

CENTRAL ADMINISTRATIVE TRIBUNAL, ADDITIONAL BENCH

ALLAHABAD

DATED: THIS THE 6 TH DAY OF JUNE 1997

Coram : Hon'ble Mr. S. Das Gupta AM
 Hon'ble Mr. T. L. Verma JM

ORIGINAL APPLICATION NO 1247 of 1996

With

ORIGINAL APPLICATION NO. 1278 of 1996

O.A. No. 1247/96

1. Bhimsen Singh, son of Banwari Lal Sr. Accountant.
2. Hirendra Nandi, son of Late B.N. Nandi; -do-
3. A.L. Jaiswal, son of R.D. Jaiswal; -do-
4. Rajesh Kumar Srivastava, son of B.B. Lal; -do-
5. Girija Singh Yadav, son of M.S. Yadav; -do-
6. triloki Nath, son of Bharat Yadav; -do-
7. Sant Ram Verma, son of Jagdev Prasad Verma; -do-
8. Govind Ballabh Joshi, son of R.D. Joshi; -do-
9. Ramesh Chandra, son of H. Ram; -do-
10. Vinay Shanker Verma, son of Late U.S. Verma; -do-
11. Kamlesh Chandr Bajpai, son of Late S.S. Bajpai; -do-
12. Arun Kumar Sharma, son of J.P. Sharma; -do-
13. Pradeep Kumar Gupta, son of Radhey Shyam Gupta; -do-
14. Anil Kumar Jain, son of Surendra Kumar Jain; -do-
15. Sanjay Sapru, son of A.N. Sapru; -do-
16. Rajendra Prasad Srivastava, son of Sahab Srivastava; -do-
17. J. Mishra, son of R.C. Mishra; -do-
18. Kuldeep Kumar Soni, son of R.S. Soni; -do-
19. Ved Prakash Singh, son of R.B. Singh; -do-
20. Rajesh Kumar Dwivedi, son of B.P. Dwivedi; -do-
21. Amar Nath Sahu, son of Hari Shankar Sahu; -do-
22. Chandra Shekhar Srivastava, son of Late C.P. Srivastava -do-
23. Dinesh Chandra Gupta, son of Late M.L. Gupta; -do-
24. Arun Kumar, son of Purushottam Ram; -do-
25. Rajat Kumar Agarwal, son of Alind Kumar; -do-
26. Om Prakash Singh, son of M.P. Singh; -do-
27. Manoj Garg, son of O.P. Garg; -do-

28. Shree Dhar Shukla, son of H.N. Shukla; -do-
29. Santonsh Mishra, son of P.N. Mishra; -do-
30. Mohd. Aslam, son of Mohd. Mojibur Rehman; -do-
31. Bhupendra Nath Dixit, son of S.N. Dixit; -do-
32. Ram Achal, son of Jugun; -do-
33. Arjun Kumar, son of Munni Lal; -do-
34. V.S. Chaurasia, son of Raja Ram; -do-
35. Shyam Kishan, son of Uma Shankar Yadav; -do-
36. Pramod Kumar Srivastava, son of Late Ram Lochan Lal; -do-
37. Raj Bihari, son of Prabhu Dayal; -do-
38. V.K. Mukherjee, son of P.C. Mukherjee; -do-
39. Rakesh Pandey, son of R.P. Pandey; -do-
40. Rajput, son of Late Ramjatan; -do-
41. Sanjeev Kumar Tyagi, son of Rajeshwar Singh; Accountant
42. Ramanand Shree Prakash, son of S.P. Gupta; Clerk
43. Sanjai Saxena, son of Subhash Chandra Saxena, Accountant
44. B.K. Ghosh, son of N.K. Ghosh, Sr. Accountant;
45. A.K. Malviya, son of S.N. Malviya; -do-
46. A. Garg, son of R.S. Agarwal; -do-
47. Alok Roy, son of Parimal Roy, Accountant
48. Sameer Kumar Srivastava, son of Late R.B. Lal, Sr.Accountant
49. K.M. Mishra, son of C.M. Mishra, Accountant
50. Arun Mishra, son of K.P. Mishra; -do-
51. Indra B. Vishwakarma, son of J.N. Vishwakarma, Sr.Accountant
52. Ashok Kumar Singh, son of C.D. Singh -do-
53. Janardan, son of Ramaie, -do-
54. Dinesh Kashyap, son of Kamal Prasad, -do-
55. Deepak Kumar Srivastava, son of S.N. Singh, -do-
56. Lalji Tripathi, son of O.N. Tripathi, -do-
57. Aklesh Kumar Srivastava, son of S.S. Srivastava, -do-
58. Deepak Chandra Srivastava, son of K.L. Srivastava, -do-
59. Pramdhesh Kumar, son of P.L. Chaurasia, -do-

