

Reserved

Central Administrative Tribunal, Allahabad.
Registration O.A.No.796 of 1986

Mushtaq Ahmad Applicant
Vs.

Comptroller and Auditor
General of India and 3
others Respondents.

Connected with

Registration O.A.No.797 of 1986

Kamlesh Chandra Khullar ... Applicant
Vs.

Comptroller and Auditor
General of India and 3
others Respondents.

Hon. D.S.Misra, AM
Hon. G.S.Sharma, JM

(By Hon. G.S.Sharma, JM)

These are two petitions under section 19 of the Administrative Tribunals Act XIII of 1985 for a declaration that the orders passed by the respondents debarring the applicants from appearing in the Section Officer Grade (for short SOG) Examination Part I ^{Civil Branch} held in December 1986 ^{are invalid} and for quashing the said examination or in the alternative for a direction to the respondents to hold a fresh examination for the applicants as a part of the examination held in 1986.

2. The applicants were appointed as Auditors in the office of the Accountant General Uttar Pradesh (for short AGUP) Allahabad on 10.10.1979 and 29.12.1978 respectively. The Combined Audit and Accounts Department was bifurcated w.e.f. 1.3.1984 into two separate wings, namely, the Audit Office and the Accounts and Entitlement Office.

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On the said bifurcation, the applicants were absorbed in the Accounts and Entitlement Office and were redesignated as Accountants. From the post of Accountant, the next promotion post is the post of Section Officer, which is a selection post and the Accountants, who have completed three years' service are entitled to appear in the selection examination known as SOG Examination. This examination is held into two parts known as Part I and Part II. The procedure for holding the SOG Examination is specified under paragraphs 194 to 209 of the Manual of Standing Orders (Administrative) (hereinafter referred to as the Manual) issued by the Comptroller and Auditor General of India- respondent no.1. Both the applicants were entitled to appear in the Part I examination of the aforesaid SOG examination held from 22.12.1986 to 26.12.1986 but as they were placed under suspension under order dated 18.8.1986 by the Dy.Accountant General(Administration)-respondent no.3, they were not allowed to appear in the said examination under the Note below Para 197 of the Manual vide orders dated 22.12.1986 and 28.12.1986 respectively.

3. The applicants have challenged the validity of the said orders in these petitions and their contention is that the Note below para 197 of the Manual is contrary to the

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to the provisions of Central Civil Service (Classification, Control and Appeal) Rules, 1965 (hereinafter referred to as the CCS(CCA) Rules) and the provisions of Articles 14 and 16 of the Constitution of India. It is further alleged that the Manual is merely a compilation of administrative instructions issued by respondent no.1 and has no statutory sanction and is arbitrary and violative of the provisions of the Constitution and the applicants cannot be prevented from appearing in the examination.

4. The suspension of the applicant Mustaq Ahmad was revoked during the pendency of his petition on 16.1.87.

5. The petitions have been contested on behalf of the respondents and in the replies filed on their behalf by respondent no.3 Km.Minaxi Chak, it has been stated that the post of Section Officer is a promotion post and is filled in on the basis of seniority-cum-fitness among the successful candidates in SOG examination Part II. She admitted that the applicants who were otherwise eligible to appear in Part I of SOG Examination could not be allowed to appear in the said examination on account of their suspension under the rules. The note below Para 197 of the Manual is a statutory provision and supersedes the provisions of CCS(CCA) Rules and is not violative of the provisions of the Constitution. The applicants were suspended on 18.8.1986 as disciplinary proceedings were contemplated against them. They were subsequently charge sheeted and the disciplinary proceedings pending against them are likely to be completed soon.

6. In the rejoinders filed by the applicants they reiterated that the directions contained in the Manual are simply administrative directions and they are not in the nature of statutory rules and they cannot override or supersede the CCS (CCA) Rules and the applicants ^{could} ~~cannot~~ be prevented from appearing in Part I of the SOG Examination held in Dec. 1986.

