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**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.NO.548/2008

Thursday this, the *12* th day of November, 2009

CORAM:

HON'BLE SRI GEORGE PARACKEN, MEMBER(J)
HON'BLE SRI K.GEORGE JOSEPH, MEMBER(A)

1. Ramdas G, aged 49 years,
Sr.Accountant,
Office of the Accountant General(A&E),
Kerala Branch, Calicut,
Residing at "Aashiana",
Karanthur Post, Kozhikode District,
Pin-673 571.
2. P.R. Vasudevan, aged 48 years
Sr.Accountant,
Office of the Accountant General (A&E)
Kerala Branch,Ernakulam,
Residing at AG's Office Staff Quarters,
C-6, Golden Jubilee Road, Kaloor,
Cochin-17.
3. Mammen Kurien, aged 44 years,
Sr.Accountant,
Office of the Accountant General (A&E),
Kerala, Trivandrum,
Residing at TC 13/1565, BRRA-223,
Kumarapuram, Medical College P.O.,
Trivandrum-11.

.. Applicants

By Advocate :Mr. Mohankumar for Mr.TCG Swamy

vs.

1. The Comptroller & Auditor General of India,
New Delhi.
2. The Accountant General(A&E),
Kerala, Trivandrum.

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3. The Senior Accounts Officer(Administration),
Office of the Accountant General(A&E),
Kerala, Trivandrum.
4. The Director(Exam),
Office of the Comptroller & Auditor General of India,
New Delhi.

... Respondents

By Advocate Sri P.Nandakumar

The application having been heard on 22.10.2009, the Tribunal on
delivered the following:-

ORDER

HON'BLE SRI K.GEORGE JOSEPH, MEMBER(A):

This O.A. is filed with a prayer to declare that the applicants have qualified in SOGE(Civil Accounts) Examination in December 2006/January 2007 at par with those in Annexure A2 and to declare further that they are entitled to the consequential benefits thereof.

2. The applicants are working as Senior Accountants under the Accountant General (A&E), Kerala. For promotion as Section Officer(Accounts), the departmental candidates are required to qualify in the Section Officers Grade Examination (Civil Accounts) Part I and Part II. The applicants have qualified in Part I of the examination and the issue in this O.A. relates to Part II only.

3. SOGE(Civil Audit) and SOGE(Civil Accounts) are examinations conducted for officials aspiring for promotion as Section Officer in audit and accounts respectively. Of the two parts in the said examination, Part I of both the examinations is identical. In respect of Part II, 3 papers viz. CPW Account Code(Theory), Precis & Draft and Computer Systems Theory & Practical are common papers. SOGE Civil (Audit) Part II has 3 exclusive papers namely CPW Account Code Practical, Advanced Accountancy and Govt. Audit. The criteria to declare a candidate passed in SOGE Audit and Accounts Examinations is that one must get 40% of marks in each subject and in the aggregate he should get 45% marks. Anyone failing at the examination but

securing 50% of the marks in a subject will not be required to appear again in that subject in the subsequent examination. Those who are exempted from appearing in certain papers of the SOGE by virtue of having passed equivalent papers in either streams will be required to secure 45% marks in the aggregate in the remaining subjects in which they actually appear subsequently for qualifying that part of the examination.

4. The applicants had passed all subjects except Precis and Draft Paper as part of SOGE(Accounts). They were allowed to appear in the SOGE(Audit) examination for the remaining papers which included Precis and Draft Paper which is common to both the Audit and Accounts Examinations. In the Precis and Draft Paper, the applicants secured 47%, 41% and 44% respectively against the required 45% marks to be declared passed in SOGE(Accounts) as per Annexure R1(b) rules. The applicants argue that they are similarly placed as Ms. Jaitha V.S. and Sri Francis C.A., who were declared SOGE(Accounts) qualified as per Annexure A3 inasmuch as they had secured 40% only in Precis and Draft Paper conducted in May/June 2004, with more than 45% marks in the aggregate.

5. In reply to this the respondents admit that Ms. Jaitha and Mr. Francis were erroneously declared as having passed the SOGE(Accounts) Examination. This error on the part of the 4th respondent will not give any legal right to the applicants to claim the same benefits. Judgments of the Hon'ble Supreme Court in Chandigarh Administration and Anr vs. Jagjit Singh and Anr. (AIR 1995 SC 705), Union of India (Railway Board) and Ors. vs. J.V. Subhaiah and Ors (AIR 1996 SC 2890) and Kerala State Electricity Board vs. Saratchandran (2008 9 SCC 396) were relied upon by the respondents to drive home the well settled position of law. It was also pointed out that the 4th respondent has laid down clear cut criteria in the form of a general circular (Annexure R1(a)) dated 8.5.2009 reiterating the position of Annexure R1(b) for declaring the candidates passed in various situations. Based on the said criteria the applicant No.1 Sri Ramdas.G has been declared as having passed SOGE (Civil Accounts) Examination. However the applicants No. 2 and 3 are not eligible to be declared as SOGE(Accounts) passed as they have not obtained exemption marks of 45% for the Precis and Draft Paper.