60. Ganga Prasad, son of Late Sunder Lal, Clerk
61. M.A. Khan, son of Muzaffar Husain Khan, Sr. Accountant
62. Sandeep Kumar Garg, son of T.N. Agarwal, Accountant
63. Bishan Dass Gyani, son of S. Prasad, Sr. Accountant
64. Rakesh Kumar, son of Ramdularey, Accountant
65. Abdul Qadir Siddiqui, son of Mumir Uddin, Sr. Accountant
66. Jag Mohan Singh Rawat, son of B.S. Rawat, -do-
67. S.K. Upadhyay, son of U.S. Upadhyay, -do-
68. Suresh Chandra, son of Bankey Lal, -do-
69. Achchhe Lal, son of Jay Raj, -do-
70. G.K. Srivastava, son of S.N. Srivastava, -do-
71. Narendra Kumar, son of G.C. Sarkar, Accountant
72. Sanjai Kumar Rai, son of Lalji Rai, -do-
73. S.K. Gupta, son of T.N. Gupta, Sr. Accountant
74. Hari Om Srivatava, son of G.P. Srivastava, -do-
75. Atul Kumar Srivastava, son of S.P. Srivastava, -do-
76. Vinod Kumar Kanojia, son of M.D. Kanojia, -do-
77. Vinod Singh, son of M. Prasad, -do-
78. Raj Krishna Ojha, son of S.B. Ojha, -do-
79. Deepak Saxena, son of B.S. Saxena, -do-
80. Ram Bilash Singh Kushwaha, son of Baij Nath Ram, -do-
81. Gopal, son of Shivji, Accountant
82. Chandra Deo, son of Algu Prasad, Sr. Accountant
83. Debashis Chatterjee, son of A.K. Chatterjee, Accountant
84. Munish KUMar Gupta, son of M.C. Gupta, -do-
85. Anil Kumar Shukla, son of A.N. Shukla, Sr. Accountant
86. Aijaz Ahmad Khan, son of Nasrullah Khan, -do-
87. Dharendra Rai, son of Mangla Rai, -do-
88. Rakesh Kumar, son of Panna Lal, -do-
89. Hira Lal, son of Nand Lal, Accountant
90. Neeraj Kumar Upadhyay, son of K.L. Upadhyay, Sr. Accountant
91. Ram Kailash Pandey, son of R.K. Pandey, -do-

