

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 265 OF 2010

Friday..., this the 28th day of October, 2011

CORAM:

**HON'BLE Dr. K.B.S. RAJAN, JUDICIAL MEMBER
HON'BLE Mrs. K. NOORJEHAN, ADMINISTRATIVE MEMBER**

1. Hema T.M
TC 37/1777(1)
Athikesava Kripa, WSRA 6
West Fort, Thiruvananthapuram – 23.
 2. Benny Varghese
Pothirickal, LMS Nagar
Muttada (P.O), Thiruvananthapuram – 25
 3. Sheeba Varghese
Pothirickal, LMS Nagar,
Muttada (P.O), Thiruvananthapuram – 25
 4. Sreelatha G
TC 36/773(4), MRA-20
Samajam Lane, Perunthanni
Vallakkadavu (P.O), Thiruvananthapuram – 8.
 5. Beena P.R
E-30(B), Varnam, Mythri Nagar, Valiyavila
Thirumala (P.O), Thiruvananthapuram.
 6. Deepthi Dev. V
Indeevaram, TC 6/1989(1)
Elipode, Thirumala (P.O)
Thiruvananthapuram – 695 006.
 7. Saji T., T.C 3/630(1)
Muttada (P.O), Thiruvananthapuram – 695 025.
 8. Venugopal V.K
MGRA-37, Vaishnavi
Maharajas Lane, Anayara (P.O)
Thiruvananthapuram.
- Applicants

(By Advocate Mr. R.V. Sreejith)

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Versus

1. Union of India represented by the
Controller and Auditor General of India
10, Bahadur Shah Zafar Marg
New Delhi – 110 002.
2. The Accountant General (A&E)
Kerala, Thiruvananthapuram.
3. Principal Accountant General (Audit)
Kerala, Thiruvananthapuram. - Respondents

(By Advocate Mr. V.V. Asokan)

The application having been heard on 03.10.2011, the Tribunal on ~~28.10.2011~~ delivered the following:

ORDER**HON'BLE Mrs. K. NOORJEHAN, ADMINISTRATIVE MEMBER**

The applicants, Assistant Audit Officers (on deputation) in Indian Audit and Accounts Department have filed this Original Application seeking following reliefs:-

- i) To call for the records leading to Clause 2 of Annexure A-4 and Clause (v) of Annexure A-5 to the extent it is objected and quash the same.
- ii) To call for the records leading to Annexures A-11 to A-15 and quash the same.
- iii) To direct the respondents 1 and 2 to consider and pass orders on Annexures A-17 to A-24 in the light of Annexure A-16 judgment.
- iv) To direct the respondents to repatriate the applicants to their parent office and grant them promotion to the post of Section Officer/Assistant Accounts Officer as per Annexure A-4 Circular, regulate the seniority and fixation of pay in the post.

2. According to the applicants, the Indian Audit and Accounts Department have two streams of Audit and Accounts. These two wings have different service conditions for fixing of seniority, promotion transfer, etc. The applicants are recruited in the Accounts stream and were working in the A&E Section. The officials in both streams have to pass an examination called Section Officers Grade Examination (SOGE for short) to get promotion to the post of Section Officers. SOGE Examination is conducted separately for Audit and Accounts Wings. The examination in the Accounts stream is known as SOGE Civil (Accounts) Examination. Similarly, the Auditors, Clerks and Senior Auditors in Civil Audit Office are eligible for SOGE Civil (Audit) Examination. The syllabus for the examination to the Audit and Accounts Officers is different. When there was a stagnation in promotion to the cadre of Section Officers in A and E Offices, the department suspended the SOGE examination in the Accounts Wing from 1996 to 2003. Such examination continued to take place in Audit Office every year. As SOGE Civil (Accounts), qualified officials in the Accounts stream were waiting for promotion as Section Officers for long duration, the unions urged the 1st respondent to promote them on ad-hoc basis. While so, the 1st respondent issued a circular permitting A&E staff to appear in SOGE Civil (Audit) examination for their eventual absorption in Audit stream. It was noted in the circular that the candidates in A&E Offices passing SOGE Civil (Audit) Examination will be absorbed in Civil (Audit) Offices against vacancies in Section Officer's cadre remaining unfilled due to non-availability of eligible audit staff for promotion as Section Officer (Annexure A-1). The 1st



