

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 356/91
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DATE OF DECISION 28.8.1992

Mr MR Mukund _____ Applicant (x)

Mr MR Rajendran Nair _____ Advocate for the Applicant (x)

Versus

Union of India (Secretary, Ministry of Communications) _____ Respondent (s)
and another

Mr Mathews J Nedumpara, ACGSC _____ Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. S.P. Mukerji - Vice Chairman

&

The Hon'ble Mr. A.V. Haridasan - Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Yes*
2. To be referred to the Reporter or not ? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *Yes*
4. To be circulated to all Benches of the Tribunal ? *Yes*

JUDGEMENT

(Hon'ble Shri AV Haridasan, JM)

The applicant, a Lower Division Clerk in the Savings
Bank Control Internal Check and Pairing Organisations
(SBCO) of the Department of Posts, has in this application
filed under Section 19 of the Administrative Tribunals
Act challenged the provisions in the recruitment rules to
the post of Upper Division Clerk in the SBCO which prescribe
different periods of service in the feeder category for
eligibility for taking part in the examination to LD clerks
borne on the cadre of SBCO and LD Clerks working there, but
belonging to the Audit Office and also making the examination

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qualifying for Audit Office LDCs while competitive for other LDCs, as violative of Articles 14 & 16 of the Constitution.

2. The factual matrix is thus.

3. The applicant was appointed as LDC in the SBCO on compassionate grounds on 2.4.1987 on the death of his father. The next higher post is UDC. According to the recruitment rules, the method of filling up of the post of UDC is as follows:-

- (a) 50% fromtime-scale clerks of Post Offices on the basis of a test;
- (b) 30% from LDCs of SBCO on the basis of a test; and
- (c) 20% from LDCs of SBCO on the basis of seniority-cum-fitness.

The selection is to be made by the Class III Departmental Promotion Committee. The grievance of the applicant is that though the LDCs working in the SBCO either directly recruited in the Organisation or on deputation from Audit Office, ~~are~~ members of an integrated class of service, the condition of 5 years service as LO Clerk for LDCs of the SBCO for appearing in the test for/UDC of while only 2 years service ~~is prescribed~~ for LDCs of Audit Office working in the SBCO is discriminatory and violative of Articles 14 & 16 of the Constitution. His further grievance is that the provision in the recruitment rules making the examination qualifying for the LDCs of the Audit Office and competitive for other LDCs

and preference given to the LDCs in the Audit Office who qualify in the examination for promotion as UDCs over other LDCs is also wholly discriminatory and unjustified. The applicant who has got only 4 years of service when the respondents initiated action for conducting the departmental examination for promotion, finding that in view of the provision contained in the recruitment rules his candidature would not be considered, has filed this application.

4. By interim order dated 22.3.1991, we had directed that the applicant should also be provisionally allowed to appear in the examination for promotion to the post of UDC proposed to be held on 5.6.1991 subject to the outcome of the application.

5. The respondents in their reply statement have sought to justify the impugned provisions in the recruitment rules since on the ground that till 1960, the Audit Office staff were attending to the checking of irregularities and frauds in the Postal Savings Bank, when the SBCO staff took over the said work from the Audit staff on the formation of the SBCO, the Audit Office LDCs who were attending to the said work had to be absorbed in SBCO and a transitory provision giving them the same conditions of service which they had in their parent organisation had to be incorporated in the recruitment rules dealing with the Audit Office staff working in the SBCO and that as it is unlikely that there would be any LDC belonging to the Audit Office now in the SBCO, the alleged discrimination in the rules has no practical relevance.

They have also contended that the functions of the Audit Office LDCs and those of the LDCs of the SBCO not being the same or similar, ~~the~~ ^{the} ~~separate~~ classification cannot be said to be unreasonable. The respondents have also raised a contention that as the applicant was appointed on compassionate grounds and not on merits, ~~the~~ ^{he} ~~applicant~~ has no legal or moral right to challenge the recruitment rules.

