

**(2022) 04 CAT CK 0016**

**In the Central Administrative Tribunal**

**Case No :** Original Application No. 180, 00167 Of 2019

Sobha S & Others

APPELLANT

Vs

Union Of India & Others

RESPONDENT

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**Date of Decision :** 08-04-2022

**Acts Referred:**

**Citation :** (2022) 04 CAT CK 0016

**Hon'ble Judges :** P. Madhavan, Member, J; K.V. Eapen, Member A

**Bench :** Division Bench

**Advocate :** T.C. Govindaswamy, O.M. Shalina, S. Sabarinadh, Indulekha Joseph, Thanuja Roshan

**Final Decision :** Disposed Of

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## Judgement

P. Madhavan, Member J

1. This is an Original Application filed by the applicants seeking the following reliefs:

"i) Call for the records leading to the issue of Annexures A1 to A3 and quash the same to the extent they proceed as if the process of selection is through a Limited Departmental Competitive Examination;

ii) Declare that A1 is only an examination equivalent to the Subordinate Accounts Service Examination conducted by the Department of Posts & Telecommunications and declare further that passing of which, is only an eligibility condition to be considered for promotion as Assistant Accounts Officers, and that all those who qualify in the said examination are subject to fulfillment of other conditions in column 11 of the schedule to Annexure A7 eligible to be considered for promotion by the Departmental Promotion Committee in the manner specified in A6 OM of the Department of Personnel & Training;

iii) Direct the respondents to consider the applicants for promotion to the post of AAO in the order of their seniority in terms of Annexure A6, and direct further to

grant them all the consequential benefits of promotion from the date from which those who are included in A3 have now been promoted, including arrears of pay and allowances, arising there from;

iv) Award costs of and incidental thereto;

v) Pass such other orders or directions as deemed just and fit by this Hon'ble Tribunal."

2. The applicants are presently working as Senior Accountants. The grievance of the applicants is that they were denied a fair and lawful consideration for promotion to the post of Assistant Accounts Officer in level-8 of pay matrix against the Recruitment Rules.

3. The respondents had published a notification on 19.4.2018 for recruitment to the post of Assistant Accounts officer as Annexure A1. The eligibility criteria shown was as per the Indian Posts & Telecommunications Accounts & Finance Service Group-B (Accounts Officers & Assistant Accounts Officers) Recruitment Rules, 2018 which was published as per notification in Gazette dated 2.4.2018. The name of the examination was "Limited Departmental Competitive Examination for Recruitment to AAO cadre of IP & TAFS, Group-B for the year 2018-19". A corrigendum was also issued vide Annexure A2 giving some more details regarding the last date of receipt, pattern of questions, etc. The respondents had published the results by OM dated 1.10.2018 (Annexure A3) showing a merit list of 949 candidates. The applicants are challenging the conduct of LDCE and preparation of the merit list on the following grounds:

i) As per the Recruitment Rules passing of SAS examination or equivalent examination conducted by a competent authority specified by the department is one of the eligibility conditions prescribed. The LDCE conducted by the respondents is against the Recruitment Rules. The passing of LDCE can only be considered as an eligibility test. Hence, the selection done on the basis of merit in the LDCE is arbitrary and ultra virus to the Recruitment Rules.

ii) The respondents ought to have published the entire list of persons who had passed the examination including that of applicants who got the pass marks.

iii) The recruitment is made only by promotion and only the eligibility condition alone can be considered for selection. No merit list can be prepared.

iv) No Departmental Promotion Committee as per rules was held for granting promotion and hence the promotions are against the Recruitment Rules.

4. The applicants in this case had participated in the examination and they were qualified to come up in the merit list. It is born by records that the applicants in this case along with others had earlier filed OA No. 360 of 2018 to quash the notification dated 2.4.2018 (new Recruitment Rules –Annexure A7) being illegal, discriminatory, etc. But this Tribunal as per order dated 25.5.2018 dismissed the said OA declining to stay the Recruitment Rules and held that "merit is an

important criteria to be considered for advancement of career as also seniority and we cannot fault the authorities for having followed this principle". However, the Tribunal directed the respondents to consider the representation of these applicants for relaxing the rules and exempting them from taking LDCE before the date of the examination.