92. Ghadeer Haider Khan, son of S.H. Khan, -do-
93. Rajesh Kumar Srivastava, son of Mahabir Prasad, -do-
94. Satish Chandra Rai, son of Deo Narain Rai, Accountant
95. Makkhan Lal, son of Raja Ram, Sr. Accountant
96. Balgovind, son of Shree Ram, Accountant
97. Ashok Kumar, son of Late C. Lal, Sr. Accountant
98. Pankaj Srivastava, son of Ram Krishna Srivastava, -do-
99. Anjay Kumar, son of Anirudh Prasad, -do-
100. D.S. Roy, son of B. Saha, -do-
101. S.K. Srivastava, son of R.S. Srivastava, -do-
102. S. N. Tripathi, son of Mewa Lal Tripathi, -do-
103. R.C. Jain, son of Late G.C. Jain, -do-
104. G.S. Sinha, son of Late G.S. Sinha, Accountant
105. M.K. Panjabi, son of M.L. Panjabi, Clerk
106. Arun Khandoori, son of B.N. Khandoori, Accountant
107. Atma Prakash, son of G.P. Srivastava, Sr. Accountant
108. Udai Raj Pandey, son of M.P. Pandey, -do-
109. Krishna Murari, son of Shree Ram, -do-
110. Ram Milan, son of S. Ram, -do-
111. Vinod Kumar, son of U.S. Srivastava -do-
112. Pankaj Saxena, son of B.B. Saxena, -do-
113. Vijai Nayyar, son of S.L. Nayyar, Accountant
114. Ajay Kumar, son of Subhash Chandra, Sr. Accountant
115. Devendra Narain, son of Late Shree Bhuwan Chandra, Clerk
116. Vivek Kumar Srivastava, son of Late Ram Autar Prasad, Sr. Acct
117. Devendra Kumar Srivastava, son of R.S. Srivastava, Clerk
118. Smt. Neelam Saxena, wife of Sajai Saxena, Accountant
119. Mahesh Chandra Verma son of Rajendra Kumar, Sr. Accountant
120. Arvind Kumar Misra son of Aparna Shanker Misra, Accountant
121. Ajeet Kumar Dwivedi son of Brindavan, Sr. Accountant
122. Balwant Rai Madan son of T.B. Madan, -do-
123. Gopal Das son of Bhagwan Das, -do-

124. Vinay Kumar son of Ram Pratap, -do-
125. P.K.Verma son of Sangam Lal, -do-
126. Lalit Kumar Srivastava son of K.C.Srivastava, -do-
127. Manoj Kumar srivastava son of K.C.Srivastava, -do-
128. Udai Bahadur son of Banwari Lal, -do-
129. P.K.Maurya son of R.S.Maurya, Accountant
130. R.K.Dhawan son of S.P.Dhawan, Sr. Accountant
131. Pradeep Kumar Dhar son of S.M.Dhar, -do-
132. Shri Krishna son of S.Lal, -do-
133. Ram Naresh son of M.L.Pal, -do-
134. Yamuna Prasad son of Ram Sunder, Clerk
135. Jugul Kishor Rawal son of K.L.Rawal, P.A.
136. Rajendra Kumar Singh son of J.C.Singh, Clerk
137. Himanshu Mani son of D.B.Pandey, Clerk
138. Vijai Bahadur son of Mokadam Ram, -do-
139. Anil Kumar Verma son of Gopal ji Verma, Sr. Accountant
140. Kedar Nath Halдар son of Shiv Krishna Halдар, Accountant
141. Madan Kumar Sharma son of B.P.Sharma, -do-
142. Ajai Tyagi son of G.S.Tyagi, -do-
143. Ganesh Shaurav son of C.B.srvastava, -do-
144. Sunit Kumar Jauhari son of R.S.Jauhari, Clerk
145. Bibhas Mukherjee son of N.C.Mukherjee, -do-
146. Smt Pushpa Misra wife of Arun Misra, Accountant
147. Deepankar Barua son of D.P.Barua, Clerk
148. Om Prakash Kushwaha son of B.L.Kushwaha, Accountant
149. Ram Milan son of D.Ram, Clerk
150. Ashok Kumar son of Jokhan Ram, Accountant
151. Rameshwar Sahai son of Triveni Sahai, Sr. Accountant
152. Manish Garg son of K.C.Garg, Clerk
153. Sanjai Bahal son of K.K.Bahal, -do-
154. T.G.Bokade son of Ganpat Bokade, Sr. Accountant
155. Manoj Kumar Srivastava s/o Ram Surat Lal Srivastava, Clerk

