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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH
AT HYDERABAD

O.A.No. 1527/95

Dated: 4th December, 1996

Between:

V. Seetha Rama Sastry
Steno,
O/o Accountant General (Audit II)
A.P., Hyderabad. .. Applicant

and

1. The Principal Accountant General
(Audit)
Andhra Pradesh, Lakadikapool,
Hyderabad.

2. The Comptroller and Auditor
General of India,
Bahadur Shah Zafar Marg,
New Delhi.

.. Respondents

Mr. P.V.P. Mrutyunjaya Rao

.. Counsel for applicant

Mr. G.Parameswara Rao

.. Counsel for respondents

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HON'BLE MR. JUSTICE M.G. CHAUDHARI, VICE CHAIRMAN

HON'BLE MR. H. RAJENDRA PRASAD, MEMBER (ADMINISTRATION)

JUDGEMENT

Oral Order (per Hon'ble Mr. M.G.Chaudhari, (J), ~~Vice Chairman~~)

In this application the applicant challenges the validity and legality of the provisions of para 9.2.10 of Manual of Standing Orders (Admn.), Volume-I, insofar as they differentiate between failed candidates as two groups. The applicant contends that the provision is arbitrary and discriminatory and violative of articles 14 and 16 of the Constitution of India. The said provision is also assailed on the ground that the limiting of the number of chances to six for the failed candidates to appear in the Part-I of the Section Officers' Grade Examination is equally discriminatory and violative of

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articles 14 and 16 of the Constitution. The applicant also challenges the provisions of para 9.2.16 of the aforesaid M.S.O. on the ground that it is discriminatory when it provides for counting of number of chances failed in one branch towards the maximum limit of six chances when the candidates switched over to different branches. The applicant, therefore, prays that the aforesaid provisions may be quashed and he may be allowed unlimited number of chances to appear and qualify at Part-I of SOG Examination.

2. Briefly stated, the facts leading to the grievance of the applicant are as follows. The applicant is working as Junior Stenographer in the office of the Accountant General (Audit-II), A.P., Hyderabad. The Comptroller and Auditor General of India conducts every year an examination called "Section Officers" Grade Examination in Two Parts (I & II)*. The passing of the said examination qualifies the candidates for promotion as Section Officers. The examination is conducted separately in various branches including the Commercial Audit Branch and Civil Audit Branch. The minimum number of marks required to secure a pass in each Part of the examination is 40% in each subject and 45% in the aggregate. The applicant was eligible to appear at the said examination.

3. There is no dispute that the Manual of Standing Orders (Admn.) issued by the Comptroller and Auditor General provides in paragraph 9.2.10 in Volume-I as follows:-

"The normal number of chances for Part I of the Section Officers' Grade Examination will be six. Indefinite number of chances will, however, be allowed to those candidates who have secured at least 30% marks in aggregate in any two of the last six chances actually availed of by them. There is no limit to the number of chances for Part II of the Examination."

There is no dispute on the point that it is competent for the C&AG to permit a candidate to appear in ^{another} ~~CZ~~ Branch for some papers than the papers given in earlier Branch.

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4. The applicant appeared for the Part I of the examination in the Commercial Audit Branch in January 1985. He, however, secured only 29.8% marks in the aggregate. Next he appeared in January 1986 and secured aggregate marks at 13.4%. He ⁱⁿ again appeared ~~in~~ December 1986 but could earn only 7.8% marks in the aggregate. Thereafter for the remaining chances he switched over from Commercial Audit Branch to Civil Audit Branch. That permission was granted by the C&AG to switch over from Commercial Branch (Audit) to Civil Branch (Audit) for the SOG Examination to be held in April/May 1990 on condition that he will not be permitted again to switch over to Commercial Audit Branch in future and on further condition that the number of chances already availed of in Commercial Audit Branch will be counted while reckoning the admissible number of chances to clear Part I of Civil Audit Branch. Thus the applicant could avail maximum of six chances in which he had to pass the Part I examination. If he failed to secure 30% marks in the aggregate ^{in two} on any ^{of} the chances out of the six he was barred from appearing at the Part I examination after the sixth chance was over.

