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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 170 OF 1995
Cuttack, this the 3rd day of October, 2000

S.M.Mohan Rao

...Applicant

Vrs.

Union of India and others ...

Respondents

FOR INSTRUCTIONS

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

(G.NARASIMHAM)
MEMBER(JUDICIAL)

Somnath Som.
(SOMNATH SOM)
VICE-CHAIRMAN

3.10.2000

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16

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 170 Of 1995
Cuttack, this the 3rd day of October, 2000

CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

.....

S.M.Mohan Rao,
Assistant Accounts Officer (Construction), Senior Accounts
Officer(Construction Office),
S.E.Railway,
Rayagada (at Visakhapatnam).... Applicant

Advocate for applicant - Mr.P.K.Chand

Vrs.

Union of India, represented by:

1. General Manager, S.E.Railway, Calcutta-43.

2. Principal FA & CAO(Coordination),
S.E.Railway, Calcutta-43.

3. F.A. & C.A.O.(Construction), S.E.Railway,
Bhubaneswar.

4. S.G.K.Murty,
Assistant Accounts Officer, S.E.Railway,
Rayagada ... Respondents

Advocates for respondents - M/s B.Pal
O.N.Ghosh
S.K.Ojha.

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

J.Jam.

In this O.A. the applicant had originally prayed for a direction to the respondents to allow him to continue to work as Assistant Accounts Officer, a post which he was holding for 25 months from 7.1.1993. After counter was filed MA No.541 of 1995 on 31.7.1995 seeking amendment to the O.A. This amendment was allowed in order dated 17.8.1995 and a consolidated amended O.A. was

filed on 31.8.1995. It is necessary to mention this because the prayers in the amended Application are totally different from the prayer made in the original Application. The amendment petition thus changed the nature and character of the OA. But as the amendment has been allowed in order dated 17.8.1995 it is not necessary to pursue this point further. In the O.A., as amended, the applicant has prayed for a direction to the departmental authorities to conduct fresh written examination for 70% vacancies to be filled up on seniority-cum-suitability basis setting aside the question papers strictly in accordance with the Railway Board's instruction dated 18.6.1987. The second prayer is for making evaluation of performance under all heads of selection and to declare the results based on highest aggregate marks. The third prayer is to allow the applicant to continue to work as Assistant Accounts Officer, the post which he was holding for past twenty-five months. The fourth prayer is for a direction to draw differential leave salary between substantive and officiating posts from the date of issue of the impugned order dated 1.3.1995 till he is taken back to duty as Assistant Accounts Officer.

Sum.
2. Facts of this case, according to the petitioner, are that he is a substantive holder of the post of Senior Selection Grade Section Officer (Accounts) in the scale of Rs.2000-3200/-. While he was working as such, he was called for written examination and oral in 1990 and he passed the written examination. He was promoted as Assistant Accounts Officer (Construction) in the scale of Rs.2375-3500/- in F.A.&C.A.O's order dated 31.12.1992 (Annexure-A/1 of the

18

O.A). He assumed charge on 27.1.1993. The applicant's case is that he is continuing as Assistant Accounts Officer with unblemished record. He was sent for Orientation and Refresher's Course Training in Zonal Railway Training School, Tiruchunapalli. The applicant states that the training was intended for regularisation of service as Assistant Accounts Officer. He was again asked to appear at written test in May 1994 for regularisation for filling up 70% of the vacancies which are to be filled up purely on seniority-cum-suitability. It is submitted that for this examination in May 1994 vacancies of all years from 1990 to 1994 were pooled and single zone of consideration was fixed instead of every two years period, thereby depriving seniors of their legitimate opportunity. It is also submitted that in terms of the Railway Board's letter dated 18.6.1987 (paragraph 8.1) the question paper for the written test should have a practical basis and should be designed to test the ability of the candidates to tackle the practical problems that they are likely to face rather than their theoretical knowledge. It is also stated that according to the Railway Board's circular at Annexure 'A' of the Rejoinder to the counter which appears to be the Railway Board's circular dated 22.12.1992, marks under various heads, namely, written test, viva voce, record of service; personality, address, leadership and academic qualification have to be totalled up and the selection made on the basis of the aggregate. It is stated that in spite of such instruction, in the examination held in May 1994 the departmental authorities have declared the results only on the basis of persons who have qualified in the written test. According to the applicant, this is borne out by the order dated 8.7.1984 at Annexure-A/6 in

