

Central Administrative Tribunal
Principal Bench, New Delhi.

DA No.

1373/2000

Shri M. Ben Koneddy

V/S

u of Laws

This above noted case was decided vide judgement/order dated 16/2/2001 by the Bench comprising of:-

Hon'ble Mr. V.K. Mehta, Member (A)

Hon'ble Mr. Shankar Prasad Maibai

The applicant/respondent (s) in the above noted case filed COA 2116/2002 in the Supreme Court and the Hon'ble Supreme Court vide order/judgement dated 04.04.2002 has been pleased to:-

- (a) ☒ Dismissed/Admitted the SLP/Civil appeal.
- (b) ☒ Set aside order/judgement of this Tribunal.
- (c) ☒ Stayed the operation of the judgement of the Tribunal.
- (d) ☒ modified/substituted the the judgement/orders of the Tribunal.

Submitted for perusal of Hon'ble Chairman and Hon'ble Member of the Bench.

(A) & member (T)

15/4/02

19/04/02

Deputy Registrar (J)

Hon'ble Chairman

Hon'ble Mr.

V.K. Mehta, Member A

Hon'ble Mr.

Shankar Prasad Maibai

h
24/4

② 1373/2000

✓
108

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

ORIGINAL APPLICATION NO.

~~SHRI/SMT.~~ M. Ban Konchady APPLICANT

VERSUS

Union of India and others RESPONDENT

The application has been submitted to the Tribunal by Shri/Smt. Applicant in person under Section 19 of the Administrative Tribunal Act, 1985 and the same has been scrutinised with reference to the points mentioned in the Administrative Tribunal Act, 1985 and Procedure Rules, 1988.

The applicant has also filed a Misc. Application(s) regarding (a) jurisdiction (b) joining (c) condonation of delay and/or (d) Petition for Transfer. MA U/R 6 of CAT Procedure Rules, 1987.

The application has been found in order and may be listed in Court for admission/orders.

S.O. (FILING)
JOINT REGISTRAR

COURT NO.

DATE

1 case

25/7/00

24/7

24.7.2000

for 24-7-2000

<FRESH>

24/7

FORM NO. 2

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

SB/DB

✓
D/B

REPORT ON THE SCRUTINY OF APPLICATION

.....
दिखित किया
.....
21/7/00

Diary No. ...1336...

Presented By : Applicant in person Date of Presentation ...14.7.2000...

Applicant (s) ...M. Ran Konchady Group : ...✓✓...

Respondent (s) ...Union of Jidra

Nature of grievance :Pay Scales.

No. of applicants :One No. of Respondents:4

CLASSIFICATION

Subject : Pay Scales (No. 19)) Department : M. Surface (21),
Transport S.B.

1. Is the application is in the proper form? (PROFORMA / COMPILATION)
(three complete sets in paper book form
in two compilations).

2. Whether name, description and address of
all the parties been furnished in the
cause title? Yes ✓

3.(a) Had the application been duly signed and (SIGNED / VERIFIED)
verified ?

(b) Have the copies been duly signed? Yes

Have sufficient number of copies of the
application been filed? Yes

4. Whether all the necessary parties are impleaded? Yes

5. Whether English translation of documents in a
language other than English or Hindi been filed ? Yes

6.(a) Is the application in time ? Yes
(See Section 21)

(b) Is MA for condonation of delay filed ? M

7. Has the Vakalatnama/Memo of appearance/00
authorisation been filed ? Yes

8. Is the application maintainable ? U/s 2, U/s 14, U/s 18
(U/s 2,14,18 or U/R 6 etc). U/R 6, PT u/s, 25 file

9. Is the application accompanied by IPO/DD
for Rs. 50/- ? Yes

10. Has the impugned orders original/duly
attested legible copy been filed ? LEGIBLE/ATTESTED

6A 3731 no

✓✓

11. Have legible copies of the annexure duly LEGIBLE/ATTESTED attested been filed ?

12. Has the index of documents been filed and pagination done properly ? FILED/PAGINATION

13. Has the applicant exhausted all available remedies ? Yes

14. Have the declaration as required by item 7 of Form-I been made ? No

15. Have required number of envelopes (file size) bearing full address of the respondents been filed ? No

Wadgaonkar
done
21.7.00

16. (a) Whether the reliefs sought for arise out of single cause of action ? Yes

(b) Whether any interim relief is prayed for ? No

17. In case an MA for condonation of delay is filed, is it supported by an affidavit of applicant ? NA

18. Whether this case can be heard by Single Bench ? No.

19. Any other point ?

20. Result of the scrutiny with initial of the Scrutiny Clerk.

The application is in order and may be registered and listed before the Court for admission/orders on;

- (a) ~~MA for joining - U/R (5) (a) / 4 (5) (b)~~
- (b) ~~MA U/R 6 of CAT Procedure Rules, 1987~~
- (c) ~~PT u/s 25 under At Act~~
- (d) ~~MA for condonation of Delay,~~

OR

The application has not been found in order in respect at Item No(s) mentioned below ;

Wadgaonkar
done
21.7.00

- (a) Item Nos. 15
- (b) Application is not on prescribed size of paper.
- (c) MA U/R 4(5)(a) / 4(5)(b) has not been filed.
- (d) Application /counsel has not signed each page of the application/documents.
- (e) MA U/R 6 has not been filed.

The application might be returned to the applicant for rectification of the defects within 7 days.

SCRUTINY CLERK

SECTION OFFICER

JOINT REGISTRAR

COURT NO. DATE

May kindly
be listed on
25th July
21.7.00

14/7/2000
D.T. 17.7.2000

17.7.2000

9/7

APPLICATION UNDER SECTION 19 OF THE TRIBUNAL ACT, 1985

TITLE OF THE CASE :

BA 1373/2000

M. Pran Konchady..... Applicant

Chief Controller of Accounts, Ministry of Surface Transport, IDA Building, Jam Nagar House, Shahajahan Road, New Delhi- 110001.

V/s.

Union of India & others..... Respondents

1. The Controller General of Accounts, M/o Finance, D/o Expenditure, Lok Nayak Bhavan, Khan Market, New Delhi - 110 003.
2. The Secretary, Min. of Finance, Deptt. of Expenditure, NORTH Block, New Delhi.
3. The Secretary, Ministry of Personnel, Public Grievances & Pension, Deptt. of personnel & Training, North Block, New Delhi.
4. The Secretary, Union Public Service Commission, New Delhi.

INDEX

SL. NO.	DESCRIPTIONS OF DOCUMENTS	PAGE NO.
1.	Application	1-13
2.	Copy of Representation dated 31 st January, 2000	'A' 1 14
3.	Copy of Impugned Order dated 26 th April, 2000	'A' 2 15

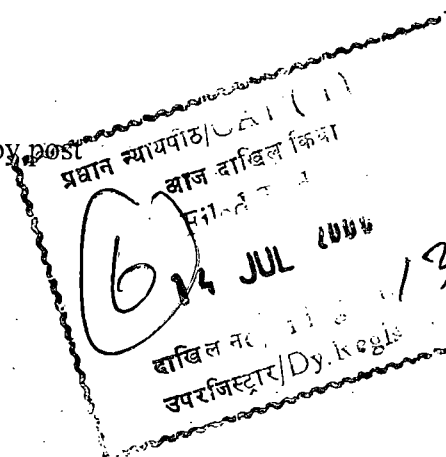
(M. PRAN KONCHADY)

(SIGNATURE OF THE APPLICANT)

For use in Tribunal's Office

Date of filing or Date of receipt by post

Registration No.



Signature of Registrar

**APPLICATION UNDER SECTION 19 OF CENTRAL ADMINISTRATIVE
TRIBUNAL ACT 1985**

BA 1373 / 2000

DETAILS OF APPLICATION

I Particulars of Order against which the application is made :

This application is directed against :

- i. The Govt. of India, Min. of Finance, Deptt. of Expenditure, Controller General of Accounts' Order No. 32013/3/98-MF. CGA / Gr.A/SAG/443 dated 26.4.2000.
- ii. Non-disposal of the representation dated 31st Jan., 2000

II Jurisdiction of the Tribunal :

The applicant declares that the subject matter of the order against which the redressal is sought is within the jurisdiction of the Tribunal.

III Limitation :

The applicant further declares that the application is within the limitation prescribed in Section 21 of Administrative Tribunal Act, 1985.

IV FACTS OF THE CASE :

1. The Indian Civil Accounts Service (Group 'A') Recruitment Rules, 1977 were notified vide G.S.R. 537 dated 14th April, 1977. These rules were subsequently amended vide GSR 125 dated 27th January, 1989, GSR 434 (E) dated 24th April, 1992 and GSR 12(E) dated 3rd Jan., 2000.

D. S. G. S.

2. As per sub rule of Rule 3 of the Indian Civil Accounts Service (Group 'A') Recruitment Rules, 1977 as amended upto date vide G.S.R.12 (E) dated 3rd January 2000 there shall be the following grades in the service viz. :

- a. Junior Time Scale Rs.8000-275-13500
- b. Senior Time Scale Rs.10000-325-15200
- c. Junior Administrative Grade Rs.12000-375-16500
- d. Selection Grade in Junior Administrative Grade Rs.14300-400-18300
- e. Senior Administrative Grade Rs.18400-500-22400
- f. Additional Controller General of Accounts Rs.22400-525-24500
- g. Controller General of Accounts Rs.24050-650-26000

3. As per Clause 20(1)(V) of the Principal Recruitment Rules and the amendments as notified and referred to above, "The Appointment to the Senior Administrative Grade shall be made by selection on merit from amongst officers who have put in 8 years regular service in the Junior Administrative Grade (including service, if any, in the non-functional selection grade of Junior Administrative Grade).

Or

17 Years regular service in Group 'A' posts of which at least 4 years regular service shall be in the Junior Administrative Grade."

4. In the absence of any statutory provision in the recruitment rules, the crucial date of eligibility was governed by DOPT guidelines as contained in their OM NO.

22011/7/86-Estt.(D) Dated July 19, 1989. As per these guidelines, the crucial date for determining the eligibility of officers for promotion was :

- i. 1st July of the year in cases where ACRs are written calendar year-wise.
- ii. 1st October of the year where ACRs are written financial year wise.



5. In terms of Principal Recruitment Rules (notified by notification No.GSR 537 dated 14th April, 1977). A footnote below Clause (iii) in sub-rule (1) of Rule 20 was inserted by notification no. G.S.R. 125 dated 27th Jan., 1989 as follows :

“For the purpose of clauses (ii) and (iii) above, the length of service shall reckon from the 1st of July following the year of Examination through which the member was recruited.”

These clauses 20(1)(ii) and 20(1)(iii) deal with appointment and promotion to the Senior Time Scale and the Junior Administrative Grade respectively.

6. The DOPT guidelines as contained in their OM No. 22011/7/86-Estt.(D) dated July 19, 1989 were superseded vide Deptt. of Personnel & Training OM No. 22011/9/98-ESTT.(D) dated 8th September 1998. **Now, as per revised guidelines the crucial date for determining eligibility of officers for promotion in case of financial year-based vacancy year would fall on January 1 immediately preceding such vacancy year and in the case calendar year-based vacancy year, the first day of the vacancy year, i.e., January 1st itself would be taken as the crucial date irrespective of whether the ACRs are written financial year-wise or calendar year-wise.**

7. These instructions came into force in respect of vacancy year commencing from January 1/April 1, 1999 and are, accordingly, be applicable to all such subsequent vacancy years. These instructions were also applicable for the transitory vacancy years commencing from January 1/April 1, 1999.




8. Accordingly, the footnote below Clause (iii) in sub-rule (1) of Rule 20 inserted by Notification no. G.S.R. 125 dated 27th January 1989 was omitted by the Notification G.S.R. 12 (E) dated 3rd January 2000 and a note after Clause V in Rule 20 (1) was inserted as follows :-

"For the purpose of clauses (ii), (iii), (iv) and (v) the length of service shall reckon from the 1st of January following the year of Examination through which the member was recruited."

The clauses 20(1)(ii), 20(1)(iii) 20(1)(iv) and 20(1)(v) deal respectively for appointment by promotion to the Senior Time Scale, Junior Administrative Grade, Non-functional Selection Grade and the Senior Administrative Grade.

9. For appointment to the Non-Functional Selection Grade of the Junior Administrative Grade of Indian Civil Accounts Service the relevant provision for eligibility and the crucial date thereof is contained in Clause 20(1) (IV) itself by which no member of service shall be eligible for appointment to the selection grade until he has entered 14th year of service on the first of July of the year calculated from the year following the year of examination on the basis of which the member was recruited.

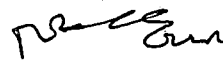
10. The paragraph 4 of the DOPT's OM No.19/1/86-PP dated 14th Aug., 1987 was amended vide DOPT's OM No. 1/11/98-CRD dated 9th Nov., 1998 to provide uniformity for determining crucial date of eligibility for promotion to a grade/post in terms of DOPT OM No.22011/3/98-Estt.(D) dated Sept., 17th, 1998. This OM prescribes the crucial date of eligibility for the grant of Non-Functional Selection Grade as 1st January instead of 1st July and this was applicable in respect of the vacancy years commencing 1st January/1st April, 1999 and also to subsequent vacancy years.



11. The clause 20(1) (iv) was substituted by notifications No. GSR-12(E) dated January 3rd 2000 to provide as follows :

" Appointment to the non-functional selection grade of Rs. 14300-400-18300 shall be made by promotion of officers in the Junior Administrative Grade in order of seniority subject to the rejection of unfit provided that no member of service shall be eligible for appointment to the selection grade until he has entered 14th year of service on the 1st of January of the year calculated from the year of examination on the basis of which the member was recruited."

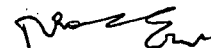
12. In terms of Principal Recruitment Rules of the India Civil Accounts Service Group 'A' as amended, I was appointed to the Junior Administrative Grade of the Service w.e.f. 31st July, 1991 and to the Non-functional Selection Grade w.e.f. 1st July, 1995. Accordingly, I had completed 8 years regular service in the Junior Administrative Grade on as well as 17 years service in Group 'A' post including four years of regular service in the Junior Administrative Grade after being appointed to the Indian Civil Accounts service on the basis of Civil Service Exam., 1981. **Accordingly, in terms of rule 20(1) (v) the applicant was eligible for appointment to the senior administrative grade w.e.f. 1-1-99** vide Deptt. of Personnel & Training O.M. No. 22011/9/98/2 ESTT.(D) dated 8th September 1998 and O.M. No. 22011/3/98-Estt. (D) dated 17th September 1998 and Notification No. GSR-12(E) dated 3rd January 2000.



13. As per DOPT O.M. No. 22011/1/98/Estt. (D) dated April 20, 1998, 7 vacancies in the Senior Administrative Grade were available (for vacancy year 1998-99) for filling up out of authorised permanent strength of 20 posts in the Senior Administrative Grade as per chronological details given below :

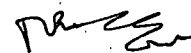
	<u>Vacancy</u>	<u>Date from which Vacant</u>	<u>Reasons</u>
I	Sh M.J.Joseph	19.6.98	On Deputation as IFA
II	Sh. S. Ambi	18-7-98	Expired
III	Sh.H.N.Nayer	7.7.98	On Deputation to IMF
IV	Sh.V.Ramchandran	7.9.98	On Deputation to IMF
V	Sh.T.K.Das	20.11.98	On Deputation as JS&FA
VI	Sh.C.Lalchhuma	13.2.99	On Deputation to Mizoram
VII	Sh.S.Joshi	17.2.99	On Deputation to IMF

14. In the DPC meeting held in March/April 1999, 3 vacant posts in the Sr. Administrative Grade were carried forward, out of 6 reported vacancies, to the vacancy year 1999-2000 even though the 1982 Batch Officers (including the applicant) were eligible for consideration and promotion against these carried forward vacancies with effect from 01-01-1999. This is in gross violation of DPC guidelines as all the available vacancies were not considered together as per DOPT guidelines as laid down in their O.M. no. 22011/5/86-ESTT(D) dated 10-4-1989 and clarified vide DOPT O.M. No. 22011/1/98-Estt.(D) dt. April 20, 1998, as per which the vacancies arising in a particular vacancy year would be considered.



15. These three carried forward vacant posts in the Senior Administrative Grade in the Ministries/Departments of Steel & Mines, Central Board of Direct Taxes and Information & Broadcasting were filled up by giving charge to the three Officers of 1982 Batch including the petitioner w.e.f. 21st April, 1999 (Sh. M. Pran Konchady), 28th May, 1999 (Sh. U.S. Pant) and 21st June, 1999 (Sh. S. Bhandari) respectively. The additional charge of 2 available posts was also given to 2 of the 3 eligible 1982 batch officers, which they continue to hold, even as on date in the CBDT and Ministry of Law, respectively.

16. I was appointed to officiate against the post of Chief Controller of Accounts, Central Board of Direct Taxes vide Ministry of Finance, Deptt. of Expenditure, Office of Controller General of Accounts O.M. No. A32013/7/96/MF.CGA/* (Adhoc)/Gr.A/452 dated 20th April 1999, where it had been stated that I have been adjusted against the post of Chief Controller of Accounts, Central Board of Direct Taxes. I was not granted any benefit of pay for holding charge and discharging the duties and responsibilities of the higher post. I continued to officiate against the said post till I was transferred on 20-10-1999 to officiate against the post of Chief Controller of Accounts, Ministry of Surface Transport, vide Ministry of Finance, Deptt. of Expenditure, Office of Controller General of Accounts, O.M. No. A-22012/1/99/MF.CGA/Gr.'A'/948 dated 6th October 1999 without getting any benefit for holding charge and discharging the duties of the higher post, although I was stated to be appointed against a non-existent post of Controller of Accounts. There is no post of Controller of Accounts in Ministry of Surface Transport. I continued to officiate against the post of Chief Controller of Accounts, Ministry of Surface Transport till 26-4-2000, when regular appointment order was issued.



