

(4)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

O.A. 443/87

Shri O.P. Verma

.....Petitioner

Vs.

Comptroller & Auditor
General of India

.....Respondent

Shri N.N. Aggarwal

.....Advocate for the
Petitioner

Shri P.P. Khurana

.....Advocate for the
Respondent

O.A. 779/87

Shri J.K. Aggarwal

.....Petitioner

Vs.

Comptroller & Auditor
General of India

.....Respondent

Shri N.N. Aggarwal

.....Advocate for the
Petitioner

Shri P.P. Khurana

.....Advocate for the
Respondent

O.A. 1097/86

Shri B.K. Sharma

.....Petitioner

Vs.

Comptroller & Auditor
General of India

.....Respondent

Applicant in person

.....Advocate for the
Petitioner

Shri P.P. Khurana

.....Advocate for the
Respondent

O.A. 1098/86

Shri G.S. Bhargava

.....Petitioner

Vs.

Comptroller & Auditor
General of India

.....Respondent

Applicant in person

.....Advocate for the
Petitioner

Shri P.P. Khurana

.....Advocate for the
Respondent

O.A. 1668/87

Shri K.N. Mehrotra

.....Petitioner

Vs.

U.O.I. through C.S.A.G.

.....Respondent

Applicant in person

.....Advocate for the
Petitioner

Shri P.P. Khurana

.....Advocate for the
Respondent

CORAM:

THE HON'BLE MR. P.K. KARTHA, VICE CHAIRMAN(J)

THE HON'BLE MR. S.P. MUKERJI, VICE CHAIRMAN(A) MEMBER

(The judgment of the Bench delivered by Hon'ble
Shri S.P. Mukerji, VICE CHAIRMAN) Member

Since common question of law, facts and reliefs
are involved in the aforesaid five applications filed
under Section 19 of the Administrative Tribunal Act.

These are being disposed by a common judgment as follows:

2. The applicants have been working as Assistant
Administrative Officers (AAO) in the office of Comptroller
and Auditor General of India at New Delhi and all of them
became eligible for promotion to the next higher grade

of Administrative Officer in that office five years after
(SAS)

they had passed the Subordinate Accounts Service or Subordinate
(SRAS)

Railway Audit Service/Examinations. Their grievance is
that their chance of promotions was "confiscated" by
persons drafted on deputation by the respondents from
the field offices. As a result of this allegedly,

arbitrary, illegal and invidious policy followed by the

respondents, the applicants S/Shri G.S. Bhargava and

R.K. Sharma who had passed the relevant examination

as far back in 1966 and 1970, had to retire as AAO in

July, 1985 and October, 1985. The applicants S/Shri O.P.

Verma and J.K. Aggarwal who had passed the qualifying

examination in 1972 and 1974 were promoted as Administrative

Officer in the C & AGs office in September and July, 1987, on the basis of the interim direction given by this Tribunal on 12.6.1987. The fifth applicant Shri R.N. Mehrotra who had passed the qualifying examination in 1971 is still working as AAO. As against this, the respondents, according to the applicants, have been promoting or appointing as AOs in the C&AGs office itself officers on deputation, from various Audit Offices (herein after indicated as field offices) who are not only junior to the applicants, but had passed the accounts service examination later than the applicants.

3. The brief facts of the case can be narrated as follows. The audit organisation of Comptroller and Auditor General consists of the headquarters office at the capital and a number of field offices like Accountants General's Offices, Railway Audit of various Railways, P.T. Defence, etc. The headquarters office and the field offices have posts of Assistant Administrative Officers/Section Officers/Assistant Superintendents with a common scale of pay. The next higher grade is that of Administrative Officer. The cadre of each field office and that of C&AG's office cadres are distinct and separate with their own Accounts Service Examinations and office-wise seniority lists. There is no common seniority list of AO's or AAO's covering all the field offices and the office of the C&AG.

AOs posted in the field offices have to look forward to promotion in their own field offices and there is no 'inter field office' transfers. However, in accordance with para 190 of CAG's Manual of Standing Orders, the CAG has the power to transfer S.A.S. Superintendents including SAS passed clerks from one office to another within the Indian Audit and Accounts Department or to any office under the Central Government.

