

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD**

Original Application No.392/2012

Reserved: 10.09.2018

Order pronounced: 11.09.2018

Between:

1. The Audit SC & ST Employees Welfare Association,
O/o. AG (CA), AG (C&RA) and AG (LBAA), AP, Hyderabad,
Rep. by its President Bhaskar Dolai, S/o. Late Krishna,
Aged about 45 years, Occ: Senior Auditor,
O/o. Accountant General (LBAA), AP, Hyderabad.
2. V.S. Mallikarjuna, S/o. Mallaiah,
Aged about 45 years, Occ: Senior Auditor,
O/o. Accountant General (LBAA), AP, Hyderabad.
3. S. Arun Kumar, S/o. Late Bharath,
Aged about 38 years, Occ: Senior Auditor,
O/o. Accountant General (C&RA), AP, Hyderabad.
4. Sri Bhaskar Dolai, S/o. late Krishna,
Aged about 45 years, Occ: Senior Auditor,
O/o. Accountant General (LBAA), AP, Hyderabad.

... Applicants

And

1. Union of India, rep. by its
Comptroller and Auditor General of India
Pocket-9, Deen Dayal Upadhaya Marg, New Delhi-24.
2. The Secretary,
Ministry of Personnel, Public Grievances & Pensions
(Department of Personnel, & Training),
North Block, New Delhi.
3. The Accountant General (Civil Audit),
Andhra Pradesh, Saifabad, Hyderabad – 500004.

... Respondents

Counsel for the Applicants	...	Dr. A. Raghu Kumar
Counsel for the Respondents	...	Mr. V. Vinod Kumar, Sr. CGSC

CORAM:

<i>Hon'ble Mr. B.V. Sudhakar</i>	...	<i>Member (Admn.)</i>
<i>Hon'ble Mr. Swarup Kumar Mishra</i>	...	<i>Member (Judl.)</i>

ORDER

{As per Hon'ble Mr. B.V. Sudhakar, Member (Admn.)}

This O.A is filed against the Office order No 28 vide No Admin.II/Exams/3-11/SAS/November -2010 dt.22.10.2010 r/w Circular No.3 of 2011 vide No.154/35-Exam/2008/V, dt 29/3/2011 and Circular No.27 of 2011 vide No. 1054/35-Exam/2008/V dt 18.11.2011 issued by the respondents.

2. Brief facts of the case are that the applicants belong to Schedule Caste and Schedule Tribe community who are members of the Audit SC & ST Employees Welfare Association, working as Senior Auditors in the respondent organization. They are eligible to appear in departmental qualifying exam known as Subordinate Audit Services (SAS) exam for promotion as Asst Audit officer (AAO). The G.O.I order No 1/1/70-estt (SCT) dt 25.7.1970 has stated that in posts/services filled by the departmental competitive /qualifying examination if sufficient number of Schedule Caste/Schedule Tribes candidates are not available on the basis of General Standard to fill all the vacancies reserved for them, candidates belonging to these communities may be selected to fill up the remaining vacancies reserved for them, provided they are not found unfit for appointment to such posts/services. Recruitment rules do provide for relaxation of standards in favour of schedule caste and schedule tribe employees. However due to the observation of the Honorable Apex Court in *S. Vinod Kumar vs Union of* has observed that lowering of marks to consider promotions of SC and ST employees is not permissible under Art 16(4) constitution of India in view of the mandate contained in Art 335 of Constitution of India. Accordingly DOPT vide OM No. 36012/23/96-Estt (res) dt 22.7.1997 withdrew its earlier orders in respect of lesser qualifying marks that existed prior to 22.7.1997. The matter was examined by G.O.I and through 82nd Amendment restored the provision to relax

qualifying marks and lowering standards of evaluation. Consequently the relaxation in the matter of promotion of SC/ST candidates was restored by DOPT letters dt 23.12.1970, 21.1.1977 and other guidelines on the subject. In pursuance to the restoration of the relaxation provided by DOPT, the 1st respondent issued circular No.15 of 2011 vide No. 458-exam/24-97/V dt 15.11.2001 with relaxed standards for SC/ST for promotion through SOGE (Section Officer Grade Exam) for the year 2001, followed by circular no.16/2006 in respect of SOGE Dec. 2006 exam vide No.1090-exam/108-2006/V dt 10.11.2006. The applicants grievance is that the relaxation levels provided by the respondents is not adequate as ordered by the Govt and hence this O.A.