17. In the Departmental Promotion Committee held on 16 Nov., 1999 for promotion to the Senior Administrative Grade for the vacancy year 1999-2000 the six vacancies out of the 7 available vacancies were considered as follows :

I.	Carried Forward Vacancies (of the vacancy 1998-99)	-	3
II	Newly Created Posts (w.e.f. 01-07-1999)	-	2
III	Fresh Vacancy w.e.f. 8.10.99 (Deputation to I.M.F.)	-	1
IV	Under reported vacancy of vacancy year 1998-99 (this vacancy continues to exist even after the DPC meeting for vacancy year 1999-2000)	-	1

18. Even in the Departmental Promotion Committee Meeting held on 16th Nov., 1999 for promotion to the Senior Administrative Grade for Indian Civil Accounts Service the Cadre Controlling Authorities failed to bring to the notice of UPSC that the Recruitment Rules incorporating amendments as recommended by 5th Central Pay Commission and conveyed by DOPT vide their OM No. AB-14017/2/97-Estt.(RR) dt.25th May, 1998 and the crucial date of eligibility as stated in paragraph 12 and 13 above have been approved by DOPT on 22nd July, 1999 and the UPSC on 13th September, 1999, i.e., before the date of DPC. These amendments were notified vide GSR-12(E) dated 3rd January and provided interalia the crucial date of eligibility as 1st January immediately preceding the vacancy year.

19. The DPC meeting held on 16th November, 1999 recommended Officers of 1982 Batch including the applicant for promotion to the Senior Administrative Grade. Accordingly, Government of India, M/o Finance, Deptt. of Expenditure, Controller General of Accounts issued Order No. 32013/3/98-MF:CGA/Gr.A/SAG/443 dated 26-4-2000 with immediate effect and until further orders appointing the applicant to the Sr. Administrative Grade w.e.f. 26-4-2000 instead of 21st April 1999, the date from which I am holding charge of the post of Chief Controller of Accounts in the Central Board of Direct Taxes without considering my representation dated 31st January 2000 requesting promotion w.e.f. 21st April 1999.

DR

20. The applicant had been continuously officiating as Chief Controller of Accounts and discharging full responsibility of the post since 21-4-1999. There is no change in his functions and responsibilities w.e.f. 26-4-2000 as compared with 21-4-1999.

V. DETAILS OF REMEDIES EXHAUSTED :

I have availed of all the remedies available to me under the service rules, etc by making representation on 31st Jan., 2000 but not disposed off.

VI MATTER NOT PREVIOUSLY FILED OR PENDING WITH ANY OTHER COURT :

Recd I further declare that I have not made any application, writ petition or suit regarding the matter in respect of which this application has been made before any other authority, court or any other bench of the Tribunal nor any such application, writ petition or suit is pending before any of them.

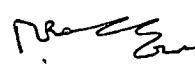
VII GROUND OF THE CASE :

- i) In terms of Principal Recruitment Rules of the Indian Civil Accounts Service (Group 'A') as amended, I was appointed to the Junior Administrative Grade of the Service w.e.f. 31st July, 1991 (and to the Non-Functional Selection Grade w.e.f. 1st July 1995). Accordingly, I had completed 4 years regular service in the Junior Administrative Grade as well as 17 years of regular service in Group 'A' post after being appointed to the India Civil Accounts Service on the basis of Civil Service Exam., 1981. Accordingly, in terms of Rule 20(1)(V) I was eligible for appointment to the Senior Administrative Grade w.e.f. 1-1-99.

Recd

(ii) In the DPC meeting held in March/April 1999, 3 vacant posts in the Sr. Administrative Grade were carried forward to the vacancy year 1999-2000 even though the 1982 Batch Officers (including the applicant) were eligible for consideration and promotion against these carried forward vacancies with effect from 01-01-1999. This is in gross violation of DPC guidelines as all the available vacancies were not considered together as per DOPT guidelines and no panel was prepared accordingly. These posts were filled up w.e.f. 21st April 1999, 28th May, 1999 and 19th July, 1999 by giving charge to the three eligible Officers of 1982 Batch without sanction of pay of the post of Chief Controller of Accounts while holding charge of the post and discharging duties and responsibilities of the higher post.

iii) I was appointed to officiate against the post of Chief Controller of Accounts, Central Board of Direct Taxes vide Ministry of Finance, Deptt. of Expenditure, Office of Controller General of Accounts O.M. No. A32013/7/96/MF.CGA/* (Adhoc)/Gr.A/452 dated 20th April 1999 wherein it had been stated that I have been adjusted against the post of Chief Controller of Accounts, Central Board of Direct Taxes without giving any benefit of pay for holding charge and discharging the duties and responsibilities of the higher post. I continued to officiate against the said post when I was transferred on 20-10-1999 to Ministry of Surface Transport, vide Ministry of Finance, Deptt. of Expenditure, Office of Controller General of Accounts, O.M. No. A-22012/1/99/MF.CGA/Gr.'A'/948 dated 6th October 1999 without giving any benefit for holding full charge and discharging duties of the post of Chief Controller of Accounts; although I was stated to be appointed against a non-existent post of Controller of Accounts in Ministry of Surface Transport.



- iv.) Government of India, Min. of Finance, Deptt. of Expenditure Controller General of Accounts' Order No.32013/3/98-MF.CGA/Gr.A/SAG/443 dated 26.4.2000 appointed me to the Senior Administrative Grade of the Indian Civil Accounts Service w.e.f. 26.4.2000 instead of 21st April 1999, the date from which I am holding charge of the post of Chief Controller of Accounts in the Central Board of Direct Taxes without considering my representation dated 31st January, 2000 leading to gross injustice.

VIII RELIEFS SOUGHT :

In view of the facts of the case mentioned above the applicant prays for the following reliefs :

1. Sanction of pay of the post of Chief Controller of Accounts from the date (21st April, 1999)I am holding charge of the post of Chief Controller of Accounts and discharging duties and responsibilities of the higher post.
2. Regular appointment to the Senior Administrative Grade, from the date I am holding charge (21st April 1999) of the post of Chief Controller of Accounts instead of 26th April, 2000, as represented by me earlier.
3. And pass such further or other Order or Orders and/or Direction or Directions to this Hon'ble Trinubal may deem fit and proper.

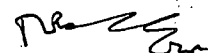
IX INTERIM ORDER, IF ANY, PRAYED FOR :

NIL

X. PARTICULARS OF POSTAL ORDER FILED IN RESPECT OF THE APPLICATION FEE.

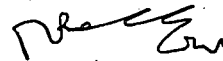
Indian Postal Order No. 2G040004 dated 12-7-2000 issued by Shahjahan Road

Post office for Rs. 50/-.



VERIFICATION

I, M. Pran Konchady, S/o Sh. D. Konchady, presently working as Chief Controller of Accounts, Ministry of Surface Transport and also holding additional charge of the post of Chief Controller of Accounts, Ministry of Central Board of Direct Taxes do hereby verify that the contents of paras 1-20 above are true to my personal knowledge and that I have not suppressed any material facts.



(M. PRAN KONCHADY)

SIGNATURE OF APPLICANT

Date : 14.07.2000

Place : New Delhi

To

The Controller General of Accounts
Ministry of Finance, Deptt. of Expenditure,
7th Floor, C-Wing, Lok Nayak Bhawan, New Delhi.

19

Kind Attn: Shri V.N.Kaila, Jt. Controller General of Accounts.

Subject: Appointment of ICAS(1982 - Batch) to the Sr.Admn.Grade in pursuance of Notification No.GSR 12(E) dated 27th Dec.,1999 published vide the Gazette of India (Extraordinary) dated January 3rd, 2000 regarding amendments to the Principal Rules published vide GSR number 537 dated 14th April, 1977.

Sir,

I would like to bring the following facts to your kind notice with the presumption that the approval of the Appointment Committee of the Cabinet is being obtained for my appointment to the Sr.Admn.Grade from the date, I have been working against the post of Chief Controller of Accounts. I have been working against the post of Chief Controller of Accounts, Central Board of Direct Taxes w.e.f. 21.4.1999 upto 20.10.1999 and thereafter holding charge of the post of Chief Controller of Accounts, Ministry of Surface Transport w.e.f. 21.10.99 till date.

1. There was no provision regarding crucial date of eligibility in the Principal Rules which were published vide Notification No.GSR 537 dated 14th April, 1977 and subsequently amended vide GSR 125 dated 27th January, 1989 and GSR 434(E), dated 24th April, 1992 so far as Sr.Admn.Grade of the Indian Civil Accounts Service is concerned. However, the crucial date of eligibility was prescribed for the appointments to the posts in the Senior Time Scale, Junior Admn.Grade and non-functional selection grade as of July 1st. following the year of Examination through which the member was recruited to the service.
2. In absence of the crucial date of eligibility, the general guidelines issued by the DOPT vide their O.M.No.22011/7/86-Estt(D) dated 19th July, 1989 were followed, in the absence of any statutory provisions in this regard. These guidelines were amended by the DOPT vide their O.M. No.22011/3/98-Estt(D) dated 17th September, 1998 read with DOPT O.M.No.22011/1/9/98-Estt(D) dated 8th Sept.,1998 to provide January 1st, 1999 as crucial date for determining eligibility in relation to transitory vacancy years commencing from January 1/April/1, 1999.
3. The Indian Civil Accounts Service Group'A' Recruitment Amendment Rules, now provide 1st of January following the year of Examination through which the member of service was recruited as crucial date of eligibility for the Senior Admn.Grade in addition to the STS, JAG and the NFSG which has been given retrospective effect from 1.1.1996. This amendment makes me eligible for appointment to the SAG w.e.f. 1st January, 1999.
4. This amendment to the Recruitment Rules has been made in consultation with the DOPT, the UPSC and the Ministry of Law and Justice. Although notification has been issued on 27th Dec., 1999 the amendment now carried out with effect from 1.1.1996 were cleared by the DOPT on 21.7.99 and the UPSC on (13.9.99) i.e. before holding of the DPC on 16th Nov.,1999.

In view of the above, I shall be grateful, if the ACC approval is obtained to the recommendation made by the UPSC w.e.f. 21.4.1999.

Yours faithfully



(M.PRAN KONCHADY)

Dated : 31st January 2000



Dated: 26th April, 2000

ORDER

Shri M.Pran Konchady(ICAS-1982) presently posted as Controller of Accounts, Ministry of Surface Transport, New Delhi has been approved for appointment to the Senior Administrative Grade in the pay scale of Rs.18,400-500-22,400. He is accordingly promoted to the Senior Administrative Grade with immediate effect and until further orders.

On promotion Shri Konchady is posted as Chief Controller of Accounts, Ministry of Surface Transport, New Delhi against the existing vacancy.

The date of taking over of the charge may be intimated to this office in due course.

mathur
(S.K.Mathur)
Dy. Controller General of Accounts

Copy to:-

1. PS to CGA/Addl.CGA(NCA)/Addl.CGA(SRS)/Jt.CGA(VNK)&Dir(INGAF)/Jt.CGA(UKM)/Jt.CGA(PPS)/Dy.CGA(AKS)/Dy.CGA(RS)&Jt.Dir(INGAF)/Dy.CGA(SK)/Dy.CGA(SSx)/ACGA(SD)/ACGA(MSG)/ACGA(KBS)/ACGA(SNS)/ACGA(RNS).
2. Pr.CCA, CBDT, New Delhi.
3. Pr.CCA, CBEC, New Delhi.
4. FA, Ministry of Surface Transport, New Delhi.
5. Shri A.N.Chakravarty, US(SM.II), DOPT, New Delhi with reference to his office letter No.18/18/99-EO(SM-II) dated 20.04.2000.
6. Shri K.S.Palachandran, US(AP.2), UPSC, New Delhi with reference to his letter No.1/15(18)/99-AP.2 dated 16.11.99.
7. Shri M.Pran Konchady, ICAS-1982.
8. Personal file.
9. Spare copies.

mathur
(S.K.Mathur)
Dy. Controller General of Accounts

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. 1373 of 2000

M. Pran Konchady Applicant
(Applicant-in-Person)

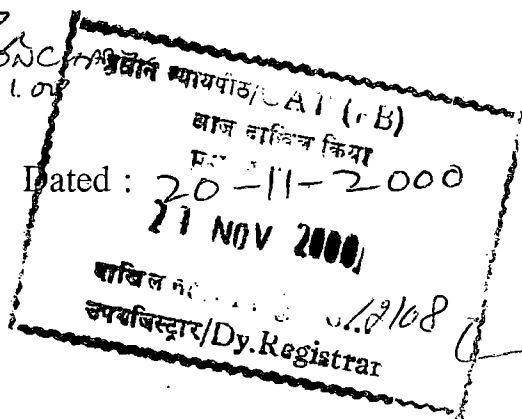
Versus

Union of India and Others Respondents
(Through : Mr P.H. Ramchandnai, Sr Counsel for the Central
Government)

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Corrected
M. PRAN KONCHADY
20-11-00



Filed through
(P.H. Ramchandani)
Senior Counsel for
the Central Government

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16

O.A. 1373 of 2000

M. Pran Konchady (Applicant-in-Person)	Applicant
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Versus

Union of India and Others **Respondents**
(Through : Mr P.H. Ramchandnai, Sr Counsel for the Central Government)

Reply on behalf of Respondents

Most Respectfully Showeth :

Preliminary submissions

The respondents before giving para-wise reply to the O.A., submit that **averments in the O.A. are vague and confusing.** It is difficult to understand on what premise the applicant is basing his case. All that the respondents have been able to understand from the contents of the O.A. is that the applicant considers that he was eligible for promotion to the Senior Administrative Grade (S.A.G.) of the Indian Civil Accounts Service (I.C.A.S.) when the DPC was held in April, 1999 and, therefore, he should have been considered in this DPC itself, instead of at the next DPC held in November, 1999. The applicant's further contention appears to be that he should




(2)

have been granted promotion to the S.A.G. retrospectively from 21-4-1999, when he was posted against the vacancy of Chief Controller of Accounts in the Central Board of Direct Taxes.

2. That the eligibility for promotion to the SAG, as laid down in Rule 20(v) of the Indian Civil Accounts Service (Group A) Recruitment Rules, 1977 is, "... 8 years regular service in the Junior Administrative Grade (including service, if any, in the non-functional selection grade of Junior Administrative Grade) or 17 years regular service in Group 'A' posts of which at least 4 years regular service shall be in the Junior Administrative Grade." The O.A. does not precisely indicate how the applicants has worked out his eligibility with reference to Rule 20(v) of the Rules though the applicant has referred to several notifications and OMs, most of them, on closer examination, are found to be irrelevant and quoted out of context. There is a bald assertion in para IV(12) and then again in para VII(i) of the O.A. that the applicant had completed 17 years of service in Group 'A' as on 1-1-1999 but the date from which this service has been reckoned is not brought out in these paras or elsewhere in the O.A. The O.A., therefore, deserves to be dismissed on the ground of vagueness of pleadings.

3. That the respondents categorically submit that the applicant did not have the prescribed length of service as on 1-1-1999 and was, therefore, not eligible to be considered for promotion on this date. His date of joining service in the ICAS is 9-5-1983. Simple



arithmetic will show that 17 years are not completed as on 1-1-1999. If applicants' case is that total length of service is to be counted from some other date (and not from 9-5-1983), there is no clear and cogent averment to this effect in the O.A. nor is such averment tenable. The O.A. is, therefore, misconceived and deserves to be dismissed.

4. The applicant's plea that vacancies were not correctly reported to the DPC held in April, 1999 is also factually wrong. Once it is shown that the applicant was not eligible, existence or non-existence of vacancies against which the applicant could have been considered for promotion loses relevance. Moreover, it is an established law that mere existence of a vacancy does not confer a right on a candidate to be promoted.

5. Regarding applicant's claim that he should have been promoted to the S.A.G. retrospectively from 21-4-1999 instead of being promoted prospectively from 26-4-2000, it is submitted that this claim is equally untenable because the applicant was posted to the Central Board of Direct Taxes w.e.f. 21-4-1999 as J.A.G. level officer and not as S.A.G. officer. A copy of the Order dated 20-4-1999, issued in this regard is annexed herewith as Annexure R-1.

6. Subject to the above submissions, facts relating to the DPCs held in April, 1999 and November, 1999 mentioned by the applicant in the O.A. are set out as follows.


7. UPSC held a DPC meeting on 5-4-1999 for the three vacancies in the S.A.G. reported to it for the year 1998-99.



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The crucial date for determining the eligibility was 1-10-1998, in accordance with the Department of Personnel & Training O.M., dated 19-7-1989 (extracts at Annexure R-2 hereto). Three officers, namely, Smt Archana Nigam, Shri Chandy Andrews and Shri A.S. Chauhan, who are of 1981-batch of the ICAS, were considered by the DPC. They were promoted on 25-5-1999. The applicants who are of 1982-batch and are also junior to the above mentioned officers, were not eligible and were therefore not considered by the DPC held in April, 1999, nor did the applicant made any grievance about their non-promotion within reasonable period after issue of the promotion orders dated 25-5-1999.

8. Another DPC was held on 16-11-1999. The applicant and five other candidates of 1981 batch were considered by this DPC. The crucial date for determining eligibility, in accordance with the Department of Personnel & Training's, O.M. dated 17-9-1998 (annexed herewith as R-3), was 1-1-1999. As on this date, the applicant neither had 17 years of total service in the ICAS nor 8 years service in the J.A.G. The applicant's date of promotion in J.A.G. is 31-7-1991 and, therefore, there was a shortfall of 7 months (as on 1-1-1999), in 8 years of service in J.A.G.. This deficiency in service was condoned by the Government and thereafter the UPSC recommended the applicant and five other similarly situated officers for promotion, in the DPC held on 16-11-

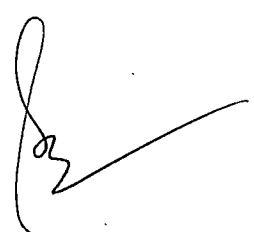


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1999. After approval of the competent authority (i.e. the President), the applicant was promoted to the S.A.G. prospectively vide order dated 26-4-2000. A copy of the promotion order dated 26-4-2000 is annexed herewith as **Annexure R-4**.

