

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK.  
...

ORIGINAL APPLICATION NO. 221 OF 1991.

Date of decision : November 5, 1993

Govind Chandra Sahoo

....

Applicant

-Versus-

Union of India and others

.....

Respondents.

( For instructions )

1. Whether it be referred to the reporter or not ? No.
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? No.

*kn 5/4/93*  
( K.P.ACHARYA )  
VICE-CHAIRMAN.

*H. Rajendra Prasad*  
( H. RAJENDRA PRASAD )  
MEMBER (ADMN.)

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For the Applicant :                      M/s.D.P.Dhalsamant,  
Advocate.

For the Respondents:                      Mr.Aswini Ku.Mishra,  
Standing Counsel (Central)

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C O R A M:

THE HONOURABLE MR.K.P.ACHARYA, VICE-CHAIRMAN.

A N D

THE HONOURABLE MR.H.RAJENDRA PRASAD, MEMBER (ADMN.)

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JUDGMENT.

H.RAJENDRA PRASAD, MEMBER (A)                      In this application, Shri Govind Chandra Sahoo, Accountant, Office of the Senior Superintendent of Post Offices, Koraput Division, Jeypur, has challenged the orders contained in letter No.RE/30-15/90 dated 10th April, 1991, from the office of the Chief Postmaster General, Orissa Circle, (communicated to the applicant in SSP's letter No.B 238 dated 6th May, 1991) wherein it was stated that the Chief Postmaster General found no reason to declare that the applicant was deemed to have passed the JAO Examination, Part-I. The petitioner has, therefore, sought

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*[Signature]*

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2. i) Shri Gobind Chandra Sahoo appeared at JAO Examination, Part-I, in 1987 and passed in all papers, (Viz. Papers I to V ) except Paper VI (Advanced Accountancy).

ii) In 1989, the Department decided to simplify the existing complexity in the content of the examination, -which, incidentally, consists of two parts, -by combining a few subjects spread over both parts and altering the syllabus of the examination. As a part of this change, Paper VI(Advanced Accountancy) was ordered to be shifted from Part I to II of the JAO Examination. It was also simultaneously decided, in order to smoothen the transition from the old to <sup>the</sup> new scheme and syllabi, that such of the candidates who had earlier appeared in the Part I examination in 1987 and 1988 and passed in all five papers under the pre-revised pattern would be deemed to have passed the Part I examination and permitted to appear at Part II to be held under the new scheme.

iii) When the list of successful candidates was released in May, 1990, the name of the applicant was found missing even though he had duly passed in all five papers of Part I, and was thus eligible for the concession mentioned above.

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3. The applicant thereupon filed a complaint before this Tribunal(O.A.304/90). In its order dated 21st.December,1990, the Tribunal directed the Chief Postmaster General to review the facts and thereafter to pass a reasoned order on merits of the case. The applicant was also given liberty to approach the Tribunal if he was in any manner aggrieved by the decision so arrived at by the departmental authorities.

4. Accordingly the Chief Postmaster General re-examined the case and passed orders mentioned in Para-1 Supra, and which are challenged in the present application.

5. The applicant is aggrieved on account of the fact that the decision conveyed to him is not a reasoned or speaking order. He is insistent that he is fully entitled to the concession extended to candidates through the D.G.Posts communications No.3-10(3)/89/PACE/1564 to 1604 dated 24.11.1989 and No.3-10(VII)/89-PACE/2305 to 2385 dated 12.3.1990.

6. The respondents state in their counter that the concession claimed by the applicant is available only to those candidates who had failed in the Advanced Accountancy Paper(VI), but passed in all other papers, in the last attempt made by them in the examination held as per the pre-revised syllabus. They place a considerable emphasis on the words " in the attempt last made by them" appearing in lines 8-9 in Para-1(1) of the Directorate's

letter dated 12th March, 1990.

It is revealed that although the applicant passed the first five papers of Part-I Examination in 1987, he also appeared at the same examination the next year, viz., 1988, and failed in Paper-I. The respondents, interpreting the words "in the attempt last made" held, therefore, that since he had failed in one of the papers "in the attempt last made" by the applicant, viz., in 1988, he was not eligible for the said concession. The relevant portion of the department's circular letter dated 12th March, 1990, reads as follows:-

Since the paper on Advanced Accountancy has now been shifted to Part II and as Part I will have only five papers ..... candidates who have qualified/passed in the three subjects mentioned above but had failed in the subject "Advanced Accountancy" (Paper VI) in the attempt last made by them under the pre-revised syllabus of 1985, will be deemed to have passed Part I and they may appear in Part II Examination to be held hereafter under the revised syllabus.

The impugned decision was based on this stipulation.

