**(1974) 04 DEL CK 0028**

**In the Delhi High Court**

**Case No :** Civil Writ Appeal No. 1211 of 1973

Yog Raj Gupta and Another — APPELLANT

Vs

Union of India and Others — RESPONDENT

**Date of Decision :** 24-04-1974

**Acts Referred:**

**Citation :** (1974) 10 DLT 244 : (1975) LabIC 959

**Hon'ble Judges :** P.N. Khanna, J;M.R.A Ansari, J

**Bench :** Division Bench

## Judgement

P.N. Khanna, J.

(1) The petitioners herein are Yog Raj Gupta and Bhoj Kanwar Sharma, petitioners Nos. and 3, who are working as selection grade auditors in the grade of Rs. 210-380 with the Chief Pay & Accounts Officer, Ministry of Supply. Another petitioner, H. C. Patiar is petitioner No. 2, who was working as an auditor in the same grade, but was posted on deputation with Director General of Border Security Force. He has since rejoined the Office of the Chief Pay & Accounts Officer with effect from September 12, 1973 on reversion from deputation. The three respondents are, Union of India (respondent No. 1), Comptroller & Auditor General of India (respondent No. 2), and Chief Pay & Accounts Officer, Ministry of Supply (respondent No. 3). Prayer has been made in the petition for a writ .of mandamus directing respondent No. 2, to declare the petitioners successful in the Subordinate Accounts Service Part Ii Examination held in November, 1972, by giving them ten grace marks each and thus treating them at par with certain other candidates, who were given such grace marks.

(2) This departmental examination, known as Subordinate Accounts Service Examination, herein referred to as ''SAS examination'', is conducted every year by respondent No. 2 in the month of November, in two parts, i.e. Part I and Part II. It is divided into several branches, two of which are "ordinary branch" and "supply audit branch". No candidate is allowed to take the Sas examination of any branch other than the branch appropriate to the establishment in which he is

 

serving. The Sas (ordinary branch) examination is open only to eligible staff working in the civil audit and accounts office like the office of the Accountant General of Central Revenues, Accountant General Commerce, Works, Misc. etc. The staff belonging to the office of the Chief Pay & Accounts Officer (as is the case with the petitioners) can appear only in the examination of Sas (supply audit branch)

(3) Prior to the year 1971, the Chief Pay & Accounts Officers-Organisation had a common/joint cadre with the Accountant General, Commerce, Works & Misc. But a separation of the cadre took place from March 27, 1971. At that time, it was agreed between the Government of India, Ministry of Supply on one side and Comptroller and Auditor General of India on the other, that the latter would continue, permitting the staff of the Chief Pay & Accounts Officer''s Organisation to appear in the Sas (supply audit branch) examination. Since then respondent No. 2 has been conducting the said examination for the candidates belonging to the Chief Pay & Accounts Officer''s Organisation also. Two papers, viz. "advance book keeping with elementary Costing & Stores Control (theoretical)" and "Constitution of India", carrying 250 out of 500 marks are common to both the branches. The remaining two papers, one of theory and the other of practical in departmental subjects carrying 250 marks are not common, the syllabi for which are completely different. To qualify in the examination"'' the candidate is required to secure 40% of the marks in each individual paper and 45% in the total aggregate. Respondent No. 2 has the powers of moderation of results of candidates in each branch. The relevant instructions are, contained in the Comptroller & Auditor General''s Manual of Standing Orders (Administrative), Volume 1.Para, 215, dealing with examination for Sas (ordinary branch), reads as follows:

"215. The papers of all the subject''s of this branch will be set and marked by officers selected by the Comptroller and Auditor General and moderated under his orders in his Headquarter office."

. A similar provision is made in. para 224 for Sas (Supply audit branch) which reads as follows :

"224. The papers of all the subjects of this branch will be set and marked by officers selected by the Comptroller and Auditor General and moderated under his orders in his Headquarter Office."