9. It would thus be seen that the applicant was neither eligible for being considered for promotion in the DPC held in April, 1999 nor in November, 1999. The November, 1999 DPC considered him when shortfall in the prescribed length of service had been condoned by the Government. In view of these facts, the applicant has no enforceable right to be promoted retrospectively from 19-7-1999. This has been made abundantly clear to him in the reply dated 19-7-2000 to his representation dated 31-1-2000. A copy of the reply dated 19-7-2000 is annexed herewith as **Annexure R-5**.


10. That as noted above, it is not at all clear from the contents of the O.A. the date from which the applicant is reckoning his length of service. It, however, appears that the applicant is probably trying to make out a case that length of service should be counted from 1st January following the year of Examination (i.e. Civil Services Examination, 1981) through which the applicant was appointed to the ICAS and, therefore, his length of service should be counted from 1-1-1982 even though he actually joined service on 9-5-1983. It



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further appears that the applicant is referring to the notification dated 27-12-1999 to support this point. This is a misconceived plea. It is true that notification dated 27-12-1999 permits reckoning of service "from the 1st of January following the year of Examination" but this notification was not in existence when the DPCs were held in April, 1999 and November, 1999. The notification is of prospective application. This is clear from Rule 1(2) of this notification itself which says that amendments made through this notification "*shall come into force on the date of their publication in the Official Gazette.*" The notification was published in the Gazette of India, dated 3-1-2000 and, therefore, it cannot be applied to the cases which were considered by the DPCs held in April, 1999 and November, 1999. Moreover, the corrigenda dated 3-5-2000 to the notification dated 27-12-1999 makes it abundantly clear that only revised pay scales mentioned in the notification dated 27-12-1999 are applicable retrospectively w.e.f. 1-1-1996 and not the other provisions like reckoning of length of service from 1st January of the year following the year of the Examination. Copies of the notification dated 27-12-1999 and the corrigenda dated 3-5-2000 are annexed herewith as Annexures R-6 and R-7 respectively.

11. That in view of the position explained in the preceding para, the notification dated 27-12-1999 is of no assistance to the applicant because it came into force after the



DPC had already been held in November, 1999 (16-11-1999). The applicant's case is to be considered in accordance with Rule 20(V) as it stood in April, 1999 and November, 1999. According to plain and natural meaning of this Rule, total service of 17 years has to be reckoned from the date the applicant actually joined the Service. The fiction introduced subsequently by the notification dated 27-12-1999 of counting service 'from the 1st of January following the year of Examination', is not applicable to the applicant. The applicant joined ICAS on 9-5-1983 and was promoted to the Junior Administrative Grade as on 31-7-1991. Reckoned from these dates, he neither completed 8 years of service in the J.A.G. nor total service of 17 years in Group 'A' posts as on 1-1-1999. He was therefore neither eligible in November, 1999 nor in April, 1999. As submitted above, he was considered by the UPSC in November, 1999 after the Government relaxed the shortfall of prescribed length of service.

12. That in view of the above submissions, the O.A. is misconceived and devoid of any merit besides being vague, and therefore it deserves to be dismissed.

13. That all facts and averments in the O.A. are hereby denied save as those which are specifically admitted herein below.



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14. That the para-wise reply to the O.A. is as under.

Para-wise reply

15. That para I of the O.A. being formal, does not require any comments. It may however be submitted that reply to the applicant's representation dated 31-1-2000 has since been given vide letter dated 19-7-2000. A copy of the reply is annexed herewith as Annexure R-5.

16. That the jurisdiction of the Hon'ble Tribunal over the subject matter, as averred in para II of the O.A. is not denied.

17. That the O.A. is barred by limitation, delay, laches acquiescence and therefore the respondents deny contents of Para III of the O.A. The applicant's grievance is that he should have been considered for promotion in the DPC held in April, 1999. As noted above, three officers were promoted on the basis of this DPC, vide orders issued on 25-5-1999. The applicant was not amongst these officer. The applicant made no grievance within reasonable time after issue of the Orders dated 25-5-1999. He submitted a representation dated 31-1-2000 when UPSC had already cleared his name in DPC of November, 1999. This representation was an after-thought and a belated exercise. If at all the applicant felt that he should have been considered in April, 1999 DPC itself, he

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should have submitted a representation within a reasonable period after issue of the Orders dated 25-5-1999. The applicant's own conduct therefore shows that he acquiesced in the Orders dated 25-5-1999. He is estopped from raising a grievance at a later stage that he should have been considered by the DPC held in April, 1999.

18. That contents of paras IV(1) and IV(2) of the O.A. do not require any comments.

19. That subject to rules relating to eligibility, as explained in paras 2, 3 and 10 above, contents of para IV(3) are denied.

20. That the facts and averments in paras IV(4) and IV(5) are highly confusing and irrelevant in so far as applicant's eligibility for the DPCs held in 1999 are concerned. Contents of these paras are therefore denied for want of clarity and relevance.

21. That with reference to paras IV(6) and IV(7) of the O.A., the respondents submit that the applicant's eligibility in respect of April, 1999 DPC was to be determined as on 1-10-1998 and in respect of November, 1999 DPC was to be determined as on 1-1-1999. Subject to this, the averments made in paras IV(6) and IV(7) of the O.A. are denied and those in paras 7 and 8 above are reiterated.

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22. That with reference to para IV(8) of the O.A., it is stated that the notification dated 27-12-1999 is of prospective application. It was issued after the applicant had already been considered by the DPC held in November, 1999 by condoning the shortfall in his service. The applicant cannot derive any advantage out of this notification. This point has already explained amply in para 10 above and therefore needs no further explanation. Subject to this, contents of para IV(8) are denied.

23. That with reference to paras IV(9) to IV(11) it is submitted that the facts and averments therein are highly confusing and irrelevant. They do not in any way advance applicant's case. The contents of these para are denied. It is however submitted that the applicant's eligibility for the DPC held in November, 999 for promotion to S.A.G. was to be determined as on 1-1-1999, and he was not eligible on this date, either according to his total length of service (17 years) or according to length of service in the Junior Administrative Grade (8 years).

24. That with reference to para IV(12) of the O.A., it is denied that the applicant was eligible as on 1-1-1999 for being appointed to the S.A.G. He was considered in November, 1999 DPC by condoning shortfall in the prescribed length of



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service. Other contents of the O.A. are also denied as false and baseless.

25. That with reference to para IV(13) of the O.A. it is submitted that once it shown that the applicant was not eligible as on 1-1-1999, the existence or non-existence of vacancies loses relevance. Even otherwise also, according to well-settled law, existence of vacancy does not confer a right on the applicant to be promoted retrospectively. The averments made in this para are denied.

26. That the contents of para IV(14) are denied as false and baseless. It is categorically denied that there was under-reporting of vacancies to the UPSC for holding DPC meeting in April, 1999. In this connection, attention is invited to the instructions issued by Department of Personnel & Training vide its O.M. dated 10-4-1989 stipulating that regular appointments can be made against vacancies exceeding one year. The number of officers expected to be repatriated from deputation has also to be taken into consideration for determining clear vacancies in excess of one year. These aspects were duly examined by respondents before holding April, 1999 DPC. The applicant was not eligible for promotion when two DPCs were held in 1999. He was considered in November, 1999 DPC by condoning shortfall in the prescribed length of service.

27. That with reference to para IV(15) of the O.A. it is submitted that the applicant was posted to C.B.D.T. as Junior Administrative Grade officer and not as a Senior Administrative Grade Officer. His posting as Junior Administrative Grade does not confer on him right to be promoted as Senior Administrative Grade officer retrospectively from the date of his posting.

28. That with reference to para IV(16) of the O.A., it is submitted that when the Order dated 20-4-1999 (Annexure R-1) was issued, the applicant was already working as J.A.G. officer in the Central Board of Direct Taxes. The Order dated 20-4-1999 only clarified that the applicant was to be adjusted as a J.A.G. officer against the vacant post of the Chief Controller of Accounts, Central Board of Direct Taxes. Thus even after the issue of the Order dated 20-4-1999, the applicant continued working as J.A.G. officer in the Central Board of Direct Taxes. There is nothing in this order to indicate that he was asked to officiate as the Chief Controller of Accounts. The dual charge held by in Ministry of Surface Transport was also as a J.A.G. officer and not as a S.A.G. officer. The averments made in this para therefore do not in any way advance the applicant's case and are hereby denied.



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29. That the contents of para IV(17) are also denied as factually baseless and irrelevant. The respondents do not admit the position stated therein.

30. That the facts and averments in para IV(18) of the O.A. are also denied as baseless and factually incorrect. All the respondents were well aware of the rules position. The applicant was not eligible for promotion in normal course. He was considered in November, 1999 by condoning shortfall in prescribed length of service.

31. That with reference to para IV(19) of the O.A. it is submitted that promotion in normal course has to be prospective. The applicant was promoted on 26-4-2000 after the approval of the competent authority. There is absolutely no valid basis for him to assert that he should have been promoted retrospectively from 19-7-1999. Contents of this para are therefore denied.

32. That the contents of para V of the O.A. are not denied.

33. That the contents of para VI of the O.A. are denied for want of knowledge.



34. That in view of the submissions made herein above, none of the grounds taken in para VII of the O.A. survive and they are hereby denied. It is reiterated that the applicant was not eligible for promotion to S.A.G. as on 1-1-1999. He was considered for promotion in November, 1999 by condoning shortfall in prescribed length of service. He has also no right to claim promotion retrospectively from the date he was posted as Junior Administrative Grade officer in Ministry of I&B.

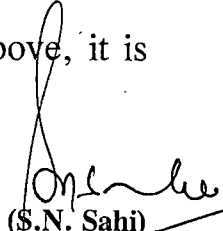
35. That the applicant is not entitled to any of the reliefs prayed for by him, in para VIII of the O.A.

36. That para IX does not require any comments as the applicant has not prayed for any interim relief.

37. That rest of the paras in the O.A. being formal, do not require any comments.

Prayer

38. In view of the submissions made hereinabove, it is respectfully prayed the O.A. may be dismissed.


(S.N. Sahi)
Assistant Controller General of Accounts
Ministry of Finance
Department of Expenditure
Controller General of Accounts
Lok Nayak Bhawan, Khan Market
New Delhi

Verification

Verified at New Delhi, this the 20th day of November, 2000 by S.N. Sahi, working as Assistant Controller General of Accounts in Government of India, Ministry of Finance, Department of Expenditure, Controller General of Accounts that the contents of the above reply are true to the best of his knowledge and belief, as derived from official records. Nothing material has been concealed.


(S.N. Sahi)

Annexure R-1

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No.A.22012(1)/97/MF.CGA/Gr.A/JAG/456

Government of India

Ministry of Finance

Department of Expenditure

Controller General of Accounts

7th Floor, Lok Nayak Bhavan

Khan Market

New Delhi.

Dated : 20th April, 1999

OFFICE ORDER

The following postings and transfers of JAG level officers are ordered with immediate effect.

S.No.	Name of the officer	Present posting	Proposed posting
1.	Sh.M.Pran Kaonchady (ICAS-1982)	CA, CBDT	CA, CBDT, against the vacant post of CCA, CBDT
2.	Sh.U.S.Pant (ICAS-1982)	FC, M/o Civil Aviation & Tourism	CA, M/o Steel & Mines, against the vacant post of CCA
3.	Sh.J.P.S.Chawla (ICAS-1985)	CA, M/o Agriculture	FC, M/o Civil Aviation & Tourism
4.	Sh.S.S.Sagar (ICAS-1988)	CA, CPAO	CA, M/o Finance

The date of handing/taking over charge may be intimated to this office in due course.

(S.K.MATHUR)

Dy. Controller General of Accounts

Copy to:

1. CGA/Addl.CGA/Jt.CGA(HPR)/Jt.CGA(VN)&Dir(INGAF)/Jt.CGA(PPS)/Dy.CGA (AN)&Jt.Dir.(INGAF)/Dy.CGA(AKS)/Dy.CGA(SS)/ACGA(SSX)/ACGA(VC)/ACGA (KBS)/ACGA(MSG)/ACGA(SNS)/ACGA(SD).
2. Addl.Secy.&FA, M/o Steel & Mines, New Delhi.
3. Pr.CCA,CBDT, New Delhi.
4. FA, M/o Civil Aviation & Tourism, New Delhi
5. FA, M/o Agriculture, New Delhi.

***Crucial date for determining eligibility**

The eligibility dates for determining the eligibility of officers for promotion would be prescribed as under—

- (i) 1st July of the year in cases where ACRs are written calendar yearwise; and
- (ii) 1st October of the year where ACRs are written financial yearwise.

The crucial dates indicated above would be applicable to only such services and posts for which statutory Service Rules do not prescribe a crucial date.

[*G.I., Dept. of Per. & Trg., O.M. No. 22011/7/86-Est. (D), dated the 19th July, 1989.]



select panels as per the aforesaid prescribed time-frame may be achieved.

274

*G.I., Dept. of Per. & Trg., O.M. No. 22011/3/98-Estt. (D),
dated 17-9-1998*

1st January shall be the crucial date of for determining eligibility of officers for promotion, irrespective of whether ACRs are written Financial year-wise or Calendar year-wise

The undersigned is directed to say that where the Recruitment/Service Rules lay down promotion as one of the methods of recruitment, some period of service in the feeder grade is generally prescribed as one of the conditions of eligibility for the purpose of promotion. *Vide* the Department of Personnel and Training, Office Memorandum No. 22011/7/86-Estt. (D), dated July 19, 1989, the crucial date for determining the eligibility of officers for promotion has been prescribed as under:—

(i) 1st July of the year in cases where ACRs are written calendar year-wise.

(ii) 1st October of the year where ACRs are written financial year-wise.

2. The matter has been reconsidered by the Government and in supersession of the existing instructions it has now been decided that the crucial date for determining eligibility of officers for promotion in case of financial year-based vacancy year would fall on January 1 immediately preceding such vacancy year and in the case of calendar year-based vacancy year, the first day of the vacancy year, *i.e.*, January 1 itself would be taken as the crucial date irrespective of whether the ACRs are written financial year-wise or calendar year-wise. For the sake of illustration, for the panel year 2000-2001 (financial year), which covers the period from April 1, 2000 to March 31, 2001, and the panel year 2000 (calendar year), which covers the period from January 1, 2000 to December 31, 2000, the crucial date for the purpose of eligibility of the officer would be January 1, 2000 irrespective of whether ACRs are written financial year-wise or calendar year-wise.

3. The crucial date indicated above is in keeping with Para. 9 of the Department of Personnel and Training, Office Memorandum No. 22011/9/98-Estt. (D), dated September 8, 1998 (*vide Sl. No. 273 of this issue*) which prescribes a Model Calendar for DPCs. In accordance with Paragraphs 10 and 11 of the said Office Memorandum, these instructions will come into force in respect of vacancy years commencing from January 1/April 1, 1999 and will, accordingly, be applicable to all such subsequent vacancy years.



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December, 1998

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4. These instructions shall be applicable to all services/posts. The Recruitment/Service Rules may, therefore, be amended accordingly. All Ministries/Departments are requested to bring these instructions to the notice of all concerned, including Attached/Subordinate Offices for guidance and compliance.

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Annexure - R-4

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No.A-32013/3/98/MF.CGA/Gr.A/SAG/ 44/
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF EXPENDITURE
CONTROLLER GENERAL OF ACCOUNTS
7th FLOOR, LOK NAYAK BHAWAN, KHAN MARKET
NEW DELHI-110003.

Dated: 26th April, 2000

ORDER

Shri M.Pran Konchady(ICAS-1982) presently posted as Controller of Accounts, Ministry of Surface Transport, New Delhi has been approved for appointment to the Senior Administrative Grade in the pay scale of Rs.18,400-500-22,400. He is accordingly promoted to the Senior Administrative Grade with immediate effect and until further orders.

On promotion Shri Konchady is posted as Chief Controller of Accounts, Ministry of Surface Transport, New Delhi against the existing vacancy.

The date of taking over of the charge may be intimated to this office in due course.

Mathur
(S.K.Mathur)

Dy. Controller General of Accounts

Copy to:-

1. PS to CGA/Addl.CGA(NCA)/Addl.CGA(SRS)/Jt.CGA(VNK)&Dir(INGAF)/Jt.CGA(UKM)/Jt.CGA(PPS)/Dy.CGA(AKS)/Dy.CGA(RS)&Jt.Dir(INGAF)/Dy.CGA(SK)/Dy.CGA(SSx)/ACGA(SD)/ACGA(MSG)/ACGA(KBS)/ACGA(SNS)/ACGA(RNS).
2. Pr.CCA, CBDT, New Delhi.
3. Pr.CCA, CBEC, New Delhi.
4. PA, Ministry of Surface Transport, New Delhi.
5. Shri A.N.Chakravarty, US(SM.II), DOPT, New Delhi with reference to his office letter No.18/18/99-EO(SM-II) dated 20.04.2000.
6. Shri K.S.Palachandran, US(AP.2), UPSC, New Delhi with reference to his letter No.1/15(18)/99-AP.2 dated 16.11.99.
7. Shri M.Pran Konchady, ICAS-1982.
8. Personal file.
9. Spare copies.

