

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No. 507/2002

Thursday, this the 30th day of January, 2003

C O R A M

HON'BLE MR G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER
HON'BLE MR K.V.SACHIDANANDAN, JUDICIAL MEMBER

Lilly Joseph,
Senior Accountant,
O/o. General Manager, Telecom,
B.S.N.L, Kottayam.

..Applicant

[By Advocate Mr. G.D Panicker.]

v e r s u s

1. The Union of India represented by
The Secretary,
Ministry of Communications,
Sanchar Bhawan,
New Delhi.
2. The Chairman and Managing Director,
B.S.N.L, New Delhi.
3. Chief General Manager,
Telecommunication BSNL,
Thiruvananthapuram.

..Respondents

[By Advocate Mr. C. Rajendran, SCGSC (represented by Ms. Jisha).]

O R D E R


HON'BLE MR K.V.SACHIDANANDAN, JUDICIAL MEMBER

Applicant Smt. Lilly Joseph has filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985, praying for setting aside Annexures A/6 and A/7 and for a direction to the respondents to grant grace marks to the applicant in Part-I Examination of the Junior Accounts Officer (JAO, for short) held in 1999, but completed in the year 2001. Applicant has also prayed for a declaration that he is eligible to get the grace marks/relaxation in standard and that the Annexure A/4 does not stand in the way of granting the grace marks.


2

2. The applicant is working as Senior Telecom Accountant in the Office of the General Manager Telecom, Kottayam. She belongs to ST community. According to her, she is eligible for all concessions that are granted by various orders of the Government of India from time to time. Being the ST candidate, she has the constitutional right to get all the eligible benefits granted to ST employees through various constitutional amendments or statutory orders. It is stated that the applicant appeared Part-I Examination conducted by the department in 1999 for appointment as JAO. In order to qualify for this post, a candidate has to pass Part-I and Part-II Examinations and the minimum number of marks required to qualify in each part of the Departmental Examination prescribed for JAO will be 40% in each subject and 45% in the aggregate, provided that a minimum of 40% is also secured separately in the practical papers answered with the aid of books. It is stated by the applicant that suitable relaxation in qualifying standard will have to be made for the candidate belonging to ST.


3. Applicant has secured above 30% marks in all subjects except Paper VI (Advanced Accountancy). The examination was conducted in October, 1999, and the department had to conduct re-examination for Paper VI on 11th December, 2001. She appeared in the said examination and secured 72 marks out of 200. Annexure A/1 is the proof for the same. It is averred that the applicant is eligible to be considered against one of the vacancies reserved for ST candidates, as per existing instructions on the subject of relaxation of standards for ST candidates. As per Government of India DOT letter No. 22-5/91-N/OG dated 14.02.92 (Annexure A/2), review of all results of the failed SC/ST should be conducted and maximum grace marks may be awarded to all the fit candidates. Annexure A/3 is the



letter pertaining to the subject of relaxation of standard in favour of SC/ST in qualifying / confirmation /departmental examination. According to this relaxed standards, the case of the applicant is to be reviewed on the basis of confidential reports, on the performances in examination etc. by a Committee of Senior Officers so as to assess their suitability or unsuitability. It is stated that she would have to be declared passed in the JAO Examination Part-I if she was granted grace marks as per the existing rules. She submitted a representation dated 20.12.2001 (Annexure A/5) for granting eligible relaxation to her as per the extant rules in order to declare her as successful in the Part-I Examination of JAO, which was rejected by the second respondent vide Annexure A/6 dated 18.01.2002. Similarly, vide Annexure A/7 dated 11.3.2002, the claim of the applicant was rejected by the third respondent. Her claim was rejected on the ground that since re-examination was only for one paper and the results of the rest of the examination have already been declared without relaxation of standards, this examination may be treated as part of the examination conducted in October, 1999. Applicant averred that as per the instructions Annexure A/8 dated 13.07.2001, this action is faulted. According to Annexure A/8, the question of relaxation was taken up with Department of Personnel and Training, Ministry of Personnel, Public Grievances and Pension and it has been reiterated that the selection finalised between 22.07.97 to 03.10.2000 shall not be disturbed. In the case of the applicant, the examination itself was completed only on 11.12.2001 and, therefore, the embargo contained in Annexure A/5 is not applicable in her case. It is submitted that the applicant squarely falls within the concession of grace marks otherwise eligible.




