

H. V. Sarma

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDRABAD

ORIGINAL APPLICATION NOS.145, 1339 & 1342 of 1997

DATE OF ORDER: th 11 MARCH, 1999

BETWEEN:

O.A.NO.145/97

A.KRISHNA KUMAR

APPLICANT

O.A.NO.1339/97

1. N.SESHAGIRI RAO,
2. M.V.SURYANARAYANA,
3. GANTI LAKSHMINARAYANA,
4. T.VISWESWARA RAO,
5. J.KESAVULU RAO,
6. V.R.SASIDHARUDU,
7. Smt. N.RADHA,
8. MURLASETTI KRISHNA MURTHY,
9. KODAKULA CHINA NARASIMHA MURTHY,
10. CHINTAPENTA VENKATA RAO,
11. P.HARI KRISHAN PRASAD,
12. MORTHA UDAYA BHASKARA SURYANARAYANA MURTHY,
13. BYPU KALYANA RAO.

.. APPLICANTS

O.A.NO.1342/97

1. V.S.RAJAN,
2. M.N.MURTHY,
3. UJ MAYYA,
4. ELSV PRASAD,
5. V.MANI,
6. G.SAI BABA,
7. P.V.SUBBA RAO,
8. VK NAIR,
9. Y.BALASUBDARAM,
10. RK ACHARYA,
11. B.SUBBA RAO,
12. PR VENKATACHALAM,
13. PA PREMANATHAN,
14. C JOHN ANTHONY,
15. V.DEEKSHITULU.

.. APPLICANTS

AND

1. Union of India rep. by its
Secretary, Ministry of Personnel
& Training, New Delhi,
2. The Financial Adviser (Defence Services),
Ministry of Defence (Finance),
New Delhi,

3. The Controller General of Defence
Accounts, R.K.Puram,
New Delhi,

4. The Controller of Defence Accounts,
Secunderabad.

... RESPONDENTS IN ALL OAs

COUNSEL FOR THE APPLICANTS: B.RAMAKRISHNA RAO in OA 145/97
A.V.SARMA in OAs 1339 & 1342/97

COUNSEL FOR THE RESPONDENTS: V.RAJESWARA RAO, Addl.CGSC

CORAM:

HON'BLE SHRI R.RANGARAJAN, MEMBER (ADMN.)

HON'BLE SHRI B.S.JAI PARAMESHWAR, MEMBER (JUDL.)

JUDGMENT

ORDER (PER HON'BLE SHRI R.RANGARAJAN, MEMBER (ADMN.))

Heard Mr.V.Rajeswara Rao, learned standing counsel for the respondents in all the OAs. Neither the applicants nor their counsels were present. This OA had come up for hearing number of times / earlier. On those occasions also, the learned counsel for the applicants nor the applicants were present. The M.A.(SR) No.1977/98 in OA No. 145/97 was disposed of on 2.2.99. Even then also, the applicant in that MA nor his counsel was present.

2. In view of the above, this OA is disposed of under Rule 15(2) of the Central Administrative Tribunal (Procedure) Rules, 1987.

3. The contentions raised in these OAs so also as the relief asked for are same. Hence all the three OAs are disposed of by a common order.

4. There is only one applicant in OA 145/97. He was a Senior Auditor under R-4.

5. In OA 1342/97 there are 15 applicants. All of them are also Senior Auditors under the Controller of the Defence Accounts, Secunderabad i.e, R-4 in that OA.

6. In OA 1339/97 there are 13 applicants who are also Senior Auditors under the Controller of Defence Accounts, Hyderabad who is R-4 in that OA.

7. The applicants in all these OAs are Senior Auditors in the Defence Accounts. Their next promotion is to the post of Accountant, now redesignated as Section Officer (A) [SO(A) for short]. The promotion to the post of Accountant/SO(A) is governed by the Recruitment Rules framed under the proviso to Article 309 of the Constitution of India in terms of Ministry of Finance S.O.No.4025 dated 23.7.71. The said Recruitment Rules are enclosed as Annexure-II at page 8 to the OA 145/97.

