

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3624 of 2023

1. Subhash Kumar Shukla S/o Late Anand Bihari Shukla, Resident of Mohalla-Par Pokhra, Bahari Begumpur, P.s.-Patna City, District-Patna at Present Employed as Sr. Accountant, O/o CCA, Bihar Circle, Patna.
2. Kishor Kumar S/o Late Sukhdeo Prasad Resident of Mohalla-Vishnupur Pakri, P.S. Beur, Anisabad, District-Patna at Present Employed as Sr. Accountant, O/o CCA, Bihar Circle, Patna.
3. Saroj Kumar S/o Sri Muheshwar Lal Resident Mohalla-Mitra Mandal Colony, Near Shiv Narayan Chowk, Saket Vihar, P.S.-Anisabad, District-Patna at Present Employed as Sr. Accountant, O/o CCA, Bihar Circle, Patna.
4. Manoj Kumar S/o Sri Gauri Shankar Prasad Resident of Mohalla-New Bengali Tola, Opposite Munna Lodge, Indira Nagar, Road No.1, P.S. and District-Patna at Present Employed as Sr. Accountant, O/o CCA, Bihar Circle, Patna.
5. Shashi Ranjan Kumar Pandey S/o Late B.N. Pandey, Resident of Flat No.301, Ramproti Singh Apartment, Gate No. 83, P.S. Digha, District-Patna at Present Employed as Sr. Accountant, O/o CCA, Bihar Circle, Patna.
6. Amit Kumar Singh S/o Sri Om Prakash Singh Presently Posted as-Sr. Accountant, Office of the General Manager (Finance), Postal Accounts Office, GPO Campus, P.S. and District-Patna-800001, Permanent Resident of Police Colony, Section-B, P.S.-Anisabad, District-Patna. Pin 800002 (Bihar)

... .. Petitioner/s

Versus

1. The Union of India through the Secretary-Cum-Director General (Posts), Ministry of Communications, Department of Posts, Government of India, P.O. and P.S.-Dak Bhawan, District-New Delhi-110001.
2. The Sr. deputy Director General (F and PA-ADMN), Ministry of Communications, Department of Posts, Accounts Wing, Government of India, P.O. and P.S.-Dak Bhawan, Sansad Marg, District-New Delhi-110001.
3. The Assistant Director General (PA-ADMN), Ministry of Communications, Department of Posts, Accounts Wing, Government of India, P.O. and P.S.-Dak Bhawan, Sansad Marg, District-New Delhi-110001.
4. The Controller General of Communications, Accounts Department of Telecommunication, Sanchar Bhawan, 20 Ashoka Road, P.S.-Sansad Marg District-New Delhi-110001.
5. The Controller General of Communications, Accounts Department of Telecommunication, Bihar Circle, CCA Building, Sanchar Parisar, Budh Marg, Near GPO, P.S. and District-Patna-800001

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Rajendra Narain, Sr. Advocate
Mr. Prashant Kumar, Advocate



For the Respondent/s : Mr. Manaur Alam, Advocate
Mr. K.N. Singh, ASG
Mr. Abhay Shankar Jha, CGC
Mr Hrishikesh, Advocate
Mr. Shivaditya Dhari Sinha, JC to ASG
Ms. Prakritika Sharma, JC to ASG
Mr. Amarjeet, JC to ASG

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE RAMESH CHAND
MALVIYA

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

11 30-11-2023 In the instant petition the petitioners have assailed the orders of the CAT dated 05.09.2022 passed in OA/050/00289/2021 by Central Administrative Tribunal, Patna Bench, Patna. (for short ‘CAT’).

2. The matter relates to selection and appointment to the post of Assistant Accounts Officer by way of promotion which is one of the source. On 02.11.2023 a detailed order has been passed in this petition and it reads as under:

“Matter relates to selection and appointment on the post of Assistant Accounts Officer. Method of recruitment of the aforementioned post is by selection post in terms of column no.5 of the Rules of Recruitment notified on 02.04.2018.

Relevant extract of Rules reads as under:-

(10)	(11)
By promotion failing which by deputation failing both by direct	<i>Promotion:</i> <i><u>Departmental candidates who have passed the Accounts Service Examination or equivalent examination conducted by Department of Posts and</u></i>



