

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

DATE OF DECISION: 30.10.1989

P R E S E N T

Hon'ble Mr.N.V.Krishnan - Administrative Member

and

Hon'ble Mr.N.Dharmadan - Judicial Member

ORIGINAL APPLICATION NO.17/89

1. MB Harikumar
2. K Ajith Kumar
3. MT Vijayan
4. AV Radhakrishnan
5. N Ayyappankutty - Applicants

Versus

1. Union of India represented by the Secretary, Ministry of Finance, Govt. of India, New Delhi
2. Comptroller and Auditor General of India, New Delhi.
3. The Accountant General, (Accounts and Entitlement) Kerala, Trivandrum. - Respondents

Mr.GP Mohanachandran - Counsel for applicants

Mr.PA Mohamed,ACGSC - Counsel for respondents

O R D E R

(Hon'ble Mr.N.Dharmadan, Judicial Member)

The applicants who are working as Clerk/Typist in the office of the third respondent are challenging in this case Clause 11 of the Indian Audit and Accounts Department(Accountant) Recruitment (Amendment) Rules, 1988 (herein after referred to as amended 1988 Rules)

as unconstitutional, illegal and ultravires because it curtails the chance of promotion to applicants to the cadre of Accountants

2. All the applicants joined as Clerk/Typist under the 3rd respondent in 1986 except 5th applicant who only joined in 1987. At the time when they joined service the Recruitment Rules governing the promotion to the post of Accountants was Indian Audit and Accounts Department (Accountant) Recruitment Rules, 1986 (Annexure A.I.). According to the provisions of these rules the post in the cadre of Accountants was a promotional post from the cadre of Clerk/Typist and there was no direct recruitment. Even after the restructuring of the department into Audit and Accounts Wings with effect from 1.1.1984 the aforesaid rules provided that 50% of vacancies of the Accountants would be filled up by promotion from Clerks, who have completed five years of service on the basis of seniority-cum-fitness. The remaining 50% also was filled up from persons in service who are working as Clerks having the qualifications of matriculation with three years of continuous service ~~but~~ on passing the departmental examination.

3. According to the applicants though they are designated as Clerk/Typist they are actually discharging the duties similar to that of Accountants and by virtue of their experience they are entitled to get promotion

as Accountants, which is the only avenue of promotion for them in the service. A number of Clerk/Typist working in the office of the third respondent as well as in other States under the control of the second respondent have already been promoted when they have put in five years of service as Clerks when they passed the Departmental Examination.

4. The first respondent in consultation with the second respondent issued the Annexure 1 Recruitment Rules for the post of Accountant in the Indian Audit and Accounts Department which were brought into force with effect from 12th August, 1986. The provisions contained in the said rule reads as follows:

<u>Method of recruitment</u>	<u>From which grade</u>
"promotion, failing which transfer on deputation."	Promotion- (a) Fifty percent by clerks with five years regular service in the grade; and (b) Fifty percent by matriculate clerks on passing Departmental Examination for Accounts or the Section Officers' Grade Examination Part-I, failing which the vacancies will be filled in as at (a) above.
	NOTE: The inter-seranking of those who so qualify will be in the order of their inter-service seniority, those qualifying in any earlier examination ranking en-block higher than those who qualify in the examination later.
	Transfer on Deputation:- (1) Accountants: or (2) Clerks satisfying conditions mentioned in item (a) or (b) occurring under the heading "Promotion", from other Accounts Offices in Indian Audit and Accounts Department. (period of deputation shall ordinarily not exceed three years)".

As stated above under Annexure-A.1 the promotion to the cadre of Accountants was divided between the clerks with five years of regular service in the grade and clerks and others who are matriculate on passing the Departmental Examination for Accountants or Section Officer's Grade Examination Part-I in equal manner fixing 50% for each group. But the respondents 1 and 2 have issued a new set of rules amending the Annexure-A.1 rule. This is Annexure A.2 dated 30th July 1988. This was issued in exercise of the powers under clause 5 of the Article 148 of the Constitution, after due consultation with Comptroller and Auditor General of India. The provisions in the amended Rules which provide for promotion to the post of Accountant from the cadre of clerks read as follows:

"11. Method of recruitment, whether by direct recruitment or by promotion or by deputation /transfer and percentage of vacancies to be filled by various methods.