4. The respondents have filed a detailed reply statement contending that as per Government of India, Department of Personnel & Training O.M. No. 36012/23/96-Estt.(Res) dated 22.07.97 which was issued on the basis of the judgement of Hon'ble Supreme Court in the case of S. Vinod Kumar vs. Union of India, various instructions of the Government providing for lower qualifying marks/lesser standards of evaluation in the matters of promotion for candidates belonging to SC/ST had been withdrawn. Annexure R/1 is the letter withdrawing such concessions. Therefore, there is no occasion to grant such concession of lesser standard of evaluation/lower qualifying marks to the applicant for the JAO Part-I Examination held in 1999. The instructions contained in Annexure A/3 order ceased to exist on 22.07.97 consequent on issuance of Annexure R/1 order till 03.10.2000 i.e., the date from which the order Annexure A/4 came into force. It is stated that the applicant misinterpreted Annexure A/4 order by giving wrong reference to the Indira Sawhney's case in 1992. The applicant would not have passed the Part-I Examination of JAO even on consideration of marks secured by her for Paper VI for which re-examination was held on 11.12.2001, i.e. after issuance of Annexure A/4 order. It was only a part of examination held in October, 1999 and the examination held on 11.12.2001 is not a fresh one. Annexure A/6 was issued by the competent authority in accordance with law. The representation (Annexure A/5) was disposed of by the third respondent vide Annexure A/7 following the order Annexure A/6. It is stated that Annexure A/8 does not directly apply to any relaxation for SC/ST candidates in the examination for departmental promotion or make it applicable retrospectively without considering the order Annexure R/1. The respondents submitted that the applicant is not entitled to any relief as claimed for and the O.A. is to be dismissed.



5. We have heard Mr. G.D. Panicker, learned counsel for the applicant and Mr. C. Rajendran (represented by Mrs. Jisha), learned counsel for the respondents.

6. Learned counsel for the applicant submitted that the applicant has got the constitutional guaranteed by the proviso under Article 335 which provides that nothing in Article 335 shall prevent in making of any provision in favour of the members of the Scheduled Caste and rights for relaxation in qualifying marks in any examination or lowering the standards of evaluation, for reservation in matters of promotion to any class or classes or service or cases in connection with the affairs of the Union or of a State. This being a constitutional mandate, the respondents ought to have granted grace marks as per the existing rules. Learned counsel for the respondents, on the other hand, contended that the marks secured by the applicant in JAO Part-I Paper VI re-examination, as is evidenced from Annexure A/1, will not be considered for promotion as JAO until he qualifies in Part-I and Part-II Examination. The candidates who have passed Part-I Examination can only appear for Part-II Examination. The relief sought for by the applicant will not give any help to her because as per Annexure, she did not secure the minimum marks required to qualify in each part of the departmental examination for JAO, i.e. 40% in each subject and 45% in the aggregate, provided that a minimum of 40% is also secured separately in the practical papers. Hence, even if the relaxation in standard is extended to her, it will not be of any help to her since she did not secure the required marks as prescribed.

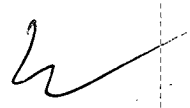
7. We have given due consideration to the pleadings, documents and material placed on record and the elaborate arguments advanced by both the learned counsel.



8. On a perusal of Annexure A/3, we find that in the case of SC/ST candidates, who were considered not unfit for promotion, grace marks should be added to bring them upto the qualifying standard. There will be no limit to giving the grace marks to the candidates who are not otherwise unsuitable. Grace marks in more than one paper will be admissible. But in Annexure A/4 dated 3rd October, 2000, it is mentioned that in matters of promotion for candidates belonging to Scheduled Castes and Scheduled Tribes, various instructions of the Government providing for lower qualifying marks/lesser standards of evaluation had been withdrawn on the basis of the judgement of Hon'ble Supreme Court in the case of S. Vinod Kumar vs. Union of India. The matter has been reviewed thereafter, consequent to which the following proviso to Article 335 has been incorporated in the Constitution by the Constitution Amendment (Eighty-Second Amendment) Act, 2000:

"Provided that nothing in this Article shall prevent in making of any provision in favour of the members of the Scheduled Castes and Scheduled Tribes for relaxation in qualifying marks in any examination or lowering the standards of evaluation, for reservation in matters of promotion to any class or classes of services or posts in connection with the affairs of the Union or of a State."

