

8

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD.

\*\*\*\*\*

Allahabad this the 6th day of February 1997.

Original application No. 1110 of 1993.

Hon'ble Mr. S. Das Gupta, AM  
Hon'ble Mr. T.L. Verma, JM

Amerika Prasad, S/o Sri Ram Lachhan,  
R/o Mohalla Mehpuri, Meharmandir,  
Campus, Hamirpur, Dist. Hamirpur.

C/A Sri B.N. Singh

..... Applicant.

Versus

1. Union of India through Director General, Department of Posts, New Delhi.
2. Chief Post Master General, U.P. Circle, Lucknow.

..... Respondents.

C/R Dr. D. Chandra

O R D E R (ORAL)

Hon'ble Mr. S. Das Gupta, AM

The applicant is aggrieved by an order dated 28.4.93 by which the name of the applicant has been deleted from the list of successful candidates for the J.A.O. Part II examination held in August 1991. The applicant has prayed that the aforesaid order be quashed and the respondents be directed to promote him on the post of Junior Accounts Officer with effect from the date when his juniors in the select list were promoted with all consequential benefits.

2. From the facts averred, the position which emerges is that the applicant had appeared in the 1988 Junior Accounts Officer Part I examination. He failed in paper III by one mark but passed in all other papers including Advanced Accountancy which is paper VI. He

Contd...2...

WY

appeared in this examination again in 1990 by which time however, the syllabus and the pattern of examination had undergone some change whereby the paper of Advanced Accountancy had been shifted from part I to part II. The applicant passed the 1990 part I examination and thereafter he appeared in 1991 part II examination of J.A.O. In that examination he did not appear in Advanced Accountancy paper and yet he was declared as passed by the order dated 10.1.92 issued by D.G. Communication. However subsequently by the impugned order dated 28.4.93 his name was deleted from the list of successful candidates on the ground that he had not appeared in the Advanced Accountancy examination and that he was not entitled to the exemption from appearing in the said paper.

3. The applicant has challenged the impugned order on the ground that in view of the instructions contained in the D.G., Department of Post circular letter dated 12.3.90, he was entitled to exemption from appearing in the Advanced Accountancy paper having passed in this paper in the 1988 part I examination. He has also challenged the impugned order on the ground that it was issued without giving him an opportunity and also that it was passed by an authority which was not competent to do so, inasmuch as the examination was conducted by the Director General, whereas the impugned order was passed by Chief Post Master General.

4. The stand taken by the respondents is that the applicant was not entitled to exemption in Advanced Accountancy paper since he did not obtain 60 per cent marks in the 1988 examination in the said paper, and he had actually failed in the part I examination of that year. No rule has been cited which would indicate that it was necessary

W.L.

Contd., 3.....

to obtain 60 per cent marks in a particular paper in order to secure exemption from appearing in the same paper in the subsequent examination. However as there is no denial of this stand by the applicant in the rejoinder affidavit, we assume that this would be the position in the normal circumstances. The point however remains is that the controversy has to be examined in the special circumstances in which the syllabus underwent change and the pattern of examination also underwent a change inasmuch as the Advanced Accountancy paper was shifted to Part II examination from Part I examination. In these special circumstances the Director General Communication had issued the circular letter dated 12.3.90. The relevant portion of this letter is reproduced below:-

"A point has also been raised as to whether a candidate who passed part I examination under old syllabus of 1977 (which existed prior to introduction of pre-revised syllabus in 1985), can appear directly for part II under revised syllabus effective from 1990. This has been examined and it is clarified that such candidates may appear in part II under revised syllabus effective from 1990.

A point has been raised whether the candidates who passed part I examination under old syllabus of 1977 (which exist prior to introduction of Pre-revised syllabus in 1985) and who qualified in the special paper of Advanced Accountancy which was set for 3 years in 11/86 and 6/87 or passed in paper VI 'Advanced Accountancy' of part I held in November 1988 but failed in part II would require to appear, again in the paper advanced Accountancy in the revised syllabus. This has been examined and it is clarified that such of those candidates who passed in paper VI of part I held in November 88 or in the special paper Advanced Accountancy set with Junior Accounts Officer part II examination held in Nov. 85 Nov. 86 and June 87 need not appear again in the paper on Advanced Accountancy now shifted to part II in the revised syllabus." (Emphases) (Copy)

5. It would be seen from the above that while the

Contd...4...

W.L.

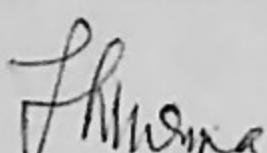
question posed is with regard to those candidates who had passed in part I examination and also had passed in Advanced Accountancy paper, the clarification given does not indicate that to obtain exemption from appearing in Advanced Accountancy paper, it would be necessary to have passed the Part I examination as a whole but only states that if a candidate had passed the Advanced Accountancy paper in 1988 part I examination, he would be granted exemption from appearing in the same paper in part II examination. Therefore there is some ambiguity in this clarification given, as the clarification read without reading the first part of the question would indicate that ~~it was enough to get~~ <sup>he was sufficient</sup> qualifying marks in the Advanced Accountancy paper in 1988 examination irrespective of whether the candidate had cleared the entire ~~examination~~ part I as a whole in order to qualify for exemption in the Advanced Accountancy paper in the part II examination. We are therefore of the view that the question of not getting 60 per cent marks in Advanced Accountancy paper is of ~~no~~ relevance to this controversy. The question is whether the applicant should have passed both the part I examination as a whole including the Advanced Accountancy paper or whether the passing of Advanced Accountancy paper alone would have made him eligible for the exemption. Thus the fact that he was ~~allowed to appear in the part II examination and he was~~ <sup>he</sup> declared as passed did not suffer from any patent irregularity nor is there any violation of any statutory rules so as to make the order declaring him as passed in the examination as void ab initio. This is a case where order passed had civil consequences and therefore the principles of natural justice warranted that the applicant should have been given an opportunity before passing

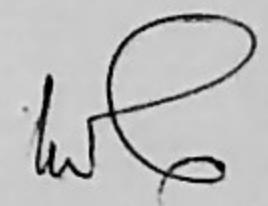
W.L. Contd...5...

adverse order.

6. In view of the foregoing, we direct the respondents to reconsider the matter at the level of the authority which had taken the examination in the light of their own clarification given in the circular letter dated 12.3.90 and decide the matter afresh after giving an opportunity to the applicant. In case after such reconsideration it is found that the applicant has been rightly allowed to appear in the Part II examination without appearing in the Advanced Accountancy paper, he shall be promoted with effect from the date when his junior was promoted with all consequential benefits including the arrears of salary and allowances. This direction ~~shall~~ be complied with within a period of three months from the date of communication of this order.

7. The application is disposed of on the above terms. No order as to costs.

  
Member - J

  
Member - A

Arvind.