

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No. OA 228 of 2013

Present: Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Mr.K.N.Srivastava, Administrative Member

SANJIB KR. DEY

VS

UNION OF INDIA & ORS.

For the applicant : Mr.B.Bhushan, counsel

For the respondents : Ms.R.Basu, counsel

Order on : 4.5.11.

O R D E R

Ms.Bidisha Banerjee, J.M.

This application was filed seeking the following reliefs :

- a) Impugned order dated 3.9.12 issued by the respondent No.3 cannot be tenable in the eye of law and therefore the same may be quashed;
- b) An order do issue directing the respondents to declare the applicant pass SOG Examination w.e.f. May 2009.

2. The admitted facts that could be culled out from the pleadings of the parties were as under :

The applicant joined the respondents' organisation as direct recruit Section Officer, on probation in August 2004. For confirmation he was required to pass SO's Grade Examination (SOGE in short) Part I and Part II within two years. As per previous pattern a candidate had to secure 47% marks in each subject and 45% in aggregate in order to clear part I and Part II examination and in order to be declared exempt in a subject, a score of 50% marks would be the yardstick. The applicant cleared SOGE Part I in March/April 2006. Therefore he was not able to clear both Part I and Part II during the probation period and so he was reverted to the post of Auditor. Thereafter he appeared in Part II in December 2006 and got exemption in the following four papers :

- i) Precis and draft (SOE-2)
- ii) Cost and Management Accountancy (SOE-18)
- iii) Computer system - Theory (SOE-28)
- iv) Computer system - Practical (SOE-30)

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Meanwhile from November 2007 syllabus for Commercial Audit Branch changed and papers for SOGE Part II were revised with introduction of two new papers as follows :

- i) Precis and draft (SOE-2)
- ii) Advance Accounting (SOE-16)
- iii) Commercial Auditing (SOE-17)
- iv) Cost and Management Accountancy (SOE-18)
- v) Financial and Contract management (SOE-19)(New Paper)
- vi) Computer system - Theory (SOE-28)
- vii) Computer system - Practical (SOE-30)
- viii) Statistics and Statistical Sampling (SOE-31) (New Paper)

As per new pattern introduced from November 2007 the applicant was required to pass the following subjects :

- i) Advance Accounting (SOE-16)
- ii) Commercial Auditing (SOE-17)
- iii) Financial and Contract management (SOE-19)(New Paper)
- iv) Statistics and Statistical Sampling (SOE-31) (New Paper)

In May 2009 the applicant could not clear Part II as he could not secure pass marks in SOE 19 and SOE 31, as well as exemption marks in SOE 17. From 2010 onwards SOGE examination was re-named as SAS and for Commercial Audit the papers were as follows :

- i) Language skills (PC-1)
- ii) Logical and Analytical ability (PC-2)
- iii) Information Technology - Theory (PC-3)
- iv) Information Technology - Theory (PC-4)
- v) Constitution of India, Statutes and Service Regulations (PC-5)
- vi) Financial rules & principles of Govt. Accounts & CPWA (PC-12)
- vii) Advance Accounting (PC-15)
- viii) Cost Accountancy & Commercial laws & Corporate taxes (PC-20)
- ix) Commercial Auditing (PC-26)

On 7.6.10 the Headquarters declared the paper on Statistics and Statistical Sampling (SOE 31) (supra) as abolished with a condition that candidates of earlier SOGE 2009 who were declared failed only in SOE 31 would be deemed to have passed the examination from the date of issue of the circular. Since the applicant failed both in SOE 19 and SOE 31 in 2009 scrapping of SOE 31 with the deeming clause as aforesaid did not bring any material change in his status. As per revised syllabus of 2010, ibid, he cleared PC2 and PC 26. He cleared PC 2 in 2010 and PC 26 in 2011. On 10.1.11 Headquarters clarified that as per exemption matrix exemption in PC 26 was

admissible which clarification was introduced after he appeared in the examination. Since he cleared PC 26 the exemption clause did not enure to his benefits.

3. The respondents in their reply have disclosed that SOE 17 and SOE 31 of 2007 format assimilated to PC 26 in Commercial Audit in the new format of 2010. The applicant having not secured exemption in SOE 17 the exemption claimed by him in regard to PC 26 was not accepted by the Administration as only upon securing exemption in SOE 17 and SOE 31 a candidate could be exempted from appearing in PC 26 (introduced in 2010).

4. Ld. Counsel for the applicant during the course of hearing would strenuously urge that the impugned order dated 3.9.12 ought to be quashed and would submit that in regard to 10.1.11 clarification (supra) the applicant should be declared qualified in SOGE examination w.e.f. May 2010. The text of the impugned order dt. 3.9.12 is reproduced verbatim hereinbelow for clarity :

"Subject - Forwarding of representation made by Shri Sanjib Kumar Dey

Sir,

With reference to your office letter No. 1210/C/Adminn/SAS/2011/70 dated 3.8.12 I am to state that the request of Shri Sanjib Kumar Dey cannot be acceded to and the reply in the matter has already been sent vide our office letter No. 524/4-Exam/Program SAS/RAE/IE/2010 dated 7.9.2010 (copy enclosed)

This issues with the approval of Principal Director (Exam)."

The department on 7.9.2010 had already clarified the position as under :

*"To
The Principal Director of Commercial Audit
And Ex-officio Member Audit Board - II
Old Nizam Palace, 234/4 Acharya Jagadish Chandra Bose Road,
Kolkata - 700020.*

Subject : Forwarding of representation made by Shri Sanjib Kumar Dey, Auditor

Sir,

I am directed to refer to your office letter No. 535/C/Adminn/SOGE/RAO/2008-09 dated 21.6.2010 on the subject cited above and to state that candidates request has not been considered. Only those candidates who appeared in SOGE 2009 and obtained aggregate qualifying marks by clearing all the papers but failed only in SOE-31 will be deemed to have passed the SOGE w.e.f. 7.6.2010. The candidate may be asked to follow the exemption matrix.

Sr. Administrative Officer (Exam)"

5. The counsels were heard and the materials on record were perused. The rival contentions advanced were taken note of.

6. In view of the factual matrix enumerated hereinabove and the admitted position that the applicant failed both in SOE 19 as well as SOE 31 in 2009 as also failed to secure exemption in SOE 17 and therefore he was not entitled to exemption in PC-26 in terms of 10.1.11 clarification, no infirmity would be noticed in the respondents' decision in not treating the applicant as cleared in SOGE in 2010 itself.

7. The applicant having failed to make out a case meriting consideration under the exemption matrix as circulated by the respondents, would deserve no relief.

8. Accordingly the OA being devoid of merit would stand dismissed with no order as to costs.

(K.N.SRIVASTAVA)
MEMBER (A)

(BIDISHA BANERJEE)
MEMBER (J)

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