6. The applicants countered that no separate examination was being conducted for SOGE(Accounts) after March, 2006. If SOGE(Accounts) Examination were to be continued to be conducted, the passing marks of 40% would be sufficient to declare them to have passed SOGE(Accounts) Examination. The exemption marks are intended only to avoid writing of future examinations and not for the purpose of declaring them to have qualified or not. Therefore the contention that Ms. Jaitha and Sri Francis were erroneously declared to have passed SOGE(Accounts) Examination on the basis of simple pass marks, is not correct. There was no error in the decision.

7. Arguments were heard and documents perused.

8. The applicants were allowed to appear at the SOGE(Audit) Examination on the basis of Annexure A1 order dated 12th August, 2003 from the office of the Comptroller & Auditor General of India, New Delhi. The relevant part of Annexure A1 is extracted as under:-


“ It has been decided to allow following categories of candidates from A&E stream to appear at the S.O.G.E.(Civil Audit) for their eventual absorption in Civil Audit Offices:

a) Those who have already passed Part II of S.O.G.E.(Civil Accounts) and are still awaiting promotion as Section Officer (Accounts) or Ad-hoc Section Officers(Accounts) who are still awaiting regularization as Section Officers will have to clear only the remaining papers of Part II of S.O.G.E.(Civil Audit). Their appointment as Section Officer(Audit) shall be reckoned from the date of joining to the post after clearing remaining papers of Part II of S.O.E.G.(Civil Audit).

b) Those who have passed Part I of S.O.G.E.(Civil Accounts) will have to clear Part II of S.O.G.E.(Civil Audit).

c) Those who have not cleared some of the papers of Part I/Part II of S.O.G.E.(Civil Accounts) will have to clear the remaining papers of S.O.G.E.(Civil Audit).

d) Fresh candidates subject to conditions laid down in para 9.2.16 of C.A.G., M.S.O(Admn) Vol.1.”



The permission to appear in the SOGE (Civil Audit) Examination was for the eventual absorption in the Audit stream as the number of persons waiting for promotion as Section officer(Accounts) was too large. This was a special dispensation

to enable candidates belonging to the Accounts stream to test whether they can qualify for the Audit stream. Their appearance in the Audit exam does not mean that they have switched over to that stream.

9. The respondents in their reply aver "SOGÉ Civil(Audit) and, SOGÉ (Accounts) Exams do not have similar papers. Only the Part I of both the exams is identical. In respect of Part II, 3 papers viz. CPW Account Code(Theory), Precis & Draft and Computer Systems Theory & Practical are common papers. SOGÉ Civil (Audit) Part II, has 3 exclusive papers namely, CPW Account Code Practical, Advanced Accountancy and Govt. Audit"

10. In other words all papers for SOGÉ (Accounts) and SOGÉ(Audit) are common, except for 3 papers which are exclusive to the latter. The applicants are right in holding that all papers of both the examinations are common if the 3 additional papers for SOGÉ(Audit) are not taken into account. The respondents are right in their view that all papers of both the examinations are not similar if the additional papers of SOGÉ(Audit) are taken into account. The difference in perception lies in the angles from which the contestants view the situation. A glass is half empty or half filled depending on the viewer.

11. The provision of MSO(Admn) Vol.I, Para 9.2.35 which deals with all situations in respect of declaring candidates as having passed reads:-

"The number of marks required to secure a pass in each part of each branch is as follows:

In each subject – 40 per cent

In the aggregate – 45 per cent

Provided that 40 per cent is also secured separately in each of the Practical papers answered with the aid of books.

Any candidate failing at the examination but securing 50 per cent of the marks in a subject will not be required to appear again in that subject at a subsequent examination. Where there is a Theoretical and a Practical paper in any subject, the marks for both the papers will be

taken together for this purpose, provided the minimum pass marks of 40 percent are also secured separately in the Practical paper on the subject. Candidates who are exempted from appearing in certain papers of the Section Officers' Grade Examination by virtue of having passed equivalent papers in other examinations will be required to secure 45% marks in the aggregate in the remaining subject(s) in which they actually appear subsequently for qualifying that part of the examination."

12. The respondents are right in their view, if it is treated that by Annexure A1 order they have switched over to the Audit stream, that the applicants should score 45% marks in any subject in accordance with para 9.2.35(last sentence), in the context of the application, to declare the applicants to have passed SOGE(Accounts) Examination. The applicants are right in their view if the fact that they were appearing in SOGE(Audit) by virtue of Annexure-A1 is disregarded, that they fulfill all conditions to get a declaration that they have passed SOGE(Accounts) in terms of para 9.2.35(first part) because they have secured 40% and above in all papers, they have secured more than 50% or above in exemption papers and they have secured 45% or above in the aggregate.