6. We have carefully gone through the pleadings and documents on record and have also heard the arguments of the learned counsel on either side. The learned counsel for the applicant argued that as the LDCs of the SBCO whether directly recruited or borne on the cadre of Audit Office and working on deputation in the Organisation are identical in their nature of duties and qualifications and that as they have been integrated into one service, the provision in the recruitment rules providing for the requirement of 5 years' continuous service in the grade in case of LDCs of SBCO and only 2 years' service in case of Audit Office LDCs working in the Organisation is absolutely unreasonable and unjustified. The learned counsel also further invited our attention to note 2 under Rule 6 of the recruitment rules (Annexure I) which reads as follows:-

"The examination is qualifying for Audit Office Lower Division Clerks and competitive for other Lower Division Clerks. The Audit Office Lower Division Clerks who qualify in the examination will have preference over other Lower Division Clerks for promotion. If the Audit Office Lower Division Clerks qualify equal to the number of vacancies announced, all vacancies will go to

them. If they qualify in excess of the number of vacancies announced, the officials in excess of the number of vacancies be promoted against the vacancies of succeeding year. They will be placed on the approved list on the basis of their seniority in Lower Division Clerks Grade."

The learned counsel argued that this provision in the recruitment rules takes away the chances of the LDCs of the SBCO for promotion to the 30% posts of UDSC to the filled on the basis of a test, to a considerable extent and the Audit Office LDCs working in the Organisation are given undue preference in the matter of promotion to that post. The learned counsel argued that the differential treatment of LDCs working in the Organisation based on the source of their recruitment is arbitrary, unreasonable and violative of the fundamental right to equality in the matter of employment enshrined in Articles 14 and 16 of the Constitution.

7. Equality before law is ensured to all persons under Article 14 of the Constitution and Article 16 provides that there shall be equality of opportunity for all in the matter of employment or appointment to any office under the State. Therefore, Article 16 is only an instance or incident of the guarantee of equality enshrined in Article 14; it gives effect to the doctrine of equality in the sphere of public employment as adumbrated in that Article. The guarantee to equality of opportunity cannot be taken to mean that the same law must be made applicable to all persons. When differences and disparities exist among men and things, it cannot be held that the same law should be applied to all men and matters. It would be xxxxxxxxx

necessary to bring special legislations depending on the social requirement and limited in its application to separate class of persons. It has been accepted that the conflicting demands of specialised legislation and principles of equality can be resolved by reasonable classification. The doctrine of reasonable classification recognises that it is permissible to classify for the purpose of legislation provided that the classification is reasonable and founded on an intelligible differentia that bears a rational nexus to the object sought to be achieved by the legislation.

8. Let us examine whether the impugned provisions in the recruitment rules which provide for a lesser length of service for LDCs of the Audit Office for promotion to the post of UDCs than the other UDCs and the further provision that the examination would be qualifying in the case of LDCs of the Audit Office and competitive in the case of others and that the LDCs of the Audit Office who qualify in the examination would have preference over other LDCs for promotion are reasonable and whether the classification is based on any intelligible differentia which bears a reasonable nexus to the object sought to be achieved. The LDCs of SBCO recruited directly to the organisation and those who are on deputation from Audit Office are, after coming under the Organisation, working as LDCs in an integrated class without any difference in their duties and responsibilities. This averment in the application has not been

