

IN THE CENTRAL

AT HYDERABAD

O.A. NO. 932/1995

and

O.A. 1142/96

Dated: 5th December, 1996

1. O.A. 932/95

Between

1. T. Srinivasa Reddy
2. G.L.K.Sarma
3. P.Shamappa Jogi
4. R.V. Kameswari
5. T.Siva Prasad
6. K.Babu Rao
7. A.Viswanatham
8. P.C. Kaladhar
9. R.Srinivasa Rao
10. D.Rajasekhar
11. G.Venkateswara Rao
12. G.A.Surya Chalapathi
13. K.Vijaya Bhaskar
14. V.Anjaneyulu
15. K.Nagamalleswara Rao
16. V.Annapurna
17. N.Balaji
18. B.Rajaji
19. P.S.V.S.R.Murthy
20. P.A.Ramachandra Murthy
21. B.Vamana Rao
22. N.Jaipal Reddy
23. V.Surya Prakash
24. D.Venkateshwar Rao
25. G.R.Vijendra Rao
26. S.Jagadiswari
27. Ramaprasadh Soni
28. A.Prasada Rao
29. G.Subramanyam
30. K.Meera Bai
31. Mohd. Yunus
32. S.M.Rahman
33. N.Veni Kumari
34. Ch.D. Prasad Murthy
35. K.Jayasree
36. Suman Valentina
37. K.R.Krishnan
38. V.Muralidhara Rao
39. R.Bhanu Murthy
40. V.P.Narayana Rao

(All applicants are functioning as
Sr. Auditors/Auditors in the office
of the Principal Accountant General
(Audit-I), Andhra Pradesh, Hyderabad/
Accountant General (Audit-II)
Andhra Pradesh, Hyderabad.)

.... Applicants.

and

1. Union of India rep. by Secretary,
Finance Department, M/o Finance,
New Delhi.

2. Comptroller and Auditor General
of India,
Bahadurshah Zafar Marg,
New Delhi.
3. Principal Accountant General
(Audit)
Andhra Pradesh, Hyderabad.
4. Deputy Accountant General (Admn.)
O/o Principal Accountant General
(Audit),
Andhra Pradesh, Hyderabad
5. Narasimha Reddy, Sr. Accountant
6. V.S.R.K.R.V. Prasada Rao, Sr. Accountant
7. B. Aruna, Sr. Accountant
8. N. Usha, Sr. Accountant
9. B. Trinadha Rao, Sr. Accountant
10. A. V. Nageswara Rao, Sr. Accountant
11. P. Rama Mohana Rao, Sr. Accountant
12. M. A. Rahim, Sr. Accountant
13. A. Uma, Sr. Accountant
14. R. Prasanna Kumari, Sr. Accountant
15. S. Nagarajan, Sr. Accountant
16. K. Satyamurthy, Sr. Accountant
17. K. Varada Kumar, Sr. Accountant
18. V. V. Nagalaxmi, Sr. Accountant
19. K. Deepak Raj Singh, Sr. Accountant
20. T. Ashalatha, Sr. Accountant
21. I. V. Ramana Murthy, Sr. Accountant
22. K. Saibaba, Sr. Accountant
23. D. Krishna, Sr. Accountant
24. M. Sivasatyanarayana, Sr. Accountant
25. S. K. Suryanarayana, Accountant
26. S. A. Raman
27. M. Ramachandra Rao, Sr. Accountant
28. Rajeena Mathews, P.A.
29. M. C. Raghuram, Sr. Accountant
30. I. Sudharani, Clerk
31. K. Jyothi, D.E.O.
32. R. Javeed Basha, Sr. Accountant
33. S. Mahadevan, Sr. Accountant
34. A. B. Anila, Sr. Accountant
35. V. Bhudevi, Sr. Accountant
36. P. Venkata Lakshmi, Sr. Accountant
37. V. Vanitha, Sr. Accountant
38. G. Padmavathy, Sr. Accountant
39. P. Mrunalini, Accountant
40. N. Vijayalakshmi, Accountant
41. Gayathri, C.O.
42. K. V. S. Rama Rao, Sr. Accountant
43. S. Manjula, Sr. Accountant
44. N. Vijayalakshmi, Sr. Accountant
45. P. V. Sitaram, Sr. Accountant
46. M. Gurudeviah, Sr. Accountant
47. N. E. J. Rani, Clerk
48. G. Ramakrishna, Clerk
49. K. D. Krishnamacharyalu, Sr. Accountant
50. B. Sheshabani, Sr. Accountant
51. Indira Jaisimha, Steno
52. R. Sudhakar, Sr. Accountant
53. A. Venkatarao, Sr. Accountant