respondent clarified that passing the SOGE Civil (Audit) Examination by the A&E staff will make them eligible for absorption in Audit Offices but it does not debar them from promotion in A&E Offices, if their turn comes earlier. The policy so declared was followed with a difference in State of Kerala according to the applicants. The applications were invited by the Principal Accountant General (Audit) Part II passed officials from the office of the Accountant General (A&E), Kerala purely on deputation basis. The word 'eventual absorption' was missing in that deputation notice (Annexure A-3). A bare reading of Annexure A-3 itself shows that the applications were sought purely on deputation basis. The applicants submitted their applications for deputation in the year 2008. They were not granted deputation then. Meanwhile, the first respondent issued a communication on 25.03.2009 introducing a new scheme for regularization of existing ad-hoc Section Officers and to promote wait-listed SOGE passed officer as ad-hoc Section Officers. Accordingly, 200 posts of regular temporary Assistant Account Officers and 167 posts of ad-hoc temporary Assistant Account Officers were sanctioned for promotion to ad-hoc Section Officers and SOGE passed Officers. However, as per the condition incorporated in the Scheme it would be implemented only after all SOGE qualified officials in Audit Wing are transferred on deputation in the same station or at their option to any other Civil Audit Office. This deputation will be followed by absorption as per the prescribed procedure (Annexure A-4). On the basis of Annexure A-4, the first respondent issued Annexure A-5 letter wherein Clause (v) reads as follows:-

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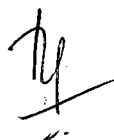
"(v) All the SOGE (Civil Audit) passed officials and those who have passed SOGE (Civil Accounts) as well as SOGE (Civil Audit) will have to go on deputation to the Civil Audit Offices for their eventual absorption. Those officials, who are unwilling to go to the Civil Audit Offices on deputation now, will not be eligible to get any kind of benefit under the existing scheme."

3. On the basis of Annexure A-5 letter, the 2nd respondent took steps to compulsorily depute the applicants to the Audit Wing against which the applicants 1 to 5 had filed representations before the 1st respondent. The 1st applicant requested for her detention in the same office due to her personal problems. But, she was sent on compulsory deputation on 14.08.2009. She was also forced to sign an application for absorption on her date of joining in Audit Wing (Annexure A-6). Similar was the experience with 2nd, 3rd, 4th and 5th applicants who were compulsorily deputed to the Audit Wing. They were informed vide Memo No. Admn 11/8-539/Vol. VI/09-10 dated 10.12.2009 that they are required to go on deputation at Civil Audit Offices for their eventual absorption and if they are unwilling to go to the Civil Audit Offices, they would not be eligible for any kind of benefit under the Scheme circulated vide Circular No. 208/NGE/33-2007 dated 25.03.2009. In the meanwhile, similarly placed officials like the applicants challenged Clause (v) of Annexure A-5 before the Hon'ble Central Administrative Tribunal, Chennai Bench. The Chennai Bench held that *"an offer of deputation cannot be forced against the will of the officers to whom such an offer is made and in fact the respondents have also submitted that there is no compulsion on the part of the applicants to go on deputation if they do not want it. That being the case, the stipulation that those officers who are unwilling to go on*

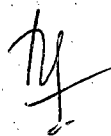


deputation to civil audit will not be eligible for any kind of benefit under the Scheme has to be set aside" (Annexure A-16). In the light of Annexure A-16 order of the Chennai Bench, the applicants submitted their applications (Annexure A-18 to 24) for the disposal of their representations.