controverted by the respondents. The only difference between these two classes of LDCs is that some of them were brought from the Audit Office while others were recruited direct. It has not been shown that there is any marked difference in the recruitment qualifications or the method of recruitment to the cadre of LDCs in the Audit Office and in the SBCO. Therefore, how can it be said that the LDCs who were recruited directly are in any way qualitatively different from the LDCs of the Audit Office? Even if it is assumed that there is any qualitative difference between these two classes of LDCs, after they have come under the SBCO in the cadre of LDCs and have been treated as an integrated class of LDCs, is it permissible to classify them separately for the purpose of granting advantage over one class to the other in the matter of promotion to the higher post on the basis of the source of their recruitment? We are of the view that the answers must be in the negative. It is open to the administration to lay down that promotion to the higher post will be given only to those who possess a higher qualification. But once a decision is taken that all belonging to one cadre are entitled to promotion to the higher post, to prescribe different criteria for members of an integrated service giving preference to one class on the basis of the source of their recruitment alone is arbitrary and unreasonable. In *Roshan Lal v. Union of India*, AIR 1967 SC 1889, the Hon'ble Supreme Court has stated thus:-

"At the time when the petitioner and the direct recruits were appointed to Grade D, there was one class in Grade D formed of direct recruits and the promotees from the grade of artisans. The recruits from both the sources of Grade D were integrated into one class and no discrimination could thereafter be made in favour of recruits from one source as against the recruits from the other source in the matter of promotion to Grade C. To put it differently, once the direct recruits and promotees are absorbed in one cadre, they form one class and they cannot be discriminated for the purpose of further promotion to the higher Grade C."

In SM Pandit v. State of Gujarat, AIR 1972 SC 252 and in RS Deodhar v. State of Maharashtra, AIR 1974 SC 259 the Hon'ble Supreme Court struck down the second proviso to the amended Rule 1 of the Bombay Civil Services Classification and Recruitment Rules which provided that half the vacancies reserved for appointment by promotion to the post of Deputy Collector should be filled by directly recruited Mamlatdars who have put in at least seven years service in the post. The Hon'ble Supreme Court in Deodhar's case observed as follows:-

"So far as the question of validity of the second proviso to rule 1 of the Rules of 30th July, 1959 is concerned, there can be no doubt that the Bombay High Court was right in declaring it to be invalid. It can hardly be disputed that both the directly recruited Mamlatdars as well as the promotee Mamlatdars form one class. They are both known by the same designation. They have same scales of pay. They discharge the same functions. The posts held by them are interchangeable. There is nothing to show that the two groups are kept apart. Both are merged together in the same class. It is not competent to the Government thereafter to discriminate between directly recruited Mamlatdars and promotee Mamlatdars in the matter of further promotion to the posts of Deputy Collector. That would be violative of Article 16 of the Constitution."

In Mohammed Shujat Ali v. Union of India (AIR 1974 SC 1631 : 1974 Lab. I C 1103) after a survey of the earlier decisions of the Hon'ble Supreme Court, the Hon'ble Supreme Court observed as follows:-

"But from these decisions it cannot be laid down as an invariable rule that whenever any classification is made on the basis of variant educational qualifications, such classification must be held to be valid, irrespective of the nature and purpose of the classification or the quality and the extent of the differences in the educational qualifications. It must be remembered that 'life has relations not capable always of division into inflexible compartments'. The moulds expand and shrink. The test of reasonable 'classification has to be applied in each case on its peculiar facts and circumstances. It may be perfectly legitimate for the administration to say that having regard to the nature of the functions and duties attached to the post, for the purpose of achieving efficiency in public service, only degree holders in engineering shall be eligible for promotion and not diploma or certificate holders. That is what happened in (1974 (1) SCC 19 : AIR 1974 SC 1 : 1974 Lab. I.C. 1) and a somewhat similar position also obtained in (1973) 3 SCC 592 : (AIR 1973 SC 811 : 1973 Lab. IC 423). But where graduates and non-graduates are both regarded as fit and, therefore, eligible for promotion, it is difficult to see how, consistently with the claim for equal opportunity any differentiation can be made between them by laying down a quota of promotion for each and giving preferential treatment to graduates over non-graduates in the matter of fixation of such quota."

