

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH.

ORIGINAL APPLICATION NO.: 628 of 1995.

Dated this Wednesday, the 21st day of June, 2000.

Vishnu Anna Nalawade, Applicant.

Shri Suresh Kumar, Advocate for the applicant.

VERSUS

Union of India & 2 Others, Respondents.

Shri R. R. Shetty for Advocate for
Shri R. K. Shetty, the respondents.

CORAM : Hon'ble Shri Justice R.G. Vaidyanatha, Vice-Chairman.

Hon'ble Shri B. N. Bahadur, Member (A).

(i) To be referred to the Reporter or not ?

(ii) Whether it needs to be circulated to other Benches of the Tribunal ?

(iii) Library.

B. N. Bahadur
(R.G. VAIDYANATHA)
VICE-CHAIRMAN.

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CORAM : Hon'ble Shri Justice R.G. Vaidyanatha, Vice-Chairman.

Hon'ble Shri B. N. Bahadur, Member (A).

Vishnu Anna Nalawade,
Sr. Auditor,
DO-II Section (Local),
O/o. the Jt. CDA I/C PAO (ORS).
Arty Lokhanagar, Nasik.

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Applicant

(By Advocate Shri Suresh Kumar)

VERSUS

1. The Controller General of Defence Accounts,
West Block No. V,
R. K. Puram,
New Delhi - 110 066.
2. The Controller of Defence Accounts (Ors),
Central Civil Lines,
Nagpur - 440 001.
3. The Jt. Controller Of Defence Accounts I/C PAO (ORS),
Arty AN Section,
Lokhnagar,
Nashik - 422 009. ... Respondents.

(By Advocate Shri R. R. Shetty for
Shri R. K. Shetty).

OPEN COURT ORDER

PER : Shri R. G. Vaidyanatha, Vice-Chairman.

This is an application filed by the applicant praying for a direction to respondents to declare him as having passed in the 1986 S.A.S. Part-II Examination. Respondents have filed reply. We have heard Mr. Suresh Kumar, the Learned Counsel for the

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applicant and Shri R. R. Shetty for Shri R. K. Shetty, the Learned Counsel for the respondents.

2. The applicant is a Schedule Tribe candidate. He is working as a Sr. Auditor under the Controller of Defence Accounts. He had appeared for the S.A.S. Part-II Examination held in October, 1986. He was not successful in the examination. According to him, as per the relaxed standard extended to the SC/ST candidates, he is entitled to be declared as passed in the said examination. He is entitled to get 25 marks either in individual paper or in the aggregate and on that basis he must be declared to have passed in the examination. He has given the particulars of marks obtained in the examination. Then he also states that ^{he} has recently come to know the judgement of the Ernakulam Bench dated 06.11.1992 in the case of K.K. Kannan V/s. Controller General of Defence Accounts & Anr. in O.A. No. 1181/91 and on that basis he made a representation to the administration dated 26.12.1994 and since the administration rejected his representation by endorsement dated 23.02.1995 he has approached this Tribunal for the reliefs mentioned above.

3. The respondents in their reply have taken the stand that the application is barred by limitation and delay. That every year examination is conducted and so far nine examinations have been conducted after 1986 and many officials have already been promoted and therefore the applicant's claim cannot be considered at this belated stage. That for the 1986 examination a policy decision was taken by the competent authority to allow relaxed standard only upto 5/ marks in individual paper or in aggregate it

should not exceed 25 marks in all. Even by applying that relaxed standard, the applicant cannot pass in the examination in question. It is, therefore, stated that applicant is not entitled to any other relief prayed for.

4. As far as merits are concerned, after hearing both the counsel, we find that for 1986 examination a policy decision is taken to give only 5% relaxed standard in individual paper.

In Paper-V applicant had secured 38 marks out of 150. It is admitted that one has to get 60 marks. On the basis of relaxed standard, namely - 5%, one has to get 52 marks for a pass in Paper-V as against 60 marks for general candidates. But since the applicant had secured only 38 marks, he cannot pass, since he is far less than 52 marks. Therefore, we hold that the applicant cannot be declared to have passed when he has not secured 52 marks, which is a minimum for the pass after applying relaxed standard.

5. But the Learned Counsel for the respondents contended that applicant is entitled to 25 marks by way of relaxed standard by relying on the decision of the Apex Court in K.S. Jagannathan's case reported in 1986 SCC (L&S) 345. The relevant direction of the Supreme Court is in para 40 of the reported judgement. It no doubt says that relaxation of 25 marks must be given to all the SC/ST candidates. Then it is further stated that this relaxation will cover not only pass marks to be given in the aggregate but also inclusive of pass marks to be given in

each individual paper. There is no dispute that pass marks is 60 marks for both Paper-V and Paper-VI. For our present purpose, we need not consider the applicant's marks in Paper-VII and Paper-VIII, since he has passed in those two papers.

Even accepting for arguments' sake that the judgement of the Supreme Court applies to this case, the applicant has secured only 38 marks as against pass marks of 60 in Paper-V. To make him pass, we will have to allot 22 marks out of relaxed standard of 25 marks. Then only three marks are remaining out of the relaxed standard. But in Paper-VI he has obtained only 54 marks as against pass marks of 60. If we add the remaining three marks, then applicant will get only 57 marks, which is short of pass marks of 60. Hence, even if we apply the ratio of the decision in K.S. Jagannathan's case by giving 25 marks, he cannot pass both Paper-V and Paper-VI. Therefore, the applicant cannot get the relief that he should be declared to have been passed in the 1986 examination.

6. Hence, taking any view of the matter, the applicant cannot get the relief of declaration that he should be deemed to have passed in the 1986 examination. Reliance placed by the Learned Counsel for the applicant on Kannan's case also is not relevant, since there the dispute was about one mark and the Tribunal held that he must be deemed to have passed in the examination, since he was short by only one mark. But that was not by interpretation of any rule or law but the Tribunal found in the facts and circumstances of the case that since he was short by one mark, he should be declared to have passed.

7. Respondents' counsel also contended that the application is barred by limitation, delay and laches. It is seen that the present application is filed in 1995 seeking a relief in respect of a examination held in 1986. It is not a mere case of granting some monetary benefit to the applicant. If the applicant's prayer is granted, he will have to be promoted from 1986. Respondents' counsel brings to our notice that each year about 100 and odd candidates are promoted on the basis of the result of the examination and if applicant's prayer is now granted, he will become senior to about 900 and odd candidates. The question of seniority cannot be allowed to hang on for years together. ^{It} This is one of the principles in the service jurisprudence that settled matters should not be unsettled after long time. Any how, we need not go into this question in detail, since on merits we have found that applicant has no case.

8. In the result, the application fails and is hereby dismissed. No order as to costs.

B. Bahadur

(B. N. BAHADUR)
MEMBER (A).

R. G. Vaidyanatha

(R. G. VAIDYANATHA)
VICE-CHAIRMAN.

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