Mathur
(S.K.Mathur)

Dy. Controller General of Accounts

No. A.32013/3/99/MF-CGA/Gr A/ 641
Government of India
Ministry of Finance
Department of Expenditure
Controller General of Accounts
Lok Nayak Bhawan (7th Floor)
Khan Market
New Delhi - 110003

Dated 19.7.2000

To

Mr M. Pran Konchady
Chief Controller of Accounts
Ministry of Surface Transport
New Delhi

Subject : Appointment to the Senior Administrative Grade of the
ICAS - 1982 Batch

Sir

Please refer to your representation dated 31-1-2000 on the above subject. The representation has been carefully examined but was found to be devoid of any merits, due to the following reasons :

- (a) In order to become eligible for promotion to the S.A.G., recruitment rules for ICAS prescribe 8 years of service in J.A.G. or 17 years service in Group 'A' of which at least 4 years should be in J.A.G. Instructions contained in Department of Personnel & Training's, O.M. No. 22011/3/98-Estt(D), dated 17-9-1998 further provide that crucial date for determining eligibility for holding a DPC would be 1st January. As you joined ICAS on 9-5-1983 and were promoted to J.A.G. w.e.f. 31-7-1991, you had neither completed qualifying service of 17 years in Group 'A' nor 8 years of service in J.A.G as on 1-1-1999. Hence you could not have been considered for promotion to S.A.G. without relaxation of the recruitment rules.
- (b) Furthermore, it may be pointed out that your reference to Gazette notification no. GSR 12(E), dated 27-12-1999 is misconceived, as it has to be read with subsequent corrigenda issued vide GSR 401(E), dated 3-5-2000. It would be seen therefrom that retrospective effect of the Gazette notification relates to revised pay scale only.

2. In view of above, it is regretted that your request for promotion to the S.A.G. from an earlier date cannot be acceded to.

Yours faithfully

mathur
(S.K. Mathur)

Dy Controller General of Accounts

स्पष्टीकारक ज्ञापन

केन्द्रीय सरकार द्वारा पांचवे केन्द्रीय वेतन आयोग की रिपोर्ट स्वीकार किए जाने के परिणामस्वरूप और केन्द्रीय सिविल सेवा (पुनरीक्षित वेतन) नियम, 1997 के लागू किए जाने के कारण वर्तमान संशोधन के पैरा 2 को भूतलक्षी रूप से 1 जनवरी, 1996 से प्रभावी किया जा रहा है। यह भी प्रमाणित किया जाता है कि इस संशोधन को भूतलक्षी प्रभाव देने से किसी भी व्यक्ति पर प्रतिकूल प्रभाव नहीं पड़ेगा।

पादटिप्पण :—मूल नियम, अधिसूचना सं. सा. का. नि. 537, तारीख 14 अप्रैल, 1977 द्वारा प्रकाशित किए गए थे और तत्पश्चात् निम्नलिखित द्वारा उनमें संशोधन किए गए:—

- (i) सा. का. नि. 125, तारीख 27 जनवरी, 1989 ;
- (ii) सा. का. नि. 434(अ), तारीख 24 अप्रैल, 1992.

MINISTRY OF FINANCE
(Department of Expenditure)
CONTROLLER GENERAL OF ACCOUNTS
NOTIFICATION

New Delhi, the 27th December, 1999

G. S. R. 12(E).—In exercise of the powers conferred by the proviso to article 309 of the Constitution, the President hereby makes the following rules further to amend the Indian Civil Accounts Service (Group 'A') Recruitment Rules, 1977, namely :—

1. (1) These rules may be called the Indian Civil Accounts Service (Group 'A') Recruitment (Amendment) Rules, 1999.
- (2) They shall come into force on the date of their publication in the Official Gazette.
2. In the Indian Civil Accounts Service (Group 'A') Recruitment Rules, 1977 :—
 - (a) in rule 3, for sub-rule (3), the following sub-rule shall be substituted, namely :—

“(3) There shall be the following grades in the service, viz. :—

 - (i) Junior Time Scale—Rs. 8000-275-13500;
 - (ii) Senior Time Scale—Rs. 10000-325-15200;
 - (iii) Junior Administrative Grade—Rs. 12000-375-16500;
 - (iv) Selection Grade in Junior Administrative Grade—Rs. 14300-400-18300;
 - (v) Senior Administrative Grade—Rs. 18400-500-22400;
 - (vi) Additional Controller General of Accounts/Principal Chief Controller of Accounts—Rs. 22400-525-24500;
 - (vii) Controller General of Accounts—Rs. 24050-650-26000.”;
 - (b) in rule 6, for sub-rule (2), the following sub-rule shall be substituted, namely :—

“(2) All recruitment to the Service by Examination shall be made to the grade of Rs. 8000-275-13500”;
 - (c) in rule 20, in sub-rule (1)
 - (i) in clause (ii), the provisos shall be omitted;
 - (ii) Note below clause (iii) shall be omitted;
 - (iii) for clause (iv), the following clause shall be substituted, namely :—

“Appointment to the non-functional selection grade of Rs. 14300-400-18300 shall be made by promotion of officers in the Junior Administrative Grade in order of seniority subject to the rejection of the unfit provided that no member of service shall be eligible for appointment to the selection grade until he has entered 14th year of service on the 1st of January of the year calculated from the year following the year of examination on the basis of which the member was recruited.”



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(iv) after clause (v), the following Note shall be added, namely :—

“Note :—For the purposes of clauses (ii), (iii), (iv) and (v) the length of service shall reckon from the 1st of January following the year of Examination through which the member was recruited.”

(v) for clause (vii), the following clause shall be substituted, namely :—

“Appointment to the grade of Controller General of Accounts shall be made by selection on merit from amongst regularly appointed officers in the grade of Rs. 22400-525-24500 failing which from officers in the grade of Rs. 18400-500-22400 having atleast three years regular service in this grade.”

(d) for the SCHEDULE, the following SCHEDULE shall be substituted, namely :—

“SCHEDULE

[See rule 4(1)]

Authorised strength of the various grades in the service :

Serial Number	GRADE	STRENGTH
1.	Controller General of Accounts—Rs. 24050-650-26000	1
2.	Additional Controller General of Accounts/Principal Chief Controller of Accounts	4
3.	Senior Administrative Grade—Rs. 18400-500-22400	20
4.	Junior Administrative Grade—Rs. 12000-375-16500 and Selection Grade—Rs. 14300-400-18300	37
5.	Senior Time Scale—Rs. 10000-325-15200	75
6.	Junior Time Scale—Rs. 8000-275-13500	15
7.	Deputation Reserve	30
8.	Leave Reserve	10
9.	Training Reserve	6
10.	Probationary Reserve	10
	TOTAL	208

[No. A. 12018/2/96/MF-CGA/Gr. 'A']

V. N. KAILA, Jt. Controller General of Accounts

EXPLANATORY MEMORANDUM

Consequent upon the acceptance of the Report of the Fifth Central Pay Commission by the Central Government and also in view of the application of the Central Civil Services (Revised Pay) Rules, 1997, para 2 of the present amendment is being given retrospective effect from 1-1-96. It is further, certified that no one is prejudicially affected by this amendment giving retrospective effect.

Footnote :—The principal Rules were published vide Notification number GSR 537, dated 14th April, 1977 and subsequently amended vide :—

(i) GSR 125, dated 27th January, 1989;

(ii) GSR 434(E), dated 24th April, 1992.



भारत का राजपत्र The Gazette of India

असाधारण

EXTRAORDINARY

भाग II—खण्ड 3—उप-खण्ड (i)

PART II—Section 3—Sub-section (i)

प्राधिकार से प्रकाशित

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नई दिल्ली, सोमवार, मई 8, 2000/वैशाख 18, 1922

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NEW DELHI, MONDAY, MAY 8, 2000/VAISAKHA 18, 1922

वित्त मंत्रालय

(व्यय विभाग)

लेखा महानियंत्रक

शुद्धिपत्र

नई दिल्ली, 3 मई, 2000

MINISTRY OF FINANCE

(Department of Expenditure)

CONTROLLER GENERAL OF ACCOUNTS

CORRIGENDA

New Delhi, the 3rd May, 2000

सा.का.नि. 401 (अ).—भारत के राजपत्र, असाधारण, भाग 2, खंड 3, उपखंड (i) तारीख 3 जनवरी, 2000 में प्रकाशित, भारत सरकार के वित्त मंत्रालय (व्यय विभाग) लेखा महानियंत्रक की अधिसूचना सं. सा.का.नि. 12(अ) तारीख 27 दिसम्बर, 1999 के हिन्दी पाठ के पृष्ठ 2 की—

- (i) पंक्ति सं. 2 में "और (v) के प्रयोजनों के लिए सेवाकाल" के स्थान पर "और (v), के प्रयोजनों के लिए सेवाकाल" पढ़ें।
- (ii) अनुसूची में क्रम सं. 2 के स्तम्भ 2 में "अपर महालेखा नियंत्रक/प्रधान मुख्य लेखा नियंत्रक" के स्थान पर "अपर महालेखानियंत्रक/प्रधान मुख्य लेखा नियंत्रक—22400-525-24500 रु." पढ़ें।
- (iii) स्पष्टीकारक ज्ञापन में, पंक्ति 2 में "पैरा 2" के स्थान पर "पैरा 2 (क)" पढ़ें।

G.S.R. 401 (E).—In the notification of the Government of India in the Ministry of Finance (Department of Expenditure), Controller General of Accounts No. G.S.R. 12 (E), dated the 27th December, 1999, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), dated the 3rd January, 2000, at page 4,—

- (i) in line 2, for "and (V) the length of service", read "and (V), the length of service";
- (ii) in the Schedule, against serial number 2, in column 2, for "Additional Controller General of Accounts/Principal Chief Controller of Accounts", read "Additional Controller General of Accounts/Principal Chief Controller of Accounts—Rs. 22400-525-24500";
- (iii) in the Explanatory Memorandum, in line 2, for "para 2", read "para 2 (a)".

[फा. सं. 12018/2/96 एम.एफ.सी.जी.ए.ग्रे. ए.]

वी. एन. कैला, संयुक्त महालेखानियंत्रक

[No. A. 12018/2/96/MF-CGA/Gr. A]

V. N. KAILA, Jt. Controller General of Accounts

COPY No 1

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH

O.A. 1373 of 2000 & M.A. 2836 of 2000

M. Pran Konchady
(Applicant-in-Person)

.... Applicant

Versus

Union of India and Others
(Through : Mr. P.H. Ramchandani,
Sr. Counsel for the Central Government)

... Respondents
[Through C.G.A.]

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मह. सच. विभाग
CONT. GEN. OF ACCOUNT.
DEPTT. OF EXPENDITURE

8 DEC 2000

डाकरी संख्या/Dy-No.....

8-12-2000

M. PRAN KONCHADY

APPLICANT IN PERSON

NEW-DELHI

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**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

O.A.No.: 1373 of 2000

M.A.No.: 2836 of 2000

M.PRAN KONCHADY: APPLICANT

(Applicant in person)

V/s

UNION OF INDIA & OTHERS: RESPONDENTS

(Through : Mr. P.H.Ramchandani, { through C.G.A. }
Sr.Counsel for the Central Government)

Rejoinder of the Applicant

Most Respectfully Showeth:

Preliminary Submissions

The Respondents before giving parawise reply to the O.A. have submitted that averments in the O.A. are vague and confusing. Despite the unreasonably long time taken; the Reply, I beg to submit, has not been prepared with adequate care, that it deserved. Some of the facts and grounds mentioned in my application have been wrongly contested and distorted to confuse the real issues; and material facts have been concealed. The contention of the Respondents that notifications and O.M.'s referred to in support of the pleadings are irrelevant, and out of context; is distorted, misconceived and deserves to be rejected. Nevertheless, I humbly submit the following facts to make the contents of the O.A more precise and cogent, before giving the parawise rejoinder.



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1. The DOPT instructions in O.M. No.22011/5/86-Estt(D) dated 10th April 1989, as amended by O.M.No. 22011/5/91-Estt(D) dated 27th March 1997; provide that DPC's should be convened at regular annual intervals to draw panels which could be utilized to make promotions against vacancies occurring in during the course of a year. For this purpose, it is essential for the concerned appointing authorities to initiate action to fill up existing as well as anticipated vacancies well in advance of the previous panel by collecting relevant documents like CR's, Integrity certificates, Seniority list, etc for placing before the DPC. DPC's should be convened every year if necessary on a fixed date, e.g. 1st April or May. **The vacancies shall be filled in accordance with the Recruitment Rules in force on the date of vacancy, unless rules made subsequently have been expressly given retrospective effect. (Annexure A-1).**


2. That the DOPT instruction's crucial date for determining eligibility for promotion, prescribed vide O.M.No.22011/7/86-EST(D) dated 19th July 1989 was Ist October, since the confidential reports are written financial year-wise **(Annexure A-2)**. These instructions were revised and superseded by DOPT vide O.M.No.22011/8/98-Estt-D dated 17th September 1998 to prescribe Ist January as crucial date for determining eligibility uniformly irrespective of whether confidential reports are written financial yearwise or calendar yearwise. These instructions came into force in respect of vacancy years commencing from Ist January /Ist April 1999 and were accordingly, applicable to all such subsequent vacancy years. **(paragraph 3) (Annexure A-3).**

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3. That accordingly, the 3 carried forward vacancies of the vacancy year 1998-1999 were required to be filled up as per Recruitment Rules applicable to vacancies of the vacancy year 1998-1999. The contention of the Respondents in para 4 of their Reply that reporting of vacancies was not relevant as the applicant was not eligible for promotion to SAG is also baseless and not acceptable as vacancies are to be filled up, by considering all the eligible candidates as per recruitment rules read with administrative guidelines. The contention of respondents, in para-4 of their reply, that reporting of vacancies was not relevant as the applicant was not eligible for promotion to SAG is also baseless, incorrect and distortion of vital facts of the O.A. and not acceptable as vacancies are to be filled up by considering all the eligible candidates together, as per recruitment rules and administrative guidelines applicable as on date of occurrence of vacancies.

4. That the G.S.R. no. 401(E) dated 8th May 2000, amending the notification dated 3rd January 2000 was subsequent to the date of issue of regular promotion to SAG order dated 26th April 2000. Copy of the notification dated 8th May 2000 is **annexed at A-4**. The said notification cannot be applied to regular promotions effected prior to its issue. It is well established that entitlement for promotion is on the basis of the rules in force. The said notification amounted to amendment to the recruitment rules, as it changes the service conditions adversely; it could only be applied to promotions effected on or after 8th May 2000. Promotions are governed by Recruitment Rules in force and not by future amendments to the said Rules. The respondents are not precluded from amending the Recruitment Rules but not in the way, it was done in this case. It is well established that rules as to promotion are not to be given adverse effect, so as to govern promotions made before the rules came into force.



5. That the respondents had requested the DOPT to condone the so called short fall of 7 months service (1-1-1999 – 30-7-1999) in respect of six officers of 1982 batch for promotion to the Senior Administrative Grade as these officers had actually completed 8 years regular service in the Junior Administrative Grade on 30th July 1999 as prescribed under clause 20(1)(V) of the Recruitment Rules. This request was said to be made, to make officers of 1982 batch eligible for promotion on crucial date of eligibility (1-1-1999) as per DOPT instructions dated 17-9-1998, for the vacancy year commencing from January 1st /April 1st 1999, as shortfall in service was only notional and covered under rule 31 of the ICAS (Group 'A') Recruitment Rules 1977. **This relaxation was not required as DOPT instructions dated 17-9-1998, prescribing the crucial date for determining eligibility, were not applicable to the 3 carried forward vacancies pertaining to the vacancy year 1998-1999,** irrespective of the date of convening the DPC. Moreover the applicant and other officers of 1982 batch of ICAS completed 8 years of actual service in JAG (which is the requirement for promotion to the SAG) in the month of July 1999 itself. Accordingly, in terms of clause 20(1) (V) of the recruitment rules as applicable to the vacancy year 1998-1999, **the applicant was eligible for consideration and promotion to the Senior Administrative Grade in the DPC meeting held on 5th April 1999. It was not required on the part of respondents to seek relaxation to make the applicant eligible for promotion to the SAG, before the DPC meeting held on 5th April 1999.**

6. That the relaxation to the proposal as stated above was accorded by the DOPT and thereafter the DPC meeting was held on 16th November, 1999 for consideration of 1982 batch officers for promotion to SAG against 6 reported vacancies including 3



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carried forward vacancies of the vacancy year 1998-99. **The 3 carried forward vacancies of the vacancy year 1998-99 were required to be considered by the DPC meeting held on 5th April 1999 itself as 1982 batch officers were eligible for promotion as per the extent recruitment rules even without giving retrospective effect to the Notification dated 3rd January 2000.**

7. That no relaxation/reference to DOPT was required to consider 1982 batch officers for promotion to SAG with effect from 1-1-1999 for the vacancies pertaining to the vacancy year 1998-99 in terms of Notification No. GSR 12 (E) dated 3rd January 2000 effective from 1-1-1996. **As per recruitment rule and the DOPT guidelines issued vide O.M. No. 22011/7/86-Estt. (D) dated 19th July 1989 applicable to the vacancy year 1998-1999, the crucial date of eligibility for promotion was 1st October of the relevant year since confidential reports are written financial year wise.** It is also well established that Government cannot amend or supersede statutory rules by administrative instructions, but if rules are silent on any particular point Government can fill gaps and supplement the rules and issue instructions not inconsistent with the rules already framed. (Sant Ram Sharma Vs. State of Rajasthan and others AIR 1967 SC 1910).

