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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

O.A.NO. 634 OF 2003

Cuttack, this the 4th October, 2004

Akshay Kumar Mohanty

.....

Applicant

Vrs.

Union of India and others

.....

Respondents

FOR INSTRUCTIONS

- 1) Whether it be referred to the Reporters or not? Yes
- 2) Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? Yes

for
04.10.04
(M.R. MOHANTY)
MEMBER (JUDICIAL)

B.N. SOM
(B.N. SOM)
VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL,
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CORAM:

HON'BLE SHRI B.N.SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI M.R.MOHANTY, MEMBER(JUDL.)

.....
Akhaya Kumar Mohanty, aged about 55 years, son of late
Bhagirathi Mohanty, at present working as Sr.Audit Officer, P & T
Audit Office, Cuttack 753005

..... Applicant

Vrs.

- 1) Union of India, represented by Secretary, Department
of Personnel, Government of India, New Delhi 110
001.
- 2) The Secretary, Department of Expenditure,
Government of India, New Delhi 110 001.
- 3) The Comptroller and Auditor General of India, 10
Bahadursah Zafar Marg, New Delhi 110 002.
- 4) The Secretary, Union Public Service Commission,
Dholpur House, Sahajahan Road, New Delhi 110 001.
- 5) The Director General of Audit (P&T), Civil Lines,
Delhi 110 054

..... Respondents

Advocates for the applicant - M/s. Ganeswar Rath,
S.N.Mishra and
T.K.Praharaj.

Advocates for the Respondents - Mr. S.B.Jena, ACGSC

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SHRI B.N.SOM, VICE-CHAIRMAN

Shri Akshaya Kumar Mohanty has filed this Original Application assailing the provision of Clause (2) of Schedule III of the Indian Audit & Accounts Service (Recruitment) Rules, 1983, so far as the restriction of the age of 53 years as well as fixation of crucial date of eligibility as first day of July are concerned. He has also prayed for quashing the eligibility list for the year 2001 and to consider his case for promotion to Indian Audit & Accounts Service taking into consideration the crucial date of eligibility as first day of January.

2. The case of the applicant revolves round the instructions issued by the Department of Personnel & Training's Office Memorandum No.22011/3/98-Estt.(D) dated 17.9.1998, wherein instructions were issued to all the Departments/Ministries that the crucial date for determining eligibility of officers for promotion in case of financial-year based vacancy year would fall on first day January immediately preceding such vacancy year and in case of calendar year-based vacancy year, the first day of January itself would be taken as the crucial date irrespective of whether the ACRs are written financial year-wise or calendar year-wise. He has also by referring to the instructions issued by the said Department in their O.M. No.AB 14017/2/97-Estt.(RR) dated 8.11.2000 that Ministries/Departments are to take immediate action for



framing/amending the Recruitment Rules in accordance with the revised guidelines on Recruitment Rules and furnish compliance report to that Ministry by 31.12.2001. The applicant's grievance is that his name could not find place in the eligibility list of 2001 as his date of birth is 11.5.1948. Had the Respondent-Department changed the crucial date from 1st July to 1st January, as instructed by the Department of Personnel & Training, his name would have been at serial No.20 of the eligibility list for promotion for the year 2001 and he could have been considered for promotion. He has submitted that the nodal Ministry for personnel matters being the Ministry of Personnel, Public Grievances & Pension, Department of Personnel & Training and as that Ministry had given direction to all Ministries/Departments to change the crucial date within a given period, the Respondent-Department had unlawfully violated the instructions. It is also submitted by him that while the Respondent-Department in consultation with the Government of India, Department of Personnel & Training decided to change the crucial date from 1st July to 1st January for determining eligibility for promotion from the panel year 2000 onwards in respect of Groups D, C and B categories, they did not carry out any change for Group A. The applicant's another grievance is that since the Government of India has enhanced the age of retirement of Central Government employees from 58 to 60 years of age, the Respondent-Department should have amended the Recruitment Rules to

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alter the age limit for induction into Indian Audit & Accounts Service from 53 to 55 years of age and by not carrying out this revision, the applicant has been seriously prejudiced. He has challenged the action of the Respondent-Department being violative of Article 14 of the Constitution and has sought for redress of his grievance.