In SL Sachdev and another v. Union of India and others, 1980 (4) SCC 562, the Hon'ble Supreme Court held that the directions issued by the Director General of P & T that the total number of selection grade posts available for the UDCs who came from the Audit Offices should be 10 per cent of the total number of Audit Office UDCs in the Savings Bank Control Organisation and Savings Bank Internal Check Organisation of the P & T (the same organisation as in this

case) is violative of the principle of equality enshrined in Article 16 of the Constitution. In a more recent decision in *Abdul Basheer and others v. Karunakaran & others*, AIR 1989 SC 1624, the Supreme Court had held that the fixation of a ratio dividing the quota of promotion between ^{preventive} graduate/officers and non-graduate preventive officers in ^{or} the Kerala Excise & Prohibition Subordinate Service is violative of Articles 14 & 16 of the Constitution. The Hon'ble Supreme Court observed as follows:-

"It seems to us that the history of the evolution of the Kerala Excise and Prohibition Subordinate Service has shown no uniformity either in approach or in object. The history has varied with the circumstances prevailing before and after the reorganisation of the State on 1 November, 1956. Originally when more emphasis was laid on the induction of graduates the ratio of graduate to non-graduate officers was maintained at 3:1. But from 9 September, 1974 the ratio was changed inversely to 1:3. More non-graduates were now inducted into the Service. The trend shows, if anything, that it ran in favour of absorbing more non-graduates. The conditions pertaining to the service, and respecting which the constitution of the service varied from time to time, showed fluctuations. A consistent or coherent policy in favour of graduates was absent. This is not a case where the cadre of officers was kept in two separate divisions. It was a single cadre, and they were all equal members of it. There is no evidence that graduate Preventive Officers enjoyed higher pay than non-graduate Preventive Officers. The High Court has noted that the nature of the duties of Preventive Officers whether graduate or non-graduate was identical, and both were put to field work. Non-graduate Preventive Officers were regarded as competent as graduate Preventive Officers. There is no evidence of any special responsibility being vested in graduate Preventive Officers. Once they were promoted as Excise Inspectors there was no distinction between graduate and non-graduate Excise Inspectors.

In our opinion the learned Single Judge as well as the Division Bench are right in holding that

the prescription of a ratio dividing the quota of promotion between graduate Preventive Officers and non-graduate Preventive Officers is invalid on the ground that it violates Articles 14 and 16 of the Constitution."

All these decisions of the Hon'ble Supreme Court show that a classification of the members of one integrated service on the basis of the source of recruitment alone and prescribing quota for promotion is violative of the principles of equality enshrined in Articles 14 and 16 of the Constitution. Therefore, the note 2 below paragraph 6 of the Recruitment Rules (Annexure I) stipulating that the examination would be qualifying for Audit Office LDCs and competitive for other LDCs and providing that Audit Office LDCs would have preference over other LDCs for promotion, that if Audit Office LDCs qualify equal to the number of vacancies announced, all the vacancies would go to them and that if more Audit Office LDCs qualify than the vacancies, the excess would be promoted against vacancies of the succeeding year is arbitrary and violative of Articles 14 and 16 of the Constitution.

9. The provision in the recruitment rules providing for requirement of 5 years/continuous service in the grade in the case of LDCs of SBCO and only two years service in the case of Audit Office LDCs working in the Organisation, according to the learned counsel for the applicant, is against the provisions of Articles 14 and 16 of the Constitution. The learned counsel argued that this discrimination based solely on the basis of source of recruitment is arbitrary and