7. The main contention raised on behalf of the applicants in these petitions is that Para 197 of the Manual or the Note thereunder debarring the candidates under suspension from sitting in the SOG Examination are merely administrative ^{in nature} and they cannot override the provisions of CCS (CCA) Rules. In other words, the contention is that no civil servant can be punished or debarred from promotion without taking disciplinary proceedings against him in accordance with the provisions of CCS (CCA) Rules and in case an official is under suspension or is facing disciplinary proceedings, he should be allowed to take the examination, if he satisfies all the other conditions prescribed for admission to such examination but his promotion can be made only after the disciplinary proceedings are over. They have placed their reliance in support of this contention on the instructions of D.G. P&T issued by his letter No.7/31/63-SPB-II dated 25.6.1965, copy annexure 2 to the petitions. Reliance has been ^{further} placed on behalf of the applicants on the decision of the Hon. Supreme Court in Accountant General Vs. S.Doraiswamy (A.I.R. 1981 S.C.-783) in which considering the validity of an amendment made in para 143 of the Manual of the Standing Orders, the Hon. Court had held that the provisions contained in Para 143 of the Manual

were departmental instructions and could be amended by the departmental instructions issued by the Comptroller and Auditor General. It has been next contended on their behalf that in any case the Note under para 197 of the Manual is irrational as it imposes unreasonable restriction on the promotion chances of ~~all~~ the employees governed by the Manual and it should not be allowed to be enforced against the applicants.

8. The applicants further placed their reliance on two Single Bench decisions of the Andhra Pradesh High Court in V.Jagadiswar Rao Vs. Post Master General (1978 All India Services Law Journal-201) and K.Somaiah Vs. Zonal Manager (1978 All India Services Law Journal -295) in which it was held that the pendency of the disciplinary proceedings cannot be a ground for over-looking the petitioner when he is otherwise found suitable for promotion even by the Departmental Promotion Committee and he is entitled to be considered for promotion. Reliance has also been placed on a Division Bench decision of Himachal Pradesh High Court in Roop Lal Vs. State of H.P. (1980 All India Services Law Journal-348) in which the question for decision before the Hon.Court was whether an adverse entry in the confidential report against which an appeal was pending and the pendency of the disciplinary proceedings could be a ground for denying promotion to the petitioner. It was held that if there are specific rules touching upon these points, the matter should be decided with reference to those rules. But if there are no such rules, the matter has to be decided on the general principle of administrative propriety and public interest. Their Lordships further observed that if

a person against whom very serious charges are levelled and if the charges are such which may result in a major punishment it would not be in public interest or in the interest of administration to give him promotion simply because the inquiry in question is not completed. In case the Government servant is finally exonerated without any blemish, the Government should consider the case of the petitioner in the light of such exoneration from the back date on which the promotions to the higher posts were considered. The learned Senior Standing Counsel appearing on behalf of the respondents placed before us a copy of unreported judgment of a Division Bench of the High Court, Allahabad in a bunch of writ petitions (No.2981 of 1984 and others) Sudhish Chandra Vs. Comptroller and Auditor General delivered on 20.9.1985 in which their Lordships had held that the proviso to Art.309 of the Constitution has no application to the employees of Indian Audit and Accounts Department and they are exclusively governed by Art.148(5) of the Constitution. It was further held that the entire service conditions of the employees of Indian Audit and Accounts Department are governed by executive or administrative orders. Although they are in the shape of rules, they are nothing but executive orders. The contention of the respondents, therefore, is that the executive orders and directions issued by the Comptroller and Auditor General and compiled in the Manual of the Standing Orders have the full force of the rules under Art. 148(5) of the Constitution. It was also contended that the instructions issued by the D.G. P&T as contained in annexure 2, have no application to the employees of other Departments and they are not part of the CCS(CCA) Rules framed under Art.309 of the Constitution.

9. Sri N.B.Singh, Senior Standing Counsel also brought to our notice an application form for SOG Examination and contended that the applicants had not submitted their applications for appearing in the examination in the prescribed form and as the Note appended to Para 197 of the Manual is a part of the rules and instructions contained in para 197, the applicants could not be allowed to appear in the SOG Examination and the applicants are bound by this Note which is legally valid and constitutional.

10. Before making any comments on the submissions made on behalf of the parties before us as above, we will like to examine the various provisions of the Manual laying down the terms and conditions of eligibility for appearing in SOG examination^{and} its effect on promotion and seniority and other connected matters. It is ^{an} undisputed case of the parties that the SOG examination was formerly known as Subordinate Accounts Service (SAS) Examination. The Manual of Standing Orders supplied to us by the learned Senior Standing Counsel does not contain the latest amendments changing the name of the examination. The reference made regarding SAS Examination in the Manual has, therefore, to be construed as a reference to the SOG Examination in which the applicants could not be permitted on account of their suspension. Para 195 of the Manual contemplates that the Departmental Examination (known as SOG Examination) is a qualifying examination for appointment to the Subordinate Accounts Service. Para 180 of the Manual specifically provides that no person, who has not passed the Departmental SAS Examination, is eligible for appointment to the Subordinate Accounts Service. Under the proviso to this para, the Comptroller and Auditor General may on his own initiative himself waive this requirement in special cases. The nature of the special cases has not been specified in this Manual