19

which a list of candidates who have qualified in the written test has been notified. This, according to the applicant, is not in accordance with the instructions of the Railway Board. It is further stated that the selection has been held amongst those who have been officiating in the promotional post for over one year and those who were working in lower grade posts. This, according to the applicant, is a competition between unequals as equals and is violative of Article 14 of the Constitution. It is further stated that because of the irregular process of conducting the examination and preparing the panel, the applicant, who has been officiating for over 24 months, was not selected and his name was dropped from the panel and juniors were given advantage. Lastly, it is submitted that in order dated 1.3.1995 thirteen persons, who had been given ad hoc appointment to the post of Assistant Accounts Officer, have been regularised in the posts they were holding. This is in part A of the order. In Part B of the order another 36 persons who were either working as ad hoc Assistant Accounts Officer or working in the lower posts having been empanelled, have been promoted to the post of Assistant Accounts Officer . It is submitted by the applicant that in this order dated 1.3.1995 at Annexure-R/11 to the counter, in Note 4 (page 5 of this order) it has been mentioned that ^{appointments} of these thirty-six officers are without prejudice to the rights and contention of the parties in obedience to the orders of the Hon'ble High Court, Calcutta, issued on 23.11.1983 and subject to the result of Civil Rule. It is also mentioned that these officers will have no claim for any benefits arising out of the empanelment, if in case according to the decision of the Hon'ble High Court they have to be stepped down from these promotional posts.

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The applicant's case is that since persons much junior to him have been given ad hoc appointment to the post of Assistant Accounts Officer there is no reason he should be brought down from the post of Assistant Accounts Officer moreso because he has been working in the post of Assistant Accounts Officer on ad hoc basis for more than twenty-five months.

3. Because of the amendment to the OA and substantial change in the relief claimed by the applicant as in the OA as originally filed and as amended, counter, subsequent counter, rejoinder, further reply, etc., have been filed by both sides and it is necessary to notice briefly the pleadings of the respondents and the further rejoinder of the applicant.

4. The respondents in their counter have pointed out that the applicant was originally appointed in Railway service on 13.2.1964. After completing the departmental examination he became Section Officer (Accounts) and was further promoted to Senior Section Officer (Accounts) in the scale of Rs.2000-3200/- on seniority basis on 1.1.1986. Further promotion is to the Group-B Service of the Railways and all the vacancies in Group-B service are filled up by promotion on the basis of selection of eligible Group-C employees and also on the basis of Limited Departmental Competitive Examination. Selection is held to fill up 70% of the vacancies (earlier 75%) and L.D.C.E. is held to fill up remaining 30% (earlier 25%). This is laid down in Railway Board's letter dated 3.11.1992 which is at Annexure-R/1. In 1990 for forming a panel of 21 staff for promotion from Group-C to Group-B in the Accounts Department against the 75% quota, 63 willing candidates including the applicant were called to appear at the

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21

examination. Accordingly, a panel of selected candidates was drawn up and this is dated 27.6.1991 and is at Annexure-R/3. The applicant failed to qualify and his name was not there in the panel. The respondents have denied that in the 1990 examination the applicant qualified for promotion to the post of Assistant Accounts Officer. It is further stated by the respondents that because of acute shortage of Accounts Officers in the Department, ad hoc appointment of staff who had the qualifying service had to be resorted to. The applicant was considered for such ad hoc promotion and in the order dated 24.8.1992 at Annexure-R/4, an ^{ad hoc} panel was approved for ad hoc promotion to the post of Assistant Accounts Officer. In this order, it was clearly written that the employees borne on this ad hoc panel will be allowed to continue only till such time they are replaced by regularly empanelled candidates. On the basis of this ad hoc panel the applicant was promoted as Assistant Accounts Officer on ad hoc basis in order dated 31.12.1992 at Annexure-R/5. Accordingly, the applicant joined on 27.1.1993. Finally, for regular selection and promotion to the post of Assistant Accounts Officer against 70% departmental quota written test and viva voce were held as per Railway Board's instruction dated 20.8.1991 which is at Annexure-R/8. The applicant along with other ad hoc Assistant Accounts Officer and Senior Section Officers (A), Senior Traffic Inspectors of Accounts and Senior Inspectores of Stores (Accounts) were called for written test held on 9.5.1994 vide order dated 4.5.1994 at Annexure-R/9. After completion of the selection process, a panel of 53 candidates was prepared with the approval of General Manager in the order dated 1.3.1995 at Annexure-R/10.