recruitment.	<u>Telecommunications or Competent Authority specified by the Department.</u> 1. Senior Accountants or Junior Accountant of Department of Posts and Department of Telecommunications with three years or Six years regular in level 6 in the pay matrix (Rs. 35,400-1,12,400) and in level 5 in the pay matrix (Rs. 29,200-92,300) respectively. 2. All other officials of the Department of Posts or Department of Telecommunications in Group ‘C’ cadre possessing a bachelor’s degree from a recognized University or Institute with the following regular qualifying service: <i>(i) In level-1 with fourteen years regular service, or</i> <i>(ii) In level-2 with thirteen years regular service, or</i> <i>(iii) In level-3 with eleven years regular service, or</i> <i>(iv) In level-4 with nine years regular service, or</i> <i>(v) In level-5 with seven years regular service, or</i> <i>(vi) In level-6 with four years regular service.</i> Note: Where juniors who have completed their qualifying or eligibility service are being considered for promotion, their seniors would also be considered provided they are not short of the requisite qualifying or eligibility service by more than half of such qualifying or eligibility service, or two years, whichever is less, and have successfully completed their probation period for promotion to the next higher grade alongwith their juniors who have already completed such qualifying or eligibility service. Deputation: <i>Officers under various organised</i>
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	<i>Accounts and Audit Services under the Government of India:</i> <i>(a)(i) holding analogous post on regular basis in the parent Cadre or Department,</i> <i>or</i> <i>(ii) who has passed the Subordinate Accounts Service Examination or Subordinate Audit Service Examination or equivalent examination in any organised Accounts Cadre under the Government of India.</i> Note 1: <i>The Departmental officers in the feeder category who are in direct line of promotion will not be eligible for consideration for appointment on deputation. Similarly, deputationist shall not be eligible for consideration for appointment by promotion.</i> Note.2: <i>Period of deputation including period of deputation in another ex-cadre post held immediately preceding this appointment in the same or some other Organisation or Department of the Central Government shall ordinarily not to exceed three years.</i> Note.3: <i>The maximum age limit for appointment by deputation shall be not exceeding fifty six years as on the closing date of receipt of applications.</i> <u>(underline supplied)</u>
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(12) Group ‘B’ Departmental Promotion Committee (for considering promotion) consisting of: 1. Deputy Director General (Postal Accounts and Finance)-Chairman. 2. Director (Staff Establishment Accounts). Department of Telecommunications-Member. 3. Director (Budget and Administration),	(13) <i>Consultation with Union Public Service Commission not necessary.</i>
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<i>Department of Posts-Member.</i> <i>Group ‘B’ Departmental Confirmation Committee (for considering confirmation) consisting of:</i> <i>1. Deputy Director General (Postal Accounts and Finance)-Chairman.</i> <i>2. Director (Staff Establishment Accounts), Department of Telecommunications-Member.</i> <i>3. Director (Budget and Administration), Department of Posts-Member.</i>	
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2. Statutory rules issued under Article 309 of the Constitution on 02.04.2018 it is titled as “the Indian Posts and Telecommunications Accounts of Finance Service Group ‘B’ (Accounts Officers and Assistant Accounts Officers) Recruitment Rules, 2018 and they are from the date of publication in the Gazette i.e., 02.04.2018. The respondents have identified 1010 vacancies of Assistant Accounts Officer to be filled up. In this regard, they have also undertaken conducting departmental examination and it relates to Subordinate Accounts Service Examination. Large number of candidates have passed Subordinate Accounts Service Examination. Having regard to the merit in passing the Subordinate Accounts Service Examination, petitioners were stated to be lesser merited candidates. Therefore, their names have been overlooked. On the other hand, more merited candidates insofar as passing of the Subordinate Accounts Service Examination they have been held to be eligible for the purpose of promotion to the post of Assistant Accounts Officer.

3. In this backdrop, the petitioners have approached CAT and suffered an order, hence, the present writ petition.

4. Learned counsel for the petitioners submitted that petitioners would be benefited if the vacancies are earmarked on yearly basis and further if the instruction dated 13.12.2019 is given effect, in that event petitioners are eligible with the selected and appointed candidates to the post of Assistant Accounts Officer by means of promotion-cum-selection. The aforementioned contention cannot be examined for the reasons that Rules of



Recruitment, 2018 governing the post of Assistant Accounts Officer does not stipulate year-wise vacancies are required to be earmarked or identified. Further, Rule 2018 does not authorize the officials to issue instructions insofar as filling up the post of Assistant Accounts Officer. Therefore, whatever the instructions issued on 13.12.2019 has no bearing on the case in hand. At this stage, it is necessary to take note of the Apex Court decision in the case of ***Nair Service Society vs. Dr. T. Beermasthan***, reported in (2009) 5 SCC 545. Paragraph 48 reads as under:-

“48. Several decisions have been cited before us by the respondents, but it is well established that judgments in service jurisprudence should be understood with reference to the particular service rules in the State governing that field. Reservation provisions are enabling provisions, and different State Governments can have different methods of reservation. There is no challenge to the Rules, and what is challenged is in the matter of application alone. In our opinion the communal rotation has to be applied taking 20 vacancies as a block.”

(Under line supplied)

5. The overall principle laid down by the Apex Court in the aforementioned decision is that whatever the statute or rules existing for the purpose of extending service conditions that has to be followed. Therefore, executive instructions issued on 13.12.2019 has no application insofar as filling up the post of Assistant Accounts Officer.