and as the powers are to be exercised by the Comptroller and Auditor General on his own initiative no one ^{can} claim exemption from SAS examination as of right under the powers reserved by this proviso. Para 184(2) of the Manual provides that a Clerk or a Divisional Accountant who passes the SAS examination in an earlier examination will have precedence in appointment to the SAS over a person who passes in a later examination. Para 186 lays down that confirmation of persons officiating in the SAS shall be made on the basis of seniority alone.

11. Para 197 of the Manual provides that subject to the final approval of the Comptroller and Auditor General, the Accountant Generals/ Heads of Offices may permit the candidates in their offices to appear in the appropriate branch of the SAS examination provided they are otherwise eligible to take the examination. The Note under this para provides " candidates under suspension should not be allowed to sit for the examination." Para 200 provides that only such persons who have put in a minimum of 3 years' service in one of the 3 capacities specified in this para, should be eligible to sit for the examination. Para 205 provides that normal number of chances for Part I of the SAS Examination will be 6. The para further requires that both parts of the examination are to be cleared within the age limit of 48 years. Para 207 contains certain other conditions of eligibility and provides that the candidates who are recommended by the Heads of Office for sitting in the SAS examination should be regular in attendance, energetic, of good moral character and business-like habits, and they are not likely to be disqualified for appointment to the SAS as not possessing the aptitude for the work of the post in the SAS and they have a reasonable prospect of passing the examination. Para 178 of the Manual lays down the general rules

of promotion and provides that while making appointments to the SAS by promotion, the Accountant Generals etc., have to satisfy themselves that the candidates for such appointments on promotion are eligible considering their ability, character and experience to discharge adequately and efficiently the duties required on the promotion post in the SAS. Para 207 of the Manual also provides that candidates satisfying the conditions set out in paras 199 to 201 are eligible but have no claim to appear in the examination.

12. A careful consideration of the various provisions of Chapter V of the Manual, more particularly, those contained in the paragraphs aforesaid, makes it clear that mere passing the SAS (now SOG) Examination does not entitle any candidate to get the higher post of Section Officer as his general suitability has yet to be judged for such promotion though it is certainly a stepping stone for such promotion. The general suitability of a candidate for promotion to SAS has to be judged at two different stages, (i) at the time of granting permission to him for taking the SAS Examination and (ii) at the time he is actually considered for promotion after passing such examination. The Indian Audit and Accounts Department does have certain peculiarities of its own to apply this double check for promotion with a view to maintain the discipline in the subordinate service; and create the sense of responsibility, sincerity and devotion to duty in their incumbents. We, therefore, find nothing objectionable or contrary to law in this connection.

13. We, however, find ourselves unable to appreciate the idea behind appending the aforesaid Note to Para 197. In our

opinion, the general conditions of eligibility laid down in para 207 are sufficient for screening the persons applying for SOG examination. According to this para no candidate, who is not regular in attendance, energetic, of good moral character and business-like habits and is likely to be disqualified for appointment to the SAS, can be permitted to take the SOG Examination. There may be cases where a candidate is eligible in all respects under para 207 to take the examination but on account of his suspension, say on some baseless report regarding serious misconduct or on his detention in custody for more than 48 hours in connection with some offence or under preventive measures taken by any competent authority he is not allowed to appear in the examination. And after the disciplinary proceedings are concluded, in the first case, he is not found guilty of any misconduct and is exonerated of the charge of misconduct attributed to him and in the second case he is honourably acquitted by the Court on his trial for the offence in connection with which he was arrested and in the third case after necessary scrutiny he is not found guilty of any such conduct on account of which he could be placed under detention. The disciplinary inquiry, criminal trial and the scrutiny regarding the suspicious conduct of a person by the appropriate authority may take years and if one is debarred from taking the departmental examination, as is the case before us on account of his mere suspension, he cannot be adequately compensated for the wrong done to him, on his exoneration or acquittal as without his passing the qualifying examination ^{not only} his promotion will ^{be} delayed ^{but} and he will also lose his seniority. In our opinion, the Note under para 197 should have some co-relation with the conditions of eligibility laid down in para 207 of the Manual. If a candidate is

otherwise suitable in all respects for appearing in the departmental examination as is the case with the applicants, he should not be debarred merely because he has been placed under suspension due to some reasons which are yet to be analysed and established.