4. The respondents filed reply statement refuting the contentions of the applicants. They submitted that the staff of A&E stream were permitted to appear for the examination in the SOGE Examination for the post of Section Officer in the Civil (Audit) side only for their deputation and eventual absorption in Civil Audit Office. The aspect about their deputation and eventual absorption against unfilled vacancies in Section Officer [now re-designated as Assistant Audit Officer (AAO)] in the Civil Audit Office was clearly brought in the aforesaid Annexure A-1. Accordingly, 52 officials from A&E Offices who had passed SOGE (Civil) Audit/Part II Examination have already been absorbed in the office of the 3rd respondent. The applicants are among the 26 candidates in the 3rd batch who are approved by the UPSC for their absorption in the office of the 3rd respondent, 18 have already joined. According to the respondents, 70 officials from A&E stream already been absorbed as AAOs in the 3rd respondent's office so far. The respondents pointed out that when they took the examination from 2004 onwards they knew perfectly well that they are being permitted to appear for the examination only on the condition of they are being deputed to the Audit Office for absorption on a later date. The respondents have formulated a policy as shown in Annexure A-4 to promote all the SOGE (Accounts)



qualified officials, who were awaiting promotion to Section Officer Grade (AAO) for a long time. Since the creation of temporary and ad-hoc posts was necessary, a decision has been taken to implement the scheme as noted in Annexure A-4 only after all the SOGE (Audit) qualified officials are transferred on deputation to Civil Audit in the same station or at their option to any other civil office. Their deputation will be followed by absorption as per the prescribed procedure. In case, the Civil Audit Offices in the station or as opted for are constrained on account of limited vacancies, additional posts will be provided to accommodate all these officials. In the event of the applicants remaining in A&E offices without going on deputation to Audit Offices they will not get the benefit as per the instructions given in Annexure A-5. The respondents produced the willingness given by the applicants vide Annexure R-1(c) to R(k) series. They contended that the applicants appeared for the SOGE (Civil) Audit Examination and they gave their willingness to go on deputation to Civil (Audit) office. Based on the written willingness furnished by the applicants, a proposal for absorption in the Audit office was sent to UPSC by the 3rd respondent and UPSC has conveyed its approval. The applicants requested for repatriation to their parent office in the light of the decision of the Hon'ble Central Administrative Tribunal, Madras Bench. They pointed out that the order of the Central Administrative Tribunal Madras Bench has since been stayed by the Hon'ble High Court of Madras vide order dated 22.02.2010 in MP No. 2 and 1 of 2010 in W.P.(C) 8269 and 8270 of 2010. A copy of the said judgment is produced as Annexure R-1 (k). The respondents submits that the applicants are not



entitled to any of the relief prayed by them in the Original Application.

5. The applicants filed rejoinder and produced Annexure A-29, a note from the 3rd respondent calling for applications only from willing candidates for deputation to his office. It was noted clearly that the period of deputation will be initially for a period of one year and is likely to be extended subject to their continued suitability and administrative convenience and that the post of Section Officer (Audit) carries extensive work. Therefore, the applicants averred that the 3rd respondent wanted only willing SOGE qualified officials from the A&E Stream for deputation to office and hence compulsory deputation of the applicants is illegal. They also stated that there are five juniors to the applicants, who had passed SOGE Civil (Audit) Examination. Out of this five, only two officials who were willing to go for audit were deputed. Moreover, one Shri P. Yagneswaran, who is now working as Assistant Account Officer in the A&E Office and who had passed SOGE Civil Audit Examination in 2004 was deputed to Audit Wing in 2006. However, he was repatriated to his parent wing i.e. Accounts Department in 2007. Similarly, one Shri M. Vinod, who was on deputation to Audit Wing had since been repatriated on 21.02.2009 to the parent department. Therefore, the respondents had permitted SOGE Civil (Audit) qualified officials to go back to the parent wing after a spell of deputation. Also, in Annexure A-1 letter, there was no instructions on getting an undertaking from those candidates who wanted to appear for the SOGE Civil (Audit) Examination. Since, no such undertaking was taken, in the first instance, the respondents cannot



compel the applicants to proceed on deputation to deficit Civil Offices within two years from the passing of the examination for their eventual absorption.

