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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application No. 761 of 2002
Cuttack, this the 17th day of December, 2004

Parikshit Behera. Applicant.

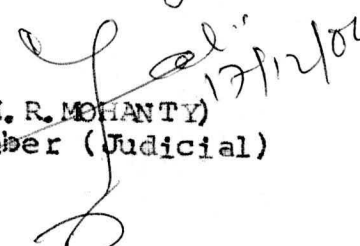
-Versus-

Union of India & Ors. 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? *Yes*


(B.N. SOM)
Vice-Chairman


(M. R. MOHANTY)
Member (Judicial)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 761 of 2002
Cuttack, this the 17th day of December, 2004

C O R A M:

THE HONOURABLE MR. B.N.SOM, VICE-CHAIRMAN
A N D
THE HON'BLE MR. M. R. MOHANTY, MEMBER (JUDL.).

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SRI PARIKSHIT BEHERA,
Aged about 40 years,
Son of Nidhi Behera,
permanent resident of Plot No. F/801,
Sector-6, CDA, Cuttack-14 at present
working as Office Assistant,
Office of Senior Superintendent
of Post Offices, Cuttack City
Division, Dist. Cuttack. Applicant.

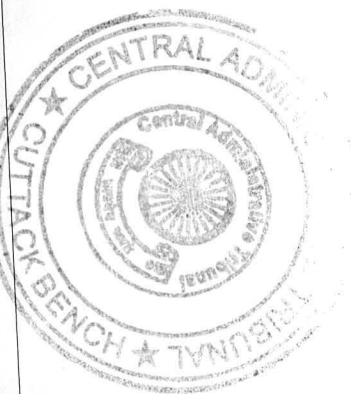
By legal practitioners: M/s. R.C. Pattnaik,
M. Bisoi, A. Dash,
R. K. Sahu,
Advocates.

-Versus-

1. Union of India represented through
Secretary, Ministry of Communication
Cum Director General of Posts,
Dak Bhawan, Sansad Marg, New Delhi-1.
2. Chief Post Master General,
Orissa Circle, Bhubaneswar,
Dist. Khurda.
3. Senior Superintendent of Post Offices,
Cuttack City Division, Cuttack,
At/Po/Dist. Cuttack. Respondents.

By legal practitioners: Mr. S.B. Jena,
Additional Standing Counsel.

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O R D E R

MR. MANORANJAN MOHANTY, MEMBER (JUDICIAL):

Applicant Parikshit Behera, who belongs to Scheduled Caste Community is continuing to work as Postal Assistant. He was appointed as such, after being selected through a regular process of selection. As per the Rules, after completion of three years as Postal Assistant, he became eligible to sit in the Departmental Examination in order to go over to the post of Junior Accounts Officer. The said Departmental Examination comprised of Part-I and Part-II. Any person, as per Rules, after passing Part-I of the said Departmental Examination, may exercise an option to appear in Part-II of the said Departmental Examination to become a Junior Accounts Officer in the said Wing or opt for Part-II of the Departmental Examination to be held for the post of Junior Accounts Officer in the Telecommunications Wing and that the option once exercised shall be final. It is the case of the Applicant that in response to an Advertisement/ Notification, he had applied during 1993 for JAO Part-I Examination (which was held from 10-10-1994 to 12-10-1994) and that the Applicant had also appeared in the said examination. On 31-05-1995 the result of the said J.A.O. Part-I examination was declared and the Applicant came out successful. Again, on 19-09-1995



Notification/Advertisement was published for conducting JAO Part-II Examination (to be held on 04-10-1995 to 06-10-1995) and the Applicant applied to appear in the said examination. The same, was however, postponed. Later, the said examination was held (for Part-II JAO) from 23-07-1997 to 25-07-1997 and, when the Applicant was declared unsuccessful in the said examination on 10-03-1998, he made a representation for giving him concession in accordance with the instructions of the Government of India (as available under Annexure-III); he being a SC candidate and more particularly the examination was a special drive examination for SC&ST candidates. Being unsuccessful in his attempt, ^{to get concessional benefits,} the Applicant filed this Original Application under section 19 of the Administrative Tribunals Act, 1985 with the following prayers:-

"to quash Annexure-VII and clause -4 of Annexure-VI and to direct the Respondents to place the Applicant's result before review committee to award grace mark in subjects and lowering the standards of evaluation in the departmental examination for declaring the applicant as successful and to give promotion retrospectively i.e. (from the date of held of the result of the departmental examination) for the post JAO meant for SC/ST candidates".

2. Respondents Department, by placing a counter on record, have submitted that Applicant qualified in the JAO Part-I examination in the year 1993 held (for SC & ST candidates) from 10th to 12th October, 1994 and that though the Applicant appeared in

Part-II JAO examination held from 23-07-1997 to 25-07-1997 but he did not secure the minimum qualifying marks (as he was required to secure 40% in each subject and 45% in aggregate) to qualify in the said Examination. It has been clarified by the Respondents, in their counter, that in Part-II JAO examination, the Applicant had secured the following marks in each paper:-

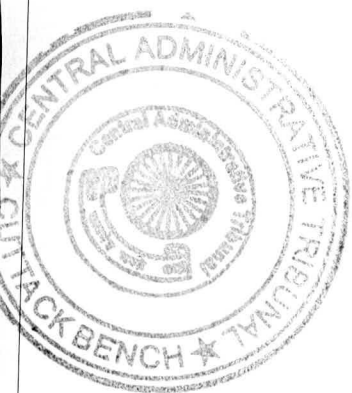
PAPER- VI 44 i.e. 29.33%

PAPER- VII 45 i.e. 45%

PAPER-VIII - 58 i.e. 38.66%

PAPER - IX - 55 i.e. 36.66%

Thus, it is the case of the Respondents that the Applicant secured only 202 marks (in total) out of the required total qualifying marks of 248 and, as such, he was held to be not eligible to qualify in JAO Part-II Examination in normal course. As regards the claim of the Applicant that he is entitled to be considered to have been declared successful (by applying the instructions of the Government of India that were made under Annexure-III) it has been clarified by the Respondents (in their counter) that since the scope of reservation in promotion for SC/ST candidates and prescription of lower qualifying marks/lesser standard of evaluation was withdrawn w.e.f. 22-07-1997 (Annexure-R/3) and though the Notification for holding of JAO Part-II