. Candidates of different branches (including the petitioners) appeared for different examinations/appropriate to their respective ''branches ''in November 1972 "The petitioners ''failed to secure 40% marks in the subject "advance ''book keeping,''etc." and could not, Therefore, be declared successful ,Respondent ..No.'' ''2 decided to_ grant ten grace marks to make up the deficiency in one or more ''papers or in the aggregate to certain candidates Belonging to Sas (ordinary branch).

(4) There is '' no dispute about these facts. The only controversy is whether the

 

grant of grace marks to the candidates of the ordinary branch was a proper exercise of discretion by respondent No. 2. This, according to the petitioners, was an arbitrary and unconstitutional exercise Of descretion. Respondent No. 2, who gave gra.ce marks to one branch and denied the same treatment to the other, according the petitioners, acted in violation of Articles 14 of the Constitution India. This, according to them, was the only reason for their failure in the examination. Their success, it is asserted, would have improved their futu''re promotion prospects /especially of petitioners Nos. 1 and 3, who are about to complete 30 years of age.

(5) Respondents, ''on the other hand, have denied the exercise of any arbitrary or unconstitutional discretion by respdndentNo.2in violation of Article 14 of the Constitution. The candidates ''of the Chief Pay & Accounts Officers Organisation, it is stated belong_to a separate cadre different from the'' cadres of the Accountant general, Commerce, Works & Misc., and Accountant General of Central Revenues. These cadres are not inter-changeable. The examination for one branch, it is pleaded,'' was substantially different from that of-the- other There was thus a reasonable classification- Within each branch, it is asserted by the "respondents ''no discrimination was shown as uniform criteria were applied. The over-all pass percentage of these two branches .(ordinary branch and supply audit- branch)''taking into account the number'' of candidates'' who appeared in the examination from all offices all over India had been shown by-the respondents to be as follows for the years 1972/1971''and.''1970:

"Name of the Year Total No. Total No, Pass Per Branch appeared Declared Centage passed Ordinary 1972 2091 1315 62.9% 1971 1610 1153 71.6% 1970 1056 699 66.2% Supply Audit 1972 70 60 85.7% 1971 75 52 69.3% 1970 56 38 67.9%"

It is pointed out that the overall pass percentage in the supply audit branch in November, 1972 examination was much higher than that of the ordinary branch for the same year and also for the two preceding years. The petitioners do not dispute this. As such, the candidates belonging to the supply audit branch, it is stated, could have no legitimate cause for complaint.

(6) Mr. S. K. Bisaria, the learned counsel appearing on behalf of the petitioners, contended that the candidates belonging to the &ordinary branch and those belonging to the petitioners'' branch (supply audit branch) all constitute one class and there was no rationale for the classification amongst the candidates of the same class. There was, Therefore, no justification to add ten grace marks to the result-of the candidates belonging to the ''ordinary branch'' while denying the same concession to the petitioners. The petitioners, it was contended, would suffer and lose their promotion only because of the exercise of discretion vested in respondent No. 2 in this arbitrary manner. The contention of Mr. Bisaria, however, is without any basis. Candidates belonging to the ordinary branch and candidates belonging-to the supply audit branch to which the petitioners belong, cannot be said to constitute one class. The two branches are entirely separate

 

