

SUPREME COURT OF INDIA

M. Jagdish Vyas

Vs.

Union of India

C.A.No.4345-4346 of 2007

(B. Sudershan Reddy and Surinder Singh Nijjar JJ.)

29.03.2010

JUDGEMENT

Surinder Singh Nijjar, J.

1. These appeals have been filed against the judgment of the High Court of Judicature for Rajasthan at Jodhpur rendered in DB Civil Writ Petition No.5193/04 and DB Civil Writ Petition No.5638/04 dated 3.5.2005. By the aforesaid common judgment the High Court had held that the instructions dated 23.07.2002 had not superseded the qualifications laid down by Central Government in its letter dated 24.6.2002. By virtue of the aforesaid decision of the High Court the 1 appellants have lost the opportunity for being absorbed in the service of Bharat Sanchar Nigam Limited (BSNL). Civil Appeal No.4351/2007 has been filed against the order of Central Administrative Tribunal (CAT) dated 17.11.2005 in O.A. No.116/2005 whereby the CAT has dismissed the O.A. following the decision of the Rajasthan High Court which is the subject matter of the two above noted appeals. We propose to dispose of all the aforesaid appeals by this common judgment.

2. The appellants had challenged the declaration of results of deputationists who had appeared in the Examination for Junior Accounts Officer (JAO), Part-II dated 29.08.2002 in the Central Administrative Tribunal (CAT) Jodhpur Bench, Jodhpur. It was claimed by the appellants that their names had been wrongly omitted from the list of successful candidates in the result dated 29.08.2002 as they had qualified the examination on the basis of the criteria laid down in the letter dated 23.07.2002. By the aforesaid letter BSNL had declared the result of candidates who had qualified in JAO, Part-II Examination held in December 2000. In that letter, the qualifying standards and the grace marks required to be obtained by the successful candidates were as follows:

“General candidates: (1) 33% in each subject and 35% in aggregate.

(2) 6 grace marks in any one subject.

SC/ST candidates: (1) 25% in each subject and 27% in aggregate.
(2) 6 grace marks in any one subject.”

3. The appellants were permanent employees of the Postal Department. They had already qualified the Part-I and Part-II Examination of Junior Accounts Officer (JAO) in the Postal Department. Since the Department of Telecommunications (DoT) was having shortage of qualified JAO, the usual practice was to fill the vacant posts by taking JAOs on deputation from other departments in Union of India. Large number of employees from the postal department used to be taken on deputation in DoT batch-wise depending on the particular need of the borrowing department, i.e., DoT. It seems a policy decision was taken to absorb the employees of the Department of Posts who were qualified for the posts of JAOs and have passed both Part-I and Part-II examinations. The Department of Telecommunications (DoT) also wanted to appoint/promote its own employees who were working on the lower ranks of Clerks, Accountants, and Telephone Operators provided they were prepared to pass Part-I and Part-II Examinations for the post of JAO. Keeping in view the aforesaid objectives, DoT framed a scheme dated 30.9.2000 which inter alia provided as under:

“Due to acute shortage in the grade of Junior Accounts Officers in Department of Telecommunications, this Department had taken certain officials from other Departments, including the Department of Posts, on deputation to work as Junior Accounts Officers and posted them to various Telecom Circles/Units. In order to have the services of these officials on long term basis, in view of large number of vacancies existing in the Department of Telecom in the grade of JAO as on date, it has now been decided, with the approval of competent authority, to absorb these deputationists as Junior Accounts Officers in DoT/DTS/DTO, as one time measure, after conducting an examination. The examination will be conducted on certain terms and conditions set out separately in respect of those officials who will be working on deputation in DOT/proposed BSNL as on 18.10.2000 and for all those who have earlier worked in DoT on deputation basis but have since been repatriated to their parent cadre. Any official holding any post higher than JAO in his parent Department as on 30.9.2000 will not be eligible to appear in the said examination.

2. The said examination will be conducted simultaneously with JAO Telecom Part-II examination and will be only for Paper-VII and Paper-VIII for these deputationists, as contained in `syllabus for JAO, Telecom Part-II Examination. The details of eligibility conditions and also terms and conditions (ANNEXURE I) for regulating their pay and seniority etc., for the said examination, alongwith proforma of declaration undertaking (ANNEXURE-II) required to be given by all the applicants at the time of applying for the examination are enclosed herewith. The application form is also enclosed. Photo copy of the same can be used by the officials for submitting the application.”

