JUDGMENT

Delivered by Shri Ch. Ramakrishna Rao, Member (Judl.)

The applicants in these two applications pray that the respondents be directed to promote them to the cadre of Assistant Audit Officer (AAO) with effect from 1-3-1984, and not from 15.11.1984 as was done. The facts giving rise to the applications are briefly as follows:-

A public notice dated 26.12.1983 was issued by the Accountant General, Karnataka, Bangalore (AGB), stating that the combined Audit & Accounts Office would be reorganised into two separate offices: (i) Accounts & Entitlement Offices (A & E Offices), and (ii) Audit Office, with cadres of their own, which would be filled on the basis of seniority -cum- fitness. Preferences were invited from Section Officers (SOs) working in the grade of Rs. 500-900 in the composite office to the upgraded posts of SOs. The applicants opted for the posts of AAO in the separate Audit office but were allocated to A & E Offices, whereas some SOs, junior to the applicants in the gradation list, were allocated to Audit Office. Aggrieved by the omission to include their names in the list of SOs allocated to Audit Office, the applicants represented to the Accountant General (A & E), the 1st respondent herein. Their

representations were, however, rejected. The applicants further represented to the Comptroller and Auditor General of India (Respondent No.2), but in vain.

The first respondent on 25.6.1984 issued a circular pursuant to the representations received from several members of staff for transfer to the Audit Office giving a fresh opportunity to the members of staff to opt for posts inthe cadre of AOs in the Audit Office, subject to the condition that appointments will be made only against future vacancies in the higher grade and SOs so selected would retain their erstwhile seniority inthe composite office of the AGB. Consequently, the applicants were appointed as AAOs w.e.f. 15.11.1984 F.N. and not 1.3.1984.

2. The contention of Dr. M.S. Nagaraja, learned counsel for the applicants is that his clients were discharging their duties in the Audit Sections in the Office of the AGB for several years; that no specific reason was given for rejecting the preference of the applicants for the Audit Office and allocating them to A & E Offices; that if the applicants were found suitable for the posts of AAO on 13.11.1984, there was no valid reason for

not considering them suitable on 1.3.1984 itself, and in view thereof, the applicants should have been appointed as AAOs w.e.f. 1.3.1984, and not 15.11.1984.

3. Shri M. Vasudeva Rao, learned counsel for the respondents, submits that though the applicants opted for the posts of AAOs, they were considered by the Screening Committee, who found them to be unfit when the candidates in the first list were selected; that the selection was made on the basis of seniority -cum- fitness, which means and implies that seniority is not the sole criterion in selecting the candidates; that there was nothing surprising in the applicants being found unfit for appointment as AAOs initially, but found fit subsequently, because the candidates with whom they were considered for selection at both times were different, and in the absence of any allegations of malafides against the authorities, who constituted the Screening committee (SC), ~~xxx~~ or the AGB, it is not open to the applicants to challenge the order appointing them as AAOs w.e.f. 15.11.1984.

4. After considering the rival contentions, we are satisfied that it does not necessarily follow,from the fact that the applicants were found suitable for appointment in the vacancies, which arose during the few months after the initial selection, that they were entitled for appointment w.e.f. 1.3.1984. In our view, merit is

not considering them suitable on 1.3.1984 itself, and in view thereof, the applicants should have been appointed as AAOs w.e.f. 1.3.1984, and not 15.11.1984.

3. Shri M. Vasudeva Rao, learned counsel for the respondents, submits that though the applicants opted for the posts of AAOs, they were considered by the Screening Committee, who found them to be unfit when the candidates in the first list were selected; that the selection was made on the basis of seniority -cum- fitness, which means and implies that seniority is not the sole criterion in selecting the candidates; that there was nothing surprising in the applicants being found unfit for appointment as AAOs initially, but found fit subsequently, because the candidates with whom they were considered for selection at both times were different, and in the absence of any allegations of malafides against the authorities, who constituted the Screening committee (SC), ~~xxx~~ or the AGB, it is not open to the applicants to challenge the order appointing them as AAOs w.e.f. 15.11.1984.

4. After considering the rival contentions, we are satisfied that it does not necessarily follow,from the fact that the applicants were found suitable for appointment in the vacancies, which arose during the few months after the initial selection, that they were entitled for appointment w.e.f. 1.3.1984. In our view, merit is

susceptible of being judged differently at different times in the case of the same persons, taking into account the calibre of the candidates in the consideration zone at a particular point of time. As long as there is no allegation of malafides levelled against the members of the SC, the selection is not vitiated by mere exclusion of the candidates senior to those selected. In the present case, no such allegation has been made, and therefore, the selection made in the first instance does not suffer from any infirmity.

5. Dr. M.S. Nagaraja next contends that clauses 6 and 7 of the conditions set out in the annexure to the circular dated 25.8.1984 issued by the A.G. (A&E) Bangalore are repugnant to the principles governing service jurisprudence. According to the counsel, though seniority of the applicants vis-a-vis the other candidates selected in the first instance was allowed to remain, they were denied the benefit of allocation to the cadre of AAOs w.e.f. 1.3.1984, when their juniors were promoted. As already pointed out, the inclusion of the names of the four applicants and two others in the original list, was a sequel to their representation. Since 4 vacancies were available for being filled up, the applicants and 2 others were selected against those vacancies on the basis of seniority -cum- fitness in a supplemental selection, and their names dovetailed into the original list for the limited purpose of determining their seniority. So viewed, clauses 6 and 7 of the conditions in the annexure to the circular dated 25.8.1984 issued by the AGB are not open to challenge.

6. It now remains to consider the legal effect of inclusion in the original list of the names of the applicants and 2 others mentioned in the order dated 13.11.1984. Though it has not been spelt out in the circular dated 25.8.1984 that the applicants would be entitled to reckon the period for the next increment from 1.3.1984, they will be entitled to do so as a result of the inclusion of their names in the original list, but they will not be entitled to claim pay and allowances for the period from 1.3.1984 to 15.11.1984 when they were not discharging the duties and shouldering the responsibilities of the higher post of AAO.

7. In the result, the applications are partly allowed.

(L.H.A. REGO)
MEMBER(AM)
24.7.1986.

(CH. RAMAKRISHNA RAO)
MEMBER (JM)
24.7.1986.

dms.