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54. A. Srinivas, Clerk
 55. U.V. Suryanarayana Murthy, Sr. Accountant
 56. N. Vijayakumar, Sr. Accountant
 57. E. Sampath, Sr. Accountant
 58. Ch. Ravikaran, Clerk
 59. N. Swarooba, Clerk
 60. P. Saroja, Accountant
 61. S. Srinivas, Accountant
 62. S. Gurunath, Sr. Accountant
 63. G. Subramanian, Sr. Steno
 64. M.V.L. Narasimharao, Sr. Accountant
 65. R. Ramesh, Sr. Accountant
 66. K. Mythily, C.O.
 67. K.Venkateswara Prasad, Sr. Accountant
 68. B. Karunakara Rao, Accountant
 69. Md. Asif, Sr. Accountant
 70. P. Damodar Naidu, Sr. Accountant
 71. K. Jayarao, Sr. Accountant
 72. S. Ramadevi, Sr. Accountant
 73. K.S. Vasundhara, Sr. Accountant
 74. E. Raghunatha Rao, Sr. Accountant
 75. G. Rajasekhar Sr. Accountant
 76. K.V.Rama Rao, Sr. Accountant
 77. M. Raja Rao, Sr. Accountant
 78. K. Chandra Sekhar, Sr. Accountant
 79. Y.V. Annapurna, Sr. Accountant
 80. Usha Chandru, Sr. Accountant
 81. B.R. Jayathirdha, Sr. Accountant
 82. M. Krishnaiah, Sr. Accountant
 83. G. Sujatha, Sr. Accountant
 84. Pushpa Ramachandran, Sr. Accountant
 85. B. Usha Kumari, Sr. Accountant
 86. M. Mary Ratnakumari, Silas.
Sr. Accountant
 87. Y. Markandeya Sarma, Sr. Accountant
 88. B. Ramacharyalu, Sr. Accountant
 89. S. Rajashri, Sr. Accountant
 90. A. Syamala, Sr. Accountant
 91. S.V. Praveen Kumar, Sr. Accountant
 92. K.P. Narasing Rao, Sr. Accountant
 93. R. Manohar Singh, Sr. Accountant
 94. K. Subhashini, Jr. Steno
- ... Respondents

Mr. J. Sudheer	...	Counsel for applicants
Mr. G. Parameshwara Rao	...	Counsel for R-1 to 4
Mr. P. Krishna Reddy	..	Counsel for R 5 to 94

2. O.A.1142/96

Between:

1. K. Bramareswara Rao, Sr. Auditor
2. Ch. Malakondiah, Sr. Auditor
3. M. Padma Rao, Sr. Auditor
4. K. Sambasiva Rao, Sr. Auditor
5. K. Krishna Reddy, Sr. Auditor
6. Y.Koteswara Rao, Sr. Auditor
7. T. Padmavathi, Sr. Auditor
8. K.Sudhakar Prabhu, Sr. Auditor
9. D. Peddi Raju, Sr. Auditor

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10. K. Shanta, Sr. Auditor
11. B. Subba Rao, Sr. Auditor
12. M. Ramesh Choudary, Sr. Auditor
13. N. Ramakanth, Auditor
14. M. Achutha, P.A.

... Applicants

and

1. Union of India, rep. by Secretary,
Ministry of Finance, N.Delhi.
2. The Comptroller & Auditor General
of India,
New Delhi.
3. Director General of Audit,
P&T Audit,
Delhi.
4. Director of Audit, P&T Audit,
Andhra Pradesh, Hyderabad.
5. I.V.Subba Rao,
Section Officer, P&T Audit Office,
Hyderabad.
6. I.Lakshmana Murthy,
Section Officer, P&T Audit Office,
Hyderabad.
7. Md. Anwar Sharif, Section Officer,
P&T Audit Office, Hyderabad.
8. N.Chandra Sekhar, Section Officer,
P&T Audit Office, Hyderabad.
9. N.Ranga Babu, Section Officer,
P&T Audit Office, Hyderabad.
10. M.Srinivasa Prasad, Section Officer,
P&T Audit Office, Hyderabad.
11. R. Chandra Sekhar, Section Officer,
P&T Audit Office, Hyderabad.
12. M.Hari Hara Prasad, Section Officer,
P&T Audit Office, Hyderabad.
13. Ch. Veerabhadra Rao, Section Officer,
P&T Audit Office, Hyderabad.

