

**CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH,
JABALPUR**

Original Application No. 394 of 2004

IN thee This 18th the day of October, 2005.

Hon'ble Mr. M.P. Singh, Vice Chairman
Hon'ble Mr. Madan Mohan, Judicial Member

1. Sunil Kumar Bhargav, Sr. Auditor 03/10130
Late Shri S.N. Bhagrav, Aged about 34 years
And 5 others. - Applicants

(By Advocate – Shri Deepak Panjwani)

V E R S U S

1. The Comptroller and Auditor General of India,
10, Bahadurshah Zafar Marg, New Delhi.

2. Principal Accountant General (Audit) I,
M.P. Gwalior M.P.

3. The Accountant General (Accounts & Entitlement)
M.P. Gwalior. - Respondents

(By Advocate – Shri M.Rao)

OR D E R

By M.P. Singh, Vice Chairman –

MA No.590/2004 filed in this OA under Rule 4(5)(a) of Central Administrative Tribunal (Procedure) Rules, 1987 for permission to move the joint application is considered and allowed.

2. By filing this Original Application, the applicants have sought the following main relief :-

“8.1to quash the circulars/orders Annexures A/1-A, A/1-B and A/1-C in entirely.

8.2to direct the respondent to not to permit candidates from A&E department to take the SOGE (Civil Audit).”

3. The brief facts of the case are that the applicants are working under the respondents 2 & 3. The Indian Audit and Accounts Department was bifurcated in two distinct wings viz. ‘Accounts

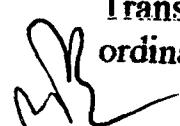


and Entitlement', and 'Audit' on 1st March, 1984. The staff allocated to these two wings were to be governed by two separate and entirely different service conditions with higher pay scales to Audit staff in terms of instructions for Restructuring of Cadres in Indian Audit and Accounts Department. According to the applicants, the scheme of the departmental examination for promotion from Auditors to Section Officer(Audit) is totally different from that of A&E staff having separate syllabus for the departmental examination. The Comptroller & Auditor General (for short 'CAG'), Manual of Standing Orders (Administrative) Volume-1 lays down as under :

"No candidate will be allowed to take the Section Officers Grade Examination of any branch other than that of the Branch, which is appropriate to the establishment in which he is serving. For this purpose, the Section Officers Grade Examination mentioned in the second column below will be regarded as appropriate to the members of the establishment mentioned in the first column.

(i)	Civil Accounts and Entitlement Offices	Section Officers Grade Civil Accounts Branch
(ii)	Civil Audit Offices	Section Officers' Grade Civil Audit Branch
(iii)	Local Audit Branches of the Accountant General West Bengal & Bihar (Audit)	Section Officers' Grade (Local Audit Branch)
(iv)	Offices of the Principal Directors of Commercial Audit & Ex-officio Members Audit Board	Section Officers' Grade (Commercial Audit Branch)
(v)	Railway Audit Offices	Section Officers' grade (Railway Audit Branch)
(vi)	P&T Audit Offices	Section Officers' grade (P&T Audit Branch)
(vii)	Offices under the Principal Director of Audit Defence Services	Section Officers' Grade (Defence Audit Branch)

Transfer from one branch to another branch are not ordinarily permissible. In rare cases, where such transfers



are found necessary in the public interest and after ascertaining that the establishment to which they seek transfer is prepared to absorb them permanently, transfers can be made with the previous sanction of the Comptroller and Auditor General who will lay down any further conditions necessary in each case, with due regard to the general principles governing transfers from one branch to another" (see para 4.3 of the OA).

3.1 The applicants have further submitted that on 12.8.2003, the respondent no.1 had issued an order whereby A&E staff was permitted to appear in SOGE (Civil Audit) for their eventual promotion as Section Officer in Audit Branch. This has paved the way for surplus staff for their promotion as Section Officers in Audit Branch jeopardizing the interest of the applicants. Subsequently, on 16.12.2004 and 20.4.2004, two consequential orders were issued on the same lines (Annexures-A/1-A, A/1-B & A/1-C). The order dated 20.4.2004 mentions that the examinations are going to be conducted from 25.5.2004 to 9.6.2004. The applicants made several representations through their association, named 'Audit Welfare Association' to the respondents stating that impugned orders/circulars are contrary to law and adversely affect the interest of the applicants and other similarly situated persons, but the said representations have not been considered by the respondents. Hence this Original Application.

