

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 602/2000

Tuesday this the 24th day of September, 2002.

CORAM

HON'BLE MR.G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER
HON'BLE MR.K.V.SACHIDANANDAN, JUDICIAL MEMBER

1. H.Salim
S/o K.Hassankutty
2. T.M.Unnikrishnan
S/o M.Vasudevan Namboothiri
3. K.G.Aravindakshan
S/o K.K.Govindan
4. K.Sukumaran
S/o Late A.Kandelan
5. V.N.Sankara Pillai
S/o late V.S.Narayana Pillai

Applicants.

(All are Senior Audit Officers, Office of the
Accountant General (Audit), Trivandrum)

(By advocate Mr.M.R.Rajendran Nair)

Versus

1. Union of India rep. by
Secretary to the Government of India
Ministry of Finance, New Delhi.
2. The Comptroller and Auditor General of India
New Delhi.
3. The Accountant General (Audit)
Kerala Office of Accountant General
Trivandrum.
4. C.Sivakumaran Nair
O/o Accountant General (Audit)
Trivandrum.
5. R.Vishwanathan Pillai
O/o Accountant General (Audit)
Trivandrum.
6. P.Unnikrishnan
O/o Accountant General (Audit)
Trivandrum.

Respondents.

(By advocate Mr.C.Rajendran, SCGSC (R1-3)

The application having been heard on 24th September, 2002,
the Tribunal on the same day delivered the following:

ORDER

HON'BLE MR.G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

Applicants, five in number, aggrieved by the provisions contained in the Schedule III of Indian Audit and Accounts Service (Recruitment Rules) 1983 (hereinafter referred as the Rules) according to which officers who had attained the age of 53 years on the 1st day of July of the year to which the promotions pertained were made ineligible for being considered for promotion to posts in Group 'A' in the Junior Scale, included in the Indian Audit and Accounts Service and by Clause 3 of Schedule III of the Rules according to which the names of eligible Accounts Officers/Audit Officers would for the purpose of combined eligibility list be arranged in the order of date of the appointment as Section Officer or corresponding post, and the orders and promotion of respondents 4 to 7 and similarly situated others who were juniors to the applicants in the category of Senior Audit Officer, by A-1 Recruitment Rules dated 24.3.83, A2(a) order dated 22.9.99, A2(b) order dated 22.9.99 and A2(c) order dated 22.9.99, filed this Original Application seeking the following reliefs:

- i. To declare that Clause 2 Schedule III of Annexure A1 according to which officers who have attained the age of 53 years on the 1st day of July of the year to which promotions pertain shall not be eligible for promotion is ultra vires the Constitution of India and to direct respondents 1 to 3 not to enforce the said provisions in the case of the applicants.
- ii. To declare that Clause 3 of Schedule III of Annexure A1 according to which combined eligibility list of Account Officers and Audit officers for the purpose of promotion to Group A JTS Indian Audit & Accounts Service is to be prepared in the order of their appointments as Section Officers or corresponding post is ultra vires the Constitution of India.
- iii. Direct the respondents 1 to 3 to prepare the eligibility list on the basis of dates of commencement of service as Audit Officers/Accounts Officers and to consider the cases of applicants for promotion to Group A, JTS, Indian Audit and Accounts Service, accordingly and to grant them promotion from the dates on which such promotions became due with all consequential benefits including arrears of pay and allowances.



iv. To declare that promotions granted to respondents 4 to 6 and to those similarly situated are illegal and quash A-2(a), A-2(b) and A-2(c).

v. Grant such other reliefs as may be prayed for and the Court may deem fit to grant, and

vi. Grant the cost of this Original Application.

2. According to the averments of the applicants in the OA, they were working as Senior Audit Officers (Commercial) in the office of the 3rd respondent at the time of filing this OA. They commenced service as Auditors/UD Clerks on 4.6.71, 11.5.70, 3.2.71, 18.5.70 and 29.5.70 respectively and promoted as Section Officers on 25.5.78, 13.7.76, 6.7.77, 13.7.76 and 14.7.76 respectively. They were further promoted as Assistant Audit Officers on 1.3.84 except applicants 2 & 3 who were promoted on 30.4.84. They were promoted as Audit Officers in July 1989 and they were further promoted as Senior Audit Officers on 1.8.92, 1.7.92, 1.8.92, 1.7.92 and on 1.7.92 respectively. They claimed that respondents 4 to 7 were promoted as Section Officers, Audit Officers and Senior Audit Officers on the respective dates as show below:

<u>Respondents.</u>	<u>U.D.</u>	<u>S.O.</u>	<u>A.O.</u>	<u>Sr.S.O.</u>
4) C.Sivakumaran Nair	23.5.67	1.3.73	3.1.90	3.1.94
5) R.Vishwanathan Pillai.	15.6.66	1.3.73	4.1.90	3.1.94
6) P.Unnikrishnan	3.8.66	1.3.73	16.3.90	3.1.94

3. While the applicants are Senior Audit Officers (Commercial) who have an All India seniority list, respondents 4 to 6 were Senior Audit Officers (Civil). Applicants claimed that there were other categories of Audit Officers and Accounts officers such as Senior Audit Officers (Defence Audit), Senior Accounts Officers (Railway Audit), Senior Audit Officers (P&T Audit) etc. According to them, they got promotion on different



dates depending upon the existence of vacancy in their Department subject to their being qualified and suitable for promotion. Promotions to the category of Accounts Officers/Audit Officers were on the basis of seniority cum merit. Referring to the Recruitment Rule of the Indian Audit and Accounts Service (Recruitment Rule, 1983) (Annexure A-1), they submitted that by operation of Clause 3 of Schedule III they were included in the eligibility list for the year 1997 with much lower ranks than those of respondents 4 to 6, i.e. as Rank Nos. 498, 398, 449, 399 and 401 respectively and therefore, respondents 4 to 6 were granted promotion to the Junior Time Scale of Indian Audit Account Service Group 'A' with effect from 22.9.99 by A-2(a), A2(b) and A2(c) respectively. First applicant submitted A-3 representation dated 9.10.98 to the Senior Deputy Accountant General in the office of 3rd respondent stating that the list prepared on the basis of the date of promotion as Section Officer was going to affect his chance adversely. In reply to A-3 he received A-4 reply dated 28.12.98. Further, according to the applicant, the stipulation in Clause 2 of Schedule III of A1 that officers who had attained the age of 53 years on the 1st July of the year to which promotions pertained, should not be eligible for promotion, was arbitrary, unreasonable and irrational. Not satisfied with A-4 reply and Clause 2 of Schedule III of A1 Recruitment Rules, applicant filed this OA seeking the above reliefs.

4. Respondents filed reply statement resisting the claim of the applicants. They explained the rationale for adopting the IA & AS (Recruitment) Rules 1983 for preparation of the combined eligibility list. It was submitted that the selection in

A handwritten signature in black ink, appearing to be a stylized 'A' or 'S' followed by a horizontal line and a small 'c' at the bottom right.

question was conducted prior to raising of the retirement age with effect from 13.5.98 for the period upto 1.7.97 and the applicants had been included in the eligibility list. As the applicants had no case that they had been left out of consideration because of the limitation of age of 53 years, this ground was not maintainable. It was also submitted by the respondents that the validity of Clause 2 of Schedule III had been upheld by this Tribunal in K.Ranganathan's case [1989 (9) ATC 864] and a similar petition filed by Shri Krishna Iyer in OA 1991/91, relying on the judgement of the Hyderabad Bench of this Tribunal in S.Janardhana Rao Vs. Accountant General (A&E), [1992(21) ATC 489].

5. Heard the learned counsel for the parties. Learned counsel for the applicant after taking us through the factual aspects, submitted that the promotion to a post was dependent on the seniority of the officials in the feeder category. In this case, the feeder category to the cadre of Group-A (Junior Scale) of the IA & AS was that of Accounts Officer/Audit Officer. The seniority in the feeder category ought to be fixed in accordance with the date of entry into that cadre. Audit Officer/Accounts Officers were appointed from among section officers based on their merit cum seniority and on the basis of merit cum seniority when a person became senior, it was not proper to take away this advantage for making promotion to the next higher cadre. The impugned provision of Clause III took care only of the inter-se seniority in one cadre. According to him, when a combined list of similarly placed cadres was made it was unfair to take the date of entry into another cadre as a criterion for fixation of seniority. According to them, the post of A.O. was a selection

A handwritten signature in black ink, appearing to read "R. S." or a similar initials, is located at the bottom left of the page.

post. Person with lesser length of service as SO could become an A.O. due to the comparative merit and thus became senior in the cadre of A.O. That this seniority accrued on him by virtue of his merit should reflect for further promotion to Group-A both in the interest of the individual as well as in public interest. A rule which does not reflect this position would be unreasonable, illegal and unjust. It was also submitted by him that the rule prescribing the age of 53 years was made when the age of superannuation was 58 years. Now that the age of superannuation was 60 years, corresponding change in the said age was called for, according to him.