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irrational. Seeking support from *Roshan Lal v. Union of India*, AIR 1967 SC 1889, and from *Mohammed Shujat Ali v. Union of India* (AIR 1974 SC 1631 : 1974 Lab. IC 1103), the learned counsel argued with considerable vehemence that being declared the LDCs in the Department without reference to the source of recruitment, to be entitled for promotion, it is not open for the Department to prescribe different standards of eligibility solely basing on the source of their recruitment. In *Roop Chand Adlakha and others v. Delhi Development Authority*, the Hon'ble Supreme Court had occasion to consider the question whether prescribing different standards of eligibility for diploma holders and graduates for promotion from the cadre of Junior Engineers to that of Assistant Engineers and in the cadre of Assistant Engineers to that of Executive Engineers in the Delhi Development Authority violated Articles 14 & 16 of the Constitution. Different periods of service in the case of diploma holders and graduates were prescribed for eligibility for promotion to the higher cadre. It was contended on behalf of the diploma holders that since both the diploma holders and graduates have fused into one cadre of Junior Engineers and had been considered eligible for promotion to the higher post of Assistant Engineers and in the cadre of Assistant Engineers to the cadre of Executive Engineers, to prescribe different period of service in the lower cadre for promotion was violative of Articles 14 & 16 of the Constitution. The Hon'ble Supreme Court rejected the contention on the ground

that considering the interest of efficiency of the service, if the Government has decided that a longer length of service experience in the case of diploma holders than graduates for promotion to the higher cadre, the decision cannot be considered as arbitrary or irrational. The following observation of the Hon'ble Supreme Court brings out the distinction:-

"In Triloki Nath's case, diploma-holders were not considered eligible for promotion to the higher post. Here, in the present case, the possession of a diploma, by itself and without more, does not confer eligibility. Diploma, for purposes of promotion, is not considered equivalent to the degree. This is the point of distinction in the situations in the two cases. If Diploma-holders --of course on the justification of job-requirements and in the interest of maintaining a certain quality of technical expertise in the cadre --could validly be excluded from the eligibility for promotion to the higher cadre, it does not necessarily follow as an inevitable corollary that the choice of the recruitment policy is limited only to two choices, namely, either to consider them "eligible" or "not eligible". State, consistent with the requirements of the promotional posts and in the interest of efficiency of the service, is not precluded from conferring eligibility on Diploma-holders conditioning it by other requirements which may, as here, include certain quantum of service-experience. In the present case, eligibility determination was made by a cumulative criterion of a certain educational qualification plus a particular quantum of service experience. If cannot, in our opinion, be said as postulated by the High Court, that the choice of the State was either to recognise Diploma-holders as "eligible" for promotion or wholly exclude them as "not eligible". If the educational qualification by itself was recognised as conferring eligibility for promotion, then, the super-imposition of further conditions such as a particular period of service, selectively, on the diploma-holders alone to their disadvantage might become discriminatory. This does not prevent the State from formulating a policy which prescribes as an essential part of the conditions for the very eligibility that the candidate must have a particular qualification plus a stipulated quantum of service-experience. It is stated that on the basis of the "Vaish-Committee" report, the authorities considered the infusion of higher academic and technical quality in the personnel requirements in the relevant cadres of Engineering Services necessary. These are essentially matters of policy. Unless the provision is shown to be arbitrary, capricious, or to bring about grossly unfair results, judicial policy should be one of

judicial restraint. The prescriptions may be somewhat cumbersome or produce some hardship in their application in some individual cases; but they cannot be struck down as unreasonable, capricious or arbitrary. The High Court, in our opinion, was not justified in striking down the Rules as violative of Articles 14 and 16."

From the above observations, it is evident that the prescription of a longer period of service in the cadre of JEs for diploma holders for promotion to the cadre of AEs than in the case of graduates was considered reasonable because the educational qualification of diploma plus a certain period of service-experience alone was considered equal to a degree in engineering. So, the Hon'ble Supreme Court upheld the provision in the recruitment rules because there was an intelligible differentia in the classifications. But in the case before us, does such an intelligible differentia exist in classifying the Lower Division Clerks on the basis of their sources of recruitment? LDCs in the SBCO recruited directly to the Organisation and those who were deployed from Audit Office after coming under the Organisation had been working as LDCs in an integrated cadre without any difference in their duties and responsibilities. There is no marked difference between the recruitment qualifications or methods of recruitment among the LDCs in the Audit Office and the SBCO. There is no case for the respondents that for deputation or deployment in the SBCO, the Audit Office LDCs had to have any prescribed length of service in the Audit Office. Therefore, we do not see any reason for there being any difference in the standard of efficiency between LDCs

recruited direct to the SBCO and those who were deputed from the Audit office. The distinction between the diploma holders and engineering graduates considered by the Hon'ble Supreme Court in Roop Chand Adlakha and others v. Delhi Development Authority and others (ATR 1989 (1) SC 437) is not there in this case.