4. The policy further stated that all the present deputationists who were willing to be absorbed in DoT/DTS/DTO as JAOs are requested to go through the terms and conditions

and submit their applications in the prescribed proforma latest by 27.10.2000. Under the aforesaid policy, deputationists who had already been repatriated to their parent departments would also be eligible. They were also to submit their applications by the same day. It was also made clear that the appearance in the examination is purely provisional and subject to approval of absorption by the Department of Personnel and Training.

“The DoT also shall have the right to cancel the examination or withhold the results. This policy was accompanied by the detailed terms and conditions subject to which the deputationists were to take the Examination of JAO Part-II for Paper-VII and Paper-VIII. All the deputationists were required to appear in the examination in T.R. paper. The relevant provision of the annexure setting out the terms and conditions for absorption of personnel taken on deputation is as under:

"(B) Examination in T.R. Paper:

(1) The DoT/DTS/DTO will have to appear in Part-VII and VIII of JAO (Telecom) Part-II syllabus, which, inter-alia, consists of theory and practical portion relating to Telecom Revenue Accounts. These papers will be conducted simultaneously with other papers of JAO Part-II exam which will be held for those DOT officials who have already qualified DOT JAO Part-I examination. The examination schedule will be announced by DE Branch of DOT. It is, however, expected that the said exam will be conducted during 2nd fortnight of December 2000 subject to convenience of DE Branch.

(2) The syllabus for TR paper set for deputationists will be same as that for JAO (Part-II) examinees of Department of Telecommunications.”

5. It was further provided that even upon qualification in both the examinations the absorption will be the sole discretion of DoT both in terms of time and number of persons. It was further provided that the deputationists who qualify in the Part-II Examination will be repatriated to their parent department before their absorption. It was further made clear that the DoT is on the verge of corporatisation and that the service conditions as well as the pay attached to the posts of JAOs and above are likely to undergo changes.

6. Knowing the aforesaid conditions, the appellants appeared in the examination in the two papers on 18.10.2000. It appears that on the very same date the examination was also held for the departmental candidates to be appointed on the posts of JAOs.

7. The result of the JAO, Part-II Examination held in December 2000 was declared through Letter dated 23.7.2002. It was stated that the candidates mentioned in Annexure-I had qualified the JAO, Part-II Examination. It further mentioned the approved qualifying standards. General candidates were required to secure 33% in each subject and 35% in aggregate, 6 grace marks were provided in any one subject. For Scheduled Caste/Scheduled Tribe candidate an even lower standard was prescribed. Significantly, the letter also

mentioned that the names of the candidates are not arranged in order of merit. Clause 6 of the letter stated that the result in the case of candidates on deputation from other departments, who were allowed to appear in this examination, will be declared separately.

8. Thereafter, the results of deputationist candidates were declared on 29.08.2002. The appellants who would have been declared successful under the criteria contained in the Letter dated 23.07.2002 were not included in the list of successful candidates. Hence, the appellants had moved the CAT as noticed above. The CAT allowed the application with the following observations:

“We have anxiously considered the submissions of both the parties. In nut-shell, the dispute is whether or not the relaxation letter dated 23.7.2002 (Annexure A-5) is applicable to the deputationists, or it is meant only for non-deputationists i.e. officials of the DoT etc. As per the respondents, the letter dated 24.6.2002 (Annexure R/1) is applicable to the deputationists and since the applicant could not obtain marks at 45% in aggregate (i.e. a total of 90% marks in both the papers VII and VIII put together) he was not included in the impugned result. We observe while going through the various communications/letters/letters issued by the competent authority from time to time that the basic bible for absorption of the deputationists in DoT is letter dated 30.9.2000 (Annexure A/3). We find that nowhere it has been mentioned that for the purpose of 7 eligibility for absorption in DoT, the deputationists are required to clear JAO part-I examination. We also find that the relaxation given in the letter dated 23.7.2002 (Annexure A/5) does not prohibit the deputationists to avail the above relaxations as is available to the officials of the DoT etc. We also observe that the communication dated 24.6.2002 (Annexure R/1) had been issued by the DoT wherein the minimum marks obtained in paper VII and VIII of JAO part II examination should be 45% in aggregate and 40% in each paper. This minimum prescribed percentage of marks were relaxed by issuing of another communication/Letter dated 23.7.2002 (Annexure A/5) which is also applicable in the case of deputationists. We also anxiously noticed that the deputationists were required to pass only in JAO Part- II examination in paper VII and VIII only. As per the letter dated 30.9.2000 (Annexure A/3) wherein the terms and conditions have been laid down in the main body of the letter as well as in Annexure I to IV thereof, stand satisfied and fulfilled. Since the applicant had already cleared the JAO Part-II examination before deputation in DoT therefore only requirement for both the deputationists in DoT for absorption was to pass in paper VII and VIII only.”