6. Learned counsel for the respondents took us through the reply statement and submitted that there were a number of cadres and the promotional prospects in the different cadres were different. The Department had adopted a criteria which would reflect a clear position as well as merit of the people. A common equalising factor among all the cadres had to be evolved. Such a factor was found as SAS examination later on renamed as Section Officers Grade (SOG) Examination which was conducted by the office of the Comptroller and Auditor General of India on all India basis. After passing the said examination, a person qualified for appointment as a Section Officer which was the feeder cadre for promotion to the post of Accounts/Audit Officer. The SOG examination was open to all Auditors/Clerks in the Department with specified service. Taking these factors into account it was decided to adopt the date of promotion as Section Officer as the basis for preparation of the Combined Eligibility List for promotion to IA & AS.

A handwritten signature in black ink, appearing to read "J. S." or "J. S. S." with a stylized line underneath.

7. We have given careful consideration to the submissions made by the learned counsel for the parties and the rival pleadings. Even though the learned counsel for the applicants took permission of this Tribunal to publish a paper notification in the 'New Indian Express', inspite of several opportunities, no copy of the publication was filed. On specifically being asked, learned counsel for the applicants submitted that the notification could not be published.

8. We find that Clauses 2 and 3 of Schedule III of A-1 Recruitment Rules provided as under as the eligibility condisions and seniority:

"(2) A combined eligibility list shall be prepared from among departmental officers borne on the Group 'B' Cadres of Audit Officers, Accounts Officers and Administrative Officers in the Indian Audit and Accounts Department who have completed 5 years regular continuous service in the grade on the first day of July of the year to which the promotions pertain. Officers who have attained the age of 53 years on the above date shall not be eligible.

(3) The names of eligible Accounts Officers/Audit Officers, shall for the purpose of combined eligibility list to be arranged in the order of date of their appointments as Section Officers (or corresponding posts) without, however, altering the inter-se seniority as Accounts Officer/Audit Officer in a particular cadre."

9. The only ground on which the above Clause 3 has been challenged is that the same was highly unreasonable, illegal and unjust for the reasons submitted by them. Respondents have justified their action for framing such a rule. Their averments in this regard are as follows:

"While framing the IA&AS Recruitment Rules 1983, which replaced the above arrangement, the following considerations weighed with the 2nd respondent in making suitable suggestions to Government.



(a) In accordance with the criteria then operative, the Union Public Service Commission was required to consider a very large number of officers from each and every cadre, which made its work extremely difficult, if not impossible.

(b) It was considered desirable that along with merit, due weightage should also be attached to the long and meritorious service rendered by these officers in their respective cadres.

These criteria could be satisfied only if a combined list is prepared for consideration after merging eligible officers of all cadres. To achieve this goal, criteria for eligibility was revised as mentioned in para 2 of Schedule III of the IA&AS (Recruitment) Rules, 1983. In prescribing procedure for preparation of such a list, the respondent No.2 was faced with an extremely complex task of merging together the eligible officers from over fifty different cadres. In all these cadres the officers performed different functions and prospects of promotion to the feeder cadres (viz. Accounts/Audit Officers) were widely different, at different points of time. In the offices of Tamil Nadu and Andhra Pradesh, the officers had to put in a service of 17 to 18 years to get into the feeder cadre, while in the cadre of Commercial Audit the corresponding period was 10 to 12 years. In Railway Audit and Defence Audit Offices, the time taken for promotion to feeder cadre varied from office to office but was invariably more than in case of many civil Accounts and Audit Offices. This stagnation of varied levels was on account of differences in the expansion of activities of auditee organisations and consequent expansion of audit activities. In these circumstances it was felt that if the criteria of the date of entry in feeder cadre was adopted as the basis for preparation of combined eligibility list, it would have resulted in serious damage to the promotional aspects of Accounts/Audit Officers in many cadres resulting in consequent demoralisation and its impact on the efficiency of the Department.

In order to achieve fair criteria it was essential to base it on a common equalising factor among all the cadres. Such a factor was found as SAS examination later on renamed as (SOG) Section Officers Grade Examination which is conducted by the office of the Comptroller and Auditor General of India (C&AG) on all India basis. After passing this examination, a person qualifies for appointment as a Section Officer which is the feeder cadre for promotion to the post of Accounts/Audit Officer. The SAS(SOG) examination is open to all Auditors/Clerks in the Department with specified service. Taking these factors into account it was decided to adopt the date of promotion as Section Officer as the basis for preparation of the Combined Eligibility List for promotion to IA & AS."