6. It is learnt that mode of selection and appointment by promotion to the post of Assistant Accounts Officer for the vacancies of 777, the respondents have filled up 773. The remaining vacancies have been filled by the next recruitment in the year 2022. The official respondents have adopted the yardstick of merit list insofar as passing of Subordinate Accounts Service Examination and the same has been taken into consideration for the purpose of filling up of the post of Assistant Accounts Officer by



promotion/selection. Rules of Recruitment, 2018 does not stipulate that merit list insofar as passing of Subordinate Accounts Service Examination is required to be taken into consideration for the purpose of filling up of Assistant Accounts Officer. On the other hand, what has been prescribed is departmental candidates who have passed Subordinate Accounts Service Examination or equivalent examination conducted by the department of Post and Telecommunication or competent authority prescribed by the department. There is no iota of evidence that appointing authority/selecting authority to the post of Assistant Accounts Officer was required to adhere to the merit list insofar as passing of Subordinate Accounts Service Examination as is adopted by the selecting and appointing authority to the post of Assistant Accounts Officer pursuant to the process of recruitment to the aforementioned post for the year 2018-19.

7. It is noticed that petitioners have not questioned the validity of selection and appointment of such of those persons who were appointed as Assistant Accounts Officer by promotion/selection so as to draw inference that selecting and appointing authority have committed error and they have gone beyond the method of recruitment to the post of Assistant Accounts Officer read with the Rules of Recruitment of the year, 2018. In the absence of such of those persons being a party to the present *lis*, it is not appropriate to interfere with the selection and appointment of such of those persons against the post of Assistant Accounts Officer. In this backdrop, it is also noticed that whatever the vacancies remained pursuant to the 2018-19 recruitment, those vacancies have been filled up in the year 2022. Therefore, having regard to the no fault on the part of the petitioners and prima facie there is fault on the part of the selecting and appointing authority in not restricting the method of recruitment to the post of Assistant Accounts Officer in terms of Rule 2018 and in the absence of mode of selection to the post of Assistant Accounts Officer, the department



cannot draw their own method of selection and it is not supported by source of law.

8. Therefore, we are of the view that whether petitioners could be accommodated against existing Assistant Accounts Officer vacancies or not, the concerned authority is hereby directed to furnish instruction to learned Additional Solicitor General, who is appearing for the respondents. The concerned authority is hereby directed to take note of the fact that there is no iota of material in 2018 rules for mode of selection other than passing the Subordinate Accounts Service Examination or equivalent examination and it is not based on merit in passing of Subordinate Accounts Service Examination. Further we have noticed that examining authority or competent authority has not notified the result of such of those persons who have appeared for Subordinate Accounts Service Examination and their result was not notified, on the other hand, the department internally identified more merited candidates insofar as passing of the Subordinate Accounts Service Examination and proceed to select such of those merited candidates for the purpose of filling up of the post of Assistant Accounts Officer by promotion/selection.”

3. In the light of the aforementioned order of this Court respondents are of the view that vacancies are available for the year 2023 and that it is to be filled up. In the meanwhile vacancies approved for the year 2022 have been filled up. It is further submitted that the post of Assistant Account Officer is required to be filled up in the mode of selection as is evident from Clause 5 of the Rules of recruitment governing the post. It is further submitted that in the Advertisement Clause 4 is relating to qualifying marks for General Category 40 per cent in



each Subject for Schedule Caste and Scheduled Tribe category 30 per cent in each Subject. Qualifying marks means candidates securing qualifying marks in each of the papers will be considered for preparation of the merit list.

4. The Advertisement is contrary to method of recruitment to in particularly by promotion. Promotion : Departmental candidates have passed the Subordinate Accounts Service Examination or Equivalent Examination conducted by Department of Post and Telecommunications who are or competent Authority specified by the department. Rules of recruitment governing the post does not specify mode of selection with reference to competitive examination and more merited candidates would be considered for the purpose of selection and appointment to the post of Assistant Accounts Officer, in other words, Advertisements is contrary to eligibility criteria for promotion to the post of Assistant Accounts Officer (cited supra). Moreover, the respondents have not notified the result and marks of the respective candidates who have appeared for the Subordinate Accounts Service Examination conducted in the year 2018. Reading of Rules of recruitment governing the post of Assistant Accounts Officer read with the Advertisements there is no criteria prescribed for selection to



the extent that more merited candidate in the subordinate accounts service examination would be considered. Even assuming that if any executive order was issued the same would be contrary to rules of recruitment governing the post of Assistant Accounts Officer, since eligibility criteria for promotion is passing the Subordinate Accounts Service Examination or equivalent examination. There is no iota of word of marks or more merited person in the above examination would be taken into consideration for the purpose of selection and promotion to the post of Assistant Accounts Officer.

5. Faced with these dates and events the respondents are at default in choosing the method of selection to the post of Assistant Accounts Officer with reference to merit in the Subordinate Accounts Service Examination and it is contrary to the rules of recruitment governing the post of Assistant Accounts Officer. Therefore, the Official respondents are hereby directed to consider the petitioners name for promotion to the post of Assistant Accounts Officer for the vacancies occurred in the year 2023 and proceed to promote them if otherwise petitioners are eligible in accordance with the rules of recruitment governing the post of Assistant Accounts Officer . The above exercise shall be undertaken within a period of three



months from the date of receipt of this order. The present order is not precedent for others who have not invoked the remedy of filing litigation. To the above extent order of the CAT dated 05.09.2022 passed in OA/050/00289/2021 stands modified.

6. The present writ petition stands allowed in part.

(P. B. Bajanthri, J)

(Ramesh Chand Malviya, J)

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