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156. B.C.Dhyani son of S.N.Dhayani, Sr. Accountant
 157. A.K.Srivastava son of K.B.Srivastava, Accountant
 158. Bishwa Jeet Chaudhary son of Late B.P.Chaudhary, Sr. Acctt
 159. Santosh Kumar Singh son of H.L.Singh, -do-
 160. Ramesh Kumar Keshari son of Late Suraj Prasad Gupta, Clerk
 161. Trilok Singh Negi son of B.S.Negi, Sr. Accountant
 162. Sudhir son of P.N.Srivastava, Clerk
 163. Amit Nagar son of B.N.Nagar, -do-
 164. Shiv Kumar Tripathi son of R.S.Tripathi, -do-
 165. Manoj Kumar Gupta son of Manoj Kumar Gupta, -do-
 166. Taposh Barak son of Late B.N.Barak, Accountant
 167. Deep Chand Banswal son of Nanak Chand Banswal, Clerk
 168. Rajendra Kumar son of Radhey Shyam, Sr. Accountant
 169. Bachchi Lal son of Moti Lal, -do-
 170. Satnam Singh son of Late Sardar Bhag Singh, -do-
 171. Bhuwan Chandra son of D.D.Joshi, -do-
 172. Ajai Kumar Srivastava son of Dr Virendra, Clerk
 173. Dinesh Kumar Arya son of Late Narveda Prasad, Accountant
 174. Rajani Kant Vidyarthi son of Shanbhu Prasad, Sr. Accountant
 175. Panna Lal son of Ram Das Sonker, Clerk
 176. Vimal Prasad Joshi son of C.D.Joshi, Accountant
 177. Bindhyachal Prasad son of Raghunath Ram, Clerk
 178. Basant Lal son of Ram Dev, Accountant
 179. Dinesh Kumar Nirmal son of Jagdish Prasad, Clerk
 180. Prakash Chandra Srivastava son of O.s.Srivastava, Sr. Acctt
 181. Vivek Kumar Srivastava son of S.P.Srivastava, Clerk
 182. Kripal Singh son of Ranjeet Singh, -do-
 183. Shatdal Malviya son of Late Laxmendra Malviya, Accountant
 184. Narendra Kushwaha son of Amar Nath Kushwaha, Sr. Accountant
 185. Ajit Verma son of O.N.Verma, -do-
 186. Sangram Singh son of Jaganath Singh, Clerk
 187. Deepak Kumar Sriwastav son of K.L.Srivastava, Sr. Accountant
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188. Rajendra Prasad Shukla son of Late S.P.Shukla, -do-
 189. Aivind Kumar Dubey son of K.N.Dubey, -do-
 190. Surendra Kumar Srivastava son of S.K.Srivastava, -do-
 191. Ganeshwar Prasad son of Jeet Lal, Accountant
 192. Rajendra Prasad son of Sri Sanoo Prasad, Sr. Accountant
 193. Shri Ram son of Late Sri Mathura Prasad, Clerk
 194. Raj Bahadur son of Lutawan Ram, -do-
 195. Vivek kumar Srivastava son of S.M.B.Lal, Sr. Accountant
 196. Pankaj Kumar Srivastava son of S.K.Srivastava, Clerk
 197. Umesh Chandra Srivastava son of Late Sri H.L.Srivastava, -do-
 198. Om Prakash son of Shobha Ram, Sr. Accountant
 199. Ram Vir Pawar son of Fateh Singh Pawar, Accountant
 200. Mahaveer Singh son of Rajendra Singh, -do-
 201. Daya Nand Pathak son of B.Pathak, -do-
 202. Pradeep Kumar Tiwari son of Late V.D.Tiwari, -do-
 203. Aqeel Ahmad Siddiqui son of J.A.Siddique, Sr. Accountant
- All employes of P.A.G. (A&E)-I, U.P., Alld.**

PETITIONERS.

VERSUS

1. Union of India through the Comptroller and Auditor General of India, New Delhi.
2. The Principal Accountatn General (A&E)-I, U.P., Allahabad.
3. Deputy Accountant General (Adminstration) Office of the Principal Accountant General (A&E)-I, U.P., Allahabad.
4. Senior Accounts Officer (Examinations), Office of the Principal Accountant General (A&E)-I, U.P., Allahabad.

