10.12.2024
(D/L-6)
Ct. No.4
(B.K.N.)

W.P.C.T. 241 of 2016

Shri Sanjib Kumar Dey
Vs.
Union of India & Ors.

Mr. Biswaroop Bhattacharya,
Mr. Chiradip Sinha
...for the Petitioner

Mr. Suman Basu
...for the State Respondents

1. The petitioner having failed in one paper "Financial and Contract Management" at the Section Officer Grade Examination, Part – II was claiming exemption from passing such paper. He claimed parity with those who had failed in another paper in the same examination, i.e. "Statistics and Statistical Sampling" since they had been deemed to have passed this examination under the new examination format. The O.A. 228 of 2013 filed by the petitioner before the Central Administrative Tribunal, Calcutta Bench has been dismissed on 4th May, 2016. It is this order which is under challenge in the present writ proceedings.

2. Heard learned counsel for the petitioner and the learned counsel for the respondents.
3. The petitioner was appointed as a Section Officer directly on 20th August, 2004. It is his case that the appointment is on probation; subject to clearing of two exams namely, the Section Officer Grade Examination (SOGE) Part-I, and Part-II. It is only when these two examinations are qualified that the appointee becomes permanent on the post of Section Officer. Failure to clear these two examinations within the period of probation results in the appointee to be removed from service, or in case of an employee fully deserving for retention, he is to be offered an appointment as Auditor in the respective office against a direct recruitment vacancy, if available. This aspect of the matter is evident from the standing order issued by the Comptroller and Auditor General of India on 3rd December, 1991, copy of which has been handed over and is being retained in records. Clause 5.5.2 of the standing order, which is the relevant clause reads as follows:

> "5.5.2. Every direct recruit appointed to the cadre of Section Officer will be on probation for a period of two years. During the period of probation he/she will have to qualify the S.O.G.E Part II. If a direct recruit fails to pass both parts of S.O.G.E within the period of

> probation, he/she will be removed from service or if fully deserving of retention, may be offered appointment as Auditor in respective office against a direct recruitment vacancy, if available."

4. The petitioner appeared for the examinations. In so far as Part-I is concerned there is no dispute that he had passed the Part-I examination.
5. In so far Part-II examination is concerned, since the examination was not conducted sufficient number of times (six times) within the first two years of the petitioner's appointment in 2004, he was permitted to take a last chance in the 2009 Part-II examination.
6. It is submitted by the learned counsel for the petitioner that a new policy had come into existence on 7th June, 2010 revamping the entire system of examination to be passed in terms of Clause 5.5.2 of the standing orders extracted above. As per the new and revamped format the examination was rechristened as Subordinate Audit/Accounts (SAS) to be a computer based test comprising of several papers other than erstwhile SOGE, as is evident from the revised scheme of SAS examination. Under Group-II there are many examinations which have been described by a

name having a prefix PC. There appears to be at least twenty papers from PC-8 to PC-27. There is a clause in the 2010 scheme (SAS) which has sown the seed of discontent in the petitioner's mind. There is a provision that exempts a person from appearing in one paper from the earlier SOGE examination namely, SOE -31 which was known as 'Statistics and Statistical Sampling'. The exemption has been granted since this paper has been abolished. The relevant Clause of the 2010 scheme (SAS) in this regard is Clause 7(h) which reads as follows:

> "h. The paper on 'Statistics and Statistical Sampling' of the 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."

7. It is the petitioner's claim that SAS scheme should have provided similar provision that all those, such as the petitioner, who were declared fail in "Financial and Contract Management", should also be deemed to have passed the examination since there was no such paper under the 2010 revised format (SAS) and since this paper had also been abolished. Financial and Contract

Management was earlier referred to by the code SOE-19.

8. The learned counsel for the petitioner submits that when the two examinations have been abolished in the new format both were required to be treated uniformly. Granting an exemption in respect of only one of the abolished papers namely, SOE-31 and not granting the same to the unsuccessful candidates of the other paper SOE-19 is discriminatory in nature. If the petitioner was to be granted such exemption under the 2010 scheme (SAS) he would have been qualified for continuing as Section Officer rather than being placed in the post of Auditor.

9. It is also submitted by the petitioner's counsel that requiring the petitioner to pass in examination namely, SOE-19 which does not exist under the 2010 scheme (SAS) is asking the petitioner to fulfil a requirement which is incapable of being fulfilled.

10. It is submitted that both these papers were abolished under the new format and, therefore, he is entitled to the relief prayed for before the Tribunal claiming exemption from the requirement of passing SOE-19 in the year

2009 in terms of the policy decision dated 7th June, 2010.

11. Learned counsel for the respondents on the other hand submits that the petitioner's claim has been considered in detail by the order impugned before the Tribunal being the reasoned order passed on his representation. The respondents with reference to examples has clarified the position and stated that the two papers are not to be treated uniformly for the simple reason that though both papers SOE-19 and SOE-13 under the earlier format have seized to exist in the 2010 format (SAS), but in so far as SOE-19 for which the petitioner is claiming an exemption the same has merged with many other papers including paper (PC-26) of the new format.

12. In so far as the other paper under the earlier format namely, SOE-31 'Statistics and Statistical Sampling' the same has not been merged in any paper under the new format after 7th June, 2010. The effect of abolition of two papers, therefore, are not uniform under the new scheme, based on which the petitioner may allege any discrimination.

13. We find the submissions of the learned counsel for the respondents to be reflected in

paragraph 11 of their reply filed before the Tribunal. They have specifically stated that 'Financial and Contract Management' paper merged with many other papers which also included PC-26 of the new format.

14. It is nobody's case that the other paper namely, SOE-31 has merged with any other paper under new format post 2010. This distinction in the two papers, of the earlier SOGE in our opinion is of great relevance. In fact the submissions of the learned counsel for the petitioner that one cannot be required to pass an examination which does not exist under the revamped SAS applies in respect of SOE-31 (Statistics and Statistical Sampling) of the earlier scheme. Since there is no corresponding examination under the new scheme there was no way that a candidate who had failed in this paper in the earlier examination could fulfil the requirement of passing SOE-31. It is apparently under such circumstance that SAS provides an exemption from passing of the said subject and provides a Clause that such candidates would be deemed to have passed SOE-31.

15. In so far as the other paper SOE-19 (Financial and Contract Management) we find from the

revised scheme of SAS examination that 'Contract Management and Laws' is now a separate paper altogether (PC-23). 'Financial Management' also appers to be manifest to some extent or the other in various other papers of Group-II such as PC-8, PC-9, PC-10, PC-11, PC-12 etc. etc. The new format, (SAS) therefore, comprises of papers which are corresponding to some extent or the other to the earlier SOE-19. Thus, it cannot be said the SOE-19 has been abolished as in the case of SOE-31. Those appearing under the new scheme (SAS) are thus required to qualify/pass examination/papers covering the subjects under 'Financial and Contract Management'. The question of exempting anyone from passing the SOE-19 examination in 2010, though he/she has failed in this paper at the examination conducted in 2009, therefore, does not arise.

16. The learned Tribunal has, therefore, in our opinion committed no error in rejecting the petitioner's claim to be treated at par with those who had failed in SOE-31.

17. We find no reason to interfere with the order dated 4th May, 2016 passed by the Tribunal in

O.A. No. 228 of 2013. The writ petition is dismissed.

(Madhuresh Prasad, J.)

(Supratim Bhattacharya, J.)