10. In SL Sachdev & another v. Union of India and others, 1980 (4) SCC 562, the Hon'ble Supreme Court refused to entertain the challenge against the provision in the recruitment rules in the case of promotion to Selection Grade/Head Clerk cadre in the SBCO which prescribed 10 years of service for promotion in the case of UDCs of Audit Office while the minimum service prescribed in the case of other UDCs was only 5 years. The Hon'ble Supreme Court declined to interfere for the reason that the provision in the recruitment rules which came into force in 1969 was challenged only in the year 1979 and that considering the history leading to the formation of the new organisation SBCO ICO, the distinction made between the two classes of UDCs in the context of length of their service for the purpose of promotion was not considered to be arbitrary or discriminatory. It was also observed that the staff of Audit Office which was engaged in the Savings Bank's work might well have faced retrenchment and that instead of subjecting them to that hardship, they were given the option of joining the new Organisation and that experience-wise also, there would appear to be fair justification for requiring them to put in longer service

in the new Organisation before they are eligible for promotion to the higher grade. It is clear from the reasoning given in paragraph 15 of the above judgement of the Hon'ble Supreme Court at page 568 that the historical background and the standard of experience in the case of the UDCs drawn from the Audit Office and the UDCs borne in the cadre of the SBCO 'ICO justified such a distinction. Therefore, the fact that the Hon'ble Supreme Court did not agree to interfere with the provisions of the recruitment rules for the post of Selection Grade UDCs/Head Clerks providing for different length of service in the Organisation for UDCs drawn from different sources cannot be considered as contrary to the view expressed in the judgements referred to above and in paragraph 12 of the very same judgement. Probably, because the provision in the recruitment rules which provided just two years service for LDCs drawn from Audit Office while 5 years service was prescribed for other LDCs to be promoted to the post of UDC in SBCO and also on the basis of the historical background of the Organisation it was held that the UDCs drawn from these two sources retained separate characteristics and had different standard of experience.

11. In Abdul Basheer and others v. KK Karunakaran and others, AIR 1989 SC 1624, the decision in Sachdev's case was noted and it has been explained as follows:-

"In SL Sachdev v. Union of India, (1981) 1 SCR 971 : (AIR 1981 SC 411) again the discrimination

between UDCs drawn from Audit Offices and other UDCs in the matter of the eligibility qualification for promotion was justified on the basis that the one enjoyed greater experience and that the distinction based on length of service was directly related to the object of the classification."

In the instant case before us, the LDCs borne on the cadre of SBCO and those who were absorbed or had come on deputation from the Audit Office were merged into a uniform class and there has been absolutely no difference in their nature of duties. The recruitment qualification and the method of recruitment of LDCs in the SBCO and in the Audit Office do not show any marked difference. Therefore, the experience in the case of LDCs either borne on the cadre of SBCO or deployed from Audit Office can be said to be only similar. There is no case for the respondents in the reply statement that there is any difference in the standard of experience between these LDCs drawn from the two sources. Therefore, we are convinced that the provision in the recruitment rules to the post of UDC prescribing 5 years service in the grade of LDC in the case of other LDCs while the period prescribed for LDCs of the Audit Office working in the Organisation is only two years is arbitrary, discriminatory and violative of Articles 14 & 16 of the Constitution.