8. There were 7 regular vacancies in the SAG by 17-2-99, for the vacancy year 1998-99 as per details given in Para 13 of the original application, **(which the respondents have not contested); still Department preferred to hold separate DPC in violation of guidelines issued by the DOPT (vide OM No. 22011/5/86-Estt. (D) dated 10-4-1989 (Annexure -A-5) and clarified vide OM No. 22011/1/98-Estt. (D) dated 20-4-1998) to hold DPC and consider all the available vacancies in a**

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vacancy year, together. The respondent for reasons best known to them, carried forward 3 vacancies and held separate DPC for 1982 batch, despite the fact that eligible officers were to be given charge of the SAG level posts in April, June and July 1999, respectively and vacancies were also available instead of holding DPC for all the available vacancies together, in violation of DOPT guidelines in this regard dated 10-4-1989 and 20-4-1998, referred to above. All the eligible officers on the crucial date of eligibility, irrespective of their batch, were entitled to be considered for promotion to SAG and relaxation of service, even on notional basis, was not required as the DOPT dated 17th September 1998 was not applicable to the vacancies pertaining to the vacancy year 1998-99. **The relaxation sought by the cadre to consider 1982 batch officers against the vacancies pertaining to the vacancy year 1998-99 was to delay to promotion of applicant by wrong application of the rules by introducing fiction of plain and simple arithmetic in calculation of qualifying service, without having followed the same arithmetic in other cases. The respondents ignoring the rule position have termed the applicant's plea as misconceived whereas the actual position is that the applicant's plea is fully supported by relevant recruitment rules, and relevant instructions.**

9. That it is also reliably learnt that in the DPC meeting held on 16th November, 1999, the DPC considered confidential reports of the officers for 8 years upto and including the year 1998-99, although for the vacancies pertaining to the vacancy year 1998-99 the confidential reports for and upto 1997-98 were required to be considered as per DOPT instructions contained in O.M. No. 22011/9/98-Estt.-D dated 8th September 1998 and further clarified vide OM No. 22011/9/98-Estt (D) dated 16th June 2000, which prescribe consideration of only such confidential reports which

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become available during the year immediately preceding the vacancy year even if DPC is convened later than the prescribed. DPC meeting held in April 1999 was also required to prepare panel for the existing as well as anticipated vacancies including the vacancies for the vacancy year 1999-2000 without waiting for the ACR for the year 1998-99. For the vacancy year 1999-2000, the crucial date of eligibility being 1-1-1999, the confidential reports for and upto 1997-98 were required to be considered as was the case in respect of confidential reports for the vacancy year 1998-99. Accordingly, in respect of vacancies pertaining to both the vacancy years (1998-99 and 1999-2000) the confidential reports for and upto 1997-98 were required to be considered. The Act of the respondents to consider Confidential Report for the year 1998-99 in violation of DOPT guidelines further proves intention of the respondents to delay the promotion of the applicant first by seeking relaxation of rules/instructions and then to wait for Confidential Reports for the year 1998-99, which were not required to be considered by the DPC, as per guidelines.

10. That the GSR No. 12(E) dated 3rd January 2000, giving effect to the recommendations of the 5th CPC including crucial date for determining eligibility (Paragraph 2) was made applicable with retrospective effect (1-1-1996) as per explanatory memorandum to the notification and accordingly 1982 batch officers were also eligible for consideration and promotion by the DPC meeting held on 5th April 1999. The GSR No. 401 (E) dated 8th May 2000 subsequently amended the Notification No. GSR 12 (E) dated 3rd January 2000 **on being represented by the applicant in January 2000. The notification dated 8th May 2000 was issued subsequent to the date of DPC (16-11-99) as well as regular promotion of 1982 batch, with the approval of the ACC, (26-4-2000) and therefore, the notification**

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dated 8th May 2000 is not applicable to the promotions already made on the recommendation of the UPSC and with the approval of the ACC. As previously stated, rules as to promotion are not to be given adverse effect so as to govern promotions made before the rules came into force.

11. That the DOPT OM No. 22011/3/98-Estt. (D) dated 17th September 1998 is relevant only for the crucial date for determining eligibility and as such have no effect on the date from which pay scales are to be allowed on promotion. It is further laid down in B.K. Bhalla Vs. State of Punjab, (1983) 1 SLR 636, 643 to 646 paragraphs 13-18 (P&H) that **Government can make promotions with retrospective effect unless the rules expressly prohibit it.** The crucial date of eligibility as prescribed is applicable to all services and posts. DOPT (respondent no. 3) itself being a cadre controlling authority, while amending Rule 6A of the IAS (Recruitment) Rules on the basis of corresponding DOPT order no. 11030/15/97-AIS (II) dated 15th October 1997 regarding manner of computation of eligibility, have clarified that "subject to availability of posts, the scales (functional) can be allowed from or after 1st January of the relevant year except in the cases where disciplinary/criminal proceedings are pending against the officer. For appointment to the SAG (super time scale) the DOPT have prescribed that, **"the scale can be allowed any time during the year of eligibility, subject to availability of vacancies in this grade"**. Accordingly, 1982 batch officers, recruited on the basis of Civil Services Examination 1981, were eligible for promotion to the Sr. Administrative Grade w.e.f. 1-1-1999 as per recruitment rules in force. Therefore, non-consideration of eligible officers in the DPC meeting held in April 1999 and carrying forward of 3 vacancies of the vacancy year 1998-99 to the vacancy year 1999-2000 was in violation of instructions in this



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regard.(The Respondents have deliberately violated the guidelines/instructions and are now trying to plead vagueness of pleadings.) **The DOPT had directed Cadre Controlling Authorities to amend the Recruitment Rules so as to advance promotions from July to January of the 17th year of Service following the year of examination based on which the officer was recruited; whereas the Respondents sought to do the opposite; by delaying processing of my promotion case and also delaying amendment of the Recruitment Rules. Had the Recruitment Rules been amended expeditiously by November 1998, I should have been promoted to SAG on 1-1-1999, itself.**

12. That the reply of the respondents stating that "in order to become eligible for promotion to the S.A.G, rule 20 (1)(V) **[and not rule 20(V) as contended by respondents]** of the ICAS recruitment rules prescribe 8 years of service in JAG (including service, if any, in the non-functional selection grade of JAG or 17 years service in Group 'A' of which at least 4 years should /be in JAG Further, DOPT instructions contained in their O.M. No: 22011/3/98/ Estt (D) dated 17th, September.1998 provide that crucial date for determining eligibility for holding a DPC as 1st.Jan and since, I, joined service on 9-5-1983 and was promoted to Junior Administrative Grade on 31.7.1991, I, had not completed qualifying service of 17 years in Group 'A' nor 8 years of service in J.A.G. as on 1.1.1999, Accordingly, I could not be considered for promotion to S.A.G. without relaxation of the recruitment rules", is also not correct as D.O.P.T. O.M. No: 22011/3/98/-Estt (D) dated 17th.September 1998 were applicable only from the vacancy years commencing from 1st.April.1999 and not to the vacancies pertaining to the vacancy year 1998-1999. In any case the relaxation of recruitment rules, though not required, was obtained by



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respondents from DOPT, to make 1982 batch officers eligible for promotion to SAG w.e.f. 1.1.1999. If the applicant was not considered eligible, without relaxation of recruitment rules as per total length of service counted from the date of joining service [9-5-1983] as contended by the respondents by attributing plain and natural meaning to rules regarding counting of total service of 17 years service, which is nothing but a distortion of facts, it is not clear from the contentions made by respondents, how Sh.P.Sudhir Kumar (1980- Batch) and Sh. A.S. Chauhan (1981- Batch), who joined on 28.02.1983 and 07.06.1983 respectively were promoted to SAG on ^{3.02.1998} ~~10.02.1998~~ and 25.05.1999. This clearly establishes that for determining, eligibility for promotion to various grades of service, the length of service is required to be reckoned from the 1st.July/1st January following the year of examination through which the member was recruited as prescribed in recruitment rules [Note below sub rule (1) of Rule20]. According to DOPT instruction, Seniority in a particular cadre does not entitle a public servant to be promoted unless he fulfils the conditions for eligibility prescribed by relevant rules. Seniority alone is no criteria for promotion to the next grade. It is also well settled that eligibility is the first and foremost consideration for promotion. If the contention and submission made by respondents for counting of service were accepted and applied for promotions of 1982 batch, then the promotions of officers belonging to 1980 and 1981 batch would also be inconsistent with rules and irregular.

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13. It is erroneous to say that I was posted as JAG level officer and not SAG Level officer w.e.f. 21st April 1999. In terms of the respondents order dated 21st April 1999. (copy annexed at A-6), I was stated to be adjusted against the post of Chief Controller of Accounts, Central Board of Direct Taxes.(C.B.D.T). My predecessor who functioned as Chief Controller of Accounts in C.B.D.T. from 7th June 1995 to 11th January 1998 exercised powers of Head of Dept. of the Accounting organisation in C.B.D.T., apart from directly assisting the Principal Chief Controller of Accounts in Accounting matters and in conducting Monitoring Committee Meetings. During the period from 21st April 1999 to 20th October 1999, I performed the same duties and responsibilities as my predecessor had performed; hence it is not correct to say that I did not perform the duties and responsibilities of Chief Controller of Accounts. Incidentally, I may add that Chief Controller of Accounts, C.B.D.T. figures in the list of Head of Departments, in the Delegation of Financial Powers Rules . Thereafter, from 21st October 1999 to 25th April 2000, I had worked as Chief Controller of Accounts in the Ministry of Surface Transport, where I had performed the duties and responsibilities of Chief Controller of Accounts including powers of the Head of Department of the Accounting Organisation. Notwithstanding the posting order which stated that I was posted as Controller of Accounts; no such post exists in the Ministry of Surface Transport. Official communications from the Respondent's office during this period were addressed to me in my capacity as Chief Controller of Accounts, thereby acknowledging the fact that I was functioning as Chief Controller of Accounts. Copies of 3 such letters received from senior officers viz. Additional Controller General of Accounts, and Joint Controllers General of Accounts are annexed at A-7,A-8and A-9, respectively.

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That the above submissions of the applicant to the preliminary submissions made by respondents make abundantly clear that the averments in the OA are very clear, precise and cogent which are supported by relevant notifications and OM's in support of the pleadings made by the applicant. **The submissions made by respondents in this regard in their reply as contained in paragraph 1 to Paragraph 6 are denied and require modifications to the extent, submissions made by applicant hereinabove.**

✓ 14. **That subject to the above submissions, facts relating to the DPC held in April 1999 and November 99 are denied as factually not correct and are required to be modified to the extent replied and submitted by applicant.**

15. That the submissions made in paragraph 7 by respondents are not factually correct and require further comments. The respondents had not reported the correct vacancy position to the UPSC for the DPC meeting held on 5th April 1999, for promotion to the S.A.G, for the vacancy year 1998-99. There is no doubt that the applicant who belongs to 1982 batch were junior to the officers of 1981 batch but was eligible in terms of recruitment rules applicable in view of completion of 8 years of service in the junior Administrative Grade on 30th July, 1999, as per clause 20 (I)(V) of the recruitment rules. Shri A.S.Chauhan, an officer of 1981 batch of the ICAS, who joined service, on 7.6.1983, was also promoted to the Senior Administrative Grade on 25th May 1999, before the applicant in the DPC meeting held on 5th April, 1999. It is well settled that seniority in a particular cadre does not entitle a Government. Servant to be promoted unless he fulfils its condition for eligibility prescribed by recruitment rules. Seniority alone is no criteria for promotion to the next



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grade If the contention of the applicant to reckon service of 17 years from the date of applicant actually joined the service is accepted, then the promotion of junior most officer of 1981 batch [Sh.A.S.Chauhan] and junior most officer of the 1980 batch [Sh.P.Sudhir.Kumar] was also irregular as they had also not completed 17 years of regular service and were promoted to the SAG under the same recruitment rules. The Respondent's averment that regular appointments can be made against vacancies exceeding one year after considering the number of officers expected to be repatriated from deputation; is accepted. Nevertheless, the factual position is that not a single SAG level officer, who was on deputation in April 1999, has been repatriated from deputation, in the nineteen month period, after the DPC held in April 1999. Rather, some SAG level officers have gone on deputation, adding to the number of SAG vacancies.

16. The averment of the Respondent in para 7 and 8 of the Reply, is false and is emphatically denied. On the very next day of issue of the orders dated 25th May 1999; I had submitted a representation dated 26th May 1999, seeking immediate processing of my promotion case. Copy of the representation is **annexed at A-10**. The Respondent did not process the case for 3 months and it was only in August 1999 that the Respondent referred the case to the DOPT seeking relaxation in qualifying service, when in fact no such relaxation was required as I had already completed the prescribed 8 years of actual service on 30th July 1999; as per the Recruitment Rules in force on 30th July 1999. The said Rules continued to be in force till 3rd January 2000 when the amended Recruitment Rules were duly notified. Even at that stage, the Respondent had an opportunity to rectify the matter, if it had acted on my Representation dated 31st January 2000. Copy of the Representation is annexed

[Signature]

as Annexure " A" 1 to the O.A. In the said Representation I had stated that ACC approval for my promotion may kindly be sought and obtained from 21st April 1999; the date from which I was working against the post of Chief Controller of Accounts in C.B.D.T, as this would be fully in accordance with the amended and duly notified Recruitment Rules of 3rd January 2000.

✓ 17. That submissions in paragraph 9 of the reply of the respondent are denied. The averments made by the respondent are erroneous and are denied. I reiterate that I should have been considered in the DPC held in April 1999, in view of the position explained in Para (4) supra. I have not sought for promotion from 19th July 1999, as stated the respondent; rather I have sought for promotion from 21st April 1999; the date from which I had been posted against the post of Chief Controller of Accounts and discharging the duties and responsibilities of the said post. The belated reply of the respondent dated 19th July 2000, was promptly and replied to, vide my letter dated 25th July 2000, wherein I have rebutted the averments of the respondent. A copy of the reply dated 25th July 2000 is annexed herewith as A-11.

18. That the. GSR No: -12 (E) dated 3rd January, 2000, giving effect to the recommendations of the 5th CPC, including the crucial date for determining eligibility, [Paragraph 2 of the notification] was made applicable with retrospective effect [1.1.1996] as per explanatory memorandum to the notification and accordingly 1982 batch officers were also eligible for consideration and promotion by the DPC meeting held on 5th April 1999. The: G.S.R.No.401 (E) dated 8th May 2000 subsequently amended the Notification No: GSR 12(E) dated 3rd January 2000, on being represented by the applicant in January 2000. On the date of DPC held on 5th

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April 1999, the 1982 batch officers were eligible for promotion as per existing recruitment rules in force for the vacancy year 1998-1999 as well as amendments carried out by Notification dated 3rd January 2000 expressly with retrospective effect 1.1.1996. **The notification dated 8th May 2000 was issued subsequent to the date of DPC (16.11.1999) as well as regular promotion of 1982 batch, with the approval of the ACC, (26.4.2000) and therefore, the notification dated 8th May 2000 is not applicable to the promotions already made on the recommendation of the UPSC and with the approval of the ACC.** The applicant was eligible for promotion to SAG w.e.f. 1.1.1999 in terms of amended recruitment rules. The plain and natural meaning of the rules as interpreted by the respondent to calculate total service of 17 years from the date of actual joining of service by the applicant is misleading and the **recruitment rules already provide manner of calculation of service to various grades of service from the 1st July / 1st January following the year of examination through which the member was recruited.** [Note below sub rule (1) of rule 20] In terms of this the applicant had completed 8 years of service in the JAG on 30th July, 1999 as per Recruitment Rules applicable on the date of vacancy and on 1st January, 1999 as per amended recruitment rules in terms of DOPT guidelines dated 17th September, 1998, which are not applicable to the vacancies pertaining to the vacancy year 1998-99. It is also relevant to submit that respondent no: 1 notified amendments of recruitment rules, as recommended by the 5th CPC, in January 2000 as against DOPT's instructions to review and carry out amendments within a period of 2 months as prescribed in O.M.No: AB-14017/2/97-Estt (RR) dated May 25, 1998. **The delay in notification of amendments in recruitment rules cannot be held against the applicant.** Had the respondents notified the amendments in time the applicant would have become eligible even

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before the DPC meeting held in April 1999, without any relaxation, as contended by respondents. The applicant was still eligible for promotion to SAG, even as per belated action on the part of respondents as Notification was made effective from 1.1.1996.

19. In view of the above submissions, the O.A is very clear, cogent and precise with all merit. In fact the respondents have tried to twist and distort facts without referring to the notification and OMs, which are relevant and have been quoted to support the contentions of the applicant. There is no vagueness of pleadings. **The reply of respondents as contained in Paragraph 7 to Paragraph 13 are misconceived and devoid of any merit besides being vague, and therefore the contents are denied as factually not correct and deserve to be rejected.** The applicant, therefore, makes humble submission before the Hon'ble Tribunal to grant the relief prayed for by the applicant.

20. That the reply of the applicant to the Para-wise counter reply of respondents to the O.A, subject to submissions made above, is as under: -

Para-wise reply:

21. That paragraph 15 of the reply, **with reference to Para I of the O.A**, being formal does not require any comments. It may however be submitted that the reply to the applicant's representation dated 31st January, 2000 was given by the respondent vide their letter dated 19th July, 2000, after submission of the O.A before the Hon'ble Tribunal and the applicant has rebutted this by replying to respondents vide my letter dated 25th July 2000. Copy of the rebuttal letter **is annexed at A-11.**

17/7/2000

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22. That the contents of Para graph 16, **with reference to Para II of the O.A.**, do not require any further comments from the applicant.

23. The averment in Para 17 of the Reply is false and is denied. On the very next day of issue of the orders dated 25th May 1999; I had submitted a representation dated 26th May 1999, seeking immediate processing of my promotion case. The Respondent did not process the case for 3 months and it was only in August 1999 that the Respondent referred the case to the DOPT seeking relaxation in qualifying service, when in fact no such relaxation was required as I had already completed the prescribed 8 years of actual service on 30th July 1999; as per the Recruitment Rules in force on 30th July 1999. The said Rules continued to be in force till 3rd January 2000 when the amended Recruitment Rules were duly notified. Even at that stage, the Respondent had an opportunity to rectify the matter, if it had acted on my Representation dated 31st January 2000. Copy of the Representation is annexed as Annexure "A" 1 to the O.A. In the said Representation I had stated that ACC approval for my promotion may kindly be sought and obtained from 21st April 1999; the date from which I was working against the post of Chief Controller of Accounts in C.B.D.T, as this would be fully in accordance with the amended and duly notified Recruitment Rules of 3rd January 2000.

