

CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

OA/021/00931/2012

Date of CAV : 19-09-2018
Date of Order : -10-2018

Between :

T.VijayKumar S/o T.Prasad Rao,
Aged about 48 years, Occ : Senior Accountant,
Pension Section, O/o The Principal Accountant General (A&E),
Saifabad, Hyderabad.Applicant

AND

1. Union of India,
Rep by its Comptroller & Auditor General of India,
Pocket-9, Deendayal Upadaya Marg,
New Delhi-110 124.
2. The Director of Examinations,
O/o The Comptroller and Auditor General of India,
Pocket-9, Deendayal Upadaya Marg,
New Delhi-110 124.
3. The Senior Administrative Officer (APP),
O/o The Comptroller and Auditor General of India,
Pocket-9, Deendayal Upadaya Marg,
New Delhi-110 124.
4. The Principal Accountant General (A&E),
AP, Saifabad, Hyderabad-500 001.
5. Deputy Accountant General,
O/o The Principal Accountant General (A&E),
AP, Saifabad, Hyderabad - 500 001. ...Respondents

Counsel for the Applicant: Mr.J. Sudheer
Counsel for the Respondents : Mr.V. Vinod Kumar, Sr. CGSC

CORAM :

THE HON'BLE MR.B.V.SUDHAKAR, ADMINISTRATIVE MEMBER
THE HON'BLE MR.SWARUP KUMAR MISHRA, JUDICIAL MEMBER

(Order per Hon'ble Mr.Swarup Kumar Mishra, Judicial Member)

(Order per Hon'ble Mr.Swarup Kumar Mishra, Judicial Member)

This application is filed under section 19 of the Administrative Tribunals Act, 1985, for the following relief : -

“ to direct the Respondents to treat the Applicant as deemed to have passed Selection Officers Grade examinations (Accounts) i.e. SOGE test with effect from 2008 and promote him with effect from the date of his immediate junior i.e. the person who has passed the test in 2008 itself or in alternate, to promote the Applicant as Assistant Accounts Officer with effect from 7-6-2010 without reference to Charge Memo No.PAG(A&E)/CC/DC-2/8-321-259/2010-11/TR-259/2010-11/TR-259, dated 11-6-2010 issued by the 4th Respondent with all consequential benefits by holding the action of the Respondents in treating the SOGE passed candidates pertaining to 2008 only with effect from 7-6-2010 and taking into account the subsequent event of issuance of Charge Memo dated 11-6-2010 for denying the applicant's promotion as Assistant Accounts Officer as on 07-06-2010 as bad, illegal, arbitrary and unconstitutional and pass such other order or orders in the circumstances of the case.”

2. The brief facts of the case are that the applicant joined as Clerk in the Respondent organization in the year 1991 and based on the eligibility he was promoted as Accountant in the year 2000 and further promoted as Senior Accountant in the year 2003. The next higher post to the Senior Accountant is the post of Assistant Accounts Officer and to be promoted to the said post from the cadre of Senior Accountant, one has to pass SOGE (Accounts). The department conducts the said examination annually. While the matters stood thus, in 2007 besides the papers which are already existing, Statistics and Statistical Sampling paper was introduced for SOGE accounts. No examination was conducted in 2007 for some administrative reasons and the said examination was conducted in June/July, 2008 and the applicant appeared in the said examination. The applicant could not clear

the said examinations in the years 2008 and 2009. The applicant again appeared for 2010 examination of SOGE Accounts (from 2010 the said test is re-designated SAS – Accounts) and cleared all the papers.

3. The applicant submits that, in 2008 but for the introduction of the Statistics and Statistical Sampling the Applicant would have been promoted as Assistant Accounts Officer in the year 2008 itself under SC quota. It may be relevant to state here that the junior of the applicant in the category of Senior Accountant by name Smt. D. Padmaja who also happens to be SC candidate was promoted in the year 2008 itself as she had passed Statistics and Statistical Sampling paper also besides other papers.

4. The applicant further submits that, the department issued circular dated 7-6-2010 through which the Statistics and Statistical Sampling paper which was introduced in the year 2007 was abolished. Strangely, through it was realized by the department that very introduction of the said paper was unwanted and abolished the same vide circular dated 07-06-2010 it was realized by the department that very introduction of the said paper was unwanted and abolished the same vide circular dated 07-06-2010 it was stated that those who have failed in the said test would be deemed to have passed the examination from the date of the circular and further more strangely, the said benefit was confined only to those who have appeared in the year 2009.