4. The respondents in their reply have stated that the applicants in this OA have challenged the circular dated 12.8.2003 issued by respondent no.1. The recruitment to the post of Section Officer (Audit) in the IAAD is regulated by the IAAD, Section Officer (Audit) and Section Officer (Accounts) Recruitment (Amendment) Rules, 1994 & 2002 (Annexures-R-1 colly.). In terms of the said rules the post of Section Officer (Audit) is filled by promotion failing which by absorption/deputation and failing both by direct recruitment. A person is eligible for promotion only on passing the SOGE. The circular dated 12.8.2003 allowing A&E staff to appear in SOGE (Civil Audit) for eventual absorption in Civil Audit

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Offices was issued on the recommendations of a Committee of three Deputy Comptrollers & Auditor General of India, which had taken the following facts into consideration:-

- “(a) While there were vacancies in S.Os cadre in Civil Audit Offices necessitating occasional direct recruitment of S.Os in deficit audit offices, there was surplus/stagnation of SOGE passed staff in A&E offices.
- (b) There was a provision in the statutory recruitment rules for filling of vacancies in the cadre of S.O.(Audit) by S.Os and SOGE passed personnel from the A&E offices in deputation/ absorption basis.
- (c) The practice of allowing staff of Civil Audit/P&T Audit Offices to appear in SOGE (Commercial) was already in vogue(sic). A similar dispensation could be extended to personnel from the A&E offices to appear in Civil Audit Branch of SOGE in their eventual absorption in the Civil Audit Offices on similar terms and conditions.

The circular contained inter alia the following safeguards for the staff of Civil Audit Offices against A&E staff getting absorbed.

- (i) Candidates of A&E offices after passing SOGE(Civil Audit) will be absorbed in Civil Audit offices only against such vacancies in S.Os cadre which remain unfilled due to non-availability of eligible audit staff for promotion.
- (ii) The seniority of audit staff getting promotion as Section Officer will be protected against A&E staff getting absorbed in the cadre as per existing rules/instructions”.

In view of the aforesaid facts, the respondents have submitted that the contention of the applicants that the circular dated 12.8.2003 is violating the statutory provisions for the Recruitment Rules is baseless and untenable.

5. Heard the learned counsel for the parties and carefully perused the pleadings available on record.

6. The learned counsel for the applicants has submitted that the rules made by the CAG under Article 148 of the Constitution of India have the same force as that of statutory rules. The circular dated 12.8.2003 (Annexure-



A1/A) regarding permission to A&E staff to appear in SOGE (Civil Audit) for their eventual absorption in Audit stream, has been issued in the year 2003 whereas the amendment in the recruitment rules has been made in December,2004. His contention is that the correction slip has been issued by the office of the CAG on 3.12.2004 (Annexure-A-7) ^{for} making correction in CAG's MSO(Admn) Vol.I 3rd Edition regarding appearance of SOGE (Accounts) passed candidates from Civil Accounts and Entitlement Offices for SOGE Civil Audit Examination. He has, therefore, contended that the necessary amendment in the CAG's MSO (Admn) Vol.I can be made effective only from the date of issue of such correction slip.

7. On the other hand, the learned counsel for the respondents has submitted that the necessary amendment in the recruitment rules was made vide impugned order dated 12.8.2003, whereby all the field offices were informed about the necessary amendment incorporated in the recruitment rules. He has also submitted that while issuing the correction slip No.17(page 189) para 9.2.14, the authority ^{to} ~~has~~ referred to ~~is~~ File No.3-Exam/2003/V/Vol.II. He has also drawn our attention to the Gazette Notification dated 3.12.1994 (Annexure-R-1) whereby schedule to the Indian Audit and Accounts Department Section Officer (Accounts) and Section Officer (Audit) Recruitment Rules,1988 have been amended. Column 12 of this Gazette notification provides that – “Promotion – Departmental candidates who have passed the Section Officers’ Grade Examination (Audit) conducted by the Comptroller and Auditor General of India”. There was also a provision for absorption of the persons belonging to accounts division.