12. The respondents seek to justify the impugned provisions in the recruitment rules conferring special benefits on the LDCs drawn from the Audit Office on the ground that when the SBCO was formed, the LDCs of the Audit Office who were performing the duties of checking irregularities and

frauds had to be absorbed in the Organisation and that on their absorption, the same conditions of service which they had in their parent organisation had to be given to them in SBCO also and that for that purpose a transitory provision was made in the recruitment rules providing for special conditions to them. The formation of SBCO was in the year 1960. Even according to the respondents, it is unlikely that there would be any LDC belonging to the Audit Office now in the SBCO and, therefore, the alleged discrimination in the rules has no practical relevance. If that be so, even if it was considered necessary at the time when the Organisation was formed to give some extra benefits to the LDCs of the Audit Office who got absorbed in the Organisation, that special circumstance being no more in existence now, we do not find any justification for continuance of such discriminatory provisions in the recruitment rules.

13. The learned counsel on either side informed us that the examination had been held during the pendency of the application. In the light of the contention of the respondents that it is unlikely that there would be any LDC in the SBCO who had been deputed from the Audit Office and in view of the fact that the applicant has also been provisionally admitted to the examination, we are of the view that it is not necessary to strike down the impugned provisions of the recruitment rules and to cancel the examination which has already been held. We are of the view that the interest of

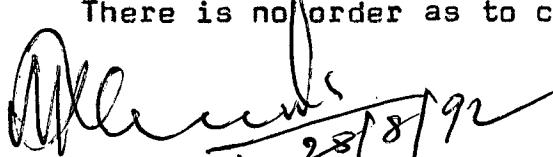
justice would be met if a direction is given to the respondents that if any LDC deputed from the Audit Office not having more length of service than the applicant had been allowed to participate in the examination, it should be deemed that the applicant was also eligible to participate in the examination, to declare the result and to give him the consequential benefits and also to amend the recruitment rules prospectively taking away the offending provisions from it.

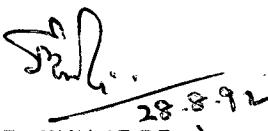
14. Before parting with this case, we deem it necessary to advert to a contention raised in the reply statement of the respondents that the applicant has no legal or moral right to challenge the recruitment rules for the reason that his appointment was not on merits, but on compassionate grounds. A person appointed to a post either directly or by promotion or in relaxation of the normal recruitment rules on compassionate grounds, becomes a member of the service to which he is recruited. After he joins the service, even if appointed on compassionate grounds, he cannot be considered inferior in status or unequal to other members of the same cadre. Once an appointment is made, the fact that a person is appointed on compassionate grounds has no relevance in regard to his rights, duties and obligations. Therefore, this contention raised in the reply statement is absolutely frivolous and unwarranted.

15. In the result, observing that Note (2) below Rule 6 and Rule 7 of Recruitment Rules (Annexure I to the OA) to

the post of UDC in the Savings Bank Control Internal Check and Pairing Organisation framed by the Director General, Posts & Telegraph, vide his letter No.74/1/67-SPB-I dated 22.1.1969 and No.51/18/70-SPB-I dated 10.2.1982 prescribing preferential and in certain circumstances exclusive promotions of Audit Office LDCs and different lengths of service for LDCs drawn from the Audit Office working in the Organisation and other LDCs suffer from the vice of discrimination and are liable to be struck down as unconstitutional, we direct the 1st respondent ^{to} consider having the relevant parts of the Recruitment Rules redrafted keeping in view the observations made in the preceding paragraphs within a period of three months from the date of communication of a copy of this order. We also direct the respondents to treat that the applicant was also eligible to appear for the examination for promotion to the post of UD Clerk and that his appearance in the examination on the basis of the interim order issued by this Tribunal is regular and valid if any Audit Office LD Clerk who does not have more length of service than the applicant has been allowed to participate in the examination and to give him the consequential benefits.

16. There is no order as to costs.


(AV HARIDASAN)
JUDICIAL MEMBER


28.8.92
(SP MUKERJI)
VICE CHAIRMAN

28.8.1992.