

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. 1341 of 1993

New Delhi this the 4th day of February, 1994

Mr. Justice S.K. Dhaon, Vice-Chairman  
Mr. B.N. Dhoundiyal, Member

1. Shri Avneesh K. Poddar  
R/o C-201, Albert Square,  
New Delhi.
2. Km. Sumit Kaur,  
R/o H.No. Paschim Vihar Extn.,  
Opposite Ordinance Depot,  
New Delhi.
3. Shri Anil Srivastava,  
R/o C-12/J, Railway Flats,  
Lajpat Nagar,  
New Delhi.
4. Shri Manoj Kumar Pandey,  
R/o D-708, Kidwai Nagar,  
New Delhi.
5. Shri Vinay Kumar,  
R/o B-3A/218, Janak Puri,  
New Delhi.

...Applicants

By Advocate Shri I.C. Sudhir.

Verus

1. Staff Selection Commission,  
through Secretary,  
C.G.O. Complex,  
Lodhi Road,  
New Delhi.
2. The Comptroller and Auditor General  
of India, I.P. Estate,  
New Delhi.

...Respondents

By Shri Vijay Mehta, proxy counsel for Shri N.S. Mehta,  
Counsel

ORDER (ORAL)

Mr. Justice S.K. Dhaon, Vice-Chairman

The controversy in this O.A. centres round  
the selection of Section Officers (Audit).

2. The selection is governed by rules framed under  
Article 148-5 of the Constitution which, inter alia, provides  
that subject to the provisions of this Constitution and  
of any law made by Parliament, the conditions of service  
of persons serving in the Indian Audit and Accounts  
Department and the administrative powers of the Comptroller  
and Auditor-General shall be such, as may be prescribed by  
the rules made by the President after consultation with

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the Comptroller and Auditor-General. By a notification dated 19.03.1988, the Indian Audit and Accounts Department (Section Officer (Accounts) and Section Officer (Audit) Recruitment Rules, 1988 (the rules) were promulgated. The rules provide that for the selection of Section Officer (Audit), the educational and other qualifications for direct recruits is Bachelors Degree of a recognised university with 50% marks.

3. A notice was issued by the Staff Selection Commission for the recruitment of Section Officers (Audit) 1993. This notice also prescribes the educational qualifications for Section Officer (Audit) as Bachelor's Degree of a recognised university with 50 marks.

4. There are 5 applicants before us. The applicant No.1, Shri Avneesh K. Poddar was permitted to appear in the examination. However, the applicant Nos.2 to 5 were not permitted to appear at the examination on the ground that they had not secured 50% marks in the examination conducted for conferring Bachelor's Degree. They have approached this Tribunal with the following reliefs:

(i) Directing the respondents to allow the applicants to appear in the said competitive examination/test, 1993 for the recruitment of Section Officers(Audit) scheduled to be held on 31.10.93, by defixing minimum percentage, i.e., 50% in their Bachelor's Degree as one of the qualifications.

5. A counter-affidavit has been filed on behalf of the respondents. We may indicate at this stage that the applicants filed an amended O.A., praying therein that the aforementioned rules insofar as it prescribe that a candidate should have secured 50% marks in the examination conducted for conferring Bachelor's Degree, should be struck

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down. A reply to the amended O.A. has also been filed. Learned counsel for the parties have been heard. We are, therefore, disposing of this O.A. finally.

6. It is not in dispute that neither of the 5 applicants secured 50% marks in the aforesaid examination. However, it appears that during the pendency of this O.A., the permission accorded by the respondents to applicant No.1 to appear at the competitive examination was withdrawn on the ground that he had been inadvertently permitted to appear at the examination. After this event, there is no scope left for the rest of the applicants to urge before this Tribunal that the respondents have discriminated between them and applicant No.1 insofar as the applicant was permitted to appear at the examination in spite of the fact that he had secured less than 50% marks. It is well settled law that no one can claim any infringement of Articles 14 and 16 if a discrimination has taken place on account of some mistake or on account of some illegality committed by the authority concerned.

7. Learned counsel for the applicant has urged that the rule, as framed under Article 148-5 of the Constitution is hit by Article 14 insofar as the prescription that a candidate should have secured 50% marks in the Bachelors Degree, is concerned. We have already noted that the rules have been framed under a constitutional provision. In law, there is a presumption of constitutionality of such a rule. Learned counsel has urged that there is no nexus between the requirement of a candidate having secured at least 50% marks at the Bachelor's Degree examination with the competitive examination conducted for the purpose of recruiting candidates to the post of Section Officer (Auditor). Judicial notice can be taken of the fact that in this country there is no dearth of graduates. Therefore, some line has to be drawn somewhere. The department has to maintain quality of the candidates appointed to a particular post. For doing so,

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it has necessarily to prescribe some minimum requirements. The law is that a classification should be reasonable. Therefore, the law further is that unequals should<sup>not</sup> be treated as equals and the like should be treated as alike. There is bound to be some discrimination when a classification is made. The test for<sup>not</sup> holding a classification as irrational is that there should be a nexus between the classification and the purpose sought to be achieved. The purpose is clearly to recruit quality candidates. This purpose is obviously in the public interest. The purpose will be well sub-served by prescribing that a candidate should have secured a certain percentage of marks at the Bachelors Degree examination. We find no element of arbitrariness in the requirement of the rule that one should have a Bachelor's Degree with 50% marks. We, therefore, hold that the said requirement is not hit by Article 14 of the Constitution.

8. Learned counsel has drawn our attention to the power of relaxation exercised by respondents in one particular examination. That power was obviously exercised in terms of Rule 7 of the rules which lays down that when the Comptroller and Auditor General of India is of the opinion that it is expedient and necessary so to do, he may by order and for reasons to be recorded in writing, relax any of the provisions of the rules with respect to any class or category of persons. There are sufficient in-built safeguards to prevent arbitrariness while exercising the power of relaxation. We have seen the order by which relaxation has been granted in one particular case. Reasons have been given while exercising the power of relaxation. It appears to us that a combined examination for the recruitment of Assistants and Section Officers (Audit) had been notified. However, due to some mistake, the requirement of minimum qualification<sup>in the case of Assistants</sup> had not been mentioned in the notification. In that situation, the power of relaxation was exercised. It is not the case of the

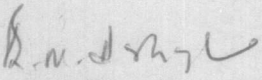



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applicants that they had applied to the Comptroller and Auditor General of India asking him to exercise the power of relaxation in their cases. Nothing will, therefore, turn on the mere fact that in one particular case the power of relaxation had been exercised.

9. This application has no substance and it is dismissed but without any order as to costs.

  
(B.N. DHOUNDIYAL)  
MEMBER (A)  
04.02.1994

  
(S.K. DHAON)  
VICE CHAIRMAN  
04.02.1994

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