3. Applicants contend that there are 435 sanctioned AAO posts as on 1.3.2011, out of which 65 posts are reserved for the SC and 32 posts for ST candidates. Against 65 posts for SC, only 18 posts are filled and out of 32 earmarked for the ST only 3 ST posts are filled due to non availability of qualified SC/ST candidates. In this scenario, the respondents through impugned order No.28 vide No.Admn.II/exams/3-11/SAS/November -2010 dt 22.10.2010 introduced relaxation of 5 % in each individual paper and also in the aggregate. Against the relaxation provided only one SC candidate qualified against 38 SC/ST vacancies. Similarly vide 2nd impugned circular No. 3 of 2011 dt 28.3.2011 same relaxation was provided and two SC and one ST candidate got selected. Despite the poor pass percentage the respondents again gave the same relaxation vide 3rd impugned circular No.27 of 2011. Noticing this, the Applicants Association represented to 1st respondent and National Commission for Schedule Caste detailing the experience in regard to relaxation of standards for SC/ST employees. In the meanwhile DOPT vide lr no. dt 7.11.2011 issued a

detailed brochure proclaiming that the qualifying standards in examinations under discussion can be relaxed in favour of SC and ST candidates if sufficient number of SC/ST candidates are not available on the basis of general standard to fill all the vacancies reserved for them. The applicants contention is that though the 1st respondent has provided for 5 % relaxation it has been found to be too little. Impugned orders referred to, would hamper the promotion prospects of SC/ST candidates is the apprehension of the applicants. Further relaxation is the need of the hour. Appearing in the exam would suffice to be considered for promotion could be examined as a plausible alternative is the applicants suggestion.

4. The Respondents confirm that the Brochure released by the DOPT does provide for relaxation of qualifying standards in respect of SC/ST candidates if sufficient number of them are not available as per the General Standard to fill up the vacancies reserved for them. Accordingly the relaxed standards fixed in the IA & AD was 20 marks in all for Part I and 25 marks in all for Part II for all branches of SOGE exam held from August 1986 to November 1995 and November 2000 to 2001. In between the exams could not be held because of the observation of the Honorable Supreme Court in the matter as stated above. Coming to SOGE exam of Nov /Dec 2002, a maximum of 5 percent in each individual paper and also in aggregate was provided. Further vide circular no 13 of 2010 issued vide lr no 589/44/Exam/circulars/2010 in all the papers of SAS Group I and II there will be relaxation of 5 percent in each and individual paper and also in aggregate. In this way the 1st respondent has been relaxing the standards for promotion of SC/ST candidates in exams year after year. The respondents state that the number of candidates who applied and the number of SC/ST candidates who passed in Nov. 2010 is 42/3 SC, in Aug 2011 it is 42/2SC

+I ST and in Mar 2012 the outcome is 35/9 SC. The respondents have studied the relaxation standards of other departments and arrived at the conclusion of 5 percent in individual paper/aggregate, without diluting administrative efficiency. The same was circulated throughout the country for uniformity. Mere appearance without qualifying in the exam will defeat the purpose of conducting the exam. The relaxation of standards are done based on the orders of the Govt. of India, number of vacancies, and the number of SC/ST on the roll etc. The respondents also admit that non-promotion of the eligible candidates to the cadre of AAO will cause administrative inconvenience.

5. Heard the ld counsel.

6. Learned counsel for the applicants strongly presents the point of view that the relaxed standards provided are insufficient to allow more number of SC/ST candidates to pass the exam. This is evident from the fact that very few SC/ST vacancies get filled up year over year. The ld counsel for the applicant counters this demand by stating that further relaxation of standards would compromise administrative efficiency. A closer look at the spirit of relaxation would indicate that the weaker sections of the society need to be facilitated to rise to positions so that they rise in the echelons of the social structure of the society as envisaged in the constitution. Hence the policy direction of the Govt in bringing out the amendments to the constitution as discussed above. In the respondent organization the results of the exams held, do clearly drive home the point that a miniscule percentage of the SC/ST candidates are getting qualified. It is a clear signal for remedial action to be taken in the matter. The respondents contention that relaxation of standards should not be such that it would mar administrative efficiency is absolutely valid and needs to be respected. Exam cannot be a mere formality. There can be no second opinion on this. However, as can be seen

from the above the SC/ST vacancies remain unfulfilled over the years. This too, will have a telling effect on the efficiency of the administration. The reason being that there being no men in position work out put will suffer and the corollary is lower productivity of the organization. Once selected, candidates if sent for good training programmes there would be a higher probability of transforming them as efficient employees justifying the decision of higher relaxation standards. A fine balance between efficiency and relaxation is therefore called for. Hence a review of the relaxation standards would be in the best interest of the respondents organization and in tune with the spirit of the constitutional amendments brought about. BSNL did make a move in this direction by fixing the relaxation percentage as 20% and 15% in JAO LICE 40% and JAO 10% exam vide their letter no.9-2/2016-Rect dt 4.9.17. A pointer towards further relaxation of standards.

7. Therefore in view of the above, respondents are directed to consider further incremental relaxation of standards keeping in view the objectives of the constitutional amendments brought about on the subject and without adversely affecting administrative efficiency. A thorough study of the issue in the context of many SC/ST posts lying unfilled for years and by analyzing the approaches adopted by other similarly placed organization would provide the leeway to resolve the impasse of lower pass out of SC/ST candidates in departmental qualifying exam for AAOs. Time stipulated to complete the exercise is 6 months from the date of receipt of this order. No order to costs.

(SWARUP KUMAR MISHRA)
MEMBER (JUDL.)

(B.V. SUDHAKAR)
MEMBER (ADMN.)

Dated, the 11th day of September, 2018

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