... Respondents.

Mr. J.Sudheer

.. Counsel for applicants

Mr. G. Parameshwara Rao

.. Counsel for R 1 to 4

CORAM

HON'BLE MR. JUSTICE M.G. CHAUDHARI, VICE CHAIRMAN

HON'BLE MR. H. RAJENDRA PRASAD, MEMBER (ADMINISTRATIVE)

On
/a/

J U D G M E N T

(Per Hon'ble Shri H. Rajendra Prasad, Member (Admn.)

Twelve of the fourteen applicants in this O.A. are Senior Auditors, one is an Auditor and the remaining one applicant is Personal Assistant in the P&T Audit Office, Hyderabad. Their common grievance is that Respondents No. 5 to 13 have been brought 'illegally' on deputation to their office in the capacity of Section Officers, ignoring their (the applicants') own just claims. Parallely, they question the validity of clauses (ii) and (iii) in Para 2 of the Indian Audit and Accounts Department, Section Officers (Audit) Recruitment (Amendment) Rules, 1994, which came into force with effect from 15th November, 1994, and pray for a direction to have the said respondents repatriated to their parent wings/offices, and to consider their (applicants') own appointment to the posts of Section Officers.

2. Originally, the work relating to Audit and Accounts in the P&T Department, along with that of many other departments, used to be looked after by the Indian Audit and Accounts personnel. The work relating to the Accounts in the Telecom and Postal wings were departmentalised in 1968 and 1976, respectively, and the work relating to Audit was entrusted to P&T Audit personnel. The applicants assert that the bifurcation of Audit and Accounts wings resulted in a 'water-tight' separation of the two, with different cadre-controlling authorities.

3. The present applicants were recruited as clerks or auditors and were subsequently confirmed. Under a scheme to upgrade 80% of confirmed Auditors, applicants 1 to 12 were promoted to Senior Auditors, after they had duly completed three years of service as Auditors. The next promotion of all applicants is to the post of Section Officers. Auditors,

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Senior Auditors and Stenographers with three years of service are eligible to compete at an examination, - P&T Audit Section Officers Grade Examination, Part I and II, - after they pass a preliminary test prior to the main Examination. The syllabus of the examination, according to the applicants, is such as to test and equip the candidates' specialised knowledge of audit subjects. The personnel who succeed in the examination are required to carry out the routine audit work as well as inspections, under a scheme which assigns specified duties to auditors and senior auditors. The memo of distribution of work pertaining to inspections is designed to expose and confer experience of audit work on the concerned staff.

4. The post of Section Officers exist in all audit organisations and special recruitment rules are available for promotion to these posts in all departments. Section Officers (Audit) and (Accounts), though administratively under the Comptroller and Auditor General, are distinct, separate and mutually exclusive cadres. After 1984, one has to successfully compete at the Section Officers Grade Examination (P& T Audit) to be eligible for promotion in the (Audit wing of) department, just as passing the SOGE (P&T Accounts) is essential for promotion as S.O. in the P&T (Accounts) side. Even the departmental manuals and standing instructions issued from time to time by the CAG, as well as the eligibility for appearing at the SOG (Audit) Examination, all make it amply clear that the two wings are totally watertight and their respective personnel cannot under any circumstances be inter-changed.

5. Despite the clear provision of rules, as brought out above, six officials from the Accounts wing of the office of the Accountant General, Andhra Pradesh, have been deputed to the office of the Director of Audit (Posts and Telecommunications), Hyderabad. The officials so deputed have not passed SOGE (P&T

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Audit) Parts I&II, whereas the applicants have themselves only passed either Part I or at least appeared for Part II examination, besides possessing adequate experience of audit work. Although the applicants are, therefore, undoubtedly better equipped to assume the responsibilities of SOs., the impugned deputations have been resorted to on the ground that no one on the Audit side, - not having passed the SOGE (Audit) Pts. I & II, - is available and eligible at present to fill the posts. The deputationists have been brought over simply on the ground that they have passed SO GE (Accounts) Pt. I & II, ignoring the fact that they are basically ineligible to come over to the audit side and that the officials who have passed the Part I of SOGE (Audit) and who, moreover, have adequate and ample experience of audit work, are available to man the posts.