and distinct, and are not inter-changeable. Each forms a separate independent cadre, being a different unit sanctioned separately and having independent existence of its own. The candidates of the ordinary branch admittedly are under the overall administrative control of the Comptroller and Auditor General, while the candidates, including the petitioners, of the supply audit branch belong to an entirely different cadre indisputably under the administrative control of the Chief Pay & Accounts Officer, who is under the Secretary of Ministry of Supply. In the matter of promotion the candidates of the two cadres have to look forward to higher positions only in their respective cadres. By the very nature of their respective branches of establishments there is an inherent and distinct classification of the persons involved. Even the examinations of these two branches are different from each other and a candidate is not allowed to take the Sas examination of a branch other than that which is appropriate to the establishment in which he is serving. The results of the two branches are separate and moderation in one cannot affect the result of the other. It is, Therefore, not correct to say that even for examination purposes candidates from all branches belong to the same class, as was contended by Mr. Bisaria. There is no dispute that the overall pass percentage in the supply audit branch in November, 1972 examination was much higher than that of the ordinary branch, it being 85.7% as against 62. 9% in the case of ordinary branch. While the total number of candidates belonging to the Supply audit branch, who appeared in the examination was 70, the candidates from the ordinary branch nmubered.2.091. In order to have a sufficient numeral of qualified candidates in the ordinary branch, there- fore, it was considered necessary to moderate the results of the examination relating to that branch. No such exigency arose in the case of the supply audit branch. The moderation of the result in the ordinary branch cannot amount to discrimination, therefore in favor of that branch and against the supply audit branch. The reliance placed by the petitioners on Article 14 of the Constitution, in their attempt to challenge the exercise of discretion-by respondent No. 2 for effecting moderation in the ease of candidates belonging to the ordinary branch is not justified, as that Article does not prohibit classification altogether. What that Article really provides is that the classification has to be justified on the basis of the nexus between the classification and the object to be achieved. (See Minor P. Rajendran v.-State of Madras and others The classification of the various candidates in this case, can in no case. be said to be unreasonable as not only they belonged to separate and distinct cadres and classes, but also because the object to be achieved was not to select for qualification, the best talent out of all the cadres put together, but was to enable candidates from each cadre to obtain the required qualification for the purposes of promotion in their respective cadres. Candidates from the two cadres were at no time to compete with each other in the matter of their next promotion. This was,therefore,.a clear case of classification having a reasonable relation with the object to be achieved. There was no question of the candidates of one class being considered when promotions of candidates ef the other class was being decoded upon. No question of any discrimination was, Therefore, involved. We are, Therefore, not prepared to accept the contention of Mr. Bisaria that the exercise of discretion by respondent "No. 2 has resulted in discrimination in favor of the candidates belonging to the ordinary branch and against the petitioners and other candidates belonging to the supply audit branch,

(7) It was then .contended by Mr. Bisaria that the only-paper in which the petitioners had failed was on the subject of "Advance Book Keeping", which was a paper common to them and the candidates belonging to the ordinary branch. It was in this paper that moderation had been effected, he urged, in favor of candidates belonging to one particular branch only. Moderation could bs effected not in respect of any particular candidate or candidates, but according to Mr. Bisaria, in respect of the various papers, which would equally affect all candidates appearing in that paper. This contention is unfounded. It has been denied that moderation was effected in -the paper of "Advance Book Keeping" alone. At the instance of Mr. Bisaria, we directed Mrs. Urmila Kapur, the learned counsel for the respondents, to produce before us for our examination the relevant orders passed by respondent No. 2, when by the grace marks were directed to be added We found that the contention of .the petitioners is incorrect. The grace marks .were not directed to: be. added particularly in the paper of Advance Book Keeping. They were directed to be added to make up the deficiency in one or more papers or in the aggregate in respect of the ordinary branch candidates. ''This did not affect the petitioners at all. They have no cause of grievance. There is nothing to prevent moderation of results in respect of candidates from any one branch. The contention of the learned counsel for the petitioners, Therefore, has no basis.

(8) It was next contended by Mr Bisaria that at the time of separation of cadres, it was made clear that the terms and conditions agreed upon in relation to the officers or other staff transferred shall not be less favorable to them than those to which they were entitled before such transfer. According to him the candidates from the supply audit branch were entitled to continue getting all the benefits including that of moderation of papers in the examination, which they would have had in the common cadre. This contention cannot be accepted. Moderation of papers or the award of grace marks in the examination cannot be said to be a right which any particular candidate enjoys and which requires any protection. This is not a part of the terms and conditions regarding service matters, which alane were protected.