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22

The applicant along with some other ad hoc Assistant Accounts Officers could not come out successful in the said selection and therefore, had to be reverted. On the joining of his regularly empanelled replacement, the applicant went on leave from 3.3.1995 by reporting sick but he had been already reverted from 1.3.1995. The respondents have also stated that merely sending the applicant for a refresher's course does not mean that by attending the refresher's course he would acquire eligibility for regularisation. It is stated that the applicant could not qualify in the written test of 1990 or in 1994 having secured less than 60% of marks and his name did not find place in the list of candidates who had qualified in the written test as per the list at Annexure-R/14. The averment of the applicant that for 1994 examination all the vacancies from 1990 to 1994 were pulled together is denied by the respondents. The respondents have stated that for the vacancies upto 1990 test was held in 1991 and a panel of 21 candidates was drawn up. Again in 1991 the selection process was taken up in May 1994 and completed in March 1995 assessing vacancies upto April 1996. On the above grounds, the respondents have opposed the prayer of the applicant against his reversion.

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5. The respondents have also filed an additional reply after the OA has been amended. In the additional reply filed by the respondents it has been contended that assertion of the applicant that according to the Railway Board's circular dated 18.6.1987 he was entitled to be called to the viva voce after the written test is not correct because the procedure for holding the test had been revised in Railway Board's letter dated 20.8.1991. Therefore, the selection held in the year 1994 was taken up in accordance with the

instructions contained in letter dated 10.8.1991 which is enclosed to the Additional Reply filed by the respondents. According to this, qualifying marks have been prescribed separately for the written examination and again separately for the viva voce and record of service together. It is also stated that the candidates who do not obtain qualifying marks in the written test need not be called for the viva voce. The respondents have stated that as the applicant did not secure the qualifying marks, i.e., 90 marks in the written test he was not called for the viva voce. The respondents have reiterated their earlier submission that the applicant did not qualify in the selection test held in 1990, but thereafter he was given ad hoc appointment to the post of Assistant Accounts Officer because of acute shortage of empanelled candidates. In the test held in 1994 the applicant again failed to qualify and therefore, the respondents have opposed the prayer of the applicant for allowing him to continue in the post of Assistant Accounts Officer. As regards the prayer relating to the holding of fresh examination, the respondents have stated that the selection test in 1994 was held strictly in accordance with the extant instructions and no illegality has been committed in holding the examination and assessing the applicant.

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6. The applicant in his rejoinder to the original counter has stated that in the examination held in 1990 marks for written and oral were considered together and not the marks of written examination alone as was done in the selection test held in 1994. The applicant has stated that in the selection test held in 1990 he was called to appear both for written test and

24

oral, but he was not selected apparently because his seniority was low. It is stated that the condition that his ad hoc appointment in order dated 31.12.1992 to the post of Assistant Accounts Officer would be in force till the empanelled candidates are available, would be applicable only if the ad hoc appointment is for a short period of three to four months and not in the case of the applicant who was continuing on ad hoc appointment for twenty-five months. The other averment of the applicant in this rejoinder relates to his having undergone the orientation course and the illegalities urged by him with regard to the 1994 examination in his OA and therefore, it is not necessary to repeat the same. The applicant has also filed another rejoinder to the additional reply. In this rejoinder to the additional reply it has been stated that the circular dated 20.8.1991 does not specifically supersede the earlier circular dated 18.6.1987 and on this basis, it has been urged that the aggregate of marks both in written and viva voce should have been taken and the applicant should not have been disqualified for getting less than the qualifying marks in the written examination.

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7. We have heard Shri P.K.Chand, the learned counsel for the applicant and B.Pal, the learned Senior Panel Counsel appearing for the respondents, and have also perused the records.