24. That the contents of paragraph 18 of the counter reply, **with reference to Para IV (1) and Para IV (2) of the O.A.**, being factual statements made by the applicant in the O.A, do not require any further comments from the applicant.

25. That subject to rules regarding eligibility as clarified and further elaborated in Para 1-13 hereinabove, the contents of Para 19 of the reply by respondents, **with reference to Para IV (3)**, are denied.

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26.. That the contents of Para 20, **relating to Para IV (4) and IV (5) of the O.A,** being factual in nature are very clear, concise and cogent. The facts have been further clarified in Para 1-13 hereinabove. The contents as stated by respondent are denied and not accepted.

27. That the contents of paragraphs 21-24, **with reference to Para IV (6) and Para IV (7) of the O.A,** of the counter reply regarding applicant's eligibility as contained in **Para IV (6)-Para IV (12)** of the O.A., are denied and not accepted in view of and subject to further submissions made in Paragraphs 1-13 hereinabove.

28. The contents of paragraph 25 and 26, **with reference to Para IV (13) and Para IV (14) of O.A,** are factually incorrect. The contents of these paragraphs are denied and the position as stated in Para IV (13) and Para IV(14) of O.A. is reiterated as per DOPT O.M. No: 22011/1/98-Estt (D) dated 20th, April 1998. The respondent's record, particularly the **Note for the DPC** and other correspondence exchanged in this regard with the UPSC **may kindly be summoned before the Hon'ble Tribunal.** In the DPC held in November 1999, it was obligatory for the Respondent to apprise the UPSC, that due to the failure of the Respondent to include my name in the DPC held in April 1999, it had not been possible to give promotion to me by 31st July 1999; when I had completed 8 years of actual service in the Junior Administrative Grade and as per the Recruitment Rules in force, should have been promoted to Senior Administrative Grade, subject to vacancies, which in fact, were available. The Respondent also should have apprised UPSC that I was working against the post of Chief Controller of Accounts, C.B.D.T. with effect from 21st April 1999, and in accordance with the Recruitment Rules amended with retrospective effect from 1-1-1996, I was eligible to be

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promoted from 1-1-1999. At the time of the DPC, in November 1999, the amendment to the Rules had already been approved by DOPT and UPSC; and was awaiting notification. Hence, UPSC should have been told, that as soon as the said amended Rules are notified, approval of the Appointments Committee of the Cabinet would be taken for grant of promotion to me, with effect from 21st April 1999, in accordance with the amended and duly notified Recruitment Rules. Unfortunately, neither was this done; nor was my representation dated 31st January, acted upon, resulting in my having to approach the Honourable Tribunal for grant of justice.

29. That the contents of paragraph 27, with reference to Para IV (15) have not been specifically denied or accepted by the respondents. The averment, being factual in nature, therein does not accept the position as stated. The respondents may be requested to indicate the correct position in view of position as stated in Para 13 of the rejoinder and the averments made in Para IV (15) of the O.A.

30. That the contents of Para 28 and Para 29 of the reply submitted by the respondents, with reference to Para IV (16) and Para IV (17) of O.A, as stated by respondents are not factually correct and therefore denied as baseless. **particularly in view of my averments in Para 13, above..** The applicant submits before the Hon'ble Tribunal to call for respondent's record, particularly their correspondence with the UPSC and DOPT before the Hon'ble Tribunal, otherwise the respondents may kindly be directed to state the correct position as admissible to them since the position as stated by the applicant is not acceptable to the respondents.

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31. That the position as stated in paragraph 30, with **reference to Para IV (18) of the O.A.**, and the contents thereof are denied. The position in this regard is as stated in **paragraph 28 above**. In view of this the applicant has enforceable right to be considered and promoted as Senior Administrative Grade officer from the date of his posting against the vacancy in the Senior Administrative Grade and the recruitment rules do not contain any restriction in this regard.

32. The contents of the Para IV (19) of the OA are reaffirmed. It cannot be denied by the Respondent that the impugned orders were issued on 26th April 2000, without considering my representation dated 31st January 2000 requesting for promotion w.e.f. 21st April 1999. This is evident from the fact that the Respondent neither replied to my representation nor was I granted promotion from 21st April 1999.

It may kindly be noted that the Respondent while furnishing para-wise reply has not furnished any comments regarding para IV (20) of the O.A. wherein affirmation is as follows :

“ The Applicant has been continuously officiating as Chief Controller of Accounts and discharging full responsibility of the post since 21-4-1999. There is no change in his functions and responsibility w.e.f. 26-4-2000 as compared with 21-4-1999”.

33. No comments.

34. Averment in para VI of the OA is reaffirmed.

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35. The averment made by the Respondent in para 34 are denied. The averment that I have no right to claim promotion retrospectively from the date I was posted as Sr. Administrative Grade Officer in the Ministry of I&B is factually incorrect as I was never posted in Ministry of I&B. In view of the submissions made hereinabove, the comments of para VII of OA relating to grounds of the case are reaffirmed.

36. Contents of the para 35 of the reply of the Respondent are denied and reliefs sought vide para VIII of OA as reaffirmed.

37. No comments.

38. The proposal of the Respondents may kindly be rejected.

39. **PRAYER**

In view of the submission made herein above it is respectfully prayed that Hon'ble Tribunal may kindly hear the case on merits so to enable grant of reliefs sought in para VIII of the O.A.; by directing the Respondents to follow the prescribed procedure, for grant of the said reliefs.

Prayer

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VERIFICATION

I M. Pran Konchady S/o Sh. Dayananda Konchady presently working as Chief Controller of Accounts, Ministry of Surface Transport, do hereby verify that the contents of paragraph 1-39 above are true to my personal knowledge and that I have not suppressed any material facts.



(M. PRAN KONCHADY)

(Applicant in Person)

Date :- 08th December 2000

Place : New Delhi

2.8 The composition of the DPC for considering the cases of Government servants for crossing the EB in a time scale of pay should be the same as the DPC constituted for the purpose of considering the cases of confirmation of the Government servants concerned with the only change that the UPSC need not be associated for considering EB cases.

P A R T - II

FREQUENCY OF DEPARTMENTAL PROMOTION COMMITTEE MEETINGS

Frequency
at which DPC
should meet

L e.g.,

3.1 The DPCs should be convened at regular annual intervals to draw panels which could be utilised on making promotions against the vacancies occurring during the course of a year. For this purpose it is essential for the concerned appointing authorities to initiate action to fill up the existing as well as anticipated vacancies well in advance of the expiry of the previous panel by collecting relevant documents like CRs, integrity certificates, seniority list etc. for placing before the DPC. DPCs could be convened every year if necessary on a fixed date 1st April or May. The Ministries/Departments should lay down a time schedule for holding DPCs under their control and after laying down such a schedule the same should be monitored by making one of their officers responsible for keeping a watch over the various cadre authorities to ensure that they are held regularly. Holding of DPC meeting need not be delayed or postponed on the ground that recruitment rules for a post are being reviewed/amended. A vacancy shall be filled in accordance with the recruitment rules in force on the date of vacancy, unless rules made subsequently have been expressly given retrospective effect. Since Amendments to recruitment rules normally have only prospective application, the existing vacancies should be filled as per the recruitment rules in force.

3.2 The requirement of convening annual meetings of the DPC should be dispensed with only after a certificate has been issued by the appointing authority that there are no vacancies to be filled by promotion or no officers are due for confirmation during the year in question.

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No. 22011/2/86-Estt(D)
Government of India
Ministry of Personnel, Public Grievances
and Pensions
Department of Personnel & Training

New Delhi, the 9 July, 1989.

OFFICE MEMORANDUM

Subject:- Eligibility of officers to be considered for promotion
by IPC- fixing of crucial date of-

The undersigned is directed to say that where the recruitment rules lay down promotion as one of the methods of recruitment, some period of service in the feeder grade is generally prescribed as one of the conditions of eligibility for the purpose of promotion. There are, however, no instructions about the crucial date with reference to which eligibility of Government servants in the feeder cadre should be determined for the purpose of promotion through Departmental Promotion Committees. The matter has been under consideration in this Department and it has now been decided that while holding IPCs during a year, the crucial dates for determining the eligibility of officers for promotion would be prescribed as under:-

- (i) 1st July of the year in cases where ACRs are written calendar year-wise; and
 - (ii) 1st October of the year where ACRs are written financial year-wise.
2. The crucial dates indicated above would be applicable to only such services and posts for which Statutory Service Rules do not prescribe a crucial date.
 3. These instructions will come into force with immediate effect.

4. In this connection, attention is also invited to para 3.1.2 of this Department's O.M. No. AB-14017/12/87-Estt(RP) dated 23 March, 1988 in which all Ministries/Departments etc had been requested to issue a note in the recruitment rules for those posts to the effect that, when juniors have completed their probation period and are considered for promotion, their eligibility shall be determined on the basis of whether they have completed the probation period provided in the rules. In order to ensure that seniors

No.22011/3/98-Estt(D)
Government of India
Ministry of Personnel, P.G. & Pensions
(Department of Personnel and Training)

North Block, New Delhi 110001
September 17, 1998

OFFICE MEMORANDUM

SUBJECT:- Eligibility of officers to be considered for
promotion by DPC - Fixing of Crucial Date of

The undersigned is directed to say that where the Recruitment/Service Rules lay down promotion as one of the methods of recruitment, some period of service in the feeder grade is generally prescribed as one of the conditions of eligibility for the purpose of promotion. Vide the Department of Personnel and Training Office Memorandum No.22011/7/86-Estt(D) dated July 19, 1989, the crucial date for determining the eligibility of officers for promotion has been prescribed as under:-

- (i) 1st July of the year in cases where ACRs are written calendar year-wise.
- (ii) 1st October of the year where ACRs are written financial year-wise.

2. The matter has been reconsidered by the Government and in supersession of the existing instructions it has now been decided that the crucial date for determining eligibility of officers for promotion in case of financial year-based vacancy year would fall on January 1 immediately preceding such vacancy year and in the case of calendar year-based vacancy year, the first day of the vacancy year, i.e. January 1 itself would be taken as the crucial date irrespective of whether the ACRs are written financial year-wise or calendar year-wise. For the sake of illustration, for the panel year 2000-2001 (financial year), which covers the period from April 1, 2000 to March 31, 2001, and the panel year 2000 (calendar year), which covers the period from January 1, 2000 to December 31, 2000, the crucial date for the purpose of eligibility of the officer would be January 1, 2000 irrespective of whether ACRs are written financial year-wise or calendar year-wise.

3. The crucial date indicated above is in keeping with para 9 of the Department of Personnel and Training Office Memorandum No.22011/9/98-Estt(D) dated September 8, 1998 which prescribes a Model Calendar for DPCs. In accordance with paragraphs 10 and 11 of the said Office Memorandum, these instructions will come into force in respect of vacancy years commencing from January 1/April 1, 1999 and will, accordingly, be applicable to all such subsequent vacancy years.

4. These instructions shall be applicable to all services/posts. The Recruitment/Service Rules may, therefore, be amended accordingly. All Ministries/Departments are requested to bring these instructions to the notice of all concerned, including Attached/Subordinate Offices, for guidance and compliance.

Sd/-
(K.K. JHA)

Director (Establishment)

Annexure-A 4

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सं. डी. एल.-33004/99

REGD. NO. D. L.-33004/99



भारत का राजपत्र The Gazette of India

असाधारण

EXTRAORDINARY

भाग II—खण्ड 3—उप-खण्ड (i)

PART II—Section 3—Sub-section (i)

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

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254]

नई दिल्ली, सोमवार, मई 8, 2000/वैशाख 18, 1922

NEW DELHI, MONDAY, MAY 8, 2000/VAISAKHA 18, 1922

वित्त मंत्रालय

(व्यय विभाग)

लेखा महानियंत्रक

शुद्धिपत्र

नई दिल्ली, 3 मई, 2000

MINISTRY OF FINANCE

(Department of Expenditure)

CONTROLLER GENERAL OF ACCOUNTS
CORRIGENDA

New Delhi, the 3rd May, 2000

G.S.R. 401 (E).—In the notification of the Government of India in the Ministry of Finance (Department of Expenditure), Controller General of Accounts No. G.S.R. 12 (E), dated the 27th December, 1999, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), dated the 3rd January, 2000, at page 4,—

- (i) in line 2, for "and (V) the length of service", read "and (V), the length of service";
- (ii) in the Schedule, against serial number 2, in column 2, for "Additional Controller General of Accounts/Principal Chief Controller of Accounts", read "Additional Controller General of Accounts/Principal Chief Controller of Accounts—Rs. 22400-525-24500";
- (iii) in the Explanatory Memorandum, in line 2, for "para 2", read "para 2 (a)".

ग.स.नि. 401 (अ).—भारत के राजपत्र, असाधारण, भाग II, खण्ड (i) तारीख 3 जनवरी, 2000 में प्रकाशित, भारत के वित्त मंत्रालय (व्यय विभाग) लेखा महानियंत्रक की योजना सं. ग.स.नि. 12(अ) तारीख 27 दिसम्बर, 1999 के पृष्ठ 2 की—

- (i) शीर्षक सं. 2 में "और (V) के प्रयोजनों के लिए सेवाकाल" के स्थान पर "और (V), के प्रयोजनों के लिए सेवाकाल" पढ़ें।
- (ii) अनुसूची में क्रम सं. 2 के स्तम्भ 2 में "अपर महालेखा नियंत्रक/प्रधान मुख्य लेखा नियंत्रक" के स्थान पर "अपर महालेखा नियंत्रक/प्रधान मुख्य लेखा नियंत्रक—22400-525-24500 रु." पढ़ें।
- (iii) स्पष्टीकारक ज्ञापन में, पंक्ति 2 में "पैरा 2" के स्थान पर "पैरा 2 (क)" पढ़ें।

[पत्र. सं. 12018/2/96 एम.एफ.सी.जी.ए./प्र. ए.]

वी. एन. कैला, संयुक्त महालेखानियंत्रक

[No. A. 12018/2/96/MF-CGA/Gr. A]

V. N. KAILA, Jt. Controller General of Accounts

[Signature]

Annexure A-5

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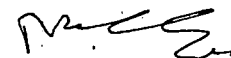
No. 22011/1/98-Estt(D)
Government of India
Ministry of Personnel, Public Grievances and Pensions
Department of Personnel and Training

New Delhi 110001
April 20, 1998

OFFICE MEMORANDUM

Subject:-Determination of regular vacancies to be reported to the Departmental Promotion Committee(DPC) - clarification regarding

In terms of para 4.1 of the consolidated DPC guidelines [O.M.No.22011/5/36-Estt(D) dated 10.4.1989], "It is essential that the number of vacancies in respect of which a panel is to be prepared by a DPC should be estimated as accurately as possible. For this purpose the vacancies to be taken into account should be the clear vacancies arising in a post/grade/service due to death, retirement, resignation, regular long-term promotion and deputation or from creation of additional posts on a long term. As regards vacancies arising out of deputation, only those cases of deputation for periods exceeding one year should be taken into account, due note, however, being kept also of the number of the deputationists likely to return to the cadre and who have to be provided for. Purely short-term vacancies created as a result of officers proceeding on leave, or on deputation for a shorter period, training, etc, should not be taken into account for the purpose of preparation of a panel. In cases where there has been delay in holding DPCs for a year or more, vacancies should be indicated year-wise separately".




.....2/-

(30) (28) - 2 - 66A

2. In reiteration of the aforesaid provisions (para 4.1) of the DPC guidelines dated 10.4.1989, it is hereby clarified that vacancies arising in a particular vacancy year, as noted aforesaid para 4.1, would be considered together by the DPC.

vacancies should also include newly-created posts in the same vacancy year. Hence, the DPC for a particular vacancy year held subsequent to the creation of such new posts in the same vacancy year would be required to take into consideration such newly-created posts also along with other already existing/anticipated vacancies arising in the same vacancy year. As a sequel to it, the zone of consideration would also be enlarged in a corresponding manner in terms of the DOP&T Office Memorandum Nos. 2011/1/30-Estt(D) dated 12.10.1990 and 22.4.1992.

3. All Ministries/Departments etc are advised to act strictly in accordance with the aforesaid clarification.


(K.K. Jha)
DIRECTOR (Establishment)

All Ministries/Departments of the Government of India

Copy to:-

1. Ministry of Railways, New Delhi
2. Department of Atomic Energy
3. Department of Electronics, New Delhi
4. Department of Space, New Delhi
5. Secretary, Union Public Service Commission, New Delhi (with three spare copies)
6. Rajya Sabha Secretariat (Admin Branch), New Delhi
7. Lok Sabha Secretariat (Admin Branch), New Delhi
8. President's Secretariat, New Delhi
9. The Comptroller and Auditor General of India, New Delhi
10. The Executive Member, Prasar Bharati, New Delhi
11. All attached offices of the Deptt. of Personnel and Training
12. All Officers and Sections of the Deptt. of Personnel and Training





Amir-A-6 (29)

No.