5. The applicant further contends that, he brought this anomaly to the

Respondents and sought for promotion vide representation dated 15-06-2010, 19-08-2010 and vide proceedings dated 26-08-2010 he was informed that the benefit of circular dated 07-06-2010 is applicable only for SOGE 2009. Thereafter the applicant filed OA No.1097/2010 challenging order dated 26-08-2010. Similar OA as projected by the applicant in OA No.1097/2010 was filed before the Madras Bench of this Tribunal in OA No.595/2011 which was allowed on 06-09-2011 on the ground that benefit as extended vide circular dated 07-06-2010 to SOGE 2009 shall also be extended to candidates in SOGE 2008. The same was challenged before the Hon'ble High Court by the Department in WP No.2968/2012 and the same was dismissed on 08-02-2012. Accordingly the OA filed by the applicant was allowed following the order passed by the CAT, Madras Bench in OA No.595/2011, dated 6.9.2011.

6. The applicant submits that he made a representation dated 12-05-2012 seeking for promotion for Assistant Accounts Officer and the same was rejected vide order dated 25-06-2012 on the ground that the applicant has to be treated as deemed to have passed SOGE only with effect from 07-06-2010 and that he cannot be treated as having been passed with effect from 2008. Accordingly the applicant seeks a declaration from this Tribunal to treat the applicant as passed SOGE candidates with effect from the date of completion of SOGE examination i.e., 2008 and further entitled for promotion on par with his junior.

7. The applicant also contends that the subsequent event of issuance of

charge memo dated 11-06-2010 cannot come in the way of the applicant and the Respondents cannot be carried away by the subsequent event as the consideration has to be with reference to 07-06-2010. Hence this application.

8. Respondents have filed reply statement stating that the letter dated 07.06.2010 vide Annexure-VI clearly mentions as under :

“7.h. The paper on ‘Statistics and Statistical Sampling’ of earlier SOGE stands abolished. The candidates of earlier SOG Examination, who were declared fail in only Statistics and Statistical Sampling (SOE-31) paper, would be deemed to have passed the examination from the date of issue of this circular. All such cases may be forwarded to this office (Examination Wing) for consideration.”

The implications of the said circular was examined by the CAT, Madras Bench in OA No.59/2011 as seen from the order dated 06.09.2011. In the said judgment, it is also referred that the clarification issued by the Department dated 05.08.2010 it was found by the Tribunal in the said judgment that the benefit of para-7 (h) of notification dated 7.6.2010 would be extended to the applicants and they are deemed to have passed the SOG Examination of the 2008. The Hon’ble High Court of Madras, in WP No.2968/2012 which was filed challenging the judgment in question in OA No.595/2011, in their judgment dated 08.02.2012 while considering the implications of the circular have mentioned in para-8 of their judgment as under :

“8. Paragraph 7 (h) of the said circular should be read in toto. It is very categorical in directing that the candidates of earlier SOG examination, who have been declared failed in one subject, viz. Statistics and Statistical Sampling would be deemed to have passed the examination from the date of examination. Of course, the said Circular further says that the said benefit would be available to the candidates from the date of issue of the Circular. The first condition of

the said paragraph is deemed provision whereby all those who have taken the examination earlier, but failed in the subject in question, shall be declared to have passed the examination. The respondents 1 to 3 took the examination in the year 2008. Therefore, while interpreting the said paragraph, it must be held that respondents 1 to 3 shall be deemed to have passed SOG examination held in the year 2008. The reference to the application of the said Circular from the date of the issue of Circular does not in any way take away the benefit to the candidates, who have taken the examination earlier and for that reason, the Tribunal had correctly interpreted the above said paragraph and had directed the petitioners herein to extend the benefit to respondents 1 to 3.”