8. We have given careful consideration to the rival contentions.



9. The issue for consideration before us is whether the circular dated 12.8.2003 issued by the CAG permitting the A&E staff to appear in SOGE(Civil Audit) for their eventual absorption in Audit stream, will adversely affect the career prospects of the applicants.

10. The main contention of the applicants is that although a decision has been taken by the CAG permitting staff of A&E staff to appear in SOGE (Civil Audit) for their eventual absorption in Audit stream on 12.8.2003, but same has come into effect from the date it was published in the Gazette of India i.e. on 3.12.2004. The examination has been conducted by the respondents in May-June,2004. Therefore, the conduct of the examination permitting the A&E staff to appear in SOGE (Civil Audit) is not in accordance with the rules and hence is liable to be quashed and set aside.

11. We find that the CAG is the rule making authority as per the provisions of the Constitution of India, which had already taken a decision and issued the orders to permit the staff of A&E staff to appear in SOGE (Civil Audit)for their eventual absorption in Audit stream, on 12.8.2003 itself, although this correction was incorporated in their MSO, vide correction slip issued on 3.12.2004. We find that the MSO is only a compilation of the various orders issued by the CAG. Moreover, we find that the decision taken by the CAG is a policy decision. We further find that in the subsequent circular issued on 16.12.2003 it has been stated as under:

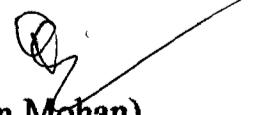
“2.....The administrative decisions contained in Headquarters circular dated 12.08.2003, which are in accordance with the statutory Recruitment Rules, are additions to the existing instructions contained in C.A.G., M.S.O. (Admn) Volume I regarding eligibility to appear in S.O.G.E. (Civil Audit). Further, passing of S.O.G.E.(Civil Audit) by candidates from A&E offices would only make them eligible for absorption to the posts of Section Officer (Audit) in Civil Audit Offices and administrative decision to fill the posts of S.O.(Audit) in a Civil

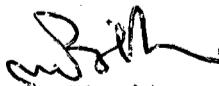
Audit Office has to be taken by the cadre controlling authority as per their local requirements/administrative convenience and after exhausting local resources. In the event of such decision having been taken, the cadre controlling authorities of Civil Audit Offices would call for the eligible volunteers from local and outstation A&E offices for appointment on permanent absorption basis to which eligible A&E candidates may respond".

12. It is the settled legal position that policy decisions taken by the Executive by taking into account all the relevant factors, are not subject to judicial review and the Government and its instrumentality are free to evolve any method; and further that the Tribunal cannot substitute itself for the controlling authority.[See Shri I.S.Sain Vs. Union of India and others, CAT (FB Judgments) (1991-94) 286, and G.B.Mahajan & ors Vs. Jalgaon Municipal Council, 1991(1) SCALE 378]. We find that the decision taken by the office of the CAG to permit the staff of A&E staff to appear in SOGE (Civil Audit) for their eventual absorption in Audit stream, on 12.8.2003, is in accordance with the recruitment rules, as the recruitment rules provide for transfer which means absorption of the persons in accordance with the procedure laid down in the recruitment rules. We also do not find any illegality or irregularity in issuing the order dated 12.8.2003.

13. In the result, this Original Application is devoid of any merit and is accordingly dismissed, however, without any order as to costs.

14. The Registry is directed to enclose a copy of the memo of parties along with this order for record. The Registry is further directed to supply a copy of memo of parties alongwith this order while issuing a copy of the same to the concerned parties.


(Madan Mohan)
Judicial Member


(M.P.Singh)
Vice Chariman