- (a) 33.1/3% by promotion of Clerks, with five years regular service in the grade on seniority basis, subject to rejection of unfit, failing which by direct recruitment.
- (b) 33.1/3% by promotion of graduate Group 'D' officials or matriculate clerks with three years continuous service on passing the Departmental Examination for Accountants or Clerks on passing the Section Officer's Grade Examination Part-I, failing which by direct recruitment. (The interse ranking of those who so qualify will be in the order of their interse seniority, those qualifying in any earlier examination ranking en bloc higher than those who qualify in a later examination; Group 'D' officials will rank below Clerks).
- (c) 33.1/3% by direct recruitment.

As per the amended 1988 Rules the earlier clause 11 of the Rule was modified by reducing the percentage of promotion available for the clerks by virtue of their seniority, to the cadre of Accountants and introducing a method of selection by which 33 1/3 percentage was reserved for persons from open market. So, according to the provisions of the Clause 11 of the amended rule 33 1/3% of the vacancy of Accountants posts alone will be filled up by promoting clerks with minimum five years of service, at the same time 33 1/3% of the vacancy will be filled up by promotion of graduates with three years of continuous service who have passed departmental examination prescribed for Accountants. The remaining 33 1/3% of posts will be filled up by direct recruitment from outside. Thus according to the applicants the Clerks/Typists who were enjoying the benefits of 100% vacancies of Accountants to be filled up by promotion either by virtue of seniority or by passing departmental examination have now been ~~reduced~~ to 66 2/3% ⁴ and the respondent have thus curtailed the promotional chance of the applicants in service. According to them if the amended 1988 Rules are implemented the applicant's chance of promotion will be completely affected and the possibility of stagnation and consequent heart burn would result in injuries to the persons like the applicants and the others working as Clerk/Typist under the third respondent. Highlighting these grievance the applicants

have submitted representations both before respondents 2 and 3. Annexure A.3 is one of such representations filed before the second respondent but the same has not been considered and disposed of in accordance with law. The applicants feel that they would not be getting justice at the hands of respondents.

Hence they have approached this Tribunal with the prayer to quash the provisions contemplated in the amended 1988 Rules prescribing the method of recruitment to the post of Accountants.

5. The learned counsel for the applicants Shri G. Mohanachandran, appearing on behalf of the petitioners contended that xxxxxxxxxxxxxxxxxxxxxxxxx the vested rights of the applicants to get promotion to the post of Accountants has been taken away by means of amended 1988 Rules. Thus the action of the respondents is an infringement of fundamental right of the applicants under Articles 14 and 16 of the Constitution. He has also submitted that the post of Accountants being the only posts available for promotion to the applicants in service, the provision to make direct recruitment to the said posts would deprive the benefits which were enjoyed by the applicants and hence, this is illegal and void. If the respondents really wanted to make direct recruitment to the post of Accountants they could have made provisions for the same

without affecting the chance of promotion available to the applicants as per the existing rules in force.

6. We have carefully examined the contentions of the applicant in the light of the pleadings and the materials produced in this case. Before considering the contentions we think it is useful to advert to the reasons which prompted the respondents to issue the amended 1988 Rule which is impugned in this case.

7. The respondents 1 to 3 have stated in the counter affidavit the reasons and objects of the amended 1988 Rules. According to the respondents consequent upon the restructuring the cadre in Indian Audit and Accounts Department, the field Offices under the Indian Audit and Accounts Department were bifurcated into offices of the Accountant General (A&E) and Accountant General (Audit). The vacancies arising in the Accountant General (A & E) Office after reorganisation were filled up by promotion from a year wise panel commencing from 1.1.1984 dividing the vacancies in equal manner giving 50% to the Clerks who have completed five years of service on seniority-cum-fitness and 50% to Clerks who are matriculates with three years of continuous service on passing the departmental examination for Accountants or Part I of the Section Officers Examination.