In view of the said categorical finding passed by the Hon’ble High Court of Madras and in view of the subsequent clarification of the circular issued on 3/6.09.2010, this Tribunal find that the applicant has to be treated as deemed to have passed the SOG examination in Statistical paper held in the year 2008 from the date of the said examination but the benefit of the same would be available to the applicant from the date of issue of circular in question ie with effect from 07.06.2010. In the circumstances, this Tribunal is unable to accept the counsel for the applicant that the said benefit should be extended to the applicant from the date of the examination itself and not from 7.6.2010. Chargememo was issued against the applicant on 11.06.2010. Therefore by the relevant date id 7.6.2010 there was no departmental case was pending against the applicant. The DPC met on 27.10.2010. The DPC was informed that the applicant had participated in a mass Casual Leave strike on 08.04.2010 for which the charge sheet for minor penalty was issued on 11.06.2010. Thereafter on 14.12.2010 it has been mentioned by the Respondents in their reply that although the DPC found the applicant fit for promotion but it held that the promotion to the applicant should be issued only after the penalty period is completed. It has been mentioned by the Respondents that in their further counter reply

filed on 19.02.2018 that penalty was issued on 14.12.2010 against the applicant by withholding of next increment for three years without cumulative effect. Therefore the case of the applicant should be considered by the DPC which met after imposition of the penalty and after consideration of the fact leading to the imposition of penalty. The promotion can be given after the currency of the penalty. Therefore the DPC found after the penalty period is completed. The penalty period was completed on 30.06.2014 AN. It has been further averred in their reply that as the penalty was later modified to that of 'censure', as the applicant was promoted to the post of Asst. Accounts Officer with retrospective effect from 03.01.2011 vide proceedings dated 28.07.2014.

9. Thus the undisputed facts are the DPC which met on 27.12.2010 found the applicant "fit for promotion" but the same cannot be given due to the currency of the penalty of withholding of increments in question. As the said penalty has been modified subsequently to that of "censure", there was no bar for giving promotion to the applicant. The applicant had earlier filed OA No.1097/2010 before this Tribunal praying for the following relief :

" In view of the above facts and circumstances the applicant herein prays this Hon'ble Tribunal may be pleased to call for the records pertaining to the Memo No.PAG(A&E)/Admn.II/Exams/2010-11/Tr.No.188, dated 26.08.2010 issued by the 5th respondent read with the 1st respondent Circular No.17-NGE/2010 No.632-NGE(App)/24-2010 dated 07.06.2010 and the NGE (App)No.912-NGE(App)24-2010 dated 05.08.2010 and declare the same as illegal, arbitrary and violative of Article 14 and 16 of the Constitution of India in so far as restricting the benefit of Para 7(h) of the 1st respondent Circular No.17-NGE/2010 No.632-NGE(App)/24-2010 dated 07.06.2010 and consequently declare that the applicant having passed all the remaining papers excepting Statistics and Statistical Sampling (SOE-31) Paper in the Section Officers Grade Examination 2008 is also eligible for being

declared of having passed the said examination w.e.f., 07.06.2010 on par with the similarly situated candidates who have been declared to have passed the said examination of 2009 with all consequential benefits such as Seniority, Pay and Allowances etc., and be pleased to pass such other order or orders as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case."

This Tribunal by judgment dated 24.02.2012, while allowing the said OA had passed the following order :-

" Heard both sides.

2. The learned counsel for the applicant has produced a copy of the order of the Chennai (Madras) Bench of this Tribunal dated 6.9.2011 in O.A.No.595/2011, where a similar relief was granted. The learned counsel also produce a copy of the order of the Madras High Court dated 8.2.2012 passed in W.P.No.2968/2012 and M.P.No.1/2012, which confirmed the order in the above OA.

3. Accordingly, the OA is allowed granting the relief as prayed for. No costs."

In this case mere passing of the examination in question does not automatically entitle the applicant to get promotion. His case has to be placed before the DPC for due consideration. Therefore in the present case, once the applicant is deemed to have passed the examination held in the year 2008. There was no other bar for giving notional promotion in favour of the applicant. Therefore this Tribunal finds that the action of the Respondents in not giving promotion to the applicant with effect from the date the DPC was held, is arbitrary and against the provisions and Circulars issued by the Respondents from time to time. Accordingly the impugned order is set aside and the Respondents are directed to grant the applicant notional promotion with effect from 27.12.2010 with all consequential financial and service benefits including seniority to the applicant with effect from 27.12.2010.

10. Accordingly the OA is partly allowed. No order as to cost.

(SWARUP KUMAR MISHRA) (B.V.SUDHAKAR)

JUDICIAL MEMBER

ADMINISTRATIVE MEMBER

Dated : October, 2018.

vi