

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

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NEW BOMBAY BENCH

O.A. No. 74/88
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Non-accrued 8
DATE OF DECISION 31.10.1988

Shri P.N.Nandanwar

Petitioner

Advocate for the Petitioner(s)

Versus

Asstt. Director General(DE-II) Respondent

Shri S R Atre
(for Shri P MPradhan)

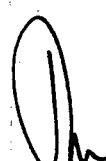
Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr.B C Gadgil, Vice Chairman

The Hon'ble Mr.P.S. Chaudhuri, Member(A)

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. Whether it needs to be circulated to other Benches of the Tribunal? Yes



BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY 400614

O.A. 74/88

Shri P.N. Nandanwar
C/o. Shri Pitter Barse's House
Behind Dr. Nikam's Residence
Pimpri
Pune 411017

Applicant

v/s

Assistant Director General(DE-II)
Department of Telecommunication
Ministry of Communication
New Delhi 110001

Respondent

Coram: Hon'ble Vice Chairman B C Gadgil
Hon'ble Member(A) P S Chaudhuri

Appearance:

Applicant in
person

Shri S R Atre
(for Shri P M Pradhan)
Counsel
for the respondents

JUDGMENT

(Per: B C Gadgil, Vice Chairman)

PRONOUNCED ON 31.10.1988

This Original Application No. 74/88 has been filed on 20.1.1988 under Section 19 of the Administrative Tribunals Act 1985 by Shri P.N. Nandanwar Vs. Department of Telecommunication, New Delhi praying for the award of grace marks in Part-I of the examination for promotion to the post of Junior Accounts Officer.

2. The applicant is working as a Section Supervisor in the Telephones department at Pune. The applicant belongs to the Scheduled Tribe community. The next promotional post for him is that of Junior Accounts Officer (JAO, for short). For such a promotion the eligible candidate has *inter alia* to pass an examination which consists of two parts. The applicant appeared for Part-I of the examination in April 1983. That examination consists of eight papers. The applicant has passed in all papers except paper no.IV. He obtained 31 marks out of 100 in that paper. The passing marks for him are 33%. The Government has issued a relaxation order dated 4.5.81, a copy of which is at page 7 of

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the application. These orders are with a view to grant relaxation of the standards in favour of Scheduled Caste/Scheduled Tribe candidates in qualifying, confirmation, and departmental promotion examinations. The order provides that if in the examination the required number of such candidates do not qualify even according to the relaxed standards the cases of such failed candidates should be reviewed by a Committee. In case the Committee finds that such failed candidates are not unfit for promotion, grace marks should be added to bring them up to the qualifying standard. The order further states that there would not be any limit in granting such grace marks to the candidates who are otherwise not unsuitable. The rest of the provisions in that order are not relevant in this litigation.

3. The applicant contends that the Scheduled Tribe Communities do not have the required strength in the cadre of JAO and that it was necessary for the Committee to consider the case of the applicant for the purpose of finding out as to whether any grace marks should be awarded to him if he was not unfit for promotion. The applicant made applications to the department requesting them to grant him at least two grace marks so that he becomes eligible to appear for Part-II of the examination and for consideration for promotion to the post of JAO. The applicant was however informed on 1.9.1984 (vide page 9 of the application) that the Part-I examination does not bestow any promotion to the higher post but simply makes an official eligible to appear for the Part-II examination. He was further informed that the review contemplated by the order dated 4.5.81 is permissible only if the candidate has appeared for Part-II of the examination. The applicant made some more representations. However, his case was not favourably considered for the award of grace marks. Hence he filed the present application on 20.1.1988 praying that the department should be directed to consider the case of the applicant in accordance with the orders dated 4.5.81.

4. The respondents resisted the application. They contended that the application is barred by time as

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it was filed in 1988 when the claim of the applicant was rejected in 1984-85. It was submitted that the review in accordance with the order dated 4.5.81 is presumably only when the claim of the candidate is to be considered for promotion and that under the rules a candidate is entitled to appear for Part-II of the examination only after he passes Part-I of the examination. It was further contended that as the applicant has failed in Part-I of the examination he is not entitled to appear in Part-II of the examination and consequently his case cannot be reviewed for the purpose of granting grace marks. In para 6, the respondents have stated that Part-I of the examination is merely a qualifying examination and only those candidates who have passed Part-I of the examination are sent for Part-II of the examination. There were also certain other contentions. However, they are not relevant.

5. Shri S R Atre for the respondents drew our attention to the Recruitment Rules dated 15.4.1977. Clause 8(3)(a) thereof reads as follows:

"Any person after passing Part-I of the Departmental Examination may exercise an option to appear in Part II of the Departmental Examination to be held for the Junior Accounts Officer in the Telecommunication Wing or Part II of the Departmental Examination to be held for the Junior Accounts Officers in the Postal Wing, and the option once exercised shall be final."

It was, therefore, contended that a candidate is eligible to appear for Part-II of the examination only after passing Part-I of the examination and that review of the cases of candidates who have not passed in such examination can be taken only after the candidate undertakes both the examinations. In substance the contention of Shri S R Atre is that the candidate who has failed in Part-I of the examination would not be

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able to appear for Part-II of the examination and that unless the candidate appears for Part-II of the examination his case cannot be reviewed for the purpose of granting grace marks.

6. We are not able to accept this contention. It is material to note that the Part-I and Part-II examinations are for the purpose of getting promotion to the post of JAO. The respondents themselves have admitted that Part-I of the examination is a qualifying examination to enable a candidate to take Part-II of the examination. The subject of order dated 4.5.81 is 'Relaxation of standard in favour of Scheduled Caste and Scheduled Tribe in qualifying/confirmation/departmental promotion examination'. The basic objective in the matter has been spelt out as "to decide whether SC&ST candidates who take departmental examinations are fit (at least "not unfit") to hold the post for which they are competing rather than by going only by their percentage of marks." Thus the question of granting of grace marks can be considered even when the examination in question is a qualifying examination. The most that can be said in favour of the department is that Part-I of the examination is a qualifying examination to permit the applicant to appear for Part-II of the examination. It will not be possible to interpret the order dated 4.5.81 in a manner which would create anomalous circumstances. If the contention of the respondents is accepted it would mean that no grace marks can be granted in Part-I of the examination and that the candidate must on his own pass that examination. It is only thereafter that he would appear for Part-II of the examination and if he fails in Part-II of the examination that he can seek the benefit under the order dated 4.5.81. The order has to be construed after bearing in mind the purpose of that order. Obviously the purpose is that those Scheduled Caste and Scheduled Tribe candidates who have failed in the examination viewed as a whole but are not found unfit for promotion can be granted grace marks. The applicant would be entitled to appear in Part-II of the examination only if he passes Part-I of the examination and in that process it would be