RESPONDENTS.

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ORIGINAL APPLICATION NO. 1278/96

1. Shivendra Pratap Singh s/o Sri Radha Mohan Singh
Senior Auditor.
2. Sunil Kumar Pandey s/o Sri Triloki Nath Pandey
Senior Auditor.
3. Shailendra Kumar Pandey s/o Sri Parmatma Prasad
Pandey - Senior Auditor.
4. Gurubagh Singh s/o Sri Ajit Singh, Sr. Auditor.
5. Arun Kumar Srivastava s/o Sri Krishna Kumar
Srivastava - Senior Auditor.
6. Sri Virendra Kumar Tiwari s/o Sri Lalji Prasad
Tiwari, -Senior Auditor.
7. Sri Dhrup Narain Pandey s/o Sri Dhanish Dhari Shar
Senior Auditor.
8. Sri Jagdish Prasad Pandey s/o Girja Prasad Pandey
Senior Auditor.
9. Sri Hanlesh Prasad s/o Sri Ravindra Prasad Gupta
10. Sri Parmanand Pandey s/o Sri Bhoolan Pandey.
11. Sri Ram Chandra Misra s/o Sri Udri Prasad Misra -
Senior Auditor.
12. Smt. Patan Srivastava wife of Sri J.M. Lal Srivastava
-Steno.
13. Sri Arvind Kumar Singh s/o Sri Virendra Bahadur
Singh - Steno.

14. Sri Ashok Kumar Maurya s/o Sri Moti Lal Maurya-Steno
15. Sri Kaushal Kumar Tripathi s/o Sri Ramesh Prasad Tripathi - Steno.
16. Sri Acchaibar Nath Gupta s/o Sri Kanhaiya Lal Gupta, Steno.

All employees of office of the Principal Director of Audit, North Eastern Railway, Gorakhpur.

..... PETITIONERS

// VERSUS //

1. Union of India through the Comptroller and Auditor General of India, 10 Bahadur Sah Jaffar Marg, New Delhi
2. The Principal, Director of Audit, North Eastern Railway Gorakhpur.
3. Audit Officer Administration, Office of the Principal Director of Audit, North Eastern Railway, Gorakhpur.

	Index No. allotted
4. Lalji Prasad (SC) Part I	18040027
5. Arvind Kumar (")	18040033
6. Suresh Chandra (")	18040034
7. Kewal Ram (")	18041001
8. D.P. Kaushal (")	18041017
9. Harsingh Rana (S.T) "	18041023
10. B.S. Khati (") II	28041008
11. Ram Sewak Prasad (S.C.) II	28047016

(Respondents no. 4 to 11 - C/o Office of the Principal Director of Audit, North Eastern Railway Gorakhpur) .

..... RESPONDENTS.

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ORDER

By Hon'ble Mr. S. Das Gupta AM

O.A. No. 1247/96 has been filed jointly by 203 employees of the office of the Principal Accountant General (A & E) I, U.P. Allahabad. The other petition i.e. O.A. No. 1278/96 has been filed jointly by 16 employees belonging to the Principal Director of Audit, North Eastern Railway, Gorakhpur. Since both sets of applicants are aggrieved by similar orders and controversy in both the cases is identical, both O.As. were heard together and are being disposed of by this common order.

2. Both sets of applicants are aggrieved by the order dated 4.11.1996 passed by the Comptroller and Auditor General of India, conveying a decision not to hold Section Officer grade examination (S.O.G.E. for short) in certain offices of the Audit and Accounts department including the office in which these applicants are employed. They have challenged validity of the aforesaid order as well as the consequent orders passed by respective Offices and have prayed for quashing of the aforesaid order and for issuance of a direction to the respondents to hold the S.O.G.E. 1996 in the offices in which the applicant are employed.