8. These rules are called the Defence Accounts (Class III and IV posts) Recruitment Rules, 1970. The enclosed annexure gives the details of the method of the Recruitment to the post of Accountant/SO(A) and other categories. The above annexure also shows the details of the qualification, scale of pay, method of selection, age limit for recruitment, educational and other qualifications for direct recruitment, period of probation, percentage of vacancies to be filled by direct recruitment and ~~and~~

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promotions, conditions for promotion and other details. The applicants in these OAs are to be considered under the promotional quota.

9. The post of SO(A)/Accountant is classified as Central Civil Service Class III Ministerial (Non-gazetted) in the then scale of pay of Rs.270-575.

10. It is a non-selection post and the 20% of the vacancies are to be filled by direct recruitment of apprentices to the Subordinate Accounts Service (SAS for short) and 80% by promotion. The promotions for the Selection Grade (Roster 'A')/Senior Auditors are confined to those who have passed the departmental SAS examination.

11. Subsequent to the issue of the S.O.No.4025 dated 23.7.71, SRO 68 dated 18.6.93 was issued for regulating the promotion to the post of SO(A)/Accountant from the grade of Senior Auditor. As per this SRO 68, the post of SO(A)/Accountant is to be filled 100% by promotion failing which by transfer on deputation/transfer and failing both by direct recruitment as SAS Apprentices, dispensing with the earlier method of recruitment to the extent of 20% by direct recruitment and 80% by promotion.

12. In SRO 68 dated 18.6.93, method of recruitment 100% by promotion is the only change. The promotion from the post of Selection Grade (Roster 'A')/Sr.Auditors to the higher post of SO(A)/Accountant is to be given provided those who are considered for promotion should pass the departmental SAS examination. Passing of the departmental SAS examination remains unchanged both in SRO 4025 dated 23.7.71 and SRO 68 dated 18.6.93.

13. The applicants submit that the post of Accountant is a non-selection post in the then pay scale of Rs.270-575 and the procedure laid down for non-selection post is

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seniority in the lower grade and fitness of the person for promotion. ~~***~~ Hence conducting the test for consideration for promotion to the higher post is nowhere laid down in the instructions issued by the Govt. of India. The Department of Personnel & Administrative Reforms in OM NO.22011/6/75-Estt(D), dated 30.12.76 has laid down the method of promotion for non-selection post and have held that where promotions are to be made by non-selection basis, the DPC need not make a positive assessment of the records of the officer and they should categorise the officers as fit or not yet fit for promotion on the basis of the records of service. It is not open for the Department to hold the examination for promotion to the SO(A) cadre on par with direct recruits. Hence laying down the instructions issued by Govt. for promotion only to those who have passed the departmental SAS examination is in violation of the instructions contained in the DP&AR OM dated 30.12.76. The applicants further contend that they had put in long length of unblemished service and hence their case for promotion is not being considered in view of the non-passing of the departmental SAS examination provided in the statutory rules. Hence they pray to set aside the clause that promotion is confined only to those who have passed the departmental SAS examination and promote them if they are passed under the seniority-cum-fitness consideration only. Some employees (4 in number) including the applicant in OA 145/97 had filed a representation which was disposed of by the order NO. dated 12.1.96 (Annexure-I at page 7 to the OA) rejecting their request for considering them for promotion without insisting them to pass in the SAS examination.

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14. All the three OAs were filed to declare that the rules framed under Article 309 of the Constitution vide Ministry of Defence S.O.NO.4025 dated 23.7.71 so far as the condition of passing the SAS examination in case of recruitment by promotion, is illegal, arbitrary and unconstitutional and for consequential direction to the respondents to consider the applicants herein for promotion to the post of SO(A) from the date of their eligibility with all consequential benefits such as seniority, arrears of salary etc.