8. It is submitted by the learned counsel for the petitioner that the applicant in this case has qualified for the post of Assistant Accounts Officer in Group-B in the examination held in 1996 and the prayer is only for regularisation of service for the period from 1.3.1995 to the date of his regular promotion in

1996. In the pleadings of the parties some controversy has been raised regarding the performance of the applicant in the test held in 1990. The respondents have clearly stated that the applicant did not qualify in that test and that is why in the panel of 21 persons published after the test his name was not there. The applicant has stopped short of asserting that he has qualified in the selection test of 1990. In the O.A. originally filed he had stated that he was called for written examination and interview in 1990 after which he was promoted on ad hoc basis. He has not averred that he qualified in the test. In the amended petition filed by him, he has stated that before his ad hoc promotion, he was called for written examination and interview in 1990 and passed the written examination. He has deliberately not mentioned that he has passed the viva voce or that he has qualified in the test. Therefore, we have no hesitation in accepting the submission of the respondents that in the test held in 1990 the applicant did not qualify. It is to be noted that the applicant has alleged no illegality in the manner of conducting the selection test in 1990.

9. The second point urged by the learned counsel for the petitioner is that in the 1994 selection test all the vacancies from 1990 onwards were taken together and the vacancies were not filled up yearwise limiting it to the zone of consideration. This contention is also without any merit because 70% of the vacancies in Group-B posts are to be filled up according to the rules through a selection test on the basis of seniority and merit and in such a selection test taking the total number of vacancies till 1994 does not in any way invalidate the examination. In the examination all

those who had requisite years of qualifying service are entitled to appear and therefore the question of limiting the candidates according to the zone of consideration does not also arise. In any case, this point becomes academic if it is held, and this has been contested by the applicant, that in the 1994 examination the applicant was rightly disqualified. This contention of the applicant regarding illegality in the 1994 selection test by clubbing up vacancies is held to be without any merit and is rejected.

10. The third ground of the learned counsel for the petitioner is only to be stated for the purpose of rejection. It is stated that in the selection test held in 1994 persons like the petitioner who had already been working on ad hoc basis were made to appear in the selection test along with persons in the lower feeder grade who had become eligible to appear at the selection test. It is submitted that those who were working on ad hoc basis in the higher post were of one class and those who had become eligible to take the examination but had been working in the lower feeder grade belonged to another class and these two classes who are unequals should not have been made to appear in one selection test. Frankly, we are unable to find any logic in this submission. The rules provide that 70% of the Group-B posts in the Accounts side are to be filled up by a selection test from amongst the departmental candidates having requisite period of service. The qualified candidates should be empanelled according to their seniority. Thus in such a test all those who have become eligible to appear can be allowed to appear. The

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fact that some of them had been working on purely ad hoc basis as a stop gap arrangement can have no bearing on holding of the examination. It is not necessary to refer to the decisions cited by the learned counsel for the petitioner to come to the conclusion we have arrived at. If the contention of the learned counsel for the petitioner is accepted, then for all posts to be filled up through examination of the departmental candidates there has to be two examinations, one for those who in the meantime are working in the promotional posts on ad hoc basis and the other for those who are not. There is no basis in law or in equity to ask for such a dispensation. This contention is held to be absolutely without any merit and is rejected.

11. The next contention raised by the learned counsel for the petitioner is that according to the Railway Board's circular dated 18.6.1987 the marks for written and viva voce are to be taken together for determining the qualifying marks, but in the 1994 examination the applicant has been disqualified at the stage of written examination which is illegal. In reply to the respondents' contention that this examination in 1994 has been conducted in accordance with the circular dated 20.8.1991 which lays down separate qualifying marks for written and separate qualifying marks for viva voce and record of service together, it has been submitted by the learned counsel for the petitioner that the 1994 examination was held in accordance with the circular dated 18.6.1987 and it was only in 1996 when the notice for the 1996-examination was issued in letter dated 18.1.1996 at Annexure-A/15 that it was indicated

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28

that the examination would be held in terms of the Railway Board's letter dated 20.8.1991. It is argued that the 1994 examination must be taken to have been held under the Railway Board's instruction dated 18.6.1987. The respondents have admitted that according to the circular dated 18.6.1987, for the Accounts Department maximum marks for written test and viva voce were 25 each and the qualifying marks taken two together were noted as 30. Therefore, according to the circular dated 18.6.1987 for determining the qualifying marks, marks in written and viva voce have to be taken together and the marks in record of service and the marks in personality, address, leadership and academic qualifications have to be taken separately. The respondents' stand is that this circular has undergone change by the Railway Board's letter dated 20.8.1991. It is submitted by the learned counsel for the petitioner that this letter dated 20.8.1991 does not specifically supersede the letter dated 18.6.1987. It is also stated, as noted earlier, that the revised procedure in this circular was not given effect to by the respondents while conducting the selection test in 1994. This was only given effect to in 1996. This circular, which has been enclosed to the Additional Reply filed by the respondents clearly notes that a copy of the Railway Board's letter dated 20.8.1991 containing revised procedure to be followed for the written test, viva voce test and evaluation of record of service in respect of selection/LDCEs for promotion from Group C to Group-B is published for information and guidance. It is clear from the above that this revised procedure applies to selection test for promotion from Group-C to Group-B