But as per para 2.4.2 of the Manual of Instructions for restructuring of cadres in Indian Audit and Accounts Department issued by the 2nd respondent in connection with the bifurcation of the composite office of the Accountant General, the composition of the two cadres Viz. Accountants and Clerks will be re-determined by working out the new strength of Accountants and Clerks at 60% and 40% respectively of the total them existing posts of 'Auditors' allocated to Accountant General (A & E) Office. It was further provided in para 1.3.2. of the said Manual that certain functions performed by the Auditors/Selection Grade Auditors would be assigned to Clerks. Thus in short 40% of the posts in the Accountants were manned by Clerks. Therefore, the officials appointed as Clerks may either discharge the functions of an Accountant or Clerk depending on the administrative requirement. According to the respondents after the restructuring of cadres in Indian Audit and Accounts Department, there was wide spread discontent among the staff as they felt that the Accountant General (A & E) offices were down graded with the abolition of direct recruitment of graduate Accountants (Auditors prior to the bifurcation of the composite office of the Accountant General). In the XVII Ordinary meeting of the

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Department Council of Indian Audit and Accounts Department (JCM) held on 30.12.1987 it was decided with the concurrence of the staff side that

1. Staffing pattern in A&E offices, the ratio of 60:40 accountants-Clerks would be improved to 70:30
2. There would be direct recruitment of graduate at 33 1/3%. Remaining vacancies would be on promotion by seniority/faster tract quota in equal ratio.
3. Recruitment Rules to the post of Accountant should be suitably amended.

It is in the line with the above decision that the President of India in exercise of the powers conferred on him by Clause(5) of Article 148 of the Constitution of India framed the amended 1988 Rules after consultation with the 2nd respondent. There was also prior discussions with representatives of the Union of Officers in the concerned cadres. The said rule was published in the Gazette of India on 30.7.1988. From the object and reasons for the amended 1988 Rules one thing is clear that the amendment was issued taking into consideration of the interest of the officers working in this cadre and after consultation with the second respondent and discussions with the Union of officers.

8. The applicants are now working in the office of Accountant General (A &E) which came into existence with

effect from 1.3.1984. Therefore, the vacancy in the cadre of Accountants in the Accountant General (A&E) office would be filled up with effect from 30.7.1988 following the amended 1988 Rules. Three of the applicants are graduates. The clerks who are graduates and also qualify in the examination conducted by the S.S.C. can become Accountants much earlier than that of others under the pre-amended recruitment Rules because the number of posts in Accountants Cadre hasbeen increased from 60% to 70%. The amended 1988 Rulescame into force only from 30.7.1988. The second respondent in circular No.1052-N.2/12-88 dated 7.11.1988 specifically instructed all field offices that the vacancies in the cadre of Accountants which existed prior to the amended 1988 Rules should be filled up only under the Recruitment Rules as existed prior to it. Thus the vested legal rights, if any, of the applicants for the vacancies as on29.7.1988 are concerned have been duly protected. According to the said instructions of the second respondent all eligible persons in the panel have been promoted to the cadre of the Accountants before the end of 1988 against the vacancy which existed in the post of Accountants as on 29.7.1988. Hence there is no merit in the contention of the applicant that they would be deprived of their legal vested rights of promotion



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to the post of Accountants due to the amended 1988 Rules, Thus out of the total five applicants only two are non-graduates and they alone may have some grievances against the amended 1988 Rules. But in their case if they are otherwise eligible under the unamended rules covering the promotion they are also eligible for promotion and they ought to have been promoted before 29.7.1988 because the second respondent decided inspite of coming into force the amended 1988 Rules that all the vacancies in the cadre of Accountants which existed as on 19.7.1988 should be filled up only under the Recruitment Rules as existed prior to the amendment.

9. In this case the second respondent has, ~~further~~ clarified in his letter No.384-N.2/12-88(M) dated 10.4.89 that even the vacancies as on 29.7.1988 in the higher grade of Senior Accountants should be taken as vacancies in Accountants cadre for promotion of clerks. Accordingly, there are sufficient safeguards for the purpose of protecting the vested rights of the applicants for getting their promotion. So, actually there is ^{no} ~~is~~ deprivation of promotion to these two applicants also as alleged in the application. A rule providing for selection of some persons from open market in the best interest of improvement

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of administration cannot be assailed by the officers merely on the ground that it may affect their chance of promotion. In fact there is no such right has been taken away by the amended 1988 Rules. But such a contention would not stand scrutiny before a Court of law. The Supreme Court held as early as in 1962 as follows in General Manager, Southern Railway and another v. Rangachari, AIR 1962 SC 36.

