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Reserved.

Central Administrative Tribunal, Allahabad.

Registration O.A.No.47 of 1988

Mushtaq Ahmad ... Applicant

Vs.

Comptroller and Auditor General
and three others ... Respondents.

Connected With

Registration O.A.No. 48 of 1988

~~Kamlesh~~
Kailash Chandra Khullar ... Applicant

Vs.

Comptroller and Auditor General
and four others ... Respondents.

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

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

These petitions under Section 19 of the Administrative Tribunals Act XIII of 1985 have been filed against the order, dated 17.12.1987 passed by the Accounts Officer (Examination) in the Office of the Accountant General U.P. (Accounts and Entitlement) I, U.P., Allahabad - respondent no.4 and they raise common questions of facts and law.

2. According to the undisputed facts of these cases, the applicant Mushtaq Ahmad was appointed as Auditor on 10.10.1979 in the then combined office of the Accountant General, U.P. On the bifurcation of the said office into two separate offices, namely (i) Office of Audit and (ii) Office of Accounts and Entitlement w.e.f. 1.3.1984, he was posted as an Accountant in the bifurcated Accounts and Entitlement Office at Allahabad. From the post of Accountant, the next promotional post is the post of Section Officer. The post of Section Officer is a selection post and officials of 3 years continuous service are entitled to appear in the examination known as Section

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Officer Grade (for short SOG) examination conducted for the said selection. This examination is taken into two parts in accordance with the provisions and procedure prescribed by paras 194 to 209 of the Manual of Standing Orders (Administrative) Vol.I (hereinafter referred to as the Manual) issued by the Comptroller and Auditor General of India. The other applicant Khullar was appointed as Lower Division Clerk on 23.2.1973 in the then combined office of the AGUP and on the bifurcation of the said office, he was posted as an Accountant in the Accounts and Entitlement Office w.e.f. 1.3.1984.

3. Both the applicants were arrested by the Police on 11.8.1986 in connection with a demonstration made by the Association of the applicants and some other employees of the office of the AGUP Allahabad on the visit of the Comptroller and Auditor General (for short CAG) of India on that date and they were released on bail in the night of 12.8.1986. The applicants were suspended by the Deputy AGUP on 18.8.1986 and disciplinary proceedings were also initiated against them which did not appear to have been concluded so far. The Principal AGUP-respondent no.2 vide his order dated 25.8.1986 treated the absence of the applicants from 11.8.1986 to 17.8.1986 as break in service under Fundamental Rules 17 and 17-A. Both the applicants represented against the said order and thereafter, after calling for the details of the work alleged to have been done by the applicants during the said period and after giving them an opportunity of showing cause, he confirmed his order dated ^{on 17.10.1986.} 25.8.1986. Both the applicants again represented against the said order to the respondent no.2 and the applicant Mushtaq Ahmad is further alleged to have filed an appeal against the said order to the CAG - respondent no.1, which do ^{appear to} not have been disposed of so far.

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4. Formerly, Part I SOG Examination was going to be held in the office of respondent no.2 from 22.12.1986 but both the applicants who were otherwise found eligible to appear in the said examination were not allowed to appear in the same on the ground of their suspension whereupon they filed separate petitions (O.A.Nos. 796 and 797 of 1986) under Section 19 of the Act XIII of 1985 before this Tribunal which were allowed by this Bench on 14.8.1987 and the respondents were directed to allow the applicants to appear in SOG Part I Supplementary Examination going to be held on 17.8.1987. The applicants thereafter appeared in the said examination but failed. They had also applied for the regular SOG Part I Examination going to be held in January 1988 but the respondent no.4 vide his orders dated 17.12.1987 informed the applicants that they did not satisfy the eligibility criteria of three years continuous service as required under para 4.1.1 of the Manual of Instructions for Restructuring.