15. In the reply filed by the respondents, the respondents state that the applicant in OA 145/97 had filed OA 270/86 on the file of this Bench seeking similar relief what the applicants sought in the present OA. After examining the merits of the case in detail, the said OA was dismissed by the judgment dated 4.7.88 which is enclosed as Annexure R-1 at page 5 to the reply. Hence the present OAs are barred by the principle of resjudicata. They also contend that the OA is barred by limitation and it is vague.

16. The respondents submit in the reply that there is an amendment to the SRO 4025 issued on 18.6.93 by SRO No.68 dated 18.6.93. This point had already been mentioned above while advertting ~~RRR~~ to the facts of this case. Hence the OA is to be disposed of on the basis of the rules incorporated in both the SROs. But as stated earlier, passing of the departmental SAS examination for promotion remains unchanged in both the SROs. In the later SRO No.68 the only change made is that the post of SO(A) is to be

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filled 100% by promotion failing which, the other modes of recruitment should be thought of.

17. The respondents contend that passing of the departmental SAS examination is a pre-requisite qualification for promotion. Mere seniority cannot be a ground for promotion. The above condition no way disturbs the inter-se seniority in the category of SO(A) and promotion to the grade of SO(A) are made from that panel on the basis of seniority subject to fitness. Hence the recruitment for the post of SO(A) is very much in conformity with the Govt. policy of seniority-cum-fitness as the basis for promotion in Group-C post..

18. The respondents further submit that as per Defence Accounts (Group-B, C and D posts) Recruitment Rules, passing of qualifying examination (namely SAS) is a pre-requisite condition for promotion to the grade of SO(A). The Recruitment Rules have a statutory force and are framed under Article 309 of the Constitution of India. Hence the administrative instructions contained in DP&AR OM dated 30.12.86 read with the subsequent OM dated 10.4.89 cannot prevail upon the statutory provision which the recruitment rules possess. This view was also taken by the earlier Bench while passing the judgement in OA 270/86. Non-selection promotion is only the method of selection and it is subject to passing the qualifying examination namely SAS examination. As the inter-se seniority in the lower grade is not disturbed, prescribing the pre-requisite qualification for consideration for non-selection post will no way violates the norms laid down by the DP&AR and as the

Recruitment Rules are framed under Article 309 of the Constitution which have got statutory force, the same cannot be challenged unless the applicants prove that those rules are framed due to malafide intention of restricting promotions to certain employees of the department.

19. In view of that, the respondents submit that the OAs are liable only to be dismissed.

20. The applicants have filed a very long rejoinder to the reply. In our opinion, the rejoinder does not ⁱⁿ any way bring out any malafide intentions or perverse attitude on the part of the respondents to come to the conclusion that the Recruitment Rules were framed to deny promotions to some of the employees especially to the applicants in all these OAs. In our opinion, the rejoinder has not brought out any relevant point for consideration in regard to the main issue ^{of} prescribing pre-requisite qualification of passing the departmental SAS examination for promotion to the higher post of SO(A) from the lower post of Senior Auditor.

21. The employees for consideration for promotion even by method of non-selection should possess a minimum pre-requisite qualification. This prescription of pre-requisite qualification is no way against the rules of non-selection posts. There are number of departments in Govt. of India where the minimum pre-requisite qualification is necessary for consideration for promotion to the higher post. The DP&AR OM dated 30.12.76 lays down the method of promotion for non-selection post and have held that where

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promotions are to be made on non-selection basis, the DPC need not make a comparative assessment of the records of the officers and they should categorise the officer as fit or not yet fit for promotion on the basis of the records of service. Based on that circular, it is contended by the applicant that it is not open to the Department to hold the examination for promotion to the Section Officer grade. First of all it is to be stated that there is no examination conducted prior to promotion. Certain minimum qualification has been prescribed for consideration for promotion under non-selection post. The minimum qualification prescribed in the case of recruitment to the post of SO(A) is passing of departmental SAS examination and that pre-requisite qualification cannot be considered as conducting selection examination when the promotion is by non-selection method. Hence on that count itself, the above contention has to be rejected. Further, the above contention is fully untenable in view of the statutory rules framed under Article 309 of the Constitution of India namely, Defence Accounts (Class III and IV) Recruitment Rules which provide for passing of the departmental SAS examination for consideration for promotion to the higher post of SO(A). In the face of such statutory rules, it is obvious that the instructions of the DP&AR cannot prevail. Hence in that view also the contention raised above cannot be accepted.