Fax : 4622305, 4690186

Telex : 031-66918

भारत सरकार
GOVERNMENT OF INDIAदिल्ली मंत्रालय, वित्त विभाग
MINISTRY OF FINANCE, DEPT. OF EXPENDITURE
बहालेखा-विपणनक
CONTROLLER GENERAL OF ACCOUNTSदूरभाष :
Ph. :
तार : महालेखा
Grams : MAHALEKHA7वां तल, लोकनायक भवन
7th FLOOR, LOK NAYAK BHAVAN
खान मार्केट, नई दिल्ली-110003
KHAN MARKET, NEW DELHI-110003दिनांक
Dated 20th April, 1999OFFICE MEMORANDUM

The President is pleased to appoint the undermentioned Sr. Time Scale Officers of 1990 batch of Indian Civil Accounts Service to officiate in the Jr. Administrative Grade of Rs. 13000-375-13500 on purely temporary and adhoc basis for a period of one year from the date they take over charge of the posts to which they are posted or till the regular officers become available whichever is earlier and post them as under:-

S.No.	Name	Present Posting	Posting on promotion	Remarks
1.	S/Shri/Smt. Vipan Chand	ACGA	CA, CBDT	Vice Shri M. Pran Konchady adjusted against the post of CCA, CBDT.
2.	R.K. Aneja	On deputation to NSG	CA, CPRO	On reversion from deputation and posted vice Shri S.S. Sagar transferred.
3.	Sandesh Kumar	ACGA	Dy. CGA	Against an existing vacancy
4.	Susan Phillips	Dy. CA, M/o S.P. & E	CA, M/o DARE	Against an existing vacancy
5.	Ajit Kumar	Dy. CA, CBDT	CA, M/o Home Affairs	Vice Shri A.S. Chauhan transferred
6.	Biri Singh	Dy. CA, M/o Industry	PASCAO, SPM Hoshangabad	Against an existing vacancy
7.	G.C. Bha	Dy. CA, M/o Coal	CA, M/o Agriculture	Vice Shri J.P.S. Chawla transferred.

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The pay of the officers would be regulated under FR-22(1)(a)(i).

The above promotion are purely on adhoc and temporary basis and will not bestow any claim on the officers for regular promotion to the post nor will the service rendered by them in the Jr. Administrative Grade count for the purpose of seniority in the Grade and for promotion to the next higher grade.

Charge reports may be sent to all concerned.

mather
(S.K. MATHUR)

Dy. Controller General of Accounts

Copy to:-

1. CGA/Addl. CGA/Jt. CGA (HPR)/Jt. CGA (VN) & Director (INGAF)/Jt. CGA (PPS)/
Dy. CGA (AN) & Jt. Director (INGAF)/Dy. CGA (AKS)/Dy. CGA (SS)/ACGA (SSx)/
ACGA (SD)/ACGA (XES)/ACGA (MSG)/ACGA (SNS).
2. Pr. CGA, CBDT, New Delhi.
3. CC (P), CPAO, New Delhi.
4. CCA, M/o UA & E, New Delhi.
5. CCA, M/o Home Affairs, New Delhi.
6. CCA, M/o HRD, New Delhi.
7. CCA, M/o Industry, New Delhi.
8. CA, M/o Water Resources, New Delhi.
9. Director General, NSG, New Delhi.
10. General Manager, SPM, Hoshangabad.
11. Dy. CA, M/o SJ & E, New Delhi.
12. Dy. CA, M/o Coal, New Delhi.
13. Sr. AO (Admn), O/o CGA, New Delhi.
14. DDO (Cash), O/o CGA, New Delhi.
15. Officers concerned.
16. Personal files.
17. Spare copies.

mather
(S.K. MATHUR)

Dy. Controller General of Accounts



सत्यमेव जयते

P.P.S. BRAR
Jt. Controller General of Accounts
Phone: -4690500

मुख्य निवा निर्यन्त्र
नं० ५०५० मन्त्रालय
हायरी नं०... 716
दिनांक... 27.10.99

Government of India
Ministry of Finance
Department of Expenditure
Controller General of Accounts
7th floor, Lok Nayak Bhawan
Khan Market, New Delhi-110 003.
D.O.S11012/1(18)/AD-PD/99/RBD/ 888

ANNEXURE A-7

31

21 October, 1999

Dear Shri Pran Konchashy

While reviewing the govt. cash balance position as per the accounts of your Ministry/Deptt with bank figure reported by RBI, CAS, Nagpur, the difference between the two sets of figure under Major Head "8675 - Deposits with Reserve Bank" at the close of 1998-99 stood as under:

Rs. In Crore

1. Amount adjusted in your accounts during the year 1998-99 (as per SCT) as per the records of this office.	2178.24 (Cr)
2. Amount reported by RBI, CAS Nagpur during 1998-99 in Respect of your Ministry.	2178.96 (Dr)
3. Annual Difference between Accounts & RBI figure for 1998-99	0.72 (Dr)
4. Proforma adjustment carried out outside the accounts of RBI during the year.	Nil
5. Actual annual difference for 1998-99	0.72 (Dr)
6. Difference upto 1997-98	Nil
7. Progressive Diff. upto 1998-99	0.72 (Dr)

I would request you to confirm the annual figures/difference mentioned in column 5 above. Further You are also requested to confirm the correctness of the progressive difference mentioned in column 7. In case the progressive difference mentioned in Col.7 does not tally with progressive difference as available in the records of your office, I would request you to furnish the annual difference starting from 1976-77 till date so that the same could be verified and reconciled with the differences as available in the records of this office.

Since the C&AG has made a critical audit observation on the existence of such difference, it is desired that the position be reviewed by your office to ascertain the actual reasons for the difference and to take immediate steps with concerned bank to minimise them at the earliest under intimation to this office.

With regards

Shri Pran Konchashy
Jt. Controller Genl of Accounts
Min of Surface Transport
Jain Nagar House
New Delhi

Yours sincerely,
P.P.S. Brar

Sh. Jagdish

ANNEXURE - A-8



MOST IMMEDIATE
DO No. G 25020/98-99/MF-CGA/FA/AR/ 9 89
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPT. OF EXPENDITURE
CONTROLLER GENERAL OF ACCOUNTS
7 TH. FLOOR
KHAN MARKET
NEW DELHI 110 003.

S.R.Shivrain
Addl. Controller General of Accounts
Ph:46901186

Dated: 25.2.2000

Dear Mr. Konchady,

As per provisions contained in para 8.24 of Civil Accounts Manual, UT Governments without Legislatures are not to be given loans or grants under Major Heads 7601, 3601 etc. but budget provision is to be made by the Ministries/ Departments under the relevant functional major heads in the Revenue and Capital sections of the demands for grants. However, loans given to Union Territory of Daman and Diu, as per details given below, are outstanding at the end of March 1999.

		(In thousands of Rs.)
Head of Account	Balance	
7602-04-825	Road Works	64,34
7602-04-826	Machinery and Equipment	5,91
7602-04-871	Water Transport - Other Loans	38,26

Consequently, Comptroller and Auditor General of India, in his draft Report No.1 of 2000 (Civil), has observed as under:

"Rather than booking the initial expenditure on loans and advances to the above UTs under the Major Head 7602 - Loans and Advances to UTs, the expenditure on Centrally Sponsored Plan Schemes should have been booked in the functional Major Heads of the concerned Department of Union Government.

Thus, the initial booking in the Major Head 7602- Loans and Advances to UTs was incorrect and the outstanding balances of the loans advanced, present a distorted picture of accounts."

As these loans will not be repaid by the UT, it is of utmost importance that the matter is taken up immediately with the loan sanctioning authorities to get them written off in the accounts for 1999-2000. While doing so it may also be ensured that no loan sanctioned to the State of Goa is incorrectly included in the above loans. If there was any misclassification in the previous years rectification may be made in the accounts of February 2000.

Please confirm action taken by 16.3.2000.

With regards,

Yours sincerely,

S.R. Shivrain
(S.R. Shivrain)

Shri Pran Konchady
Chief Controller of Accounts
Ministry of Surface Transport
2nd Floor, I.D.A. Building
Jamnagar House
New Delhi.

Copy

33

ANNEXURE - A-9



U.K. MAITRA

Jt. Controller General of Accounts

D.O. No.1(8)(8)/98/TA/ 114
Government of India
Ministry of Finance
Department of Expenditure
Controller General of Accounts
7th floor, Lok Nayak Bhawan
Khan Market, New Delhi-110 003.

Dated the 25th Feb., 2000.

Dear

Shri. Konchady,

In this office O.M. No.1(8)(8)/98/TA/246-250 dated 6th April, 99, (copy enclosed), you were requested to wipe off the balances lying under the Major Head '7602', in terms of para 5.14 of the Civil Accounts Manual, since it was not correct to classify the amounts released to Union Territory Administrations without legislatures under the 'Major Head 7602 - Loans to Union Territories'. No action appears to have been initiated from your end in this regard. The latest balances in this regard are again enclosed. These items of outstanding have been commented upon by C&AG in his audit report. CGA has taken a serious view on this. You are, therefore, requested to look into the matter and arrange to expedite action immediately.

Action initiated in this regard may please be reported to me latest by

07.03.2000.

With best wishes,

Yours sincerely,

U.K. Maitra
(U.K. MAITRA)

To,

Shri. Pran Konchady
Chief Controller of Accounts
Ministry of Surface Transport
I.D.A. Building
Jam Nagar House
New Delhi.

Pran

ANNEXURE - A-10 (34)

Dated: 26th May, 1999

To

The Controller General of Accounts,
Ministry of Finance,
Department of Expenditure,
7th Floor, Lok Nayak Bhawan, Khan Market,
NEW DELHI.

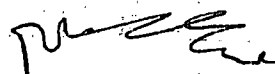
Dear Sir,

I belong to 1982 Batch of I.C.A.S. In accordance with D.O.P.T.'s instructions, the 1982 Batch of I.C.A.S. is eligible for consideration for regular promotion as C.C.A. w.e.f. 1.1.99. At present there are vacancies at the level of C.C.A. and above, as detailed below:-

- 1) O/o C.G.A.
- 2) M/o Steel & Mines
- 3) C.B.D.T.
- 4) M/o I & B
- 5) M/o Law & Justice (to be upgraded as C.C.A.)
- 6) M/o Food & Civil Supply (to be upgraded as C.C.A.)

In addition some officers may be going out on deputation as J.S. & F.A. etc. Further, D.O.P.T.'s instructions provide for keeping up of a panel of officers for future vacancies also. In view of this I would request that my case alongwith other officers of 1982 Batch may be considered for adhoc promotion as C.C.A. immediately and also processed for regular promotion as C.C.A. simultaneously.

Yours faithfully,



(M. PRAN KONCHADY)

%c.



Recd.
Q

27/5/99

B. K. KUTTY
Sd/- Controller General of Accounts
Min. of Finance (Dept. of Exp.)
New Delhi, 10002
Phone 6917768

ANNEXURE - A-1A 35

Shri S.K. Mathur, ICAS
Dy. Controller General of Accounts.
Ministry of Finance, Deptt. of Expenditure.
7th Floor, Lok Nayak Bhawan,
New Delhi.

Subject: Appointment to the Senior Administrative Grade of the ICAS-1982 Batch.

Sir,

Please refer to your letter No.A.32013/3/99/MF.CGA/Gr.A/639 dated 19th July, 2000 (received by me on 21st July, 2000) regarding my representation dated 31st January, 2000. In this connection, I would like to bring to your notice the para wise position

- a) With reference to the crucial date of eligibility for appointment to the various grades in the organized Group 'A' services, the Deptt. of Personnel & Training have already clarified as under:

"Subject to availability of posts, these scales can be allowed from or after 1st January during the relevant year in which officers become eligible for this scale."

There is no such condition for promotion to the S.A.G., as per recruitment rules of having completed 17 years service in Group 'A' of which at least 4 years should be in the J.A.G. or 8 years service in JAG as on 1.1.1999. As per clarification above, the scales can be allowed at any time during the relevant year, provided vacancies in the grade are available and the suitable officers are available for the posts as the scale can be allowed any time.

Even the note below clause V in Rule 20(1) prescribe as under

"For the purposes of clauses(ii),(iii), (iv) and (v), the length of service shall reckon from the 1st of January following the year of Examination through which the member was recruited"

In view of this, since I was recruited in the ICAS on the basis of Civil Service Exam, 1981, the service shall reckon from 1st January, 1982 accordingly, I was eligible for consideration for promotion to the S.A.G. from or after 1st January, 1999.

- b) My representation dated 31st January, 2000 can not be treated as misconceived for having not read with the corrigenda issued vide GSR 401 (E) dated 31st May, 2000 as the said corrigenda was issued vide GSR 401(E) dated 3.5.2000, which is much after the date of my representation.

In view of above, I would request you to reconsider the reply to my representation dated 31st January, 2000.

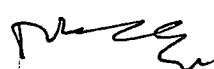
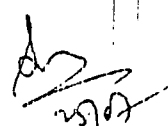
Yours faithfully



(M. Pran Konchady)

C.C.A (Surface Transport & C.B.D.T)

Dated: 25.7.00



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. 1373 of 2000

M. Pran Konchady Applicant
(Applicant-in-person)

Versus

Controller General of Accounts and Others Respondents
(Through : Mr P.H. Ramchandani, Sr Counsel for the Central Government)

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1.	Respondents' sur-rejoinder in terms of permission granted by the Hon'ble Tribunal 1 - 8 on 14-12-2000	

ngall
(S.K. Mathur)
Dy Controller General of Accounts
Ministry of Finance
Department of Expenditure
New Delhi

Dated : 3-1-2000

*Recd one copy
S/m
4/1/2001*

S. P. MALHI
Private Secretary
C/o Pt. CCA. CBDT,
New Delhi

to Mr Pran Konchady,

AT (Fb)
बाज दाखिल किया
Filed To
- 4 JAN 2001
दखिल नो/Flh.
जपबिलदार/Registrar

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**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. 1373 of 2000

M. Pran Konchady **Applicant**
(Applicant-in-person)

Versus

Controller General of Accounts and Others **Respondents**
(Through : Mr P.H. Ramchandani, Sr Counsel for the Central Government)

Sur-rejoinder to the applicant's rejoinder dated 8-12-2000

Most Respectfully Showeth :

The sur-rejoinder is being filed in accordance with the permission granted by the Hon'ble Tribunal on 14-12-2000.

2. That the Respondents in their reply dated 20-11-2000 have pointed out that the O.A. filed by the applicant is 'vague and confusing'. A particular instance quoted by respondents is that O.A. nowhere precisely indicates how the applicant has worked out his eligibility for promotion to the Senior Administrative Grade (S.A.G.) of the Indian Civil Accounts Service (ICAS). Even the date from which the applicant is reckoning his total length of service has not been indicated in the O.A. The applicant has filed a rejoinder dated 8-12-2000 which is almost twice the size of the O.A. but the rejoinder too lacks essential details. Even in the rejoinder, the applicant has not precisely indicated how he has worked out his eligibility for promotion to the Senior Administrative Grade and the date from which he is reckoning his total length of service. Mere fact that this Hon'ble Tribunal is pleased to issue notice to the respondents does not absolve the applicant of his




74 (2)

responsibility to state his case clearly. Even otherwise also, notice issued by the Hon'ble Tribunal is on admission of the O.A.

3. That the only para in which the applicant appears to have come closest to his assertion that he was eligible for promotion to the S.A.G. of the ICAS, is para 12 of the rejoinder but even in this para, the applicant has made only a bald averment that "... the length of service is required to be reckoned from the 1st July/1st January following the year of examination through which the member was recruited ... [Note below sub rule (1) of Rule 20]". As already stated in the respondents' reply, the applicant was declared successful in the Civil Services Examination held in 1981 and he joined the Service on 21-12-1982. He has not stated in clear terms whether his case is that his length of service should be reckoned from 1st July, 1982 or from 1st January, 1982. It is respectfully submitted that the applicant cannot pose a riddle before this Hon'ble Tribunal or the respondents to find out how he became eligible. The onus lies on the applicant to state all relevant facts, including relevant dates, in the O.A. itself, to show that he was duly eligible for promotion to S.A.G., when DPC was held in April, 1999. It is the basic principle of pleadings and natural justice that opposite party should not be taken by surprise.

4. That the rejoinder is only an attempt to find some faults here and there in the respondents' reply dated 20-11-2000, without the applicant, in the first instance, establishing his own case. For instance, the applicant has now come out in paras 12 and 15 of the rejoinder that his case is similar to those of Mr P. Sudhir Kumar and Mr A.S. Chuahan. In fact, the respondents are being made to prove their case that the applicant was not eligible for promotion, instead the applicant having to prove first that he was eligible for promotion, when earlier DPC met. This approach is contrary to well-established principles of pleadings.



It is submitted that irrespective of the submissions made in respondents' reply dated 20-11-2000, the O.A. deserves to be dismissed on the sole ground that the basic facts on which applicant's assertion is based that he was eligible for promotion to S.A.G. when DPC was held in April, 1999, are found wanting in the O.A. Subject to this objection, the averments made in paras 12 and 15 of the rejoinder are being replied in para 11 below.

5. It is noticed that the applicant has now come out with a new plea in para 9 of the rejoinder that the proceedings of the DPC held in November, 1999, are vitiated because it wrongly took into consideration the CRs for the year 1998-99 whereas the DPC should not have gone beyond 1997-98. It is submitted that rejoinder is not meant for raising a fresh plea because rejoinder is not a substitute for the O.A. For raising a new plea, O.A. has to be amended, which requires permission of the Hon'ble Tribunal. It is, therefore, submitted that a new plea taken in the rejoinder may therefore be ignored by this Hon'ble Tribunal. Subject to this objection, new plea raised in para 9 of the rejoinder, is also being replied in paras 10 below.

6. That comments on those paras in the rejoinder in which the applicants have made new averments, are as under.

7. That in reply to paras 3, 4, 10 and 11 of the rejoinder, it is submitted that 'explanatory memorandum' under the notification dated 27-12-1999 cannot override the substantive provisions of the notification. As already submitted by the respondents in para 10 of their reply dated 20-11-2000, the notification is of prospective effect as it is clear from Rule 1(2) of this notification. The averments made in these paras are, therefore, denied.



78 (4)

8. That in reply to paras 5 to 7 of the rejoinder, it is submitted that the DPC held in April, 1999 was for the vacancy year 1998-99. The crucial date for determining eligibility for this vacancy year was on 1-10-1998. The applicant was not eligible on this date (1-10-1998) because he had neither completed 17 years total service nor 8 years service in the Junior Administrative Grade on 1-10-1998. As already submitted in respondents' reply dated 20-11-2000, the applicants were not even eligible on subsequent crucial date, i.e. 1-1-1999. The averments made in paras 5 to 7 are, therefore, denied.