Examination was scheduled to be held from 18-02-1997 (but in fact held from 23-07-1997 to 25-07-1997) the Government of India instructions (under Annexure-III to the OA, as relied on by the Applicant) was/is not applicable to the case in hand. However, it has been admitted by the Respondents that the scheme of lesser qualifying marks/lesser standard of evaluation, was, however, again restored vide DOP&T O.M. dated 03-10-2000 with immediate effect. As such, it has been submitted by the Respondents that the Applicant is not entitled to get any concession in either way and, therefore, this O.A. is to be dismissed being devoid of any merit.

3. The short question for consideration in this Original Application is as to whether the instructions of the Government of India (withdrawing the concession given to the SC&ST candidates in the matter of promotion/awarding of marks during the commencement of the examination) will have any effect jeopardising the interest of the SC/ST candidates ?. To determine this question of law, we have heard at length the learned counsel for both sides in reference to various pleadings and the case laws made/cited by the both parties.

4. Learned Counsel for the Applicant, during hearing submitted that it is not in dispute



that process of selection for any examination starts from the date of Notification and it is an admitted fact that in this instant case, the first Advertisement for holding of part-I JAO examination was made sometime in the year 1993 and at that time the instructions under Annexure-III was in force. That apart, fact also remains that Notification was issued on 19-09-1995 fixing to hold JAO Part-II examination on 04-10-1995 to 06-10-1995 but (the same could not be held for the best reasons known to the Respondents and) the same was held from 23-07-1997 to 25-07-1997. No reason has also been assigned by the Respondents (explaining in the counter) as to why the said examination could not be ~~take~~ as per the scheduled date and time fixed in the notification dated 19-09-1995. Therefore, it has been argued by the learned counsel for the Applicant that since from the beginning the instructions were in force and since reason (for not holding the examination on the scheduled date and time) is not attributable to the Applicant, the Applicant should not be ~~made~~ to suffer/deprived of getting the benefits pursuant to ANNEXURE-III. Further it has been argued by the learned counsel for the Applicant that law is well settled that this modified instructions will not, in any way, affect the interest of the Applicant; for the same being of no retrospective application. Learned Counsel for the Applicant has also submitted that in case the subsequent



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modified circular/instruction is accepted to be applicable, then it will be as against the principles of legitimate expectation of the citizens. Therefore, the Applicant, ~~is~~ is entitled to get the concession as per the Circular under Annexure-III. Furthermore, it has been argued by the learned counsel for the Applicant that though it was a special drive examination, no SC/ST candidate was selected/promoted.

5. On the other hand, learned counsel appearing for the Respondents has pointed out that since the relaxation given by the Government under Annexure-III has been taken away by subsequent circular (during the conclusion of the examination) the Applicant cannot have any right to claim ~~the~~ benefits given under Annexure-III and, therefore, in no circumstances the benefits of the circular under Annexure-III are applicable to the Applicant.

6. On consideration of various aspects of the matter, it is to be noted here that the well established law is that once selection process starts the same had to be continued in accordance with the procedure/law as it stood then, at the commencement of the said proceedings. In the instant case, the undisputed fact is that the Government of India instructions under Annexure-III was in existence at the time of commencement of the examination, in question. The same was taken out from 22-07-1997 and again made applicable



(so far as SC & ST candidates are concerned) soon after the result of the examination was published. It is also not in dispute that the vacancies (for which the Special Drive Examination was conducted) occurred prior to the new instruction came into force i.e. under Annexure-R/3 dated 22-7-1997. Therefore, applying the ratio decided by Their Lordships of the Hon'ble Supreme Court of India rendered in the case of Y.V. RANGIAH AND OTHERS v. J. SREENIVASA RAO AND OTHERS (AIR 1983 SC 852); in the case of P. MAHENDRAN AND OTHERS v. STATE OF KARNATAKA AND OTHERS (AIR 1990 SC 405) as referred ^{to} by the Hon'ble High Court of Orissa in the case of GAYADHAR SAHOO v. STATE OF ORISSA AND OTHERS (OJC NO. 811/1990 disposed of on 26-04-1991); in the case of CHIEF GENERAL MANAGER, TELECOM, KERALA v. C. RENUKA AND ANOTHER (SCSR (Vol. 19) 10) and in the case of A.A. CALTON vs. THE DIRECTOR OF EDUCATION AND ANOTHER (AIR 1983 SC 1143) it is conclusively held that the present Applicant was/is entitled to get the benefits provided by the Government of India Circular/instructions under lesser qualifying Annexure-III for evaluation of marks in the examination conducted for the post of JAO. Accordingly, we hereby direct the Respondents to review the result of the Applicant as per the instructions under Annexure-III



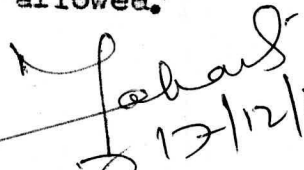
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within a period of sixty days from the date of receipt of a copy of this order and act further in the matter, basing on the review result, as directed above within the stipulated period.

7. In the result, this O.A. is allowed.
No costs.


(B.N. SOM)
Vice-Chairman


17/12/04
(M. R. MOHANTY)
Member (Judicial)