The office of the CAG, according to the respondents, is the policy making office dealing with technical and administrative problems of the field offices located all over the country. It stands at the apex of the pyramid and is parallel to the field offices. According to the respondent it requires the services of staff with experience in field offices in order to discharge responsibilities relating to policy concerning field offices. Even though the Recruitment Rules of 1963 provided for appointments as Administrative Officers, 100% by promotion, the respondents because of their peculiar requirements have been following what is known as 're-organisation scheme' promulgated on 2.11.1961. In accordance with this scheme, it was decided by the respondents inter alia that the staff of the office of CAG who had no lien in other offices and were holding posts of Assistant Superintendents/Section Officers/AOs and above in a substantive or officiating capacity be allotted on a proforma basis to suitable positions in any of the field offices, as far as possible on the choice of the staff. They were liable

to transfer to those offices to which they were also to look for further promotion/confirmation. However, as (OA 1668/87) in the case like that of Shri K.N. Mehrotra/ even after the proforma allotment to the field office, (the allotted officers) they continued to function in the C&AG's office without physically working even for a single day in the field office to which they were allotted. The UICs on passing the Subordinate Accounts Service Examinations (SAS) were to be allotted to the field offices and posted there. These allotted officers were thereafter to look to that offices for confirmation/promotion. Their claims for working as Assistant Superintendents or AAO in the C&AG's office were to be considered with those of other originally recruited in field offices.

5. Certain employees of Accountant General, Central Revenues, New Delhi, that is, one of the field offices moved the High Court of Delhi against this allotment scheme by which officials of C&AG's office ^{who} were allotted proforma to their office (and curtailed their promotion prospects. In that writ petition, an out of court settlement was reached on 30th March, 1977 between the C&AG and the staff of AGCR/Commerce/Works/Misc. field offices. It was agreed that the C&AG will not make any further allotment to the field offices and that the existing allottees would be withdrawn from the field offices in a phased manner in a number of years. When the allottees in the field offices are promoted in those

offices, ad hoc posts were created to accommodate them so that they do not encroach upon the the promotion prospects of the original employees of the field offices, till such time as all the allottees are repatriated to C&AG's office. According to the respondent, even after the court settlement, even though further allotments to field offices were discontinued, those, who had already been allotted to the field offices continued to function in the field offices till they could be repatriated and their allotments cancelled. Until such de-allotment, the allottees had to look-forward to promotion in the context of their position in the field offices. The grievance of the applicants is that instead of bringing back the allottees after 1973, the C&AG has been indiscriminately bringing back confirmed Section Officers of the field offices ^{on deputation} in the C&AG's office. As a result of this policy, which was in flagrant violation of the Recruitment Rules of 1963, which provided for only filling up the post of Administrative Officers on promotion by a 100% basis, by the respondents' own showing (para 3(iv) of counter affidavit filed by the respondents in OA 1668/87) as of date against the total number of 152 AAOs/SOs and 58 AOs in the office of C&AG, only one AAO and 8 AOs belong to the C&AG's office, while all others are on deputation basis. 6. The respondents, however, claim that the re-organisation scheme of 1961 was challenged by one of the allottees, but was upheld by the Delhi High Court.

7. It appears that in 1978 a committee was set up to look into the cadre management of C&AG's office. The committee submitted its report in 1979 and thereafter it was decided by the respondent that a separate cadre should be formed for C&AG's office and draft Recruitment Rules were framed. These draft rules envisaged initial recruitment by absorption of allottees as well as those working in the office of C&AG on deputation, besides insiders, that is, those who were directly recruited in C&AG's office and even after passing the SAS examination not allotted to any field office pursuant to the out of court settlement of 1973. However the proposed Recruitment Rules could not be notified.

8. The position, therefore, in 1978 was like this. The Recruitment Rules of 1963 provided that all appointments of Administrative Officers in C&AG's office were to be made by promotion. The C&AG's office however had the following three categories of staff as follows:-

(i) Insider allottees, that is, those who having passed the SAS before 1973 were allotted to the field offices but were working in the C&AG's office.