5. The respondents Nos. 1 to 5 filed a detailed reply statement stating various reasons in support of the selection process undertaken. According to them as per the VIth Central Pay Commission recommendations the cadre of JAO and AAO were merged into one cadre by name AAO w.e.f. 1.1.2006. Further Group-B cadre of DoP and DoT was amalgamated as a unified cadre as AAO/AO/Sr. AO w.e.f. 1.9.2009. Owing to this, the four sets of Recruitment Rules in operation existing in DoP & DoT i.e. (i) The Department of Telecommunication (Junior Accounts Officer) Group-C Recruitment Rules, 1986, (ii) The Department of Telecommunications (Assistant Accounts Officer) Recruitment Rules, 2000, (iii) The Department of Posts (Junior Accounts Officer) Group-B (Non-Gazetted) Recruitment Rules, 2002 and (iv) The Department of Posts (Assistant Accounts Officer) Group-B Recruitment Rules, 2005 have to be merged and a revised Recruitment Rule for filling up of the posts of AAO in DoP & DoT had to be framed. Accordingly, after much discussion at various levels the present Recruitment Rules (Annexure A7) was accepted and published. The present AAO cadre comes under Group-B gazetted cadre in PB-2. The cadre also became an all India cadre. Before the amalgamation, JAO cadre was only a circle cadre and it was non-gazetted.

6. In the earlier Recruitment Rules of JAO of 2002 of DoP, the passing of examination conducted by the Department was only a qualifying examination irrespective of the vacancies available. So a large number of employees appeared in the departmental examination and got qualified. But only a limited number of persons could get promotion owing to shortage of vacancies. There existed large number of qualified persons from 1995 onwards. So the Department took a decision to defer the holding of JAO-Part II examination till the position is improved. The said waiting list could be exhausted only after the amalgamation of Group-B cadres in 2009. But owing to delay in the approval of the Recruitment Rules for JAO/AAO cadre, further examination got delayed. The new Recruitment Rules was prepared as per guidelines issued by DoP&T, UPSC and DOLA. The various schedules in the Recruitment Rules were prepared as per the guidelines contained in Annexure A13 dated 31.12.2010. As per Column-5 (Whether selection post or non-selection) it is clearly shown as "Selection". It is mentioned in DoP&T OM dated 31.12.2010 under the heading "selection or non-selection" appearing in point 3.6 as under:

"3.6. Column 5 (Whether selection post or non-selection post)

When promotion is proposed to be made on the basis of merit, the word "Selection" may be used and when promotion is to be made on the basis of seniority subject to the rejection of the unfit, the word "Non-Selection" may be

used. In the case of direct recruitment or deputation or absorption, the entry should be "Not Applicable". In the case of composite method of recruitment (i.e. Promotion / deputation), the words "Not Applicable" may be used."

7. So it is clearly stated in the Recruitment Rules in schedule 5 whether selection post or non-selection post as - "Selection". Thus, there is no doubt that an element of merit is there in the selection process and seniority alone cannot be considered. The respondents taking into considerations of all these aspects decided to go for an LDCE as notified in Annexure A1. The schedule of Annexure A1 clearly gives the eligibility condition i.e. those who have passed SAS examination or equivalent examination conducted by the Department of Posts & Telecommunications or any other competent authority specified by the Department are eligible to apply. There is nothing wrong in the drawal of merit list on the basis of the available vacancies as per Annexure A3. The applicants have no locus standi to challenge the procedure of selection after undergoing the selection process. The applicants herein had challenged the Recruitment Rules itself and failed to get it quashed before the examination was conducted.

8. The private respondents Nos. 6 to 12 who were successful in getting promotions also filed reply more or less adopting the contentions of the official respondents. They also raised the contention that the present applicants had earlier filed OA No. 360 of 2018 for quashing the new Recruitment Rules. They had no case at that time that the LDCE had to be treated as only a qualifying examination. So the present OA is also barred by the principle of res-judicata.

9. The applicants had filed a rejoinder referring the short question which they want to consider in this case in paragraph 4 i.e. "whether the conduct of the respondents in resorting to a process of recruitment by LDCE is consistent with Annexure A7 Recruitment Rules or not and if it is not whether Annexures A1 to A3 would be sustainable".