"This equality of opportunity need not be confused with absolute equality as such. What is guaranteed is the equality of opportunity and nothing more. Article 16(1) or (2) does not prohibit the prescription of reasonable rules for selection to any employment or appointment to any office. Any provision as to the qualifications for employment or the appointment to office reasonably fixed and applicable to all citizens would certainly be consistent with the doctrine of the equality of opportunity; but in regard to employment, like other terms and conditions associated with and incidental to it, the promotion to a selection post is also included in the matters relating to employment, and even in regard to such a promotion to a selection post all that Art.16(1) guarantees is equality of opportunity to all citizens who enter service."

10. The impugned Rules have been issued under Clause 5 of the Article 148 of the Constitution having regard to circumstances prevailed after the bifurcation of Audit and Accounts department with effect from 1984,
h in the public interest taking into account the

functioning of the departments and on the facts and circumstances of the case as indicated earlier there cannot be any infringement of fundamental rights guaranteed to the officers already working in the service as Clerks/Typists. In this connection it would be appropriate to refer the decision reported in the Tamil Nadu Education Department Ministerial and General Subordinate Service Association etc. v. State of Tamil Nadu and others, AIR 1980 SC 379; the Supreme Court observed as follows:

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The feeble criticism that the promotional proportion between the two wings, in the process of interlacing and integration, is unsupported by any rational guideline is pointless. The State's case is that when two sources merge it is not uncommon to resort to the quota rule for promotion, although after getting into the common pool further 'apartheid' shall be interdicted save in a limited class with which we are not concerned here. Of course, even if the quota rule is an administrative device to inject justice into the integrating, process, the ratio cannot be arbitrary nor based on extraneous factors. None such is averred nor established. The onus is on the challenger and, here, the ratio is moderately related to the numbers on both sides and we see nothing going 'berserk' nothing bizarre nothing which makes you rub your eyes to query what strange thing is this Government doing ? Counsel for the respondents explain that when equated groups from different sources are brought together quota-rota expedients are practical devices familiar in the field. Bearing in mind the strength of the District Board staff to be inducted, the ratio is rational, May-be, a better formula could be

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evolved, but the court cannot substitute its wisdom for Government's save to see that unreasonable perversity, malafide manipulation indefeasible arbitrariness and like infirmities do not define the equation for integration. We decline to demolish the order on this ground. Curial therapeutics can heal only the pathology of unconstitutionality, not every injury."

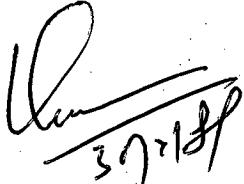
The fixation of percentage between the persons in service and the persons to be selected from the open market is a matter xxxx within the powers of the Government. The Supreme Court recently in Karam Pal etc. V. Union of India, 1985(1) SLR 639, held after considering the powers of the Government in maintaining the different cadres in the interest of efficiency of the service as follows:

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With a view to maintaining the efficiency of the service and at the same time to meet the requirements and exigencies of the service, separate cadres have been formed in respect of Assistants and Section Officers in the different Ministries and offices attached to such Ministries. Notwithstanding the fact that these cadres are different, the scheme makes provision for promotional avenue taking all of them into consideration. Obviously, working it out keeping in view the interests of so many employees in the different cadres is indeed a very onerous and difficult task. This has, therefore, been assigned to the Department of Personnel. Unless there is any serious failure in implementing the Rules and grave injustice is done to some individuals or a group of officers, we do not think it would be proper to interfere with the working of the scheme and dislocate the inter se seniority of the officers in these grades."

nor has any grave injustice been established in this case as alleged in the application. In the facts and circumstances of the case, we uphold the impugned recruitment Rules at Annexure A-2 and dismiss the the application.

The parties will bear their respective costs.


30/10/89

(N. V. Krishnan)
Judicial Member

(N. V. Krishnan)
Administrative Member

30.10.1989

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