



2024:DHC:7720-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 16671/2023**

UNION OF INDIA AND OTHERS

.....Petitioners

Through: Mr. Ruchir Mishra, Mr. Sanjiv
Kr. Saxena, Mr. Mukesh Kr. Tiwari and Ms.
Reba Jena Mishra, Advs.

versus

SURESH KUMAR MEENA

.....Respondent

Through: Mr. Asish Nischal, Mr. Arun
Nischal and Mr. Shivam Kumar Singh,
Advs.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN

JUDGMENT (ORAL)

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03.10.2024

C.HARI SHANKAR, J.

1. The respondent, a Scheduled Tribe¹ candidate working as Sorting Assistant in the Department of Posts, underwent the 2018-2019 Limited Departmental Competitive Examination² for promotion to the post of Assistant Accounts Officer³. The examination consisted of six papers. There is no dispute that while a general category

¹ "ST" hereinafter

² "LDCE" hereinafter

³ "AAO" hereinafter



candidate required 40% marks to pass in each paper, a ST candidate required only 30%. A candidate had to pass in all papers to qualify for promotion as AAO.

2. As luck would have it, the respondent scored 40 marks each in Paper-III and Paper-IV, 42 marks each in Paper-I and Paper-V, and 55 marks in Paper-VI but could score only 29 marks in Paper-II which was one mark short of the requisite 30% passing marks. The respondent, therefore, approached the National Commission for SC/ST and also petitioned the Central Administrative Tribunal⁴ by way of OA 1526/2022, in which the impugned judgment has come to be passed. The respondent's prayer, before both fora, was for a direction to the petitioners to award him that one extra grace mark, which would enable him to pass all papers and secure promotion as AAO.

3. The learned Tribunal upheld the respondent's entitlement to one grace mark in Paper-II and thereby allowed the OA. Aggrieved by the said decision, the Union of India, through the Department of Posts, has approached this Court under Article 226 of the Constitution of India.

4. We have heard Mr. Mishra, learned Counsel for the petitioners and Mr. Nischal, learned Counsel for the respondent at some length.

5. The award of grace marks is admittedly governed by an order

⁴ "the learned Tribunal" hereinafter



dated 20 September 1996 of the Department of Posts, the relevant paragraph of which reads as under:

"However, it has been decided that grace marks not more than what a candidate actually secures in a particular paper should be allowed e.g. if an candidate has secured 17 marks he can be granted a maximum of 16 marks where passing standards is 33 and where passing standard is 50 a candidate can be granted maximum 25 grace marks if he himself has obtained 25 marks. If by doing so a candidate obtains qualifying standards both individual papers and in aggregate he may be declared eligible for review of result subject to fulfilling other conditions for review of result of failed candidates. In case a candidate secured less marks than 17/ 35 as discussed above, these cases should not be considered for grant of grace marks. These guidelines would be applicable for all Departmental examinations and for all categories of staff in whose case such review of failed candidates is allowed under the existing rules."

The use of the expression "should be allowed", employed in the afore-extracted paragraph of the order dated 20 September 1996 makes it clear that there is no discretion with the petitioner insofar as the awarding of grace marks is concerned. Simply put, a candidate would be entitled to one mark less than the marks obtained by the candidate, as grace marks. If, by awarding the grace marks, the candidate clears the paper, so be it.

6. As already noted, the respondent has scored more than the requisite passing marks in all the papers except Paper-II in which he needed only one mark to pass the paper. The respondent having scored 29 marks, was entitled, as per the order dated 20 September 1996, to be awarded up to 28 grace marks. The respondent was, however, seeking only one mark, and the learned Tribunal has, in our view, correctly held that he was entitled to be awarded the said grace mark.



Paras 8 and 9 of the impugned order read thus:

“8. In terms of the aforesaid order dated 20.09.1996 obtained by the applicant by way of an RTI application stated that a candidate who has secured 17 marks can be granted a maximum of 16 marks where passing standard is 33 and where passing standard is 50, a candidate can be granted maximum 25 grace marks if he himself has obtained 25 marks. These guidelines were issued prior to holding the current examination in which the applicant participated.

We are in full agreement that the standard of the examination has to be maintained in order to get best calibre out of best candidates for selection but the rider put by Constitution in the indigenous circumstances of our country that backward classes have given a special treatment in order to uplift them and these guidelines were time to time amended has been questioned time and again before Court of Law since beginning from Indra Sahani onwards but the constitutional provision which has mandated the relaxation no authorities whatsoever can ignore this fact.