(ii) Insider non-allottees, that is, those who have been recruited originally in the C&AG's office and having passed the SAS examination after 1973 were not allotted to any field office in accordance with out of court settlement of 30.7.73; and

(iii) Deputationists.

In June, 1980 a meeting was held by the 'insiders' with the Deputy Comptroller and Auditor General regarding their promotion as Administrative Officer. A copy of the minutes of this meeting has been annexed at Annexure-8 to the rejoinder filed by Shri G.S. Bhargava in O.A. 1098/86. In this meeting on behalf of the respondents, it was pointed out that the allottees were men of office of C&AG and the mere fact that for some time they remained out did not make any material change. After they were taken back, for all purposes, they would be treated as men of that office and will take their proper places. It was also pointed out that the SRAS, SAS people belong to two distinctly different schemes and the re-organisation scheme recognised that fact. It was also emphasised on behalf of the respondents that "the allotment scheme should be deemed to have been over for all purposes and the allottee Section Officers shall not be sent back on promotion to their offices of allotment".

9. Be that as it may, the position did not undergo any change and according to the respondents' own admission, between 1961 and 1985 no person was promoted in the C&AG's office to the post of AGs in respect of any of the aforesaid three categories till November, 1985.

10. In November, 1985, it was decided by the respondents not to have a permanent cadre for C&AG's office but to fill up the posts by getting officers on deputation from field offices. It was, however, decided inter alia

that in the matter of promotion such officers who had entered the CAG's office directly, that is, insiders should not be placed at a disadvantageous position vis-a-vis their colleagues in the field offices. Thus (insiders) according to the respondents while such officials cannot expect promotion as an AO whenever vacancy arose in CAG's office subject to their having put in minimum of five years as AAO, their cases had to be decided on the basis of some relationship with the situation, prevailing in the field offices so that they are not placed in a disadvantageous position. This was made clear to the associations' Comptroller & representative who met Deputy Auditor General on 7.11.86. According to the respondents the CAG's office was treated as audit office and the existing position in the audit office throughout the country was that the mean year for promotion works out to be 1971 (vide page 4 of the counter affidavit filed by respondent in OA 443/87). The respondents further stated that all officers directly recruited in CAG's office who became Section Officers/AOs prior to 1972 have been promoted as AOs. Only those officials whose turn of promotion had come in the office of their allotment or field offices were inducted as AO and no promotion as AO was made in the CAG's office prior to November, 1985. They were promoted as AO under the Next Below Rule, that is, when their juniors in the office of their allotment had been so promoted. After the policy decision was taken in 1985, promotions were made of five AOs during 1985/86 and one in 1987. No AAO on deputation was

promoted as AO except under the benefit of Next Below Rule.

For making such promotions of the allottees their seniority was kept in view and they were first delinked from the office of allotment and then promoted.

10. We have heard the arguments of the learned counsel and for all the parties, the applicants appearing in person

and gone through the documents carefully. The first point

to be considered is whether the posts of Administrative Officer, in the office of C&AG could after 1963 when the

Recruitment Rules were promulgated be filled up by

deputationists. It is admitted by the respondents that in

accordance with the Recruitment Rules, the posts had to be

filled up by promotion. A copy of these rules is available

at Annexure-1 to the application No. CA 1663/87 of Shri K. S.

Mahotra. These rules indicate that 50% of the posts of

Administrative Officer are to be filled by selection and

50% as non-selection posts. The method of recruitment is

indicated only by promotion and the feeder category is

indicated as at Subordinate Account Service/Subordinate

Railway Service Cadres. Since the office of the C&AG is a

cadre distinct from the cadre of field offices, it goes

only

without saying that the officers belonging to the Subordinate

Accounts Service and Subordinate Railway Service of C&AG's

cadre would be eligible for promotion. There is no provision

for filling up the posts by deputation, but the C&AG has

power under the Recruitment Rules to increase or decrease

the number of posts. Further, the C&AG has the following

power under para 190 of C&AG Manual of Standing Orders:-

190. Transfers of S.A.S. Superintendents including S.A.S. passed clerks from one Audit and Accounts Office to another are not ordinarily made. They are, however, liable, like all other Central Government servants, to be transferred from one office to another, subject to the provisions of F.R. 15. The Comptroller and Auditor General may transfer such persons to any other office within the Indian Audit and Accounts Department or to any office under the Central Government on such terms and conditions as may be determined by him in each case.