13. The reason for allowing the SOGE(Accounts) candidates to appear in the SOGE(Audit) was the long waiting list of SOGE(Accounts) passed candidates for promotion as Section Officers. The good intention of the respondents cannot be doubted, but it is not the case that the applicants have made an irrevocable decision to be in the Audit stream. They have appeared in the SOGE(Audit) examination. The applicants found that though they could not pass it, they have secured pass marks or more in the Precis and Draft Paper and that was good enough to secure a declaration to have passed SOGE (Accounts) if they had appeared in SOGE(Accounts). But SOGE (Accounts) Examination was not held and is not going to be held in the near future. The Precis and Draft Paper is common to both the Examinations. In the case of 2 persons who were similarly placed as the applicants, the respondents declared them as having qualified in SOGE(Accounts). Annexure A3 refers.


14. The respondents argue that Annexure A3 order was an inadvertent error which need not be perpetuated for which they have relied on various Hon'ble Supreme Court judgments. The facts and circumstances of the judgments (supra) are not exactly similar

to the present case. The Hon'ble Supreme Court in Chandigarh Administration and another vs. Jagjit Singh and another, AIR 1995 SC 705, held as follows:-

“ Generally speaking, the mere fact that the respondent-authority has passed a particular order in the case of another person similarly situated can never be the ground for issuing a writ in favour of the petitioner on the plea of discrimination. The order in favour of the other person might be legal and valid or it might not be. That has to be investigated first before it can be directed to be followed in the case of the petitioner. If the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal or unwarranted order cannot be made the basis of issuing a writ compelling the respondent-authority to repeat the illegality or to pass another unwarranted order.”

What the Apex Court held was that an illegality or an unwarranted order should not be perpetuated.

15. But there is nothing illegal or unwarranted in the instant case. The respondents stated in their reply, “The provision of MSO(Admn) Vol.1, para 9.2.35 quoted by the applicants are applicable only to a particular stream of examination. In the instant case, the applicants have passed 3 papers under one stream(SOGE (Civil Accounts)) and the fourth under a different stream(SOGE(Civil Audit))”. The fourth paper in fact, is the common paper, the only paper for the applicants to pass, if SOGE(Civil Accounts) were held. In the context, when SOGE(Civil Accounts) is not to be held, and when the applicants still remain in the Accounts stream and when the only paper remaining to pass is the common paper to both Accounts and Audit exams and when they have passed it, it is only reasonable to treat the applicants as having passed the Accounts exam. And it is legal in so far as it is in conformity with the provision in para 9.2.35 of MSO(Admn) Vol.1.



16. In our considered view Annexure A3 may be inadvertent but not an error. If it is within the powers of the respondents to allow the Accounts stream candidates to appear in the Audit stream examination for eventual absorption in the Audit stream, then it is also within their powers to treat them, in respect of the common paper, as having appeared in the Accounts exam, because they still remain in that stream. They


were only allowed to appear in the Audit examination with a view to eventually absorb them in the Audit stream. This was a special dispensation. Till they are absorbed in the Audit stream, they remain in the Account stream. They have passed the Precis and Draft Paper which is common to both the streams and the only paper remaining for the Accounts stream persons to pass. Therefore Annexure A3 is not an error but totally in accordance with para 9.2.35(first part) and legal. The respondents can declare them as qualified in SOGE(Accounts) as they fulfill all the conditions mentioned earlier. In the case of Mrs. Jaitha and Mr. Francis they have done so inadvertently or otherwise. They can extend the same benefit to the applicant Nos. 2 and 3 as well. The applicant No.1. does not need it as he is otherwise qualified in the eyes of the respondents. It is better to have a large number of qualified accountants rather than having failed auditors.

17. If different decisions are taken in respect of similarly placed persons then the charge of discrimination is sustained. In order to avoid discrimination, two options are available. (i) Treat Annexure A3 as a bonafide mistake and rectify it by cancelling it after following due process in accordance with the principle of natural justice. The grounds on which this option rests are that it is SOGE (Audit) examination that the affected persons had appeared at and is in accordance with para 9.2.35 (last sentence). (ii) Treat Annexure A3 as proper and in accordance with para 9.2.35(first part) and declare the applicants 2 and 3 also as having qualified in SOGE(Accounts) as they fulfill all the conditions for declaring so, although they have appeared in SOGE(Audit) examination as a special dispensation was given as per Annexure A1 order. In option 2 the view taken will be that all papers for SOGE (Accounts) and Audit examinations are common, but for the 3 additional papers for the latter. If the applicants 2 and 3 want to clear SOGE(Audit) in future they will have to get 45% marks in the aggregate in the additional subjects in accordance with the last sentence of para 9.2.35. Evidently, the second option is preferable because the applicants have not yet been absorbed in the Audit stream. They still remain in the Accounts stream.

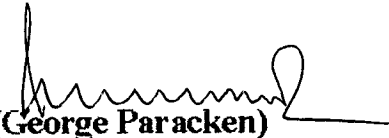
18. In the light of the above discussion, the O.A. is allowed. Annexures A6 and A7 orders are quashed and set aside. The respondents are directed to declare applicants Nos. 2 and 3 as having SOGE(Accounts) qualified with all consequential benefits

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within a period of one month from the date of receipt of a copy of this order. No order as to costs.



(K. George Joseph)
Member (A)



(George Paracken)
Member (J)

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