14. The severity of the charges in connection with which the applicants were suspended is not known to us as nothing to this effect has been placed on the record. It, therefore, cannot be said that in no case the applicants can be ultimately found suitable for promotion on the ground of such charges.

On the other hand, if the applicants are exonerated of the charges of misconduct in connection with which they were suspended, the respondents cannot give them their promotion and seniority with the due dates on account of the provisions discussed above. The residuary power vested in the Comptroller and Auditor General under para 180 to make appointment to the SAS or promote a person as Section Officer can be exercised only on his own initiative and there is no guarantee that in case the applicants after their exoneration apply, they will be exempted from the departmental examination and will get their promotion ^{from the due dates} without such examination. The respondents, therefore, cannot remedy the wrong done to the applicants by denying them the opportunity of appearing in the SOG examination merely on the ground that they were under suspension on the dates the examination in 1986 were held. As already pointed out above, the mere passing the examination will not entitle the applicants to promotion. In this case after passing the Part I examination the applicants will have to pass Part II examination for becoming eligible for promotion. In these circumstances, in our opinion, the Note under Para 197 certainly places unreasonable restriction on the chance of promotion

of the applicants. There is, in view of the above, no doubt that the

of the applicants, more so, because the respondents will have an opportunity to examine the character, conduct, efficiency, ability etc., of the applicants when they are actually considered for promotion after passing the requisite qualifying examination. Despite the fact that ^{the directions contained in} para 197 including the Note under it ~~was~~ issued by the competent authority under the powers under Article 148(5) of the Constitution, we can examine the validity of the same. In J.B.Chopra Vs. Union of India (1987(1) Administrative Tribunals Judgements- 234), it was held by the Hon. Supreme Court that the Administrative Tribunal being a substitute of High Court, has the necessary jurisdiction power and authority to deal with all disputes relating to service matters including power to deal with all questions pertaining to the constitutional validity or otherwise of such laws as offending to Articles 14 and 16(1) of the Constitution. In view of the above considerations, we hold that in case a candidate possesses good moral character and satisfies the other conditions laid down in paras 197 and 207 of the Manual, the ^{under para 197 containing the absolute power of} Note/debarring him from appearing in the departmental examination is unreasonable and deserves to be struck down and ignored.

15. Regarding the contention of the respondents that nobody can claim as of right to appear in the SOG Examination, we are of the view that the opening sentence of para 207 of the Manual which states that 'candidates satisfying the conditions set out in paragraphs 199 to 201 are eligible but cannot claim to appear for the examination' simply speaks of the conditions set out in paras 199 to 201 and not about the conditions of eligibility and other provisions contained in paras 197 and 207. We are, therefore, of the view that a candidate who has put in 3 years' service in the specified grade and is below 48 years and has also not taken more than 6 chances can still be debarred under this provision from appearing in the depart-

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mental examination in case he does not fulfil the general requirements laid down in paras 197 and 207. The case of the candidates who not only satisfy the conditions set out in paras 199 to 201 of the Manual but also satisfy the general conditions of eligibility contained in paras 197 and 207, will have to be viewed from a different angle and in our opinion, they can claim to appear in the departmental examination (SOG) as of right, otherwise it will amount to undue discrimination against them which is prohibited under the provisions of our Constitution.

16. We are, therefore, unable to uphold the impugned orders passed by the respondents debarring the applicants from appearing in the SOG Examination.

17. The applicants have prayed that SOG Part I Examination held on 22.12.1986 be quashed or the respondents be directed to hold a fresh examination for them. We are told that the respondents are going to hold Supplementary SOG Part I Examination on 17.8.1987 for the candidates who could not appear in the examination held in Dec. 1986. In view of this, there is no need to quash the examination held in Dec. 1986 nor for holding a separate examination for the applicants and the applicants can easily protect their rights in case they are allowed to appear in the Supplementary Examination going to be held on 17.1987.

We accordingly direct the respondents to permit the applicants to appear in the SOG Part I Supplementary Examination going to be held on 17.8.1987. If so desired, the respondents may not declare their result till the applicants are exonerated of the charges in connection with which they were suspended or till the next SOG Examinations are held, whichever is earlier. There will be no order as to costs.

MEMBER (A)

Sharma
14.8.87

Sharma
14/8/87
MEMBER (J)

DATED Aug. 14, 1987
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