9. With these observations, BSNL was directed to include the names of the appellants in the list of successful candidates as per their merit positions and consider their candidature for absorption on the posts of JAOs.

10. The aforesaid decision of the CAT was challenged before the High Court of Judicature at Jodhpur by Union of India/BSNL in two writ petitions. Considering the factual situation as narrated above, the Division Bench considered the two letters dated 23.07.2002 and

24.06.2002 and held that the CAT had not construed the same in the proper perspective. The Division Bench concluded that deputationists who were to be absorbed on the posts of JAOs and the departmental employees seeking appointment by way of promotion on the posts of JAOs who were required to take the JAO Examination, constituted two separate and distinct classes. While the employees of DoT have been offered an opportunity for being qualified to become JAO in the regular line of promotion, deputationists who had not passed one of the requisite essential papers of JAO, Part-II Examination were permitted to make up the deficiency by passing the necessary paper in the examination held by the DoT. The classification was, therefore, on a rational basis. It had a nexus with the object sought to be achieved. Therefore the appellants could not have complained of any violation of their rights under Articles 14 and 16 of the Constitution of India. The Division Bench concluded that the letter dated 23.07.2002 was not applicable to the deputationists. They were governed by the conditions laid down in the letter dated 24.06.2002 which had been placed before the CAT as Annexure R1. It has been held that the appellants failed to place on record any material to show that the aforesaid letter dated 24.06.2002 which was applicable in the case of deputationists, had been superseded by the letter dated 23.07.2002.

“Consequently, the writ petitions filed by the Union of India/BSNL were allowed and the order passed by the CAT was set aside. The applications filed by the appellants were dismissed. Hence the appellants who were the applicants before the CAT have challenged the aforesaid judgment of the Rajasthan High Court in these appeals.”

11. We have heard the learned counsel for the parties. It is vehemently argued by Mr. Sushil Kumar Jain, appearing for the appellants, that the letter dated 23.07.2002 is fully applicable in the case of the deputationists who had appeared in the T.R. paper of the JAO Part-II Examination. The letter dated 24.06.2002 stood modified by the letter dated 23.07.2002. According to the learned counsel, the Division Bench has misread the relevant provisions in various documents. He submitted that the appellants had appeared in the examination pursuant to the scheme dated 30.09.2000. In this letter, it was clearly provided that the syllabus for T.R. paper set for deputationists will be same as that for JAO Part-II examinees of the DoT. A combined examination was held in which candidates of DoT as also deputationists appeared. The conditions of eligibility were prescribed for all the candidates. He emphasised on the use of the expression "this examination" in the letter dated 23.07.2002.

“According to the learned counsel the eligibility criteria had been lowered for all the candidates. Learned counsel submitted that in view of Clause 6, BSNL was entitled to declare the results of the deputationists separately. It was so declared on 29.08.2002. This declaration of the result on 29.08.2002 was a mere continuation of 10 the declaration of result as contained in the letter dated 23.07.2002.

This mere declaration of the result on 29.08.2002 would not permit BSNL to change the qualifying marks for deputationists from 33% in individual papers and 35% in aggregate to 40% in each paper and 45% in aggregate. Had it been the intention of the authorities to provide separate qualifying marks for deputationists, it would have been

mentioned in the letter dated 23.07.2002. Therefore, according to the learned counsel a harmonious reading of the letter dated 23.07.2002 and the letter dated 29.08.2002 would lead to the inevitable conclusion that the decision communicated in letter dated 24.06.2002 stood superseded and modified for the petitioners also.

Learned counsel further submitted that all the candidates whether departmental or deputationists appeared in the same examination for the purposes of being qualified to hold the post of JAO in DoT. All the candidates appearing in the examinations formed one class. Therefore deputationists cannot be discriminated by providing higher qualifying marks in comparison to the marks required by departmental candidates.”

