (Annexure A-I) which has come into force from 11-1-92. Therefore, even in accordance with the Supreme Court's decision in Nachane's case supra, this rule has to be respected and given effect to by the respondents. The Annexure-III results are published on 26-1-92. Hence, they should have been published on a Regional basis and not on an All India basis.

17. We have carefully seen the judgement in DV Kapur's case (supra). We find that this judgement has no relevance to the issue under consideration in this case.

18. In regard to the judgement in Nachane's case,

we are afraid, we cannot agree with his perception of that judgement. The principle laid down in that case is that even if the Act empowered the Life Insurance Corporation to frame rules retrospectively and such rules were framed, it was held that the rules cannot take away the rights which accrued to the employees in the matter of bonus on the basis of the writ issued by the Supreme Court in DJ Bahadur's case (AIR 1980 SC 2181).

19. The argument of the learned counsel for the applicant would have been sound, if the amending rule related to merely a matter of procedure. To illustrate, if there was a rule that cases will be heard only on Mondays, it is a rule of procedure only. By a later amendment, it could be notified that cases will be heard only on Wednesdays, instead of on Mondays. After such amendment, all cases, including those filed prior to such amendment, can be heard on Wednesdays because the earlier rule does not create a vested right about the day of hearing. That is not the case here. Admittedly, the results on a regional basis will be different from those on an all India basis. As a matter of fact, the applicant who was declared to have passed on a regional basis is now shown to have failed on the basis of the all India results. Therefore, in our view, the manner in which the results are to be published (i.e. on an all India basis or on a regional basis) is a vested right. It is not a mere matter of procedure which could be changed at any time without any adverse consequence. The publication of the results has to be in accordance with the rule in force at the time of examination. The above is supported by the Supreme Court's decision



in AIR 1983 SC 852- Y.B.Rangappa Vs. J.Srinivas Rao, wherein the court held that the vacancies which occurred prior to the amended rules would be governed by the old rules and not by the amended rules. Therefore, the law in force at the time when the examination commenced would apply to the applicant in the present case and not the rules amended thereafter i.e. on 11-1-1992.

20. Unless the amending rule is made retrospective, it cannot, prima-facie, take away the vested rights of the participants in the 1990 examination to have the results declared in accordance with the recruitment rule then in force. What that rule was, stands finally interpreted in the Tribunal's R-1 judgement holding that the rule required that the results be published on an all India basis. Therefore, the annexure A-1 amending rule which, admittedly, has only effect only from 11-1-92 does not interdict the respondents from publishing the results of the 1990 examination on an all India basis.

21. The amending rule (Annexure-I) not being retrospective, there was no question of making any provision to validate the results published in 1990 on a regionwise basis, even though this is contrary to the annexure R-1 judgement. Therefore, the question whether such an amending rule nullifies the R-1 judgement does not at all arise for consideration. Hence, we do not find the need to apply the ratio of the decision in the Nachane's case relied upon by the respondents to reach the conclusion we have reached in this case.

22. We, therefore, dispose of this application

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with the following direction/orders :-

- (i) The manner of publication of the results of the limited competitive examination, is a vested right which shall be governed by the rules in force when the examination was conducted.
- (ii) The results of the 1990 examination should be declared on an all India basis as directed in the Annexure R.1 judgement of this Bench.
- (iii) The amending rule Annexure A.1 is only prospective in nature and shall have effect only in respect of any fresh Part-I examination held after it came into force.
- (iv) As the applicant has failed in the Part-I examination held in 1990 on the basis of the results declared on 28-1-92 (Annexure A.III) on an all India basis, he has no right to appear in the Part-II examination.
- (v) This application has, therefore, no merit and it is dismissed without any order as to costs.

B.S. HEGDE  
( B.S. HEGDE ) 1874/93  
Member (J).

N.V. KRISHNAN  
( N.V. KRISHNAN )  
Vice Chairman (A)