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against 70% quota. In this circular it has been specifically mentioned that for written test in the selection against 75% vacancies (later on revised to 70%) there will be one paper of 150 marks and the candidates will have to secure 60% minimum qualifying marks. As regards record of service and viva voce both for selection and for LDCE for 30% quota it has been mentioned that maximum marks for viva voce and record of service are 25 each and the qualifying marks are 30 as against the total of 50 marks for viva voce and record of service with a further stipulation that at least 15 marks have to be obtained in the record of service for the purpose of qualification. From the above it is clear that according to the circular dated 20.8.1991 candidates appearing against 70% quota for selection test have to get 90 marks, i.e., 60% as qualifying marks. They have to again get 30 qualifying marks out of 60 in viva voce and record of service put together. Obviously, those who have not secured 60% in the written examination would not be called for viva voce and their record of service would not be assessed. Unlike the circular dated 18.6.1987 here viva voce has been separated from the written examination and put along with record of service. Thus, it is clear that the action of the respondents for disqualifying the applicant on the basis of his inability to get the qualifying marks in the written examination would be perfectly correct if the examination in 1994 had been held in accordance with the Railway Board's circular dated 20.8.1991. So the question arises from which date this circular will come into force. It is specifically provided in paragraph 4 of this circular that

these instructions would come into force from 4.9.1991. It has been further indicated that this will come into force after 15 days from the issue of the letter, i.e., 15 days from 20.8.1991, but the examinations and the viva voce conducted and the record of service evaluated before that date as per earlier instructions will not be affected. In this case, the examination was held in ^{May} 1994 i.e., after more than two and half years of the issue of the circular and obviously the respondents were obliged to hold the examination in 1994 in accordance with the circular dated 20.8.1991. In view of this, it cannot be held that just because in the notice of examination in 1996 the circular dated 20.8.1991 has been specifically mentioned, it was not applicable to 1994 examination. The Board's circular makes it clear that after 4.9.1991 all fresh examinations must be taken up in accordance with the procedure laid down in the circular dated 20.8.1991. This contention of the learned counsel for the petitioner is also held to be without any merit and is rejected.

12. Lastly, it is also to be noted that the applicant has appeared in the examination without any objection with regard to holding the same examination for ad hoc appointees and those who were working in the lower feeder grade and with regard to assigning of marks for different papers and evaluation of the service records. In the OA an averment has been made that in the circular dated 18.6.1987 it has been laid down that the written examination should be more on practical aspects of the work and should not be designed

31

assess the theoretical knowledge of the candidates. The applicant has not made any averment or filed any document to show that in 1994 examination the paper of written test was not designed to test the practical knowledge. In any case in the circular dated 20.8.1991 there is no such instruction that written paper in selection test should be more on practical subjects. It has only been mentioned that out of 150 marks the professional subjects will carry at least 100 marks. The rest 50 marks or less will be on Establishment and Financial Rules. The Hon'ble Supreme Court in the case of University of Cochin, represented by its Registrar, University of Cochin v. N.S.Kanjoonjamma and others, 1997 SCC (L&S) 976, have held that a person who has participated in the examination without any objection, cannot later on challenge the method of examination or evaluation after he has been declared unsuccessful. The law laid down by the Hon'ble Supreme Court in the above case applies with full force to the case of the applicant.