7. The learned counsel for the petitioner has, drawn our attention to a subsequent letter issued by the department on 3.5.90, which, while clarifying the position in the following terms, announced the result of the Part I examination held in 1987 and 1988 :-

Consequent upon these changes, the candidates who appeared in Pt. I examination held in 1987 and 1988 and passed/qualified



in papers I to V but failed in Paper VI ( Advanced Accountancy), are now deemed to have passed/qualified in Pt.I Examination of 1987 and 1988. The result of these successful candidates is enclosed.

a) Shri Dhalasamant, the learned counsel submits in this connection that it is significant this last-cited letter refers comprehensively to the instructions contained in the earlier two letters, viz.No.3-10(3)/89/PACE 1564 to 1604 dated 24th November, 1989, and No.3-10(VII)/89-PACE/2305 to 2385 dated 12th March,1990, and proceeds to authoritatively clarify the contents of these two communications. This latest communication should therefore be regarded as the final elucidatory instruction on the subject and, for that reason, govern the field of all subsequent administrative actions and decisions.

b) The learned counsel also asserts that it is equally pertinent to observe that this communication refers to the cases of those "candidates who appeared in Part I Examination held in 1987 and 1988 and passed and qualified in Papers I to V but failed in Paper VI (Advanced Accountancy)". It is noteworthy that the years mentioned are not conjoined by the word 'Or', but by the word 'and' which clearly implies that any one passing the examination in either of these two years is eligible for the concession. He says that the communication does not stipulate anywhere that the five papers should be cleared in any one of the two years referred

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to therein. The obvious implication and the only possible interpretation is that the candidates should have passed in the five papers during the two year period before the revised syllabus came into force. He argues very strongly that qualifying in these papers together in one single examination was not a pre-requisite: it was enough that a candidate qualified in all the five papers at the examinations held during these two years.

8. In this case the following facts are <sup>not</sup> in dispute :

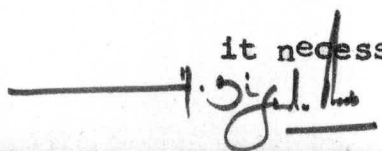
i) The applicant appeared at and passed Papers I to V of the Part I of JAO Examination, 1987.

ii) On the basis of this success he was not ineligible for the concession extended to such candidates.

iii) The applicant for some reason appeared at the same examination once again in 1988 but failed in Paper-I.

iv) It was held by the authorities that he is not eligible for the said concession on the ground that he failed in one of the papers "in the last attempt made by him" in 1988 and, therefore, not permitted to appear at the Part-II of the examination.

9. From these straight-forward factual propositions one question which naturally arise is : why at all was it necessary for the applicant to make an additional





attempt in the 1988 examination when he had already earned the eligibility to appear for the second part of the examination on the strength of his success in the same examination held earlier during the previous year ? In our view the out-come of the instant case would hinge around the answer to this one question.

10. When asked to comment on this, Sri Dhal Samant, the learned Counsel for the petitioner, replied that the answer to the above question is contained in a document already produced by him which is none other than the clarificatory letter dtd.3.5.90 from D.G. Posts - which has been also referred to and quoted in Part in para-7 above. It is seen from this letter that the result of the 1987 examination was held back for some unaccountable reason and announced only along with the result of the examination held during the subsequent year. Thus, right upto the time of applying for the 1988 examination - and even till much after that examination - this candidate was not really aware of his success or failure in the earlier(1987) examination. Under the circumstances the applicant, as a matter of abundant pre-caution, and not being aware of his success in the examination already held during the previous year, felt obliged to make a second attempt. It is another matter that, as ill-luck would have it, he failed in one of the papers viz., Paper-I, which he had already cleared in the earlier examination along with four other

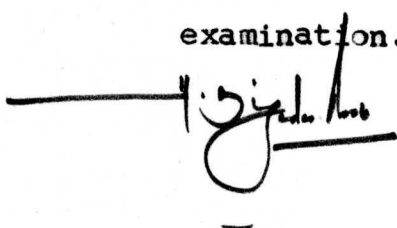
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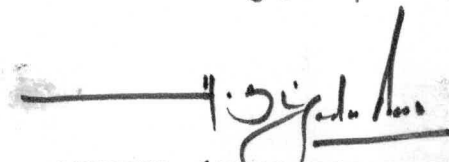
papers. This is a valid and entirely revealing explanation. This being the situation, it was extremely unjust to declare him ineligible on account of his failure in one paper in a subsequent examination which had already been cleared by him earlier,-a fact which was not made known to him. In other words, if the result of the 1987 examination had been announced in time there would not have been any need at all for the applicant to write the same examination once again. For this reason, the 1988 examination, which he was not really required to take, and its result, which has no relevance to his eventual eligibility, shall necessarily have to be disregarded. Conversely it also stands to reason that the 1987 examination alone shall have to be regarded as truly and validly <sup>the</sup> last attempt made by the applicant.

11. In the light of the preceeding discussion, we set aside the orders contained in CPMG, Bhubaneswar, letter No. RE/30-15/90 dated 10th April, 1991, as well as SSP., Koraput Division, Jeypur, Letter No. B 238 dated 6th May, 1991, and declare that Sri Govind Chandra Sahoo has successfully completed J.A.O's examination Part-I, 1987, and is therefore fully entitled to take the Part-II examination whenever it is next held. The respondents will accordingly permit him to appear in the relevant examination.



12. Incidentally, it is noticed that, on a previous occasion when the applicant was duly permitted by this Tribunal to appear at an earlier examination, the hall-permit was issued in his favour after the examination was over. We hope that such lamentable lapse shall not recur. Nevertheless, if for some unanticipated reason, the applicant does not receive a hall-permit for the next examination in time, he is given the liberty of producing a copy of this order for admittance to the examination at a Centre nearest to him and <sup>on</sup> the strength of it the officer supervising the examination shall duly permit the applicant to write the next JAO Part II Examination. *The application is accordingly disposed of.*

  
5/XI/93  
VICE-CHAIRMAN.

  
MEMBER (ADMINISTRATIVE).

05 Nov 93

Central Administrative Tribunal,  
Cuttack Bench./ Hossain./