3. The Respondents have opposed the Original Application by filing a detailed counter. Their contention is that the Recruitment Rules for Indian Audit & Accounts Service have been framed under Article 309 and Article 148(5) of the Constitution by the President of India in consultation with the Comptroller & Auditor General of India. The applicant, whose name appeared in the eligibility lists for the years 1997, 1998, 1999 and 2000, never had found any fault with the Recruitment Rules except now when his name could not find place in the select list of 2001 as he had crossed the upper age limit of 53 years. They have submitted that there can be no challenge to the Recruitment Rules, unless these Rules are found to be violative of Articles 14 and 16 of the Constitution, which is not the point in this case. Referring to the decision of the Full Bench of Central Administrative Tribunal, at Bangalore Bench, which has been subsequently followed by Chandigarh Bench and Ernakulam Bench, the Respondent-Department have submitted that the provisions of Indian Audit & Accounts Service (Recruitment) Rules have been found to be constitutionally valid and

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therefore, the sanctity of Clause (2) of Schedule III of the said Recruitment Rules cannot be challenged now by the applicant. With regard to the question of revising the crucial date for eligibility for promotion to Indian Audit & Accounts Service from 1st July to 1st January, they have submitted that the instructions of the Department of Personnel & Training are not applicable to them as those guidelines issued by the Department of Personnel & Training by their letter dated 2.4.1998 were applicable in cases where the Recruitment Rules are silent and do not prescribe the crucial date. However, as the Recruitment Rules for the cadres up to Group B did not have crucial date for determining the eligibility, first day of January has now been prescribed by them as the crucial date. Regarding applicability of the instructions issued by the Department of Personnel and Training, they have submitted that under Article 148(5) of the Constitution, the service conditions including recruitment and promotion of the employees serving in Indian Audit & Accounts Department are determined by the President of India in consultation with the Comptroller & Auditor General of India. In compliance with the above constitutional mandate, any administrative instruction/order issued by the Ministries is made applicable to the employees of the Indian Audit & Accounts Department only if the Comptroller & Auditor General is consulted before its issue. They have, therefore, submitted that general instructions issued by the Department of

Personnel & Training in O.Ms. dated 8.9.1998 , 13.10.1998 and 17.9.1998 having not been issued in consultation with the Comptroller & Auditor General of India, these are not automatically applicable to Indian Audit & Accounts Department unless adopted by the Comptroller & Auditor General of India. In any case, they have submitted that as the Recruitment Rules for Indian Audit & Accounts Service prescribe the crucial date as first day of July, there was no need for revising the crucial date as the instructions of the Department of Personnel & Training were directed to those cases where the Recruitment Rules did not provide for crucial date for determining eligibility.

4. We have heard Shri Ganeswar Rath, the learned counsel appearing for the applicant and Shri S.B.Jena, the learned Additional Central Government Standing Counsel appearing for the Respondents and have also perused the records placed before us.

5. At the outset we would like to place on record our appreciation of the efforts made by the learned counsel for the applicant in explaining before us the provisions of Article 148(5) and Article 309 of the Constitution of India and the relationship between the Government and the organisation of the Comptroller & Auditor General of India for proper understanding of the issues raised in this O.A. We have also been greatly helped by the learned Additional Standing Counsel in supplying various informations that we needed in connection with this Original Application.

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The Respondents have submitted additional counter and written note of arguments which have been taken on record.

6. The issues raised here are basically two-fold. Firstly, that it was incumbent on the part of the Respondent-Department to enhance the age restriction for entry into Indian Audit & Accounts Service from 53 to 55 years of age as soon as the age of retirement of Central Government employees was raised by the Government from May 2000. Secondly, that the Ministry of Personnel, Public Grievances & Pensions, Department of Personnel & Training, being nodal Ministry for determining the personnel policy, implementation of the instructions contained in O.M. dated 17.9.1998 by the Respondent-Department was unavoidable.