10. On going through the above, we find that there is nothing arbitrary or unreasonable. Whatever advantage or disadvantage is



there, it is there for everybody who is under consideration. We also find that the applicants' averment that merit is not considered has no force. The eligibility list is prepared from amongst Audit/Accounts Officers/Administrative Officers who fall within the zone of consideration and they are arranged on the basis of their entry in to the cadre of Section Officer. At the same time, maintaining the inter-se seniority of all Audit/Account/Administrative Officers in the same cadre. So it cannot be said that more meritorious who become Audit/Account/Administrative Officer lose their position if they get into the cadre earlier than those who do later.

11. It is well accepted judicially that preparation of a Recruitment Rule is an executive function and in judicial review it is to be seen whether it is violative of the fundamental right enshrined in the Constitution of India or it has been prepared by an authority not competent to do the same. It is possible that Court/Tribunals can prepare a better recruitment rule laying down better conditions but in judicial review, Courts/Tribunals will not act as appellate authority sitting in judgement over the decision itself. It is the rule making process and relevant factors were taken into consideration that is to be considered. In this case, the appropriate authority had framed the Recruitment Rules and the only ground raised by the applicants for challenging the same has been found by us as without any merit. So the challenge against Clause 3 has to fail.

12. The next challenge is against Clause 2 of Schedule III regarding stipulation of age limit of 53 years for consideration

A handwritten signature in black ink, appearing to read "A. S. J." or a similar variation, is located at the bottom of the page.

for entry into Audit/Accounts Officers Group-A. We find that the selection had been conducted in 1997 when the age of retirement had not become 60 years and the applicant had been considered as he was within the age limit specified. His claim that the same should be enhanced corresponding to the increase in the retirement age from 58 to 60 years is a matter to be decided by the rule making authority. On going through the entire Recruitment Rules, we do not find that the age of 53 years had been fixed by the authority concerned because the retirement age was only 58 years. In the case of All India Service like the IAS & IPS, the age for consideration has been fixed as 54 years on the 1st of January of the year concerned. Thus, these are executive decisions and in judicial review, no directions can be given that it should be enhanced or reduced. Applicants has not advanced any specific reason or ground as to why the same needs to be enhanced. What we find is that enhancement as sought for by the applicant is something that may put certain people to advantage and some others to disadvantage. Consideration of such needs can be done by the rule making authority. As it stands now, we do not find any need for inference in this Clause.

13. We also find that the validity of Clause 3 of Schedule III had been gone into by a Full Bench of this Tribunal in K.Ranganathan & others reported in 1989 (9) ATC 864. The Bench had also gone into Clause 2 of Schedule III regarding fixation of 53 years as age. The Tribunal held that Clause 3 of Schedule III was not violative of Articles 14 & 16 of the Constitution. It also held the upper age limit prescribed in the Recruitment Rules as valid.

A handwritten signature in black ink, appearing to be a stylized 'A' or 'S' followed by a long horizontal line.

14. In the light of the above, we hold that the applicants are not entitled for the reliefs sought for. Accordingly we dismiss this OA. No order as to costs.

Dated 24th September, 2002.



K.V. SACHIDANANDAN
JUDICIAL MEMBER



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER

aa.

APPENDIX

Applicant's Annexures:

1. A-1: True copy of the Indian and Audit Accounts Service (Recruitment Rule) 1983, dated 24th March 1983.
2. A-2(a): True copy of the order No.3999-GE.I/99-98/Vol.III, dated 22.9.99 issued by the Assistant Comptroller and Auditor General (Personnel) office of the 2nd respondent to the 4th respondent.
3. A-2(b): True copy of the order no.4107-GE.I/99-98/Vol.III, dated 22.9.99 issued by the Assistant Comptroller and Auditor General (Personnel) office of the 2nd respondent to the 5th respondent.
4. A-2(c): True copy of the order No.3999-GE.I/99-98/Vol.III, dated 22.9.99 issued by the Assistant Comptroller and Auditor General (Personnel) office of the 2nd respondent to the 6th respondent.
5. A-3: True copy of the representation dated 9.10.98 submitted by the 1st applicant to the Senior Deputy Accountant General (Administration).
6. A-4: True copy of the letter No.Au/Admn.IV/16-5/AOGL, (200) dated 28.12.1998 sent by the Senior Audit Officer, (Admn) to the 1st applicant.

Respondents' Annexures:

1. R-1(a): True copy of the judgement in OA 1991/91 dated 7.10.93 of the Hon'ble CAT, Ernakulam Bench.
2. R-1(b): True copy of order in OA No.256/89 dated 17.6.92 of the Hon'ble CAT, Hyderabad Bench, Hyderabad.

npp
11.10.02(4)