9. In view of the aforesaid, we are of the considered view that the applicant is entitled for additional one mark in order to get qualified in the said examination. Thus, we hereby direct the respondents to consider the case of the applicant for grant of one more mark to him. In case, he is otherwise eligible, he shall be considered for the post of AAO. This exercise shall be completed within a period of three months from the date of receipt of a certified copy of this Order.”

7. Mr. Mishra, learned Counsel for the petitioners has drawn our attention to a communication dated 28 January 2020 from the Senior DDG (PAF) in the office of the Department of Posts to the National Commission for Schedule Tribes, paras 1 and 2 of which read thus:

“1. That pursuant to the recommendation of the Hon’ble Commission dated 13.12.2019, the Hon’ble MoC has approved the following proposal:

- (i) The benefit of grant of grace marks to the tune of **10 marks** only should be limited to a single paper.



(ii) Since most of the candidates have failed in paper no. IV (i.e. Telecom Accounts and USOF), therefore, the competent authority approved granting of above grace marks uniformly to all the candidates in paper IV.

(iii) The candidate should have secured minimum pass percentage marks (30%) in all other papers except the one in which the individual failed i.e. paper IV.

(iv) The candidate should have done reasonably well in all other subjects/papers.

2. Accordingly, the category wise lists of the candidates of SC and ST candidates based on the above criteria, was prepared and promotion orders in respect of total 54 candidates with the break of SC-21 and ST-33 was issued vide this office OM No. 301(35)/2019/PA-Admn. III/3127-3285 dated 20.01.2020 promoting them to the cadre of Assistant Accounts Officer of IP&TAFS Gr. B.”

8. Mr. Mishra also places reliance on grounds G and H of the present petition, which may be reproduced as under:

“G. Because Ld. Tribunal erred in not appreciating that 94 candidates failed in paper-I, 119 in paper-II, 77 in Paper-III, 336 in paper-IV, 62 in paper-V and 43 in Paper-VI and 36 unfilled vacancies, and by no means all the failed SC/ST candidates could be satisfied, therefore, the decision to extend benefit of grace marks in Paper-IV is most appropriate and just decision, which has been taken in the present case and implemented. Therefore, the impugned order dated 23.03.2023 in OA no.1526/2022 to grant one additional mark to the applicant in Paper-II is not tenable and appropriate in the facts of the case.

H. Because the Tribunal while passing the impugned order dated 23.03.2023 erred in not passing the OM/order dated 20.09.1996 which deals, inter-alia, with the issue as to how the relaxation of granting grace marks is to be extended and how many marks can be awarded as grace marks, has already been complied with the petitioner in the present case by granting benefit upto 10 grace marks in Paper-IV, therefore, the petitioners having taken and approved the decision of grace marks in paper-IV, could not have been directed to grant additional mark to the applicant in paper-II as any special treatment to the applicant shall not only



result in discrimination to the other reserved category candidates but it would also not be sound exercise of discretion vested in the petitioners to award relaxation in the form of grace marks.”

9. Mr. Mishra submits that the decision to restrict the number of passing marks across the Board to 10 was taken in the interest of filling up as many vacancies as possible.

10. While we have no doubt about the *bona fides* of the decision to grant 10 grace marks across the Board, the decision cannot be contrary to the petitioner’s own office order. The decision taken by the petitioner, as reflected in the afore-extracted communication dated 28 January 2020, would indicate that irrespective of the marks obtained by the candidate, 10 grace marks would be awarded. In other words, a candidate who would obtain 8 marks would also get 10 grace marks and a candidate who would obtain 20 marks would also get 10 grace marks. This is clearly contrary to the OM dated 20 September 1996 of the petitioner, and cannot sustain.

11. The learned Tribunal has only held that the respondent was entitled to the benefit of the OM dated 20 September 1996 for one additional mark in Paper-II, as sought by him and has directed the petitioners to consider the case of the respondent in that regard.

12. If the respondent is otherwise eligible, the Tribunal has held that the respondent be considered for the post of AAO.

13. We do not find any error in the impugned decision of the



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learned Tribunal as would justify interference within the limited confines of our jurisdiction under Article 226 of the Constitution.

14. The petition is accordingly dismissed.

C.HARI SHANKAR, J.

DR. SUDHIR KUMAR JAIN, J.

OCTOBER 3, 2024

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Click here to check corrigendum, if any