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13. In support of his contentions, the learned counsel for the petitioner has cited a large number of cases. We have been forced to go through these decisions, but we regret to say that none of the decisions is applicable in any way to the facts of this case. Some of the decisions referred to by the learned counsel for the petitioner are discussed below. In the case of Narinder Pal Sharma and another v. State of Punjab & others, 1995(1) SCSLJ 439, where marks were separately allotted for ACRs, experience and ability test for the posts of Stenographers and Senior Clerks and when candidates, who failed to secure 33% or less marks in the ability test were not recommended, their Lordships of the Hon'ble Supreme Court held that the

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action of the authority is invalid. The criteria must be to include for consideration all those who secured marks on all heads and to recommend those who secured highest in aggregate. This decision is quite distinguishable because in this case both in the circular dated 18.6.1987 as also in the circular dated 20.8.1991 details regarding total marks and qualifying marks under different heads of evaluation have been indicated and the mode of evaluation has also been given. Therefore, the decision in **Narinder Pal Sharma's case (supra)** can have no application in this case. The second case relied upon is Mr.S.S.Sambhus and others v. The Union of India and others, 1992(1) SLJ (CAT) 225. In that decision it was held that while considering regular promotion and making out comparative assessment of performance of two groups of officers from Surveyor Assistant Grade I to Assistant Surveyor(Works) weightage should be given to persons who are working on ad hoc basis in higher post. In that case there was no written test and the comparative assessment was made on the basis of CRs. As in the present case the persons had to appear at a selection test which involves written test and thereafter viva voce and evaluation of record of service, this decision can have no application in the present case. The next decision is S.Balakrishna v. The Union of India and another, ATR 1992(1) CAT 533. In that case the applicant was reverted from the post of Enforcement Officer to that of Assistant Enforcement Officer. His promotion was on ad hoc basis. He continued to function as Enforcement Officer for two years. The Tribunal held that since the need for his services is still there, the applicant should be allowed to continue

33

in the ad hoc promotional post till his ad hoc services are no more needed. It is not the case here that the applicant's services are needed as Assistant Accounts Officer on ad hoc basis. After drawing up of the panel a regularly empanelled candidate has been posted in his place and he has been reverted. Therefore, this decision is not of much help to him. The next decision is N.Y.Apte and others v. Union of India and others, ATR 1992(2) CAT 322. This decision has been relied upon by the learned counsel for the petitioner in support of his contention that one selection test should not have been held in respect of 75% quota of Assistant Accounts Officer for both those who are working on ad hoc basis as Assistant Accounts Officer and those who are working in the feeder grade and have the necessary eligibility to appear at the test. It is contended that because of this unequals have been treated as equals and Article 14 has been pressed into service. In N.Y.Apte's case (supra) the issue was for promotion to the post of Meteorologist Grade I. The Rules provided that for promotion to the post of Meteorologist Grade I, Meteorologists Grade II with five years approved service would be eligible for consideration. It was also provided that Assistant Meteorologists with eight years of approved service would also be considered for promotion to Meteorologist Grade I. The Principal Bench of the Tribunal in the above decision held that the effect of the rules is to treat the persons holding inferior posts in a better position than the persons holding superior posts and therefore, it was held that discrimination is writ large in the scheme of the rules in this behalf. In the instant case persons who are

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34

working on ad hoc basis as Assistant Accounts Officer are holding Group-C posts in substantive capacity like other Group-C post holders who had the requisite eligibility to take the selection test under the 70% quota. Both the groups belong to substantive Group-C posts. The two groups do not belong to different cadres like Meteorologist Grade II and Assistant Meteorologist as in N.Y.Apte's case (supra). The law as in the above case cannot be said to be applicable in this case. Another decision relied upon by the learned counsel for the petitioner is Dr.Krushna Chandra Sahu and others v. State of Orissa and others, Civil Appeal No. 8164 of 1995, decided by the Hon'ble Supreme Court on 8.9.1995. In that case it was noted that the Government did not issue any administrative instructions with regard to the criteria on the basis of which suitability of the candidates was to be determined. The Selection Board decided to adopt the criteria fixed by them. The Hon'ble Supreme Court held that the Selection Board had no jurisdiction to lay down the criteria for selection unless they are authorised specifically in that regard by the Rules made under Article 309. We have gone through the judgment, but we are unable to find as to how this judgment is in any way relevant to the points which arise for consideration in the instant case.

14. In consideration of all the above, we hold that the applicant has failed to make out a case for the relief claimed by him. The Application is therefore held to be without any merit and is dismissed, but, under the circumstances, without any order as to costs.

(G.NARASIMHAM)

MEMBER(JUDICIAL)

(SOMNATH SOM)

VICE-CHAIRMAN

3rd October, 2000/AN/PS