5. The validity of the said orders has been challenged in these petitions by the applicants on the grounds that under para 200 of the Manual all persons who have put in a minimum of 3 years service in one or more of the three categories prescribed therein are eligible to sit in the SOG Examination and as both the applicants had completed much more than 3 years continuous service before the break in their service caused by order dated 17.10.1986 by the respondent no.2, they were fully eligible to appear in the examination going to be held in January 1988 and now scheduled to be held from 22.2.1988. According to them the criteria for eligibility fixed under Para 200 of the Manual have been reiterated in para 4.1.1. of the Manual of Instructions for Restructuring of Cadres and as the applicants fulfil the requisite qualification and their review/appeal against

the order of causing break in their service are still pending, the orders passed by the respondent no.4 debarring the applicants on the ground of their non-eligibility due to break in service are illegal, arbitrary, malafide and contrary to the provisions of Articles 14 and 16 of the Constitution of India and deserve to be quashed.

6. The petitions have been contested on behalf of the respondents and in the replies filed on their behalf by the Senior Dy.AGUP (Admn.), Allahabad- respondent no.3, it has been stated that the orders dated 17.10.1986 treating the services of the applicants from 11.8.1986 to 17.8.1986 as break in their service, were passed in accordance with law and the rules and in view of the break in service of the applicants, they did not have the minimum period of 3 years of continuous service to their credit on 15.11.1987 when the said period has to be considered under para 200 of the Manual and as they did not have three years continuous service to their credit in their offices on that date under para 4.1.1 of the Manual of Instructions for Restructuring, they were rightly held non-eligible for appearing in the SOG Part I Examination scheduled to be held in January 1988 due to break in service under F.R.17 and 17-A. The service period of the applicants prior to the said break cannot be treated to be in continuation for the purposes of departmental examination and the impugned orders were passed in accordance with the relevant rules and the allegations made by the applicant to the contrary are not correct and well founded. The applicants have reiterated the grounds of their attack against the validity of the impugned orders in their rejoinder.

7. In view of what has been stated above, the dispute in this case relates to the interpretation of para 200 of the Manual and para 4.1.1 of the Manual of Instructions of Restructuring, which for the sake of convenience, are reproduced below :-

"200. Only persons who have put in a minimum of 3 years' service in one or more of the following capacities should be eligible to sit for the Examination.

(i) As a Lower Division/Upper Division Clerk in an Audit Office.

(ii) As a Stenographer/Steno typist in an Audit Office.

(iii) As a Divisional Accountant under the administrative control of an Accountant General

Provided that no candidate shall be allowed to appear for any part of the S.A.S Examination if he has attained the age of 48 years on or before the 15th November of the year in which the Examination is held. This restriction does not apply to individuals who have completely passed one branch of the SAS Examination and are permitted to appear in another branch. The date for determining the length of total service put in by the candidate qualifying for the examination is also the 15th November of each year.

Note: Service as an Accounts Clerk in the Public Works Department in States where the Divisional Accountants are under the administrative control of the Accountant General shall reckon upto a maximum of 2 years against the minimum of 3 years limit prescribed above.

4.1.1. Section Officer's Grade Examination. There will be two distinct examinations for audit and accounts cadres. These will be known as Section Officers' Grade Examination-Civil Branch (Audit) and Section Officers' Grade Examination -Civil Branch (Accounts). The schemes and syllabii of the two examinations will be notified separately. Clerks, accounts, SG accountants, divisional accountants and stenographers borne on the cadre of the Account and Entitlement Offices will be eligible to take to SO's Grade Examination-Civil Branch (Accounts) on completion of prescribed continuous years of service. Similarly, clerks, junior auditors, auditors and stenographers in Audit Offices will be eligible for SO's Grade Examination (Audit) of the appropriate branch. Subject to these conditions all other conditions of eligibility to take the examination and number of chances admissible, as laid down in the Comptroller & Auditor General's Manual of Standing Orders (Administrative) Volume