3. The case of the applicants in both the O.As. is that the S.O.G.E. is usually held every year in both the Audit and Accounts branches of the Audit and Accounts department throughout India simultaneously. S.O.G.E. is a qualifying examination conducted by the Comptroller and Auditor General of India and the Clerks and Accountants who pass S.O.G.E. acquire better prospects of advancement in their own office and department as also in other Central and State government offices

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Sector and public/undertakings. Those who pass S.O.G.E. are qualified to be promoted as Section ^{Officer} ~~Officer~~. They are also eligible for posting on deputation. In addition, those who pass S.O.G.E. and are awaiting promotion as Section Officer are entitled to special pay of Rs.40/- from the date following last day of Part II of S.O.G.E. in which they are declared successful. This special pay is taken into account for fixation of pay on promotion as Section Officer. Further, after one year of passing S.O.G.E. Part II, the aforesaid special pay is enhanced to Rs.70/- for such members of staff who are still awaiting promotion.

4. It is stated that so far the S.O.G.E. was being held simultaneously all over India in all the offices of Audit and Accounts department every year. S.O.G.E. comprises 3 stages. First stage is a preliminary screening test conducted locally. Those who clear this test are allowed to appear in the main S.O.G.E. which again comprises 2 stages viz Part I and Part II examination. It is stated that ^{the} ~~the~~ process of 1996 S.O.G.E. had already been initiated by the local authorities having invited applications from such candidates who were interested in S.O.G.E. 1996. Thereafter the test was held and the names of selected candidates who passed the preliminary test were also declared. However, by the impugned order dated 4.11.1996, Comptroller and Auditor General of India had conveyed the decision not to hold S.O.G.E. in various offices including the office in which the present applicants are employed.. This was ^{followed by} ~~the~~ consequential orders issued by the local authorities.

5. The impugned orders have been challenged ^{the} ~~the~~ on the ground that ~~the~~ applicants' prospects of advance-

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ment in their own office and the department and also in other Central and State governemtn Offices as well as Public Se-ctor Undertakings are being adversely affected by not holding S.O.G.E. in the offices in which the applicants are employed, without any justification what-so-ever, after the process for holding of S.O.G.E. had already begun by holding preliminary test. The other ground taken is that the action of the respondents is discriminatory inasmuch as S.O.G.E. is being held in certain other offices. For instance, this examination is being held in the Audit branch of All India Audit and Accounts department at Allahabad whereas Accounts branch of the department at Allahabad has been directed not to hold the said examination. They have also taken a plea that there is no nexus between conducting S.O.G.E. and the vacancies available in the respective offices and have stated that the reason given by the respondents that S.O.G.E. is not being held in some of the offices since there is large backlog of S.O.G.E. passed candidates awaiting promotion is, therefore, not valid.

6. By supp.affidavits/Misc.applications filed subsequently applicants brought out that in their respective offices, some of the candidates for part I and Part II examination were being allowed to appear in 1996 examination despite the general order issued by the Comptroller and Auditor General of India not to hold S.O.G.E. in these offices.

7. The respondents have contested the case by filing counter affidavit. It has been submitted therein that the applicants do not have any legal right to appear in S.O.G.E. as this examination is only to fill up the posts of Section Officers of which there are no vacancies since 1992 and a large number of S.O.G.E. passed candidates are awaiting promotion.

main difficulty is there would be no logic in permitting the applicants to appear in S.O.G.E. and create further backlog. The respondents have also given details of backlog ^{of} S.O.G.E. passed candidates awaiting promotion. It has ^{also} been stated that ^{as} far deputation to ex-cadre post is concerned, whenever such opportunities are available, candidates who had already passed S.O.G.E. and are awaiting promotion will be considered for such deputation. In any case, it has been stated, ^{rare} only on occasions demand for deputation from other offices is received. It has also been brought to our notice that similar matters have been dismissed by other benches of the Tribunal. In subsequently filed counter affidavit, it has been brought out that the Comptroller and Auditor General of India is empowered to issue instructions regarding S.O.G.E. and is fully competent to pass the order dated 4.11.1996 which is a speaking order indicating that S.O.G.E. could not be held in surplus offices. It is stated that the Comptroller and Auditor General of India is fully competent to decide whether or not S.O.G.E. should be held in any particular year.