6. It is claimed by the applicants that the SOGE (Audit) is of a far higher standard, when compared to SOGE (Accounts) which is less tough in its scope and standard. In elaboration of this assertion, they point out that the Book-Keeping Paper for SOGE (Accounts) deals with only elementary aspects of the subject whereas the same paper on the Audit side is exhaustive and much wider and more comprehensive. This fact, viz., the higher and tougher standard, is one of the reasons why fewer candidates pass in SOGE (Audit) and many more qualify relatively easily in SOGE (Accounts). They assert further that the percentage of successful candidates in the SOGE (Audit) is, for that reason, much lower than on the Accounts side.

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7. The fact, according to the applicants, is that there are larger number of officials on the accounts side, and consequently more numbers qualify in the SOGE (Accounts), and — there being not enough posts/vacancies to absorb them—these persons are being sent out to fill the audit vacancies within

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the offices of the Accountant-Generals and similar offices, - like for example, the P&T Audit Directorate in the instant case.

8. The applicants repeatedly refer to and rely on the judgment dated 12.10.93 passed by this Tribunal in OA 683/93 which, according to the applicants, lays down that the recruitment rules relating to the Section Officers of both audit and accounts do not permit deputations between two wings, but only among those from the same wing under the same cadre controlling authority. No deputations are permissible in any other manner.

9. It is a further grievance of the applicants that, with a view to circumventing the said judgment, the respondents have irregularly amended column (12) of the Schedule to the Indian Audit and Accounts Department Section Officer (Accounts) and Section Officer (Audit) Recruitment Rules, 1988, as under:

"Transfer on deputation/transfer:

- i) Section Officer/Section Officer's Grade Examination passed staff from any other audit office of the Indian Audit and Accounts Department, failing which,
- ii) Section Officers/Section Officers' Grade Examination passed staff from any Accounts & Entitlement office of the Indian Audit and Accounts Department and failing both,
- iii) staff qualified in an equivalent examination in any Accounting Organisation under Central Government.

Note: The departmental officers in the feeder category who are in the direct line of promotion shall not be eligible for consideration for appointment on deputation. Similarly deputationist shall not be eligible for consideration for appointment by promotion. Period of deputation including period of deputation in another ex-cadre post held immediately preceding this appointment in the same or some other organisation/department of the Central Govt. shall ordinarily not exceed 3 years."

10. It is alleged that this amendment has been carried out only to favour the unqualified ~~personnel~~ of the Accounts wing at the expense of the Audit staff; that the posts have been irregularly filled by unqualified strangers/aliens; that these unqualified persons have not been repatriated to their parent offices/wing

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despite the clear and categorical pronouncements of this Tribunal; and that the respondents actually propose to bring four more persons on deputation. The applicants complain that such unabated deputations of unqualified persons from an unentitled wing can merely demoralise the audit wing employees, which will directly lead to deterioration in the standard of their output. It is finally asserted that non-consideration of available officials in the Audit for at least adhoc promotion to Section Officer, and importing of non-entitled and unqualified persons is 'arbitrary, irrational, discriminatory, improper, ab initio void, illogical, without jurisdiction and violation of Articles 14, 16 and 21 of the Constitution of India.'

11. In the companion case (OA 932/95), the applicants (40 in number) who are working as Senior Auditors/Auditors in the office of the Principal Accountant General (Audit-I)/ Accountant General (Audit-II), Hyderabad, question the changes incorporated in the Schedule to Indian Audit and Accounts Departments Section Officers (Accounts) and Section Officers (Audit) Recruitment Rules, 1988, by the amendment introduced in 1994 and pray for a direction to the Respondents to consider their claims for the posts of Section Officer (Audit).