I, as amended from time to time will be applicable. The first examination under the new schemes will be held in November/December, 1984"

8. The relevant date on which the minimum service of 3 years is to be seen is 15th Nov.1987 in these cases. It is not in dispute on behalf of the respondents that before the break in the service of the applicants by order dated 17.10.1986 of the respondent no.2 from 11.8.1986 to 17.8.1986 both the applicants had completed 3 years continuous service. The contention of the respondents, however, is that continuous service of 3 years has to be seen preceding the relevant date 15.11.1987. In our opinion, this ^{is} ~~is~~ not the correct logical interpretation of para 200. We are further of the view that the provisions contained in para 200 would have been introduced with a view to prevent the new comers in the Department from appearing in the SOG examination without acquiring some working knowledge of the Department. Once the officials of the three categories mentioned under para 200 complete the minimum period of 3 years continuous service they become eligible to appear in the SOG Examination under para 200 and the eligibility once acquired or obtained cannot be wiped out or taken away by any subsequent break in service. Any other interpretation made to this para will frustrate the very purpose for which it was introduced. The provisions contained in para 4.1.1 of the other Manual are also not different. That para simply states that the officials of the specified categories borne on the cadre of Accounts and Entitlement offices will be eligible to take the SOG examination on completion of prescribed continuous years of service and as the first examination under

the new schemes was to be held in Nov./Dec.1984, the continuous service in the two bifurcated offices had to be seen in toto and not from the date of bifurcation, namely, 1.3.84 of the two offices. Thus even according to para 4.1.1., the continuous service has to be determined in accordance with the provisions of para 200 of the Manual.

9. In the previous cases of the applicants (**Mustaq Ahmad Vs. Comptroller and Auditor General 1986(6) Administrative Tribunals Cases-35**), we had examined in some detail the various provisions of the SOG Examination contained in paras 194 to 209 of the Manual and had held that the mere passing of SOG Examination does not entitle any candidate to get the higher post of Section Officer as his general suitability has to be judged for such promotion when he is actually considered for promotion. We had further observed that the suitability of a candidate for promotion has to be judged at two different stages -(i) at the time of granting permission to him for taking the SOG examination and (ii) at the time he is actually considered for promotion after passing such examination, and we had upheld this procedure of applying double check for promotion considering the working conditions in the offices of the Accountant General. What we want to emphasise in that connection in these cases is that the subsequent break in the service of any official after once acquiring the eligibility of completing 3 years continuous service by itself may not be sufficient to permit him to appear in the SOG examination. His suitability has to be further judged in accordance with the directions contained in para 207 of the Manual which provides that 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. Thus, the eligibility of an official for appearing in the examination has to be ^{judged} judged in the light of the provisions of paras 199 to 201 of the Manual and his suitability has to be further judged under para 207. In many cases, an official who is eligible to appear in the SOG examination under paras 199 to 201 may not be found suitable for allowing him to appear in the said examination under the provision of Para 207. We are, therefore, of the view that the eligibility under para 200 once reached, cannot be taken away by subsequent misconduct caused by break in service or otherwise as his suitability can be judged further under para 207. As in the instant case, the respondents did not exercise their discretion under para 207 and the sole ground on which the applicants have been disqualified from appearing in the ensuing SOG examination is that due to break in their service they had not completed the minimum continuous service of 3 years from the date of the break is not in accordance with the scheme of Chapter V of the Manual containing the paras 194 to 207 relating to SOG examination and as such, the impugned orders passed by the respondent no.4 cannot be sustained.

10. Both the petitions are accordingly allowed and the impugned orders dated 17.12.1987 passed by the respondent no.4 are hereby quashed and the respondents are commanded not to prevent the applicants from appearing in the ensuing SOG examination merely on the grounds contained in the said orders. The parties are left to bear their own costs.

Sharma
19.2.88
MEMBER (A)

Sharma
19/2/88
MEMBER (J)

Dated 19th Feb.1988

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