10. We have heard the learned counsel appearing for the applicants Advocate Shri T.C. Govindaswamy, learned counsel appearing for the respondents Nos. 1 to 5 Advocate Smt. O.M. Shalina, SCGSC and the learned counsel appearing for the private respondents Advocate Smt. Thanuja Roshan George and Advocate Mr. S. Sabarinadh. We have carefully gone through the pleadings, the Recruitment Rules and various documents produced in this OA.

11. The counsel for the applicants mainly contends that there is no provision in the new Recruitment Rules (Annexure A7) for conducting an LDCE examination. He further contends that since SAS examination was not conducted for a long time and considering the subject involved in the examination papers, it can at the most be considered as a qualifying examination and not a competitive examination. The respondents ought to have considered it as only a qualifying examination and all those who got the minimum marks should have been included in the list and promotion should have been given on the basis of seniority and grading obtained in the confidential reports as per guidelines for

promotion produced as Annexure A6.

12. But the counsel appearing for the respondents would contend that column 11 of the Recruitment Rules provides an option other than SAS i.e. "equivalent examination conducted by Department of Posts and Telecommunications or Competent Authority specified by the Department". Since the SAS examination were not conducted for a long time and since the mode of recruitment shown in column 5 of the Recruitment Rules is specifically shown as "Selection" the Department decided to conduct an LDCE as an equivalent examination incorporating the element of selection on the basis of merit. So according to the counsel for the respondents, the LDCE examination conducted has to be treated as a qualifying as well as competitive examination based on merit.

13. On going through the situation faced by the Department and since the candidates are coming from two Departments i.e. DoP and DoT the merit should be a criterion for selection. The applicants are coming from two Departments and it is very difficult to prepare a common seniority list on the basis of benchmarks and grading obtained by the candidates. Foreseeing the said difficulties, the Recruitment Rules made it clear in column 5 that the mode of recruitment is by "Selection". As per column 11, the rule also provides for a provision for the Department to prescribe "equivalent examination" instead of the Subordinate Accounts Service Examination (SAS) which was not conducted for long time. So we find nothing wrong on the side of the respondents deciding to go for an LDCE to give promotions to the employees.

14. Now the question is whether the LDCE is to be considered as a qualifying examination alone and not a competitive examination. On a careful consideration of the provisions of the Recruitment Rules, the mode of recruitment is shown as "Selection" and as per the guidelines issued by the DoP&T dated 31.10.2013 (Annexure A13) when promotion is made on the basis of merit the word "Selection" has to be shown in the schedule. In this case also in Annexure A7 column 5 shows that the method of recruitment is "Selection" and this shows that an element of merit is to be involved in the process. So the examination to be conducted should be qualifying as well as based on merit i.e. competitive in nature. So we find that there is no inherent contradiction with the rules for recruitment in this case. We further find that the selection conducted is both qualifying and competitive in nature. Therefore, merit has also to be taken into account when the recruitment by promotion is undertaken. We find that the conduct of the LDCE in these circumstances is not against the Recruitment Rules. We hold that the argument of the counsel for the applicants that the LDCE can be considered at the most as a qualifying examination alone is not acceptable.

15. The another argument raised by the learned counsel for the applicants is that when promotion is adopted as the mode of recruitment, only the seniority and benchmark grading alone can be considered for promotion. He mainly relies on Annexure A6 OM of the DoP&T dated 8.2.2002. The said OM was issued giving guidelines when mode of selection is "selection-cum-seniority" and "selection by

merit". According to him even juniors were promoted in this case. On a reading of the said OM, we find that this OM applies to promotions where selection mode shown is selection by seniority and selection by merit. In cases where up to and excluding Group-A posts, if the mode happens to be "selection-cum-seniority" then the benchmark prescribed is "good" and officers obtaining such benchmark are arranged in order of seniority in the lower grade. So there will be no supersession among those who met same benchmark. In cases of promotion from lower groups to Group-A and mode of promotion happens to be "selection by merit" the minimum benchmark prescribed is "good" and only those officers who get the said benchmark are promoted in the order of merit as per grading obtained. Thus officers getting a superior grading supersede those getting a lower grading. According to the counsel for the applicants, the candidates should have been selected on the basis of benchmark and seniority and not based on marks obtained. We had earlier discussed whether merit should form an element in the selection process. We had found that the LDCE examination had two aspects i.e. one qualifying and other as competitive and merit is an element for selection. This is not a case where the mode of selection is based on selection-cum-seniority or selection by merit. The mode is "Selection" which takes into account merit and it is a selection post. So, the above OM of the DoP&T (Annexure A6) has no application to the present case. We find no merit in this argument also.