12. The pleas and contentions of the applicants are essentially the same in both the cases with the only difference that, whereas certain officials have already been brought on deputation to the P&T Audit Directorate (and whose repatriation is sought) in OA 1142/96, the Respondents in OA 932/95 are said to be merely 'trying' to bring some officials on deputation from the Accounts wing (and which is sought to be prevented).

13. The respondents have filed a counter-affidavit in the latter case and adopt the same in OA 1142/96. Private Respondents-5-94 (impleaded as directed in MA 830/95) have also filed a counter affidavit in OA 932/95.

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14. The official respondents in their counter are at great pains to explain that, notwithstanding anything to the contrary contained in the scheme of bifurcation, the Audit and Accounts Wings are complementary to one another and cannot be viewed as impervious or water-tight compartments. Persons serving in either the Accounts or the Audit are expected to be conversant with the fundamentals of work in both fields, as the nature of work performed by them is not entirely dissimilar in content and scope, and often overlaps. The Respondents state that none of the applicants who passed in SOGE (Audit) were ever denied their chance of promotion. As an example, they refer to 11 candidates who successfully completed Part II of SOGE (Audit) in November 1992, all of whom were duly promoted as SOs within one year thereafter. As regards the present applicants, none of them came out successful in the said examination, while some others (who are not the applicants in this OA) were duly promoted after they qualified in the examination held on 11.7.95.

15. The respondents explain that the relevant Recruitment Rules do not envisage promotions of those who only partially qualify in SOGE, viz., Part I of the examination. In this connection they draw attention to the observation of this Tribunal in OA 683/93 that officials who are not qualified in SOGE Part II are ineligible for promotion as SOs even on adhoc basis.

16. The respondents argue that any comparison of the standards of examination of SOGE Part II (Audit) and (Accounts) is untenable, and that it would be unacceptable to concede the partisan assertions of the applicants in this regard. It is clarified that the syllabi for both examinations are prescribed keeping in view the actual job-requirements in both wings. It is pointed out that the preliminary examination meant to screen the candidates intending to appear for SOGE Part I is common to both Audit and Accounts staff. They also mention that there is

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no noticeable or marked variation or gulf between the percentage of success between the candidates on Accounts and Audit at the SOGE in successive years, and produce statistics to prove this statement.

17. Coming to the continuing need^{for} and rationale of deputations of surplus-qualified staff from one office/wing to another, the respondents explain that this step is aimed essentially at meeting adequately the constitutional obligation of ensuring proper checks over public-spending. Such measures have been in operation since at least 1961, and they inescapably continue to be taken even after the restructuring of the department in 1984. However, deputations are resorted to only as a temporary measure in the absence of any other solution and only in situations of genuine operational necessity, and not as a routine move. The officials so sent on deputation for a period, not exceeding three years, are neither entitled for absorption in any other wing other than their own nor can their presence impair in any manner the prospects and chances of the audit staff themselves. Such deputations exist in some other branches of the Government, for example, P&T, Railway and Commercial Audit. It would be unreasonable to suggest that such deputations would in any way offend article 14 and 16 of the Constitution, especially when the deputationists do not acquire any right of confirmation, regularisation or absorption in the office(s) to which they are temporarily deputed. They are promptly returned to their parent offices on completion of their allotted period of deputation, or on the availability of ⁸ suitably qualified (Audit) candidates, whichever ^{occurs} earlier. The respondents deny that the work on audit side suffers due to the presence of these 'unqualified' deputationists. The interests of the audit staff are quite fully protected and temporary deputations will in no way mar their promotional chances.

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18. Referring to the amendment made to the Rules, the Respondents point out that the rule-making authority has the right to amend them, if only to meet certain administrative exigencies. In the present case, it is an acute shortage of qualified candidates which made it necessary for the Government to make a provision for deputations from other wings in the IA&AD. This cannot possibly be objected to and does not amount to discrimination or said to be violative of articles 14 and 16 of the Constitution. The Comptroller and Auditor General, being a high ranking constitutional authority, and being fully alive to the needs and requirements of the services under him, is naturally expected to act in keeping with such requirements and without a trace of arbitrariness.

19. It is finally pointed out by the Respondents that the applicants do not have the eligibility to be considered for promotion inasmuch as they do not fulfil the requirements of successfully passing both parts of SOGE. Under the circumstances, the respondents submit, the claims of the applicant are totally unacceptable and that the OA is to be dismissed.