Now, the applicant appeared for the examination in the Civil Audit Branch in May 1990. He got only 16.5% aggregate marks. Next he appeared in November 1991 but could secure only 18.25% aggregate marks. Lastly he appeared in November/December 1994 and secured 32% aggregate marks. The applicant thus having exhausted the six chances, but having been able to secure mere 30% marks only at one chance, he stands precluded from appearing at the SOG Examination thereafter. That is how the grievance of the applicant that the provision of confining the chances to six is arbitrary and discriminatory.

5. The CAG issued circular dated 16.9.94 (Annexure-RIII) on the subject of special chance to appear in SOG Examination Part I to candidates who have exhausted all the admissible chances. The recital in the said circular shows that the matter regarding allowing an additional chances ^{to} those Part-I candidates of the SOGE who had exhausted all their admissible chances had

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been under active consideration of the Headquarters Office and keeping in view the discussion held in the Departmental Council Meeting held in January 1994 and the recommendations received from the Heads of the Department ~~it~~ was decided by the Comptroller and Auditor General of India that "all such Part-I candidates who have already exhausted all their normal admissible chances in the SOG Examination may be allowed one additional chance, as a one-time special concession, to appear in the said Examination." The decision further provided that the additional chance can be availed either in the ensuing SOG Examination to be held in November 1994 or the next SOG Examination to be held in November/December 1995 at the option of the candidates.

6. The frame of the application is relating to the inequity in shutting out further chances to the applicant he having failed already in six chances. The relief is not based with reference to the special chance provided under the above mentioned decision vide Annexure-RIII. In the light of the principal grievance made in the application, the learned counsel for the applicant Mr. Mrutyunjaya Rao urged the following submissions:-

(1) The rule confining the chances to six is arbitrary and capricious. A candidate who is unable to pass the examination in the sixth chance is doomed for the rest of his career from appearing at that examination and has thus to forget about any promotional chance to advance his career. This results in discouragement and it is not in the interest of the Department itself to have employees who have no anticipation left and thus psychologically may not be in a position to display their maximum efficiency.

(2) The criteria prescribed that those who secure 30% aggregate marks at any of the ^{two} chances out of the six

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chances can avail of the examination without any limit of chances and thus better their prospects has no rational basis and when all the candidates falling in that category and those who could not earn 30% aggregate mark (at) two chances being failures as a class, such a distinction is invidious. Granting therefore of a concession to some of the failed candidates on an arbitrary criteria is discriminatory. Secondly, even the candidates who failed to secure 30% aggregate marks (at) any two of the chances should also be allowed unlimited chances to appear, particularly as there is no limit of chances to qualify at the Part-II SOG Examination. The applicant therefore is entitled to avail the seventh chance and further chance till he is able to pass the examination and cannot be shut out from doing so after the availment of sixth chance.

(3) The criteria adopted by the respondents in fixing the percentage of aggregate marks at 30% to give benefit to some of the failed candidates is irrational, unreasonable and arbitrary and results in discrimination violating articles 14 and 16 of the Constitution.

(4) The irrationality of the above mentioned provisions also stands reflected from the fact that in other departments under the same authority there is no such restriction in chances prescribed as stated in paragraph 6 of the OA and likewise, under the State Government in Andhra Pradesh, no such restriction has been imposed and there was therefore no object to be achieved in the public interest by ^{depriving} ~~depriving~~ from ^{such a} ~~that~~ recognized practice when the respondents have adopted the rule to confine the chances to six to certain category of failed candidates. The provision therefore to confine chances to six to persons like the applicant is oppressive and it places the candidates under psychological constraint at the time of last examination. When their

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seriousness to take the examination is already tested at the preliminary examination, it is unfair and unreasonable to place such candidates under a psychological fear by confining the chances to pass at the examination. This policy is detrimental to the qualities of human resourcefulness as well as efficient personnel management and human ^{endeavour} qualities.