8. In the rejoinder affidavit filed, applicants have reiterated their contentions made in the O.A. and denied the contrary averments made in the C.A.

9. Shri Ashok Khare appeared for the applicants and argued that the Comptroller and Auditor General of India is a high Constitutional authority and various instruction issued by him have the force of statutory law. He referred to Article 148(5) ^{of the Constitution} in support of his aforesaid contention. He argued that having framed the rules that S.O.G.E. shall be held once a year for all Audit and Accounts offices in all branches on the

date notified by or on behalf of the Comptroller General of India, it was not open to the department to hold such examination selectively in some offices only and refrain to hold ^{it} in other offices. He further argued that the rationale given by the department for not holding S.O.G.E. in the office of the applicants is wholly invalid since passing in the S.O.G.E. not only entitles candidates to be promoted as Section Officers, but also ^{to} other benefits like special pay and opportunity for deputation to ex-cadre post.

10. Arguing on behalf of the respondents, Sri N. B. Singh relied on the decision of Hon'ble Supreme court in S. Thankadappan V/s Union of India & others A.I.R. 1991 SC 783, Lalit Mohan Dev V/s Union of India A.I.R. 1972 SC 995, Union of India V/s Amrik Singh, (1994) 26 ATC 589 and V.T. Khanzode V/s Reserve Bank of India A.I.R. 1982 SC 917.

11. In the case of S. Thankappan, the Hon'ble Supreme court, while explaining the distinction between the powers conferred under Article 309 and those under Article 148 of Constitution of India, inter-alia held that the Comptroller and Auditor General of India, who is the Head of Audit and Accounts Department is a constitutional functionary holding special position under the Constitution and special provision has been made for framing rules for the personnel working in that Department in clause 5 of Article 148.

12. The proposition of law laid down in Lalit Mohan Dev appears to be that in absence of statutory rules, the government is competent to issue administrative instructions as long as these instructions are not inconsistent with the rules already framed. A similar proposition of law has been enunciated

in the case of Amrik Singh. The decision in the case of V.T. Khanzode, V/s Reserve Bank of India does not, however, appear to be germane to the controversy before us and hence not discussed.

13. It would appear from the foregoing that the counsel for both the parties have relied upon the powers conferred by Article 148(5) of the Constitution in support of their rival contentions. Stand of the learned counsel for the applicant appear to be that since the provisions regarding holding S.O.G.E. have been formulated in exercise of such powers by the Govt. of India in consultation with the Comptroller and Auditor General of India, these provisions can not be deviated from. The contention of the learned counsel for the respondents appears to be that under the said Article, the Comptroller and Auditor General of India is fully competent to issue administrative instructions regulating the manner in which S.O.G.E. is to be held. Therefore, he would in no way be fettered by any restriction in deciding not to hold the examination in a particular year or in selected offices.

14. We have given our anxious consideration to the rival pleadings.

15. The provisions regarding holding of S.O.G.E. are contained in Chapter IX of the CAG's manual of standing order (Administrative) Vol. I. Relevant portion of para 9.2.1 of Chapter IX reads as follows :

" The Departmental Examination qualifying for appointment to the Section Officer's service is divided into two parts and an examination

in both the Parts is normally held once a year in November for all Audit and Accounts offices in all branches on dates notified by or on behalf of the Comptroller and Auditor General. ".....
(Emphasis s-upplied)

From the perusal of preface to the manual of Standing order, it appears that the same is compilation of the rules made by the Department. It would, therefore, appear that para 9.2.1. extracted above is also a part of the rule regulating the manner in which S.O.G.E. would be held. To that extent, we find that this supports the contention of the learned counsel for the applicant that the said para has the force of statutory law. The question, therefore, remains whether the text of the rule is such that it would not allow the Comptroller and Auditor General in consultation with whom rules are required to be framed by the President of India in terms of Article 148(5), not to hold S.O.G.E. in certain selected offices.