12. On the other hand, learned counsel for the respondents submitted that the deputationists cannot claim to be equated with the departmental candidates. The departmental candidates were being given an opportunity to get promotion in the normal line. The qualifying criteria for the departmental candidates was relaxed as a one-time measure in view of the peculiar situation that was being faced by the DoT employees at that time. The qualifications for deputationists were specifically laid down in the Letter dated 24.06.2002. The aforesaid criteria was not applicable to the departmental candidates. It is submitted that there is no discrimination and the Division Bench had rightly rejected the claim of the appellants.

13. We have considered the submissions made by the learned counsel for the parties. The only issue that needs determination is whether the deputationist candidates could be distinguished from the departmental candidates in the matter of providing minimum qualifying marks in the examination in question. In order to claim parity with the departmental candidates, the deputationists have relied upon the language contained in the letter dated 23.7.2002. The question that arises for consideration, therefore, is whether the deputationists are justified in claiming the parity with the departmental candidates on the basis of the above letter.

14. In our opinion, a bare perusal of the Letter dated 24.06.02 would make it abundantly clear that the qualifying marks have been separately provided for the deputationists who were to appear in the JAO Part-II Examination. The Letter dated 24.06.02 is as under:

“No.21-31/2001-SEA Government of India, Department of Telecommunications, Sanchar Bhawan, 20, Ashoka Road, New Delhi - 110001.

Dated: 24.6.2002 To The ADG(DE),BSNL, Dak Bhawan, New Delhi- 110001
Subject: Qualifying marks of JAO Part-II exam in respect of the exam appeared by deputationists.

Reference: Your U.O. No.10-1/2001-DE, dated 07.05.2002.

I am directed to refer to your letter under reference and convey that the qualifying marks in respect of the papers in the JAO Part-II exam taken by the deputationists

will continue to be the same as that of the departmental candidates i.e. the deputationists have to secure 40% in each subject and 45% in the aggregate provided a minimum of 40% also secured separately in the practical paper with books. 45% in the aggregate for this purpose would mean 90 marks out of 200 marks (200 marks are the maximum marks of paper VII and VIII).

To be precise, as (i) both papers VII and VIII appeared in by the deputationists fall under one subject, (ii) Paper VII and VIII constitute the aggregate papers in the Exam for the deputationists and (iii) Paper VIII is practical paper with the aid of books, the following marks should be secured by the deputationists to declare him as qualified.

13 (i) 45% aggregate marks i.e. total of 90 marks in both papers VII and VIII put together.

(ii) A minimum marks of 40% in paper VIII (Practical paper with aid of books).

(iii) No minimum marks is required in paper VII.

SD/- (D.
SELVARAJ) ADG (SEA)”

15. A perusal of the aforesaid letter clearly shows that it provided qualifying marks of JAO, Part-II Examination for deputationists. The information has been given on a request made by BSNL for clarification.

16. The letter specifically refers to "qualifying marks of JAO, Part-II Examination in respect of the exam appeared by deputationists". It is then stated that the qualifying marks in respect of the papers in JAO, Part-II exam taken by deputationists will continue to be same as that of the departmental candidates. It is further clarified that deputationists have to secure 40% in each subject and 45% in the aggregate.

17. From the above it becomes clear that the deputationists were being treated as a class apart from the departmental candidates. It also becomes apparent that the conditions enumerated in the aforesaid letter did not apply to the departmental candidates. In our 14 opinion there is no merit in the submission of Mr. Sushil Kumar Jain that since the letter sated that the marks would be the same as that of the departmental candidates, the conditions laid therein also apply to departmental candidates. The aforesaid expression was clearly only indicative of the general standard that was expected of all the examinees. No material was placed on the record either before the Tribunal or before the High Court to show that there has been any relaxation in the standard or the minimum marks required to be obtained by the deputationists. The qualifying marks prescribed in the letter dated 24.06.02 were not in any manner affected by the Letter dated 23.07.02 so far as the deputationists were concerned. It related only to the declaration of result of the departmental candidates. The letter dated 24.6.2002 issued with the approval of Member -F of BSNL had provided the lower standard of 33% for each subject and 35% in aggregate exclusively for the examination held in

