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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 with
Mr. Sanjiv Kumar Saxena, Mr. Mukesh
Kumar Tiwari, Ms. Poonam Shukla, Ms.
Reba Jena Mishra and Ms. Harshita Sharma,
Advs.

versus

SURESH KUMAR MEENA

.....Respondent

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

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

HON'BLE MR. JUSTICE AJAY DIGPAUL

JUDGMENT (ORAL)

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12.02.2025

C. HARI SHANKAR, J.

Review Pet. 17/2025 and CM APPLs. 2398-2401/2025

1. We had, in our order dated 16 January 2025, expressed a tentative opinion that no ground for review of our judgment dated 3 October 2024 was made out. However, as Mr. Ruchir Mishra, learned Counsel for the UOI-review petitioner submitted that the judgment would open floodgates, we gave an opportunity to him to take instructions from his client as to whether the review petitioner was willing to implement the judgment of the Tribunal without treating this matter as a precedent.



2. Mr. Mishra, learned Counsel for petitioner, has today handed over to us a letter dated 4 February 2025 issued by the Director (PA-Legal), Department of Posts, Postal Accounts Wing, which states that the petitioner was not in a position to implement the judgment under review.

3. We have, therefore, considered the merits of the review petition after hearing Mr. Mishra in that regard.

4. The dispute in WP (C) 16671/2023 related to a Limited Departmental Competitive Examination¹ undertaken by the respondent Suresh Kumar Meena for promotion from the grade of Sorting Assistant to the grade of Assistant Accounts Officer². The respondent belongs to the Scheduled Tribes³. The examination consisted of six stages. Undisputedly, an ST candidate was required to score only 30% marks in each paper to pass. Passing in all the six papers was necessary to qualify for promotion.

5. The respondent scored 40% marks in two of the papers, 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 scored only 29 marks in Paper-II, which was 1 mark less than the passing marks.

6. The respondent approached the Central Administrative

¹ "LDCE", hereinafter

² "AAO", hereinafter

³ "ST", hereinafter



Tribunal⁴, praying for a direction to the petitioner to award him one grace mark in Paper-II, which would enable him to pass all the papers and secure promotion as AAO.

7. The Tribunal allowed the OA and directed that the respondent be awarded one grace mark in Paper-II as prayed by him.

8. Aggrieved thereby, the petitioner approached this Court by means of the present writ petition.

9. The Tribunal placed reliance on an order dated 20 September 1996 of the Department of Posts, the relevant paragraph of which reads thus:

"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 a 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."

10. We concur with the view of the Tribunal that, as the aforesaid paragraph from the instruction of 20 September 1996 required that a mandate used the expression "should be allowed", there was no

⁴ "Tribunal" hereinafter



discretion with the petitioner in so far as the award of grace marks is concerned.

11. It is worthwhile to reproduce, here, paras 6 to 9 of the judgment passed by us, of which review is now sought, thus:

“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.”

12. From the afore-extracted paragraphs, it is evident that the contention of the learned Counsel for the petitioners before us, when the writ petition was argued, was predicated on a communication dated 28 January 2020 from the Senior DDG (PAF) in the office of Department of Posts. The said communication stands extracted in Para 7 of our order, extracted *supra*. The stand taken by the petitioner before us was that, despite the above position, the petitioner had taken a decision to grant upto 10 grace marks in Paper-IV. Thus, while the petitioners were apparently agreeable to grant 10 grace marks in Paper-IV, they were not agreeable to grant even 1 grace mark in



Paper-II.

13. In that view of the matter, we found the decision of the petitioner not to grant 1 grace mark to the respondent in Paper-II as unsustainable and upheld the order passed by the Tribunal.

14. The present review petition seeks review of the said judgment passed by us.

15. The main stand of the petitioner in the review petition is that the policy for review of grant of grace marks for Scheduled Caste and Scheduled Tribe candidates who had not scored the requisite qualifying marks in the LDCE, stood discontinued by a letter dated 8 April 2016. In that view of the matter, the review petition seeks to assert that this Court as well as the Tribunal had erred in following the earlier instruction dated 20 September 1996 of the Department of Posts.

16. Mr. Ruchir Mishra, learned Counsel for petitioner took us to the order dated 8 April 2016. We find that, while this order does talk about discontinuance of the policy for awarding grace marks, it does not rescind, in so many words, the order dated 20 September 1996. There is, in fact, no reference to the said order in the order dated 8 April 2016.

17. We also queried of Mr. Ruchir Mishra, learned Counsel for petitioner as to how, if the Department of Posts had taken a decision to



discontinue grant of grace marks for failed reserved category candidates in the LDCE, they had decided to grant 10 grace marks in Paper-IV. He submits that the decision to grant 10 grace marks in respect of Paper-IV was consequent to interaction with the SC/ST Commission which advised the Ministry to take some steps as several candidates had failed in Paper-IV. As such, he submits that a policy decision was taken by the Ministry, based on the advice of SC/ST Commission that, in order to maximize recruitment, 10 grace marks would be given in Paper-IV.

18. To our mind, the petitioners cannot approbate and reprobate. If it is their case that they had done away with the policy of grace marks for persons who had not scored qualifying marks in LDCE, that policy had to apply across the board. It could not be selectively applied only to candidates who failed in papers other than Paper-II and while granting grace marks to candidates who failed in Paper-IV.

19. It must be remembered that all the six papers were part of one LDCE.

20. For this reason too, we are in agreement with the view of the Tribunal that the respondent was entitled to be granted one grace mark in Paper-II.

21. We therefore find no ground to review our judgment.

22. The review petition is accordingly dismissed. The pending



2025:DHC:921-DB



applications also stand dismissed.

C. HARI SHANKAR, J.

AJAY DIGPAUL, J.

FEBRUARY 12, 2025/an

Click here to check corrigendum, if any