16. The other argument raised by the counsel for the applicants is that as per the Recruitment Rules column 12 a departmental promotion committee has to be constituted for Group-B and the respondents have granted promotion to respondents Nos. 6 to 12 and others without placing the selection list along with other details before the DPC and hence the promotions are illegal. We have gone through the pleadings and various documents produced by both applicants and respondents in this case. We could not find any answer given in the pleadings of respondents in the OA either in the reply statement or in the additional reply statement filed by the respondents. Since the respondents have not denied this allegation we find that there is merit in this argument. The respondents ought to have promoted the candidates after placing them for consideration before the DPC. So there is an irregularity occurred in promoting respondents Nos. 6 to 12 and others in this case. The examination conducted was an all India examination. This irregularity can be cured by placing the names of the selected candidates along with service details before a properly constituted DPC for this purpose. Hence, we hereby direct the respondents to conduct a DPC as provided under the Recruitment Rules within a period of three months from the date of receipt of a copy of this order. The promotions already granted will be treated as ad-hoc promotions till the promotions are ratified by a properly constituted DPC as per the Recruitment Rules.

17. The counsel for the respondents Nos. 6 to 8 and 9 to 12 had invited our attention to an earlier OA No. 360 of 2018 filed by the applicants herein along with some others which was disposed of by this Tribunal on 25.5.2018 wherein

the following reliefs were claimed:

“(1) Call for the records leading to issuance of Annexure A1 and to quash the same as it is illegal and amounts to discrimination of the applicants which violates their rights guaranteed by the Constitution;

(2) Declare that A1 and further proceedings thereto are illegal in the light of the patent exclusion of the applicants for a fair participation in the LDCE;

(3) Set aside A2 quashing the same being unreasonable and unjustifiable as regards the applicants;

(4) Direct the 1st respondent to consider A3 on merits in the light of Rule 8 of A1, prior to conduct of LDCE on the basis of A2 syllabus;

(5) Direct the respondents to appoint and regularize the applicants in the post of Assistant Accounts Officer (AAO) cadre in the Postal Accounts Offices, as a onetime measure, before further processing of applications received pursuant to A1;

(6) Grant such other reliefs which this Hon’ble Tribunal may deem fit, proper and just in the circumstances of the case;

And

(7) Award costs to the applicants.”

The said OA was disposed of on merits holding that there is no sufficient ground to stay the Recruitment Rules and held that merit is an important criteria to be considered for advancement in career as also seniority and we cannot find fault with the authorities for having followed this principle. The above OA was disposed of by giving a direction to consider their representation in the light of Rule 8 i.e. power to relax and exempt them from LDCE before the examination is conducted. The decision in that OA has become final as no OP (CAT) was filed against it. The respondents rejected the representation of the applicants as per order dated 2.7.2018 (Annexure A9). Thereafter, the applicants participated in the examination fully knowing that merit obtained in the LDCE will be a criterion for promotion. The applicants ought to have raised the contentions made in this OA in their earlier OA. Now it seems that having failed to come up in the merit list, the applicants had filed another OA raising some other contentions. We find merit in the arguments of the private respondents Nos.9 to 12 in this regard.

18. In the result, we find no merit in the arguments raised by the applicants except the argument raised by the applicants in paragraph 16 of this order. Accordingly, we dispose of this Original Application with the following directions:

i) The respondents are directed to place the select list of the persons who came up in merit list before a properly constituted DPC and grant promotion as per rules.

ii) The respondents are directed to treat the promotions already granted as ad

hoc one till DPC approves it.

iii) The respondents are also directed to make it amply clear in the notification itself that the LDCE going to be conducted will be competitive as well as qualifying in nature in future notifications for promotions.

19. The Original Application is disposed of with these directions. No order as to costs.