December, 2000. It appears that a one time concession had been given to the departmental candidates in special circumstances. If the standard had been lowered for the deputationists also, the letter would have made a specific provision in that regard. The fact that the names of the successful candidates were not arranged in order of merit also indicates that the letter related only to the departmental candidates. The intention was clearly to induct as many candidates from the lower ranks of Clerks, Accountants and Telephone Operators 15 working in DoT to the higher posts of JAO provided they had reached the bare minimum standard. On the other hand, it is clearly stated in the letter dated 29.8.2002 that the list of deputationists, who have qualified in Paper VII and Paper VIII, have been arranged in order of merit. Therefore, undoubtedly the intention was to absorb only the best from the deputationist candidates.

18. The expression that the qualifying marks for the deputationists will continue to be the same as that of the departmental candidates in the letter dated 24.06.2002 would not mean that the deputationists would ipso facto become entitled for any relaxation in the standard which may have been given to the departmental candidates in the future. Condition No.6 which provides that the result of deputationists will be declared separately would also indicate that the departmental candidates had been segregated from the deputationists. Hence, the criteria for declaration of results for the departmental candidates is different from the deputationists. The results of the departmental candidates have been declared irrespective of the merit of the candidate. On the other hand, the result of deputationists has been declared in the order of merit.

19. The respondents have also given a clear justification for issuing the letter dated 23.7.2002. The relaxation related to the entire 16 JAO Part-II Examination in five papers. All the departmental candidates had to appear in five papers of JAO Part-II Examination. On the other hand, the deputationists appeared only in one subject, i.e., Paper VII and VIII combined. The deputationists had already passed JAO Part-II Examination in their parent Postal Department. Therefore, the requirement of passing Part-I of the departmental examination had been relaxed in favour of the deputationists. They were required only to appear in Paper VII and VIII. Therefore, they could not claim to be equated with the departmental candidates. The rationale for providing the minimum qualifying marks of 40% in each subject and 45% in the aggregate for the deputationists is set out in the letter dated 24.6.2002. There was no scope for any confusion. This criteria has not been relaxed in the case of deputationists in the letter dated 23.7.2002.

20. In our opinion, the final decision has been taken by Government of India for relaxing the minimum qualifying marks for the departmental candidates as a one time measure in order to facilitate the departmental candidates to get promotion to the posts of JAO. Deputationists, on the other hand, had been provisionally allowed to sit in the examination subject to the final decision of the competent authority whether to absorb them or not. These conditions 17 were made known to the deputationists in the policy decision dated 30.9.2000. The categorization of deputationists and the departmental candidates into the two categories, in our opinion, has been rightly upheld by the High Court. The law has been well settled for

many years that members of one homogenous group have to be treated equally. At the same time Articles 14 and 16 do not mandate that un-equals are to be treated as equals. In this case, the classification cannot be said to be either irrational or arbitrary. It had a clear nexus with the objects sought to be achieved, i.e., to fill in as many vacant posts from the departmental candidates working on the lower ranks provided they reached bare minimum qualifying standards in the JAO, Part-II Examination. So far as the deputationists are concerned, the respondents were entitled to insist on recruiting the best from among the deputationists. Hence, the higher criteria for deputationists cannot be said to be arbitrary or discriminatory. Such classification is permissible under Articles 14 and 16 of the Constitution of India. The law that Articles 14 and 16 permit reasonable classification of employees has been settled for many decades and reiterated in a catena of judgments by this Court. We may notice here only the observations made by the Constitution SC 1427] wherein this Court has held as follows:

“The relevant law on the subject is well-settled. Under Article 16 of the Constitution, there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State or to promotion from one office to a higher office thereunder. Article 16 of the Constitution is only an incident of the application of the concept of equality enshrined in Article 14 thereof. It gives effect to the doctrine of equality in the matter of appointment and promotion. It follows that there can be reasonable classification of the employees for the purpose of appointment or promotion. The concept of equality in the matter of promotion can be predicated only when the promotees are drawn from the same source. If the preferential treatment of one source in relation to the other is based on the differences between the said two sources, and the said differences have a reasonable relation to the nature of the office or offices to which recruitment is made, the said recruitment can legitimately be sustained on the basis of a valid classification.”

21. In view of the above, we find no merit in the appeals. We accordingly dismiss the appeals. There will be no order as to costs.