7. The arguments advanced by the learned counsel are indeed weighty and attractive. These, however, need an elaborate examination as it involves the true nature of the concept enshrined in articles 14 and 16 of the Constitution, ^{to be analysed} That is particularly so because Mr. G. Parameswar Rao, learned counsel for the respondents submitted in this connection as follows:-

(1) No parallel can be drawn from State Service as the State Government has no parallel service.

(2) Auditing is an onerous job and it is the C&AG who is the constitutional authority who takes decisions in matters regarding services after examining the aspects of the same and this cannot be lightly treated as arbitrary or unreasonable without understanding the rationale behind the same.

(3) Indeed, affording six chances to pass the examination is a beneficial consideration for failed candidates and such a provision cannot be assailed on the ground of being unreasonable.

(4) The Comptroller and Auditor General in his wisdom had taken a decision to afford six chances to those who could earn at least 30% of aggregate marks at two chances. The cut off number of marks, i.e. 30%, was intended to give benefit to those ^{who} at least shows some possibility of improving further and depends on ^{the individuals'} his intellectual equipment. In matters of intellectual ability no uniform standard can be

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laid down and it is perfectly justified to draw a line where it appears that from that point onwards a candidate may be able to show better standard.

(5) The candidates who could not pass despite six chances and are precluded from appearing at the examination thereafter are not deprived of avenue of promotion inasmuch as the normal avenue of promotion would still be open and therefore it is not correct to say that they are doomed in their career by not giving them further chance after the sixth chance.

8. As stated earlier, the questions raised by either counsel need a careful and exhaustive analysis of the subject. We would not have hesitated to undertake that task had it been necessary to do so for the purpose of granting relief to the applicant. It is well established that where a relief can be granted on a single ground, the Court should not unnecessarily enter into academic discussion or consideration of other aspects as such a decision would be obiter. The anxiety of the learned counsel for the applicant to have a principle laid down in respect of the impugned provisions can very well be understood. He is right in submitting that it involves a principle which would apply to similarly placed candidates like the applicant and since it touches the question of policy guiding a public service, it is essential that we express our view on the questions raised by him so that the employees who may be intending to appear at the SOG Examination will know their position definitely. However, we find that since the relief can be granted to the applicant on a ground as discussed below, we do not propose to decide the questions raised by Mr. Mrutyunjaya Rao in this application. These are left open for consideration separately.

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9. As stated earlier, although the applicant has not based his case on the special chance made available under the circular of the C&AG dated 16.9.94, since there have been averments relating to the same made in the pleadings of either side, and the respondents themselves having produced a copy of the circular as Annexure-RIII, we are satisfied that that aspect can be legitimately considered within the framework of the application.

10. We have already set out the provision of the circular dated 16.9.94. The circular also makes it clear that the concession was extended only as a one-time special concession. The circular does not contain any words to the effect that the candidate should have already exhausted all the normal admissible chances upto a particular date or year. A plain reading of the circular leads to the interpretation that the special concession as a seventh chance can be availed of either at the Part I examination to be held in November 1994 or to be held in November/December 1995. Obviously the concession would be available to those who have not been able to secure 30% aggregate marks at two chances out of six chances; for those candidates automatically will be eligible to get further chances. The applicant took his sixth chance at the examination held in the month of November 1994. The special chance being also available under the circular dated 16.9.94 to be availed at the December 1995 examination and since the requirement of exhausting the normal admissible chances, i.e., six, had taken place in the month of November 1995 in regard to the applicant, it is possible to hold that on the terms of the circular as it reads, he should be eligible to avail of the examination to be held in December 1995/January 1996.

In that connection it may be stated that the applicant had applied by Annexure-AV dated 13.10.95 to the C&AG praying to atleast award him adhoc chance to appear at the SOGE Part I to be held in January 1996 (i.e. December 1995 examination).

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Mr. G. Parameswara Rao however submitted that the circular when read as a whole can also mean, when reasonably construed, that special concession has been extended only to those candidates who have availed six chances upto the examination held in the year 1993 and is not available to those candidates like the applicant who did not exhaust six chances till 1993 and availed of the sixth chance after the date of issuance of the said circular. The learned counsel firstly relies on the circumstance that the recital in the circular shows that the decision had been arrived at in January 1994 and secondly that the orders were issued on 16.9.94 and thus the reference to exhausting of six normal admissible chances could only have to six chances availed prior to the date of issuance of the said circular on 16.9.94.