6. Heard the counsel for the parties and perused the documents.

7. The undisputed fact is that the SOGE Civil (Accounts) Examination was suspended between 1996 and 2003. This was due to non-availability of vacancies in the Section Officer (Assistant Accounts Officers) Grade and the availability of a larger number of SOGE Civil (Accounts) qualified officials awaiting their promotion. Under these circumstances, a policy decision was taken to permit A&E staff to appear for the SOGE Civil (Audit) Examination for their eventual absorption in the Audit Stream. Annexure A-1 clearly shows that the permission granted for the A&E staff to appear for the SOGE Civil Audit Examination was conditional. Para 2 of Annexure A-1 shows that those who qualify SOGE Civil (Audit) Examination will be absorbed in case vacancies in Section Officer's cadre remaining unfilled due to non-availability of eligible audit staff for promotion as Section Officer. Annexure A-25 is the notification for holding SOGE Examination (Civil Accounts) in which the undertaking is made compulsory for the candidates to appear for the Civil (Audit) Examination. It is pointed out in Annexure A-25 (2) produced by the applicants. The same is extracted below:-

"I....., employed as
in the Office of the Accountant General (A&E), Kerala intend to
appear for the SAS (Civil Audit) Examination.

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I hereby declare that I will apply for eventual absorption in the deficit Civil Audit Offices within two years from the date of passing the SAS (Civil Audit) Examination.

I fully understand that permission to appear for the examination, if granted to me, is subject to the above undertaking, which is final and irrevocable."

However, while clarifying the various doubts raised above, relating to eligibility of A&E candidates to take the SOGE (Civil Audit) vide Annexure A-2, it was shown against Sl. No. 8 that qualifying in the SOGE Civil (Audit) Examination by A&E candidates only make them eligible for absorption in Audit Offices and does not debar them for promotion as S.O in A&E Offices, if their turn in promotion comes earlier than their promotion in Section Officer in the Audit Office. A large number of officials of the Accounts Stream therefore took the SOGE Civil Audit Examination from the year 2004 onwards. The officials in the Accounts Stream naturally took SOGE Civil (Audit) Examination with the expectation of getting promotion to Section Officer earlier in the Audit Stream. However, when a policy decision was taken to regularize vide Annexure A-4, the existing ad-hoc Section Officers and promotion wait-listed SOGE Civil (Audit) passed officials as ad-hoc Section Officers, the entire scenario changed. Now they have an opportunity to get promoted in the Accounts Stream itself. Also, the work in the Audit Stream demands extensive tours warranting stay outside the headquarters for long spells. Therefore, Clause (v) of Annexure A-5 has come as a bolt from the blue that, if they are unwilling to go to the Civil (Audit) Offices on deputation, they will not get any kind of benefit under the scheme of



promotion of wait-listed SOGE Civil (Accounts) passed officials as (AAO). Since the applicants had given their willingness they were deputed to the office of the 3rd respondent. They have now approached this Tribunal with a prayer to direct the respondents to dispose of their representations for their repatriation to their parent office.

8. They produced Annexure A-16 order of the Central Administrative Tribunal Madras Bench whereby the Clause (v) of Annexure A-5 is set aside. The respondents were directed to consider the case of the applicants who are otherwise fit for regularization under the scheme formulated without insisting on them going on deputation against their will. This has been upheld by the Hon'ble High Court of Madras in its judgment dated 16.09.2011, which was produced by the applicants after the hearing was over. Para 7 is extracted below:-


"7 The Tribunal on consideration of aforesaid facts and circumstances of the case, held that when a scheme is formulated for the benefit of the Accounts Wing Officers, denying them the benefit of the said scheme to some of the Officers, who have passed the Audit test, will be against the spirit for which the scheme has been formulated. Though the appellants have submitted that there is no compulsion on the part of the applicants to go on deputation, if they do not want it, the stipulation that those officers, who are unwilling to go on deputation to Civil Audit will not be eligible for any kind of benefit under the scheme has to be set aside to make the scheme applicable to the applicants herein."

9. We respectfully follow the judgment of the Hon'ble High Court of Madras and declare the eligibility of the applicants in this Original Application for the benefits of the scheme formulated vide Annexure A-4. The O.A.

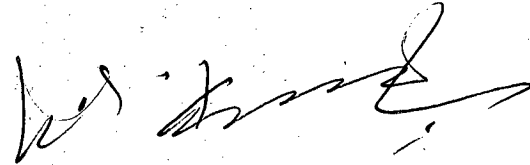


therefore succeeds. The respondents are directed to consider the representations of the applicants for repatriation to their parent office and pass appropriate orders within a time line of three months.

(Dated, the 28th October, 2011)



K. NOORJEHAN
ADMINISTRATIVE MEMBER



Dr. K.B.S. RAJAN
JUDICIAL MEMBER

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