In pursuance of the enabling proviso of Article 335 of the Constitution, it has been decided by Annexure A/4 to restore, with immediate effect, the relaxations/concessions in matters of promotion for candidates belonging to SC/STs by way of lower qualifying marks, lesser standards of evaluation that existed prior to 22.07.97 and as contained in the instructions issued by the Department of Personnel and Training from time to time. The effect of these instructions would be that the Department of Personnel and Training's OM No.36012/23/96-Estt.(Res) dated 22nd July, 1997, becomes inoperative from the date of issue of this OM (Annexure A/4). Further, vide Annexure A/8, it was made clear that no selection finalised between 22.7.1997 and 3.10.2000 shall




be disturbed. Involving the vires of Hon'ble Supreme Court ruling and all other decisions, the Ministry of Personnel, Public Grievances and Pension issued Annexure R/1 order dated 22.07.97, which has been taken note of in Annexure A/4 dated 03.10.2000. The relevant portion of Annexure R/1 is reproduced as under:

The undersigned is directed to say that in terms of instructions noted in the margin, certain relaxations/concessions in the matter of qualifying marks/standards of evaluation of performance are to be made in favour of candidates belonging to the Scheduled Castes and the Scheduled Tribes while considering them for promotion.

2. The validity of such lower qualifying marks/ lesser standards of evaluation was called into question in Courts in the context of the judgement of the Supreme Court in the case of Indira Sawhney vs. Union of India. The Supreme Court, in the case of S. Vinod Kumar vs. Union of India (JT 1996 (8) S.C.643) has held that the provision for lower qualifying marks/lesser level of evaluation, in the matter of promotion, provided for candidates belonging the Scheduled Caste and the Scheduled Tribes under Government's instructions, is not permissible under Article 16(4) in view of the command contained in Article 335 of the Constitution. The Court has further observed that even if it assumed for the sake of argument that reservation is permitted by Article 16(4) in the matter of promotion a provision for lower qualifying marks or lesser level of evaluation is not permissible in the matter of promotion, by virtue of Article 335. The Court also held that the protection for reservation in promotion for five years, given by the Supreme Court, vide para 829 of the judgement in Indira Sawhney's case, did not save the provisions for lower qualifying marks/lesser level of evaluation...."


9. It is, therefore, clear that even after the subsequent amendment of the Constitution, the eligibility for such relaxation has been freezed / cannot be granted for the period 22.07.97 to 03.10.2000. Therefore, the order Annexure A/3 granting relaxation of standard appears to be effective till 22.07.97 and then it was again granted vide Annexure A/4 order dated 3rd October, 2000. In other words, it is made clear such benefits should not be extended to these categories of persons during the interregnum period referred to above. The reasoning in the above O.M. is very clear and is based on the the judgement of Hon'ble Supreme Court and that of the amendment by the Constitution regarding the dates of giving effect thereto.



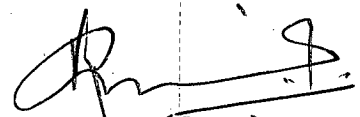
10. Another limb of argument advanced by the learned counsel for the applicant that the re-examination held on 11.12.2001 will come out of the purview of the cut off date, i.e. 3.10.2000, and granting the relief as claimed for by the applicant is a matter to be considered. Considering all the aspects in this case, we are of the view that the examination was originally conducted in October, 1999, and for some or other reason, the re-examination for paper VI was conducted in December, 2001. Therefore, it cannot be said that it was a separate examination, but it could only be a continuation of earlier examination and it cannot be segregated from the examination conducted for other papers for the same selection earlier. Therefore, the finding of the respondents in Annexure A/6 that "since re-examination is only for one paper and results of the rest of the examination have already been declared without relaxation of standards, this exam may be treated as part of the examination conducted in October, 1999" cannot be found fault with. In our view, this reasoning seems to be very rational and stand to legal principles and hence, we hold that the respondents are right in non-granting the relaxed standards for the paper VI, for which re-examination was held on 11.12.2001.

11. In the result, we do not find any cogent reason to set aside Annexures A/6 and A/7 or any other OMs that have been discussed above and the OA deserves to be dismissed. Accordingly, we dismiss the O.A. with no order as to costs.

(Dated, 30th January, 2003)



K.V. SACHIDANANDAN
JUDICIAL MEMBER



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER

cvr.