20. A counter-affidavit has been filed in OA 932/94 on behalf of R-5 to 94. It is asserted therein that the applicants in that OA have no locus standi inasmuch as this Tribunal had held in OA 683/93 that the applicants therein were not eligible for promotion as SOs, even on adhoc basis, since they had not passed Part II of SOGE., and further that relaxation, if any, in this regard had to be granted only by the department concerned. Since the present applicants are exactly similarly placed as those in earlier OA (683/93), and since no relaxation has been given in respect of any of the applicants in either of the two cases, the applicants, the counter-affidavit argues, have no right which they can possibly establish and, additionally, do not have a locus standi to press

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their claim. It is further contended that the judgement in OA 683/93 contains a number of observations or obiter dicta, which do not at the same time alter the final order and relief, if any, that was granted in that OA. It is also pointed out that the said judgment in OA 683/93 had, after full and detailed consideration of the facts, held that no employee who is not eligible for promotion in accordance with the rules of promotion and recruitment can claim for a direction to the concerned authority to promote him even on adhoc basis, even if vacancies were available in the promotional posts and even if no fully eligible candidates were available for such promotions. It was left to the concerned authority to decide as to whether it was necessary to fill up such posts, and whether the same could be filled up on adhoc basis when eligible candidates for promotion were not available, and where even eligible candidates for transfer or transfer on deputation were unavailable. It was also made clear in the judgment that, even though the applicants therein were not being granted the relief prayed for by them, their cases could be considered for adhoc promotion if the concerned authority felt that it was necessary to fill up the posts and if there was no possibility of filling them up by transfer or transfer on deputation in accordance with the relevant rules.

21. It is argued by these respondents that the amendment to the rules, which is now challenged by the present applicants, was not existing at the time of pronouncement of the order in OA 683/93, and the observations of the Tribunal touching the aspect of transfer on deputation were, therefore, more in the nature of obiter dicta than any firm finding or categorical ruling.

22. These respondents, like the official Respondents, also assert that the work of Audit and Accounts are complementar

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to one another and quote certain observations of the Fourth Pay Commission in support of that contention. These observations, made in a different context altogether, are, however, not regarded by us as relevant to the issue at hand.

23. The counter-affidavit of these respondents proceeds to substantiate the assertion of the complementary nature of Audit and Accounts Wings, by referring to the training programme prescribed for SOs (Audit) and SOs (Accounts) which make it obligatory for such officials from each wing to equip themselves with the basics of the functioning of the other. It is added in this connection that for a number of years the inspection of Accounts of Treasuries in AP is being carried out by the Accounts staff, unlike the Audit staff as was the case earlier. They next proceed to comment on the syllabi of both SOGES and seek to establish that there is no real disparity in the standards between the two. It is stated that the SOs in the office of the AG (Audit) also carry out certain checks connected to Administration, Pay Bills, Office Establishment, Coordination and inspection of Headquarters etc., and these tasks are of common nature. Under the circumstances it is idle to argue, as the applicants have done, that the SOs from the Accounts wing are incapable of carrying out some of the tasks common to all.

24. It is further argued by the respondents that a large number of posts of SOs (Audit) are lying vacant for want of suitable incumbents, and if the deputation of suitable candidates from the Accounts side is prevented on any grounds at this stage, the same will quite adversely affect the functioning of the Audit office. Such a move, if allowed, will also preempt the due promotion of some of the SOs in the Audit Department as Assistant Audit Officers/Audit Officers/Senior Audit Officers. The respondents vehemently

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oppose the contentions that officials who successfully completed SOGE (Accounts) are not capable of discharging the functions of SO (Audit) since more than 10 such officials have been satisfactorily performing such duties for the past 2½ years, besides 45 other such officials who have been functioning in various other Audit offices without any complaint or adverse comment on their performance, both under the State and Central Government offices. It is mentioned that due to a large number of retirements on Audit side every year, in the cadre of SO/AAO/AO, and parallely, due to the non-availability of SOGE passed candidates to fill up these posts, the total number of unfilled vacancies on the Audit side has accumulated over a time. It is due to this reason and none else, that such vacancies have piled up and not, as contended by the applicants, because the syllabus and the standard of audit examination is in any way tougher. Further, it is mentioned that selection/recruitment of clerks/auditors/accountants/Section Officers conducted by the Staff Selection Commission is common for both Audit and Accounts Wings without any distinction or difference in regard to SO (Audit) and SO (Accounts). On selection of suitable candidates, the Commission allots eligible candidates to the offices of the AG (Accounts) or AG (Audit) at their discretion. All these merely prove that there is ^{no} real distinction, or absolute and total separation of work, in the Audit and Accounts offices.