16. We have noted from the text of the para extracted above that the word "Normally" has been used. This word has considerable significance. It discounts the contention of the applicants that SOGE must necessarily be held once a year for all Audit and Accounts offices. It clearly indicates that the Comptroller and Auditor General shall have discretion to deviate from what is normally done i.e. to hold the examination once a year in all the Audit and Account Offices. No doubt such discretion is to be exercised reasonably and not arbitrarily. Once the discretion has been used reasonably, there would be no occasion for any court to interfere.

17. The learned counsel for the applicants contended that word 'normally' qualifies only ^{the} phrase "once a year" and not the phrase ~~that~~ "all Audit and Accounts offices in all branches". Thus the burden of his argument is that while the C.A.G. has the discretion to dispense with the S.O.G.E. in ^a particular year for justifiable reasons, he could, under no circumstances decide that in some of the offices, SOGE would not be held when such examination is being held in other offices.

contention.

18. We are unable to accept the aforesaid. / The word 'normally' must necessarily qualify the entire scheme of examination. In other words, this must qualify both ^{the} periodicity as well as ^{the} Span. Thus C.A.G. will have discretion ^{not only} to decide not to hold examination in a particular year, but also to decide to hold it in selected offices in a particular year. Thus the decision of the Comptroller and Auditor General not to hold S.O.G.E. in some of the offices including the office in which the applicants are employed cannot be faulted on the ground of lack of competence. The next question to be considered is whether such decision is unreasonable. We have seen that in the C.A. reasons for not holding the S.O.G.E. in various offices including those of the applicant have been set out. It is that in such offices there already is large backlog of S.O.G.E. passed candidates who are awaiting promotion to the Section [&] Officers service. If, therefore, C.A.G. decides not to hold further examination in such offices in order to avoid ^{long waiting} accretion to the already [&] list, we do not see any lack of justification in the action taken by the C.A.G.

19. We next come to the question raised by the learned counsel for the applicant that they are

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being denied the benefit of special pay which they would get, if they pass S.O.G.E. and ^{are} kept in the waiting list for promotion to the rank of Section Officer and also prospects of deputation to a cadre post. To examine how far this argument is tenable, we revert ^{of} back to the text of para 9.2.1 of the manual Standing orders extracted (Supra). It would be seen that, for the purpose of Departmental Examination is for qualifying for appointment to the Section Officers service. The basic purpose of S.O.G.E. is to make personnel in the Audit and Accounts department qualify for appointment in Section Officers service. It is not for qualifying such personnel to receive special pay or for being sent on deputation. Such benefits are merely incidental. S.O.G.E. is not held to confer such benefits to the candidates. Since the purpose of S.O.G.E. is to qualify the candidates for appointment to the Section Officers service, competent authority will be wholly justified in not holding such examination in case it is found that ^a large number of candidates, who have already qualified in S.O.G.E. are yet to be promoted to the post of Section officers service and there are ^{no} immediate prospects of clearing ^{the} backlog in ^{the} near future. We, therefore hold that the decision of the Comptroller and Auditor General not to hold S.O.G.E. in certain offices neither would be ^{arbitrary} nor violative of Articles 14 and 16 of the Constitution.

20. We would also mention in this context that the fact which was subsequently brought out by the applicants that few candidates in their office were allowed to appear in the S.O.G.E. despite earlier blanket ban, does not also strengthen the case of the applicants. We have seen that these exceptions

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have been made for the candidates of certain specified communities as the backlog of candidates of such communities is proportionally much less.

21. The learned counsel for the respondents made available to us copies of the decision of certain benches of the Tribunal dismissing similar applications. We do not feel any necessity to make reference to these judgments as ^{the} points raised before us were not considered in those cases. Suffice it to say that other benches also came to the conclusion as ours, though through a different process of ratiocination.

22. In view of detailed reasons given in the foregoing, we find no merit in these applications and the same are accordingly dismissed, leaving the parties to bear their own costs.

Member (J)

Member (A)

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