The aforesaid para empowers the C&AG to transfer officers from the field offices to the headquarters office temporarily. It will thus be possible for C&AG not to fill up a post of Accounts Officer in his office, but transfer an officer from a field office to the headquarters office and adjust his pay against the unfilled post at the headquarters. Such an officer can ^{be} designated as a deputationist. The exercise of the powers under para 190 above by the C&AG does not to our mind conflict with the Recruitment Rules of 1963. However, it goes without saying that power under the aforesaid para has to be exercised judiciously, fairly and reasonably and not arbitrarily or for collateral purpose. The re-organisation scheme of 1961 was challenged by the allottees, but was admittedly upheld by the High Court. The applicants before us, however, is more concerned in the manner in which the scheme has been implemented than the vires with the allotment scheme itself.

11. Prima facie to us it appears rather odd that as on date, as against 152 AAOs/SOs, and 58 AOs in C&AG's office, only one AAO and eight AOs belong to C&AG's office. Even out of 8 AOs, four AOs were promoted between July and

November, 1987, after this Tribunal on 12.6.1987 in

OA 443/87 directed that all existing and future vacancies shall be filled in only by consideration of the applicants and others eligible for promotion under the rules and shall not be filled in by deputationists.

12. The argument of the respondents that for such a small cadre of a few four or five AAOs and AOs, the Recruitment Rules cannot be applied is unconvincing.

Recruitment Rules can apply even to isolated posts, so called

The ridiculously small number of insiders, who were not allotted to the field offices is illusory. The

number is bound to go up if we included the insider those allotted also, that is, who had been originally recruited

or merged with the CAG's office passed the SAS examination before 1973 and were notionally allotted to a field office.

As has been pointed out above, in June, 1980, in a meeting held with the Deputy Comptroller and Auditor General,

the respondents themselves indicated that the allotment scheme should be deemed to have been over for all purposes

and the allottee SOs shall not be sent back on promotion to their offices of allotment. Actually the allotment

scheme died a death on 30.3.1973 through the out of court settlement. This settlement between CAG and the

representative of the field staff or staff of field offices was articulated in the letter of the CAG's office dated

6th April, 1973 (Annexure-E to the OA 1097/86). The

relevant extracts are quoted below:-

" It has now been decided that, save to the extent orders of allotment have already been issued, there would be no more allotment of SRAS passed clerks of this office. The persons who already stand allotted to your office would be withdrawn in a phased manner over a number of years. It will naturally be an endeavour to reduce this period to the maximum possible. To the extent that this is not done, additional ad hoc posts will be created in your office. The number and duration of such ad-hoc posts would be such that the adverse impact on the promotion prospects of your staff is neutralised. In your office out of the 4 allottees, one has been promoted as A.O. But he originally belonged to your office. As regards Section Officers, as against the original figure of 3 allottees, one is on deputation and the number of adhoc posts to be created immediately works out to 2 S.Os. The number of these ad-hoc posts may go up or come down depending upon the number of allottees physically working in your office at any given time".

It will be clear from the above extracts that apart from stoppage

the / of further allotment, promotion of allottee officers

in the field offices were to be made against supernumerary

ad hoc posts to be created in the field offices and not

against the regular posts in those offices. Technically speaking,

therefore, allottees in the field offices became

the expatriate children of C&AG's office with effect from

30.3.73 waiting to be repatriated as and when vacancy

in the parent apex office arose. Though no time limit

was fixed for their repatriation, the expatriate allottees

had a vested right to be considered for absorption in the

parent office/after 30.3.73. The distinction between

post-1973 and pre-1973 SAS passed officers of C&AG's

office virtually vanished after 1973 though formally

the recognised. In 1979 on / report of the Committee of 1978, it

was decided by the respondent that the C&AG's office should

have a separate cadre by itself, and again in June 1980,

it was indicated in the meeting with the 'insiders' that allottee Section Officers shall not be sent back on promotion to their office of allotment.