22. In the Railways, there is a post of Assistant Accountant in the Accounts Branch. It is a non-selection post. But those to be promoted as Assistant Accountant should possess the professional qualification of having

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passed the Appendix-II Examination. In the present case, for promotion to the post of SO(A) one has to pass the departmental SAS examination. For a non-selection post in the Railways in the Accounts Branch, when passing of the professional course is prescribed even though that post is to be filled by non-selection, we do not see any reason to come to the conclusion that for the post of SO(A), no professional qualification should be prescribed even though it is a non-selection post.

23. The post of SO(A) is supervisory post. He has to control the accounts staff working under him. Unless the supervisor possesses adequate knowledge of the rules and regulations and is well versed with the accounts procedures, he cannot effectively control the staff working under him and also cannot guide them in regard to the various financial issues which may arise every now and then. In that view, an employee promoted to the grade of SO(A) should be well versed with the departmental rules and regulations. To achieve that, the statutory rules have been framed prescribing the pre-requisite qualification of pass in the departmental SAS examination for considering them to the non-selection post of SO(A). Mere ^{long} length of service cannot be equated to pass in the departmental examination. In that view, the prescription of passing the SAS examination cannot be held to be an arbitrary decision.

24. There is no discrimination among the Senior Auditors while considering for promotion to the post of SO(A). All of them should possess the qualification prescribed. It is not waived for any employee. Hence we do not see any reason to waive the qualification to the

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applicants herein or altogether direct the respondents to remove that clause. Equal opportunity is provided to all and it does not in any way infringe the fundamental rights guaranteed under the Article 16 of the Constitution of India.

25. The respondents submit that the administration/Ministry is empowered to issue the Recruitment Rules following the guidelines issued by the DP&AR. Hence issue of the Recruitment Rules by the Ministry of Defence in no way violative of the instructions laid down by the nodal Ministry namely DP&AR. In all these there is no specific mention made in regard to the violation, if any, in framing the Recruitment Rules for the post of SO(A) on the basis of the guidelines issued by the DP&AR. As stated earlier, the guidelines are to ensure that the Department functions effectively in discharging the duties. If it requires a minimum pre-requisite qualification for promotion to a non-selection post, such a rule cannot be held as violative of guidelines of DP&AR as that rule is on the basis of the guidelines of the nodal Ministry to discharge the functions of the Government efficiently.

26. The promotional chances have been improved as all the vacancies are to be filled by promotion failing which only other modes of recruitment can be resorted to as provided for in the SRO 68 dated 18.6.93. Though the applicants appear to have some grouse in the modified Recruitment Rules, we do not see any substance in that submission.

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27. From the above analysis, we come to the conclusion that in the provisions for promotion to the post of SO(A) by non-selection method, there is no disguise of selection test to circumvent the law. The method of non-selection has been fully adhered to by the respondents while framing the rules for the post of SO(A) from the lower post of Senior Accountant. In that view, it has to be held that all these OAs are devoid of merits.

28. In view of the foregoing, we find no merits in all these three OAs and hence all these three OAs viz, OA No.145/97, 1339/97 and 1342/97, are dismissed.

29. No order as to costs.

प्रमाणित प्रति
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 क्रम संख्या: OA 145, 1339 & 1342/97 (97)
 CASE NO. 145, 1339 & 1342/97
 दिनांक 11.3.99
 16.3.99
 COURT OFFICER
 Central Administrative Tribunal
 HYDERABAD BENCH.