7. We have given our most anxious thoughts to both the issues and the rival contentions placed before us in this regard.

8. The first issue, i.e., whether the age restriction of 53 years is reasonable or not is no longer available for fresh adjudication as a coordinating Bench of this Tribunal (Ernakulam Bench) has already answered the question in the negative in the case of II.Salim and others v. Union of India and others, OA No.602 of 2000, decided on 24.9.2002. We are bound by the said judgment and therefore, uphold that the age restriction as enshrined in the Recruitment Rules is legally valid and cannot be assailed as unconstitutional.



9. With regard to the second issue, the applicant has assiduously made noise and thunder to state that notwithstanding the provision of Article 148(5), instructions issued by the Ministry of Personnel, Public Grievances & Pensions, Department of Personnel & Training are binding on all the Ministries/Departments of the government of India including Indian Audit & Accounts Department.

10. The contentions of the Respondents is that the O.M. dated 17.9.1998 is not applicable in the present case. They have stated that the said O.M. of 1998 has superseded the earlier instructions contained in the O.M. dated 19.7.1989 by providing one crucial date instead of two, as was prescribed earlier. They have submitted that in the case of Indian Audit & Accounts Service, first day of October was never adopted as the crucial date in the Indian Audit & Accounts Service(Recruitment) Rules, though the ACRs are written financial year-wise and no amendment was carried out in terms of the instructions of July 1989. They have also pointed out that in the O.M. dated 19.7.1989 it was mentioned that the crucial dates indicated in the O.M. would be applicable only to such services and posts for which statutory service rules do not prescribe a crucial date. So there was no need to amend the Recruitment Rules in 1989. So far as the O.M. of 1998 is concerned, their stand is that the said O.M. having not been issued by the President of India in consultation with the Comptroller & Auditor General of India, it had no application so

far as the employees of Indian Audit & Accounts Department are concerned.

11. The case of the applicant hinges on the point that the O.M./Government instructions issued from time to time also apply mutatis mutandis to the employees of the Indian Audit & Accounts Department. We have given our best thoughts to this matter with reference to the provision made in the Constitution about the role and function of the Comptroller & Auditor General of India, which is one of the pillars of the Constitution of India. For maintenance of the integrity of the democratic fabric, in the Constitution, a few institutions have been provided and the Comptroller & Auditor General is one such institution. Functional independence of such an institution has been recognised as the paramount need for upholding the sanctity of the Constitution of India. Keeping this need in view, the Constitution makers have enacted Article 148(5) which lays down that "subject to the provisions of this Constitution and of any law made by Parliament, the conditions of service of persons serving in the Indian Audit and Accounts Department and the administrative powers of the Comptroller and Auditor-General shall be such as may be prescribed by rules made by the President after consultation with the Comptroller & Auditor-General." This makes the Comptroller & Auditor General of India as the watchdog of policies and procedures of the executive organ of the Constitution. Such an

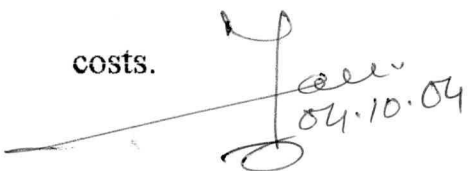
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independent role would be well-nigh impossible if executive writs will travel unhindered across the organisation of the Comptroller & Auditor General. We, therefore, hold that the contention of the applicant that the O.Ms./circulars issued by the Department of Personnel & Training are on their own motion applicable to the Indian Audit & Accounts Department like that of the other Ministries/Departments, is erroneous. As the Recruitment Rules for the Indian Audit & Accounts Service do prescribe a crucial date and the President of India did not feel it necessary to consult the Comptroller & Auditor General to carry out any change in the re-determination of that cut-off date for promotion, we see no merit in the controversy raised in this O.A. Accordingly, this O.A. fails. No

costs.


(M.R. MOHANTY)
MEMBER (JUDICIAL)

AN/PS


(B.N. SOM)
VICE-CHAIRMAN