13. It is also note-worthy that the draft Recruitment Rules which were sent in 1980, suggesting C&AG allottees constitution of the cadre by induction of deputationists and non-allottees were not notified and the Recruitment Rules of 1963 recognising only promotion were allowed to be continued without amendment. All these point to the conclusion that allottees and non-allottees whether they are confirmed or not in the field offices had become a part and parcel of the C&AG's office for all purposes.

14. During the course of the arguments, it was brought to our notice that the last allottee was repatriated in 1983. Accordingly, there is no doubt in our mind that from 1983 or the date by which the last allottee was repatriated to the C&AG's office, all vacancies in C&AG's office had to be filled up by promotion from the grade of AAO of officials holding post in that grade but originally recruited and confirmed in the C&AG's office, that is, 'allottee insiders' and 'non-allottee insiders'. The respondents, therefore, are directed to proceed as follows:-

(a) For each of the years from 1983 (or the year when the last allottee was repatriated) the respondent, should identify the junior most batch of SAS passed AOs holding the post of AO in the office of C&AG.

(b) For each of the aforesaid years, the respondents should consider all AAOs allottees and non-allottees, but excluding deputationists, belonging to the junior-most (as indicated in (a) above) batch/and above, and give them notional promotion on merit or on seniority as the case may be, against the 50% merit quota and 50% seniority quotas. The number of notional promotions should not exceed the number of deputationists holding the posts of AOs in that year. The deputationists so replaced by the insiders in that year should be reverted if not already ^{done} to their parent cadre from the date of actual promotion of such insiders.

(c) No distinction be made between SAS and SPAS passed officers in the matter of repatriation and confirmation/promotion as the Railway Audit Officers are recognised as field offices.

(d) The notional promotions as indicated in (b) above of the should be made irrespective of fact whether the insider (allottee as well as non allottee) is at present in service or not so long as his turn for consideration for such promotion in accordance with (a) above, comes before the date of his superannuation.

(e) The notional promotion so made will entitle the promotee to all consequential benefits including those of arrears of pay and allowances and revision of pensionary and other terminal benefits.

(f) If the CLAG for special reasons of expertise of a deputationist is not in a position to be revert the deputationist to/replaced by an insider in accordance with (b) above, he should create supernumerary ad hoc post for retaining such a deputationist.

(g) In order to maintain a two way traffic between CLAG's office and field offices, the respondent may, if so advised, amend the Recruitment Rules providing for a deputation reserve both in the head office to be filled by the officers drawn on deputation from the field offices as also a deputation reserve in the field offices for sending insiders for temporary periods to gain experience in the field office should be restricted to Deputation Reserve.

The appointments of deputationists of CLAG's only and no deputationists should be appointed in future as AO in CLAG's office outside this Reserve.

(h) In regard to the sealed cover procedure adopted in case of Shri K.N. Mehtatra, applicant in QA 1668/87, since the chargesheet was served on him on 16.11.87, whereas the DPC was held much earlier and the applicant was informed by respondent's letter dated 8.10.87 that sealed cover procedure had followed in his case, we declare that the sealed cover procedure was not called for in his case in accordance with the ruling of the Full Bench of this Tribunal in K.C.H. Venkata Reddy Vs. U.O.I., ATR 1987(1) 547. We further direct that the sealed cover should be opened and if he is found fit for promotion, he should be provisionally promoted as AO with effect from the date his immediate

20

junior Shri Satish Kumar was promoted. This will be subject to the promotion which he may get in accordance with (a) & (b) above. He should be promoted with all consequential benefits from the date his immediate

junior Shri Satish Kumar was promoted.

(i) Action on items (a) to (g) as also on item (h) should be completed within a period of three months and on (g) within a period of six months from the date of communication of this order.

15. All the aforesaid five applications are disposed of on the above lines of (a) and (i) above. There will be no order as to costs.

(S.P. MUKERJI)

VICE CHAIRMAN (A)

8/10/88
(P.K. KARTHA)
VICE CHAIRMAN (J)