(9) Mr. Bisaria then contended that candidates belonging to different branches after passing the Sas Part It examination are eligible to higher promotion irrespective of the branch to which they belonged. He cited the example of one Mr. N. K. Jain, who belonged to supply audit branch and who after qualifying Sas examination was selected to Indian Audit & Accounts Service and is now working as Deputy Accountant General in the office of the Accountant General of. Central Revenues. Certain other examples mentioned in the writ petition were also cited by the counsel, in his attempt to show that the employees of supply audit branch

 

and those of the other branches belong to a common " group " from whom promotions are ultimately effected to the Indian Audit and Accounts Service. This contention of the learned counsel is devoid of merit. The Sas examination enables the candidates on their success to acquire eligibility for the next promotion in their own cadre to Subordinate Accounts (Class Iii non-gazetted) Service, the next post being that of Section Officers/Accountants. The further promotion they can hope to get is Account Officers/Audit Officers. Promotion to Indian Audit and Accounts Service, it has been explained in the reply affidavit filed by the respondents, is governed by altogether different considerations. Recruitment in that service is not made by promotion in any of these cadres. It is dons partly by direct recruitment through a competitive examination conducted by the Union Public Service Commission and partly by promotion, after consultation with the Union Public Service Commission of selected members of the Subordinate Gazetted and Ministerial establishments. This recruitment by promotion is normally made by selection from class Ii of the gazetted officers of the various branches of .Indian Audit & Accounts Service and the Chief Pay & Accounts Officers''s Organisation. The petitioners belong to the cadre of Auditors/ S. G. Auditors. Their normal overrules of promotion are restricted to the Sas cadre of the Chief Pay & Accounts Officer''s Organisation. The mere fact that Class Ii Officers from the various branches from the source from which the promotion by selection to Indian Audit and Accounts Service may be made does notification that at all levels the employees of the different branches "form one cadre or group. There is no dispute that promotion to Indian Audit and Ace-aunts Service (Class I gazetted), which as already observed, is generally made from amongst class Ii officers, is not a normal avenue open to any class of employees, as it is done by selection only. The grant of grace marks in the Sas examination to the candidates from the ordinary branch, Therefore, has nothing to do with the selection of candidates for the Indian Audit & Accounts Service. The contention of Mr. Bisaria, Therefore, is unfounded. The respondents have also stated in their affidavit that all the three petitioners again applied for appearing in Part Ii of Sas (Supply branch) examination, which was held in November ,1973. Petitioner No. 2 was eligible to appear again for Part Ii examination, as he was within the prescribed age limit of 48 years. Petitioner Nos. 1 and 3 were not ordinarily eligible to appear having completed more than 48 years as on the said date. They were, however, specially permitted to avail of a special chance in relaxation of the rules by the Ministry of Supply. The candidature of the petitioners for november, 1973 examination was accepted. Petitioners Nos. 1 and 3 did appear in the examination, but could not succeed. Petitioner No. 2 did not appear. This also shows that the petitioners have no cause for grievance.

(10) We also find that the grant of grace marks to the candidates belonging to a particular cadre is nothing but a mere concession to such candidates, with the object of ensuring availability of sufficient number of eligible candidates in the cadre. This sort of concession Cannot be claimed as a matter of right by the

 

petitioners. In K. V. Rajalakshmiah Setly and another .v. State of Mysore, the Supreme Court observed :

" No doubt some concession had been shown to the first batch of 41 persons and the batches of persons who had come in after the batch of 63 persons also received some concession, but after all these were concessions and not something which they could claim as of right. The State of Mysore might have shown some indulgence to this batch of 63 persons, but we cannot issue a writ of mandamus commanding it to do so."

--- *** --- The petitioners thus have no right to the grant of grace marks,. nor will this court go out of its way to direct the respondents to show this concession to them. We do not, Therefore, find any merit in this petition and the same is dismissed. In the peculiar circumstances of the case, however, there shall be no order as to costs.