11. Doubtless, there is considerable force in what the learned counsel has tried to argue. We, however, need not place final interpretation on the said circular one way or the other as that is also not necessary insofar as the present case is concerned for reasons to follow hereafter. We leave that question open.

12. It is the confusion and unfortunate laxity in drafting the orders on the part of the concerned officials of the respondents that despite the controversial question having been raised relief must be granted to the applicant without deciding those questions. As stated earlier, the applicant had applied for being given the special concession to appear at the examination vide Annexure-AV on 13.10.95. It appears that prior to making the application dated 13.10.95 the applicant had submitted application to appear at the examination to be held in November 1995 presumably on the basis that the restriction to limit the chances to six was illegal and he was entitled to avail the

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seventh chance. The applicant was however informed by the respondents vide Annexure-AIII dated 11.9.95 that he was not eligible to appear at the said examination as he had exhausted all the admissible number of six chances and had not scored 30% of marks in any two of the last six chances. That reply therefore was relating to the eligibility of the applicant to avail the ^{seventh} ~~six~~ chances in the ordinary course and not the special chance under circular dated 16.9.94. The application dated 13.10.95 however was specifically for granting him the special concession. The applicant was replied vide memo dated 4.12.95 (Annexure-AVI). He was thereunder informed that the Headquarters had turned down the proposal of granting special chance to him as he had not exhausted all the admissible chances upto and including November 1993 examination and he was also not eligible to appear at the examination vide para 9.2.10 and 9.2.16 of the C&AG, M.S.O (Admn.) Vol.I.

13. Thus the request of the applicant to be given special chance was turned down on the ground that he had not exhausted the admissible chances upto November 1993. Had the matters stood there, perhaps, the interpretation sought to be placed on the circular dated 16.9.94 by Mr. G. Parameswar Rao would have merited a serious consideration. ^{However the} ~~The~~ respondents (Senior Audit Officer, (Admn.), Hyderabad) issued a corrigendum (Annexure R-IV) on 22.12.95 modifying the aforesaid memo dated 4.12.95. In terms of that corrigendum the reply given to the applicant in answer to his application dated 13.10.95 to give him the special chance to appear at the examination reads as follows:

"In reply the Headquarters had turned down the proposal of granting special chance to the applicant as he exhausted all the admissible chances upto and including November 1994 examination and also he is not eligible to appear for SOGE vide para

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9.2.10 and 9.2.16 of C&AG M.S.O. (Admn.) Vol.I."
 (underline supplied)

This corrigendum since refers to the examination of November 1994 as inclusive for the purpose of availment of the special chance under the circular of C&AG dated 16.9.94, gives an expanded meaning to the said circular and the stand of the respondents that the circular contemplated the concession to be given only to those who have exhausted the chances upto 1993 does not stand supported. The corrigendum is not in the negative form to say that admissible chances have not been exhausted, but the statement is positive to include the examination of November 1994. This ambiguity and conflicting action of the respondents, as it stands on the record, should in our view enure to the benefit of the applicant to get the relief.

14. Mr. G. Parameswara Rao today, after obtaining fresh instructions, sought to explain that in response to a doubt expressed by the local authorities the Headquarters had issued a clarification on 30.8.95 stating that the special chance ~~is applicable~~ to candidates who have exhausted all their admissible chances is applicable only to those candidates who had exhausted their admissible chances as on that date, i.e., 16.9.94. Thus, according to the learned counsel, the applicant would not be eligible to get the special chance.