9. That in reply to para 8 of the rejoinder, the vacancy position is explained as follows. The cadre-controlling authority, i.e. the Controller General of Accounts, while referring the proposal to UPSC for the DPC held in April, 1999, worked out six vacancies in the S.A.G., out of which two were proposed to be set aside for the expected upgradation of posts and one for the expected repatriation of an officer (Shri V.N. Kaila) from deputation. The proposal was therefore made for filling up of three vacancies by promoting three officers of 1981-batch. However, on further examination, UPSC did not accept one of the projected vacancy as the period involved was less than one year but in the meantime, one more vacancy arose due to long term deputation of Shri C. Lalchuma, and thus number of vacancies exceeding one year, remained three. The UPSC accordingly recommended three officers of 1981-batch (Mrs Archana Nigam, Mr Chandy Andrews and Mr A.S. Chauhan) for promotion to S.A.G. While sending proposal for the next DPC (which was held in November, 1999), it was decided to release two vacancies which had earlier been set aside for the expected upgradation of the post, as the upgradation proposal failed to

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37 (5)

materialise. Besides, one vacancy which was earlier excluded by UPSC as it did not exceed one year, later emerged as a clear vacancy of more than one year because of extension of deputation granted to the officer concerned. Accordingly, three vacancies of 1998-99 were reported to the UPSC. This was in addition to three anticipated vacancies of the year 1999-2000. It is clear from the above facts that there was no under-reporting of vacancies for holding DPCs in April, 1999 and November, 1999. While making these submissions, it is once again reiterated that the applicants were not eligible for promotion on crucial dates, i.e. 1-10-1998 and 1-1-1999, and hence they cannot derive any advantage out of the existence or non-existence of vacancies. The averments made in para 8 of the rejoinder are, therefore, denied.

10. That in reply to para 9 of the rejoinder, it is submitted that the minutes of the DPC held in November, 1999 do not specifically indicate the year up to which the CRs of the candidates were taken into consideration. Assuming that CRs for the year 1998-99 were also taken into consideration by the DPC, there was nothing wrong in it because, as explained above, three vacancies belonged to the year 1999-2000 while three vacancies of the preceding year (1998-99) had been carried forward because none was eligible to be considered for promotion against those vacancies. Moreover, the applicant has not shown how his interests were adversely affected, if the DPC took into consideration the CRs for the year 1998-99. He was not eligible to be considered against the vacancies of the year 1998-99. He cannot, therefore, find faults with the selection process on this score. The averments made in para 9 of the rejoinder are denied.

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11. That in reply to paras 12 and 15 of the rejoinder, the cases of Mr P. Sudhir Kumar and Mr A.S. Chauhan, referred to by the applicant are explained as follows —

- (a) Mr P. Sudhir Kumar is an officer of 1980-batch. He joined ICAS on 28-2-1983 and was promoted to the Junior Administrative Grade w.e.f. 23-10-1989. He was considered for promotion for the vacancy year 1997-98 for which the crucial date for determining eligibility in accordance with Department of Personnel & Training, O.M. dated 19-9-1989, was 1-10-1997. As explained in the respondents' reply dated 20-11-2000, a candidate has either to complete 17 years of total service or 8 years service in the Junior Administrative Grade on the crucial date of eligibility, i.e. 1-10-1997. There was deficiency of 22 days as on 1-10-1997 in 8 years service in Junior Administrative Grade in Mr P. Sudhir Kumar's case, which was condoned by the Government, and thereafter he was considered for promotion. It cannot, therefore, be said Mr P. Sudhir Kumar has been promoted by ignoring the conditions of recruitment rules.
- (b) Mr A.S. Chauhan is an officer of 1981-batch. He joined ICAS on 7-6-1983 and was promoted to the Junior Administrative Grade w.e.f. 29-6-1990. He was considered for promotion for the vacancy-year 1998-99 for which the crucial date of eligibility was 1-10-1998. He had completed 8 years of service in the Junior Administrative Grade as on 29-6-1998 and




(7)
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was thus eligible for promotion as on 1-10-1998. His promotion was thus in accordance with the recruitment rules.

12. That it is further submitted that even if it is assumed (but not accepted) that there was some mistake in not following the recruitment rules while promoting Mr P. Sudhir Kumar or Mr A.S. Chuahan, the law does not require that the Government should commit similar mistake in applicant's case also. In such cases, the usual practice is to review the wrong promotions but the applicant has not impleaded Mr P. Sudhir Kumar and Mr A.S. Chauhan as respondents in the O.A. The averments made in paras 12 and 15 of the O.A. are, therefore, factually incorrect.


13. That in reply to paras 13, 17, 28, 32 and 35 of the rejoinder, it is reiterated that though the applicant was posted against a vacancy which was in the Senior Administrative Grade (S.A.G.), but there was no formal order of the competent authority appointing him as the S.A.G. officer from the date of his initial posting. No case is, therefore, made out for applicant's retrospective promotion to the Senior Administrative Grade. Moreover, as submitted above, the applicant cannot plead additional facts/averments in the rejoinder. The averments made in paras 13, 18, 30, 32 and 35 of the rejoinder are denied.

14. That in reply to para 16 of the rejoinder, it is submitted that representation dated 26-5-1999 referred to by the applicant, have not been found in the relevant records and therefore could not link them up when the reply dated 20-11-2000 was prepared but looking at the acknowledgements which appear on the photocopies of these representations, the respondent 1 does not



deny existence of those representations. However, the applicant has not explained in the rejoinder why he did not enclose copies of these representation with the O.A. itself. The conduct of the applicant once again shows that the O.A. is only a partial or incomplete statement of facts. In case the applicant was aggrieved by the fact that his representation dated 26-5-1999 have not been acceded to, he ought to have referred to those representations along with his representation dated 31-1-2000 in para 1(ii) of the O.A. The applicant's own conduct disentitles him to any advantage of his representations 26-5-1999.

16. That subject to the submissions made hereinabove, all facts and averments in the applicant's rejoinder are hereby denied and those in the respondents' reply dated 20-11-2000 reiterated.


(S.K. Mathur)
Dy Controller General of Accounts
Ministry of Finance
Department of Expenditure
Controller General of Accounts
Lok Nayak Bhawan, Khan Market
New Delhi

Verification

Verified at New Delhi, this the 3rd day of January, 2001 by S.K. Mathur, working as Dy Controller General of Accounts in Government of India, Ministry of Finance, Department of Expenditure, Controller General of Accounts that the contents of the above reply are true to the best of his knowledge and belief, as derived from official records. Nothing material has been concealed.


(S.K. Mathur)

Copy No. 1
31/1/2001
II

K5

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A.No. 1373 of 2000 and M.A. No. 2836 of 2000

M.Pran Konchady
(Applicant-in-Person)

...

Applicant

Versus

Union of India and Others
(Through: Mr. P.H. Ramchandani,
Senior Counsel for Central Government)

.....

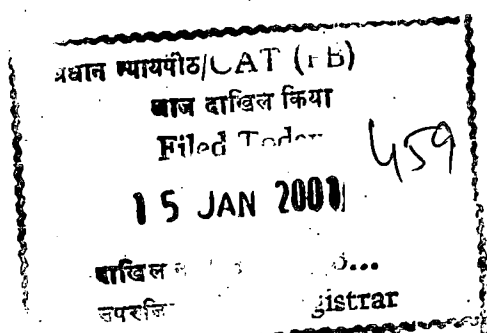
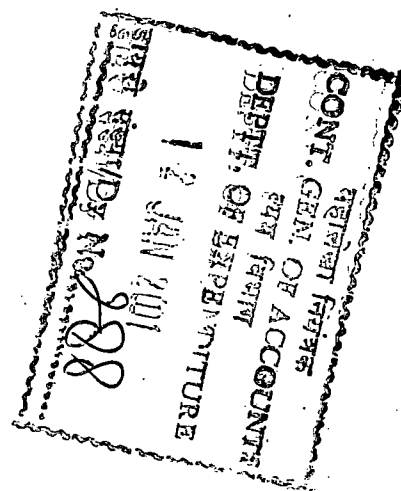
Respondents
(Through C.G.A.)

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(M. PRAN KONCHADY)
APPLICANT IN PERSON

12TH January, 2001
New Delhi.



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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. No. 1373 of 2000 and M.A. No. 2836 of 2000

M.Pran Konchady
(Applicant-in-Person)

.....

Applicant

Versus

Union of India and Others
(Though: Mr. P.H.Ramchandani,
Sr. Counsel for the Central Government)

.....

Respondents
(Through C.G.A.)

Rejoinder of the applicant to sur-rejoinder dated 3.1.2001

Most Respectfully Showeth:

1. The paragraph-wise reply to the sur-rejoinder is being filed in accordance with the permission granted by the Hon'ble Tribunal on 14th December, 1999.
2. That the contents of the O.A. are very precise, clear and cogent. The reckoning of total length of service including the crucial date of eligibility for promotion to the SAG has been precisely explained by applicant in paragraphs 4,5,8 and 12 of the O.A. and paragraphs 2,5,6, 11 and 12 of the rejoinder dated 8th



December, 2000 filed by the applicant. The contention of respondents is therefore, denied as baseless and the averments made by applicant in the O.A. and the rejoinder are reiterated.

3. That the contents of paragraph are denied as an attempt to confuse the real and simple issues involved, which have been clearly and precisely explained in the O.A. [paragraphs 4,5,8 and 12] and the rejoinder dated 8.12.1999 [paragraphs 2,5,6,11 and 12]. The averments made by applicant are reiterated.

4. That the contents of paragraph are nothing but an attempt by the respondents to sidetrack the real issues by raising frivolous issues. The contention of the respondents is devoid of any merit and deserves to be dismissed. The pleadings and submission made by applicant are as per well-established principles of pleadings. Subject to these submissions, the averments made in paragraph 12 of rejoinders, the contents have further been replied in paragraph 11 below.

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5. That the contents of paragraph 9 of the rejoinder are reiterated and the contents of sur-rejoinder are denied as an attempt to cover-up deficiencies in procedures followed by the DPC in its meeting held on 19th November, 1999. The averments made by applicant are further replied in paragraph 10 below.
6. No comments required.
7. That the contents of paragraph 7 are denied as the explanatory memorandum to the notification dated 03.01.2000 is very much part of the Gazette notification G.S.R.12 (E) dated January 3rd, 2000 and the contention of the respondents is not correct that the explanatory memorandum cannot override the substantive provisions of the notification. The explanatory memorandum is explanation to the applicability of the eligibility conditions and other recommendations made by the 5th Central Pay Commission. If the explanatory memorandum had no overriding effect, there was no need for respondents to subsequently issue another notification No. G.S.R.401 (E) dated 8th May, 2000, on being represented by the applicant, to

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modify explanatory memorandum subsequent to the promotion of the applicant.

8. That for the DPC held in April, 1999 the crucial date for determining eligibility is with reference to the eligibility of the candidates on the date of DPC and not as per the vacancy year 1998-99. The applicant was eligible for promotion w.e.f. 31.7.1999 on completion of 8 years regular service in the Junior Administrative Grade on Crucial Date, as already submitted and on 1.1.1999 in terms of G.S.R.12 (E) dated 3rd January, 2000. As per the extant instructions of the DOPT, it was incumbent up on the Respondents to make year-wise panel in the DPC held in April, 1999 ; and even keep advance panel ready for future and anticipated vacancies, including the short-term vacancies. The contention of the respondents is, therefore, denied and the averments made by the applicant are reiterated.

9. That the explanation given by the respondents regarding vacancy position is not as per rule position as contained in DOPT Office Memorandum No. 22011/1/98-Estt[C] dated 20th

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April, 1998 [Annexure A-6 to rejoinder]. The respondents are only trying to confuse issues by giving explanations not consistent with the submissions made by the applicants and the rule position. It is respectfully submitted that **the respondents have now categorically accepted availability of 6 vacancies but have concealed the fact of upgradation of 2 posts at the level of SAG, which was also under consideration; consequent on recommendations of the 5th CPC. These posts were upgraded w.e.f. 1..7.1999 which should have been anticipated.** It is further submitted that the respondents also failed to follow guidelines to fill up vacancies in accordance with the recruitment rules in force on the date of vacancies as submitted in paragraphs 1 and 3 of the rejoinder dated 8.12.2000 and to prepare year-wise panels. The attempt to link vacancies with eligibility of the applicant with the vacancies and their existence or non-existence is futile and not relevant as cadre is required to prepare and keep advance panel ready for anticipated vacancies. The applicant reaffirms availability of clear vacancies as stated in the O.A. in terms of rule position and guidelines. As per the DOPT instructions dated





10.04.1989, the cadre authorities are supposed to make panel ready even for the short-term vacancies. The contention of the respondents is therefore denied and the averments made by applicant are reiterated.

10. That the contention of the respondent that the minutes of the DPC held in November, 1999 do not specifically indicate the year up to which the Confidential reports of the candidates were taken into consideration is also vague and evasive. The intention of the respondents in clearly admitting the factual position and the mistake committed by them is not understood. In respect of vacancies pertaining to both the vacancy years (1998-99 and 1999-2000) the confidential reports for and up to 1997-98 were required to be considered as submitted in paragraph 9 of the rejoinder dated 8th December, 2000. **The applicant is trying to promote his interest to the extent of pointing out the irregularity and also the act of respondents to consider Confidential Report for the year 1998-99; in violation of DOPT guidelines; to further prove intention of the respondents to delay the promotion of the applicant first**



by seeking relaxation of rules / instructions and then to wait for Confidential "Reports for the year 1998-99, which were not required to be considered by the DPC even for the vacancies pertaining to the vacancy year 1999-2000." This is another ground for requesting review DPC, as proper procedure was not followed by the DPC in terms of DOP instructions dated 10th April, 1989. The contention of the respondent is therefore, denied as baseless and the averments made by applicant in paragraph 9 of the rejoinder are reiterated.

11. That the reply of the respondents as contained in paragraph 11 is explained as follows :-

- (a) Mr. P.Sudhir Kumar an officer of 1980 batch, who joined ICAS on 28.2.1983, was promoted to the Junior Administrative Grade w.e.f. 23.10.1989 after 6 years and 8 months of service against 9 years of regular service as required under recruitment rules. Similarly, there was deficiency of 2 years and 4 months of service for completion of 17 years of total service as required for promotion to the S.A.G. against 22

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days of service as contended by the respondents “ by attributing plain and natural meaning of the rules counting total service of 17 years from the date the applicant actually joined the service by applying simple arithmetic: as stated in paragraphs 3 and 11 of the counter-reply by respondents dated 20.11.2000.”

- (b) Similarly, Shri A.S.Chauhan, an officer of 1981 batch who joined ICAS on 7.6.1983 was promoted to the Junior Administrative Grade w.e.f. 29.6.1990, after completion of 7 years of service against 9 years of regular service required for promotion to the Junior Administrative Grade. Similarly, he had not even completed 16 years of regular service on the date of his promotion to the SAG on 25.5.1999.

The applicant in paragraph 12 of his rejoinder dated 8th December, 2000 had cited these cases to counter respondents logic of plain and natural meaning of the rules for calculating total service of 17 years from the applicant actually joined the service by application of simple



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arithmetic as stated in Paragraphs 3 and 11 of the reply submitted by respondents dated 20th November, 2000. It is a fact that the applicant joined service before Shri A.S.Chauhan [7.6.1983] and was promoted after him to the JAG [31.7.1991] and the SAG [26.4.2000]. The contention of respondents is therefore baseless and devoid of any merit.

12. The applicant has no intention to get the promotion of Mr. P.Sudhir Kumar and Shri A.S.Chauhan reviewed but **the applicant only wants correct procedure to be followed in applicant's case by holding a review DPC as the correct procedure was not followed by the DPC in his case.** The contention of the Respondent is therefore denied.

13. That the contention of the respondent is denied as devoid of any merit and the averments made in para 20 of the O.A. and in paragraph 13 of the rejoinder dated 8th December, 2000 are reiterated. The post was never downgraded from the SAG level to post the applicant at the level of JAG, which is in violation of the guidelines in the regard as the applicant performed both



statutory and administrative functions and exercised powers attached to the SAG level post. The additional facts are only incidental to clarify the points made by the respondents.

14. That the reply of the respondents stating that **'the respondent No. 1 does not deny existence of these representatives'** is evasive and contrary to the statement that **'the representation submitted by the applicant dated 26th May, 99 have not been found in the relevant records.'** The applicant does not owe any explanation to the Respondent for not attaching copy of this representations with the O.A. as the OA was made in pursuance and non-disposal of applicant's representation dated 31st January, 2000. **In fact, respondents owe explanation for not taking timely action on the representations and misrepresenting and concealment of facts in paragraph 17 of the counter-reply.** The applicant has put forward relevant facts to further substantiate mala fide on the part of respondents by not taking timely action on the representation made by the applicant on 26.5.1999 [immediately after promotion of 3 officers] and to counter

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respondent's contention contained in paragraph 7 of the counter reply dated 20.11.2000. The applicant is further trying to prove that the reply by respondent is factually not correct and distorted and has not been prepared with adequate care and attention. The submissions made by applicant in Paragraph 24 of the rejoinder dated 8.12.2000 are hereby reiterated and **the contention of the respondents is denied as misrepresentation of facts and suppression of relevant information.**

15.

The subject to the submissions made hereinabove, all facts and averments in the sur-rejoinder are hereby denied and those in the applicant's rejoinder dated 8.12.2000, subject to above submissions, are hereby reiterated.

[Signature]

Verification

Verified at New Delhi, this the 12th day of January, 2001 by M.Prان Konchady, working as Chief Controller of Accounts in Government of India, Ministry of Surface Transport that the contents of the above reply are true to the best of my knowledge and belief. Nothing material has been concealed.


(M.PRAN KONCHADY)
Applicant-in-Person