

(8)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 13/90

Transfer Application No:

DATE OF DECISION: 21.3.95

Shri S.S.Salvi

Petitioner

Applicant in person

Advocate for the Petitioners

Versus

Controller General of Defence Accounts
New Delhi & Anr. Respondent

Shri V.S.Masurkar

Advocate for the Respondent(s)

CORAM :

The Hon'ble Shri Justice M.S.Deshpande, Vice Chairman

The Hon'ble Shri P.P.Srivastava, Member (A)

1. To be referred to the Reporter or not ?
2. Whether it needs to be circulated to other Benches of the Tribunal ?


(P.P.SRIVASTAVA)
MEMBER (A)


(M.S.DESHPANDE)
VICE CHAIRMAN

(9)
BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH, BOMBAY

OA. NO. 13/90

Shri Suryakant Sahebrao Salvi

... Applicant

V/S.

Controller General of Defence
Accounts, New Delhi & Anr.

... Respondents

CORAM: Hon'ble Vice Chairman Shri Justice M.S.Deshpande
Hon'ble Member (A) Shri P.P.Srivastava

Appearance

Applicant in person

Shri V.S.Masurkar
Advocate
for the Respondents

JUDGEMENT

Dated:

(PER: P.P.SRIVASTAVA, MEMBER (A))

The applicant who is a Senior Auditor under Controller of Defence Accounts had appeared for the sub-ordinate Accounts Service (SAS) Examination Part II held in July, 1988. He was declared failed in the said examination. The applicant has brought out that his failure in the examination was due to lop-sided setting of Paper VI i.e. Book-Keeping with Element of Cost Accounting. The applicant has brought out that only Book-Keeping questions were set for this paper ignoring Cost Accounting. The applicant says that atleast questions worth 50 marks should have been asked from Cost Accounting. Since he has had an excellant performance in this paper during the last three years and has secured 68 marks, taking as an average in the last examination, his marks in the present examination in July 1988, should be changed from 30 to 60. Another point brought out by the applicant for consideration in this case is that he being a Scheduled Caste (SC) candidate should have been given relaxation of marks. The extent of

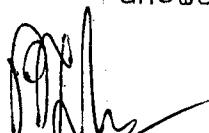
11
11-2

relaxation should be decided on each occasion wherever such examination is held taking into consideration all relevant factors including (i) the number of vacancies reserved, (ii) the performance of SC/ST candidates as well as general candidates in that examination (iii) the minimum standard of fitness for appointment to the post and also (iv) the overall strength of the cadre and that of the SC/ST in that cadre. The respondents in this case have not done so. They have not prescribed any concession before commencing the examination for the year 1988 and therefore the applicant is entitled to get 25 concessional marks in one subject or in aggregate as per ruling given in Supreme Court's judgement in Comptroller and Auditor General of India, Gan Prakash, New Delhi & Ors. vs. K.S.Jagannathan & Ors. in Civil Appeal No. 2952 of 1984 decided on April 1st, 1986 reported in 1986 SCC 679. The applicant has, therefore, prayed that

respondents' letter dated 4.10.1989 placed at Annexure- 'D'

should be set aside and the applicant be granted the reliefs :- that he should be awarded 68 marks in Paper VI and 25 marks should be given as concession as his being a SC candidate.

2. The respondents have brought out that the question paper No. VI was set by the competent authority and was examined by a Committee. Therefore, they have mentioned, that it is not against rules and no question in the paper was from outside the syllabus, although question on cost accounting was ^{not} there in the paper. They have mentioned that there were 8 questions and the candidates were required to answer only 5 questions. The respondents have further



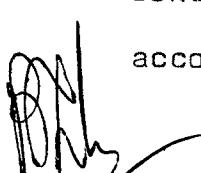
brought out that 5% relaxation of marks had been allowed to the SC/ST candidates for the SAS Part II held by Defence Accounts and no further relaxation is due to the applicant.

They have mentioned that the Supreme Court judgement referred to by the applicant was against the C.A.G. covering the period from 1980 to 1985 and from 1986 onwards the Supreme Court has directed the C.A.G. to allow relaxation to the SC/ST candidates of his department taking all factors into consideration. Since the Defence Accounts Department has permitted relaxation to SC/ST candidates, there has been no violation of the directions given by the Supreme Court.

3. We have heard the applicant and the counsel for ^{1d.}
the respondents. During the arguments the ^{1d.} counsel for
the respondents produced a letter dated 17.8.1990 wherein
our attention was drawn to Para 2. It has been mentioned
in Para 2 that :-

"The extent of 5% relaxation proposed to be allowed to the SC/ST candidates of the SAS Part II examination held in 7/88 was notified in advance vide para 7 of our circular bearing No. AN/XVI/16100/7-88/Genl dated 28.12.87. The Controllers were also requested to bring the extent of relaxation to the notice of the SC/ST candidates. Shri Salvi in his rejoinder has submitted that the extent of relaxation was not brought to his notice by your office in advance. The exact position in this regard may please be intimated."

4. We have considered the arguments and the material before us. We are of the opinion that the setting of question paper is a prerogative ~~of~~ of the concerned authority and if the question papers are from the syllabus, the legality of the question paper cannot be challenged on the ground that certain ~~portions~~ of the syllabus had not been covered by the question paper. We also find that the concessions as required to be given to SC/ST candidates, according to rules, have been given by the respondents

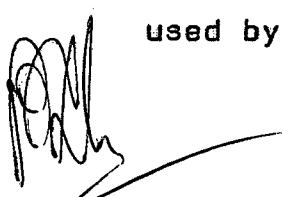


in this case. We are of the opinion that the applicant has not been able to show any illegality in the conduct of the examination and therefore his prayers lack merit.

5. The applicant submitted a Misc.Petition after the arguments were heard and the judgement was reserved on 1.2.1995. The M.P. came for consideration on 8.2.1995 when the applicant was present in person and Shri V.S. Masurkar was present for the respondents.

6. Through this M.P. the applicant has submitted that the respondents have submitted two letters No. AN/XVI/16101/7-88/PC/CAT/Bombay, dated 17.8.1990 and AN/XVI/16100/7/88/GENL, dated 28.12.1987 after the arguments were heard and the judgement was reserved and these documents were submitted in the absence of the applicant.

7. Shri V.S.Masurkar for the respondents mentioned that confidential letter dated 17.8.1990 was shown at the time of arguments and since that letter had a reference to the other letter dated 28.12.1987 and the counsel for the respondents was directed to give a copy of the same for the record of the Court and the copies of these two letters were given for the record of the Court. The counsel for the respondents has further mentioned that he has given copies of these letters to the applicant also. As far as the letter dated 17.8.1990 was concerned, the same was referred to by the counsel for the respondents in his arguments and since the letter dated 17.8.1990 referred to another letter dated 28.12.1987 which was used by the counsel for the respondents for argument,



(B)

it was directed that a copy of that letter be given for record.

8. Since the arguments on these letters had already been heard while hearing the main OA., we do not consider it necessary to further hear the matter.

9. We have already held that the OA. lacks merit and in view of what we have stated above both the OA. and the M.P. are dismissed. There would be no order as to costs.


(P.P.SRIVASTAVA)

MEMBER (A)


(M.S.DESHPANDE)

VICE CHAIRMAN

mrj.