○ This explanation is not part of ^{any} the Annexure to the counter nor in terms referred to in the counter. As the records stand, we cannot shut our eyes to the corrigendum issued on 22.12.95 after referring to the reply of the Headquarters that we should act on the explanation now sought to be tendered insofar as the instant case is concerned. Since the explanation is purported to have issued on 30.8.95 and the corrigendum was issued on 22.12.95 and as the corrigendum refers to reply received from Headquarters, it is difficult to

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ignore the contents of the corrigendum. If at all a mistake was committed at some level in the office of the respondents or there was misunderstanding about the true nature of the instructions, the applicant cannot be made to suffer for the same. It is possible that the mistake was a bonafide and genuine mistake. We do not comment as to whether it was so or otherwise as that is not necessary for us to decide. Suffice, therefore, to state that in terms of the corrigendum (Memo) dated 22.12.95 (Ann.R-IV), since the applicant had exhausted the ^{sixth} (7) chance in November 1994, he should be eligible to avail of the special chance under the circular dated 16.9.94 at the ensuing examination of December 1996, whenever it is held either during this month or thereafter, ~~in January 1997~~. We are informed that the examination is scheduled for 10th of December 1996. Thus, insofar as the applicant is concerned, on the facts of this case and as an isolated case, for the reasons discussed above with regard to the memorandum dated 22.12.95, we are inclined to direct the respondents to permit the applicant to appear at the aforesaid examination by way of special chance made available to him under the circular dated 16.9.94. We make it clear that the question as to whether failed candidates should be entitled to get unlimited chances is not decided by us and is left open.

We have no hesitation in stating that the arguments raised by Mr. Mrutyunjaya Rao for the applicant and the submissions made in reply by Mr. G. Parameswara Rao bring into focus a need for having a second look at the provisions made in regard to the availment of chances by failed candidates at SOG Examination and the situation created by special concession given only once. The matter merits serious consideration by C&AG, ~~Notwithstanding the able arguments of Mr. G. Parameswara Rao.~~

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15. In the result the following order is passed:


ORDER

- (1) The respondents are directed to permit the applicant to appear for Part-I of Section Officers' Grade Examination scheduled to be held on 10.12.96 or on its postponed date whenever it would be held. The permission so granted will be construed as special chance made available to the applicant under circular of G&AG dated 16.9.94.
- (2) The permission granted to the applicant shall be treated as personal, granted to him in the facts of this case and this judgement ~~would~~ ^{shall} not be read as a precedent laying down that any other candidate will be entitled to the benefit of this order, ^{automatically} without, however, prejudice to his individual rights and contentions.
- (3) The interim order is made absolute.

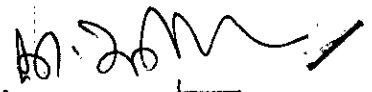
The O.A. is disposed of in terms of the aforesaid order.

No order as to costs.


H. Rajendra Prasad)
Member (Admn.)


M.G. Chaudhari (J)
Vice Chairman

4th December, 1996


Deputy Registrar (D)cc

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A.1527/95

To

1. The Principal Accountant General (Audit)
A.P. Lakadikapool, Hyderabad.
2. The Comptroller and Auditor General of India,
Bahadur Shah Zafar Marg, New Delhi.
3. One copy to Mr. P.V.P.Mrutunjaya Rao, Advocate, CAT.Hyd.
4. The Comptroller and Auditor General of India,
Bahadur Shah Zafar Marg, New Delhi.
5. One copy to Mr.G.Parameswar Rao, Adtl.CGSC.CAT.Hyd.
6. One copy to Library, CAT.Hyd.
7. One spare copy.
8. Copy to All Reporters as per standard list of CAT.Hyd.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. JUSTICE M.G. CHAUDHARI
VICE-CHAIRMAN

AND

THE HON'BLE MR. H. RAJENDRA PRASAD
MEMBER (ADMN)

Dated: 4-12-1997

ORDER / JUDGMENT

M.A./R.A/C.A. No.

in

O.A.No. 1527/95

T.A.No. (W.P.)

Admitted and Interim Directions
Issued.

Allowed.

Disposed of with directions

Dismissed.

Dismissed as withdrawn.

Dismissed for default.

Ordered/Rejected.

No order as to costs.

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केन्द्रीय प्रशासनिक न्यायिकरण
Central Administrative Tribunal
दो. - BENCH
30 DEC 1996
Hyderabad Bench
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