25. As regards the 'experience' gained by the Audit staff, it is pointed out that clerks and stenographers in the Accountant General (Audit), who do not actually deal with any audit work in course of their day-to-day functioning, are also eligible for appearing at the SOG examination on completion of 3 years of service. It is thereby clearly implied that in a situation where officials who have nothing to do with the

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actual audit work-experience can also successfully compete for promotion through SOGE (Audit). The so-called 'experience' repeatedly cited by the applicants in the OA is largely an academic exercise and with no basis on the ground in relation to the work-realities of the Audit organisation.

26. Finally, it is submitted by the respondents that the rules/amendments thereto, are not meant to benefit any particular individual or class of employees but are framed/introduced purely in the interests of administrative efficiency and routine operational requirements. The impugned amendment cannot possibly be termed discriminative or violative of articles 14 and 16 of the Constitution merely because it introduces an element of deputations from a sister wing in the same Department.

27. In a lengthy rejoinder to the counter-affidavits the applicants, for a large part, merely repeat their original arguments; that audit and accounts wings are indeed water-tight compartments, and that the applicants possess sufficient experience of audit work even if they have not passed the SOGE (Audit). In the rejoinder also the applicants refer to the judgment in OA 683/93, and proceed to point out that the official respondents have repeated the stand on most of the points which they had already adopted in the said OA. For the rest, the rejoinder merely re-states the arguments contained in the OA itself, as well as many of the grounds which had already been raised by them in OA 683/93.

28. We have carefully considered the facts and contentions raised by the parties. Ample opportunity was provided to the parties to project their respective points-of-view and the hearing was allowed at great length. In our view the following issues revolve themselves in this OA and need to be addressed:

- (1) whether the Audit and Accounts Wings are absolutely water-tight compartments, impervious to the movement of personnel within the two wings;

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- (ii) whether the amendment introduced in the Indian Audit and Accounts Department, Section Officer (Accounts) and Section Officer (Audit) Recruitment Rules, 1988, on 15th November, 1994, is fair and valid; and
- (iii) whether the transfer on deputation of SOGE (Accounts) passed officials from the Accounts Wing to the Audit side, as a temporary administrative measure, is prima-facie flawed or illegal.

29. It has not escaped our notice that the facts contained in the earlier OA as well as these OAs are nearly identical, and so are the grounds. For the rest, the only difference is that the instant OAs concern ^{themselves} ~~itself~~ with the amended rule while proceeding from many ^{of} the same premises or grounds which were urged in the earlier OA. Under the circumstances it is not surprising that the views and contentions of the respondents are also to a large extent similar to the ones in OA 683/93. Thus, there is a lot of repetitive argument on the part of both parties. At one stage, Shri J. Sudhir, learned counsel for the applicant objected to the respondents urging many of the grounds and contentions which they had earlier taken in OA 683/93. The fact, however, is that the grounds and facts in both the cases, being closely interwoven and often overlapping on one another, certain re-statements of familiar arguments was perhaps inescapable. Nevertheless, we have confined our attention to the facts and counter-assertions made in the instant OAs, keeping in view to the extent relevant, the observations and order issued in the earlier OA.

30. It is now held by us that, for the purpose of resorting to temporary arrangements based on unavoidable operational considerations, the movement of personnel on deputation between

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the Audit and Accounts Wings is unavoidable in certain situations and is not therefore impermissible notwithstanding the functional bifurcation of the two wings. It is also held that the transfer on deputation from Accounts to the Audit wing and vice versa is quite in order in the given circumstances. We spell out the reasons thereof as under:

Notwithstanding the bifurcation and consequent restructuring of cadres in the IA&AD in 1984, we are unable to persuade ourselves that the two wings have become so permanently mutually exclusive under all circumstances so as not to permit even a temporary expedient of inter-wing deputations for valid administrative reasons to tide over an urgent operational necessity of temporary nature. The bifurcation was evidently made on valid felt administrative needs and, eventually, a complete separation may have to be attained. At the same time, we are able to see that during the period of transition, or for a genuine operational need at an intermediate stage, or to meet a certain abnormal situation - like for example, non-availability of suitable candidates to fill a large number of vacancies in either of the wings, - there should be nothing inherently objectionable in utilising the services of such of the available officials who have duly demonstrated their suitability by successfully completing both parts of a comparable examination in either Audit or Accounts Wings. We are of the opinion that the SOGE for both Audit and Accounts are nearly similar in scope and standard with only marginal variations of inescapable kind. These variations do not establish either the superiority or higher standards of any particular examination but reflect merely the content and contextual peculiarities applicable to the ^{nature} work and ^{of duties} scope in each wing. We, therefore, reject the contention that the SOG^d (Audit) is based on a wider syllabus of tougher standard. Moreover, when, traditionally, the Audit and Accounts wings have functioned in tandem for a long period,

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and when even today the functions of Audit in certain circumstances continue to be performed by Accounts staff, in various offices, it would be futile to argue that the SOGE (Accounts) passed officials are incapable to perform the audit work, or vice versa, if called upon to do so by a knowledgeable authority fully competent to assess their respective abilities in this regard.

We are also unable to be convinced that the impugned amendment has been brought in with a view to hampering the interests of any particular section or class of officials of either wing. It is brought out by the official respondents that the amendment was necessitated entirely by the ground realities in their Department; they are best equipped to deal with such situations by such administrative or regulatory measures which are considered suitable and expedient, so long as those measures are not wantonly discriminatory or motivated by malafides. In our considered view the authorities should be let free to solve their administrative problems by appropriate administrative measures so long as these are not designed to adversely affect any particular individual or a group or class. We cannot certainly hold that such is the case in the stated circumstances in the instant case, and that there is anything to suggest discrimination or malafides. The amendments were issued by a competent authority after taking into consideration the recurring operational difficulties faced in the offices under him. We do not therefore propose to do anything by way of judicial interference which might hamper such measures, specially when the transfer on deputations of persons from the Accounts Wing to the Audit Wing are neither of a permanent nature nor is it such as to confer any permanent benefit on them, like, for example, absorption, regularisation or promotion.

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In another view of the facts, and from another angle of the matter, this could be held, at the worst, to be a case where the choice lay between two sets of officials, neither of whom was, in the strictest interpretation of narrow rules, totally eligible for consideration for filling up the posts in question. Of the two groups, one set of officials is more suited, by virtue of having established better ~~their~~ claim, ^{by} passing two parts of an examination which, in its scope, standard and content, is similar to the one which could not be so passed by the other group. This set of persons was preferred for what appear to be sound administrative reasons. The official respondents are the best judges of this and we would not dispute their assessment in such matters. That being so, we are of the opinion that, where the choice lies between two not-wholly-eligible groups, there is nothing basically impermissible about preference being accorded to what the authorities regard as better qualified of the two, strictly for a temporary deputation. In this view of the matter too, there is nothing objectionable about the action of the official respondents.

31. After carefully considering all the facts, oral submissions as well as the record of the cases, we take the view that the transfer on deputation of SOGE (Accounts) officials to the Audit side is not flawed or unfair in any way. We take note of the position that, as per the rules and submissions of the respondents themselves, the impugned deputations are not intended to be long-term or by way of permanent arrangements but are subject to a maximum of 3 years - or even less, if suitably qualified officials become available before that. We note that whenever SOGE Part I and II qualified candidates from the Audit side become available to man the posts held by the deputationists from the Accounts side, all deputations, as specifically assured by the respondents, shall be terminated and the concerned deputationists, to the extent necessary, ..17

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will be repatriated. The impugned deputations are subject to either of the two contingencies, if and when they occur.

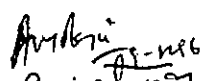
32. In the light of what has been discussed above, we conclude that the O.As, lacking as they do in merit, are liable to be disallowed, and are, therefore, disallowed.

No costs.


H. Rajendra Prasad
Member (Admn.)

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M.G. Chaudhari (J)
Vice Chairman

Deputy  Resistor (3) cc.

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