

**CENTRAL ADMINISTRATIVE TRIBUNAL****CHANDIGARH BENCH****OA No. 060/01081/2015****Pronounced on : 28.11.2017****Reserved on : 13.11.2017****CORAM: HON'BLE MR.SANJEEV KAUSHIK, MEMBER(J)  
HON'BLE MRS.P. GOPINATH, MEMBER(A)**

Hira Lal, aged 59 years, S/o Late Sh. Kishan Chand working as Senior Accountant, Office of Principal Accountant General (A&E), Punjab, R/o H. No. 1115-B, Audit Pool Colony, Sector 41-B, Chandigarh.

.....Applicant

**BY: Sh. Hemender Goswami****VERSUS**

1. Comptroller and Auditor General of India, 9, Deen Dayal Upadhyay Marg, New Delhi – 110 124.
2. Principal Accountant General (A&E), Punjab Sector 17-E, Chandigarh.
3. Senior Accounts Officer (Admn.), O/o Principal Accountant General (A&E), Punjab Sector 17 E, Chandigarh.

.....Respondents

**BY ADVOCATE: Sh. Barjesh Mittal****ORDER****MRS. P. GOPINATH, MEMBER(A):-**

1. Applicant joined the Audit and Accounts Department on 27.02.1980 on passing the Auditor Exam conducted by office of Accountant General, Punjab. He was promoted as Senior Accountant on 01.04.1987 and continues to work as such. Respondent No. 1 issued a circular dated

07.06.2010 announcing the SAS Examination. Six chances were available to departmental candidates to pass all the papers of the examination and the applicant cleared the said exam in March, 2015 as per Annexure A-7 result sheet where his name appears at Sr. No. 1 of the Civil Audit Branch and status is shown as "Pass". The respondents are relying on Annexure A-3, administrative order issued by the office of C & AG to all heads of department while rejecting the case of the applicant for promotion/appointment on absorption, on the ground that the applicant had attained the age of 56 years as on 07.03.2012 and hence was ineligible. The applicant challenges this act of the respondents as he contends that the IA & AD Recruitment Rules, 1989 and the Recruitment (Amendment) Rules, 2001 which were applicable at the time of applying for the SAS Examination in 2011 did not provide for any age bar for appointment on absorption on successfully clearing the SAS examination. Annexure A-3 was issued on 12.08.2015 and was not applicable to him as he appeared in the examination prior to coming into force of this administrative order which have only a prospective effect and not retrospective. Further, an administrative order cannot overrule the statutory RR.

2. Applicant argued that clause 11 of Recruitment Rules, 2012 which limits the maximum age to 56 years for appointment by absorption, is applicable as on the closing date of receipt of applications which was July/August, 2011 in the case of the applicant, and at that time, he was less than 56 years of age. Applicant attained the age of 56 years on 07.03.2012. Applicant argues that the effort, time and money spent in preparing for the examination had been rendered wasteful on his being declared ineligible.

3. Heard counsel for applicant and respondent and perused written submissions made. The Annexure A-3 is a Headquarter Office letter prescribing the age restriction is dated 12.08.2015. The IA & AD Recruitment Rules, 2012 prescribes the maximum age limit for absorption by examination as not exceeding 56 years as on closing date of receipt of applications. Applicant argues that he applied for the examination in July-August, 2011, much before any administrative order on age restriction was introduced. The applicant is seeking as relief promotion to the post of Assistant Audit Officer and the quashing of Annexure A-2, series of letters declining him the absorption to SAS (Civil Audit).

4. The respondents argument is that the Indian Audit and Accounts Department (Assistant Accounts Officer) and (Assistant Audit Officer) Recruitment Rules, 2001 and 2012 came into force w.e.f. 06.10.2001 and 10.01.2013 and are applicable to the applicant. The contention of the applicant to apply the Recruitment Rules of 1989 is contra to the scheme. The Annexure A-3 administrative order restricts the age limit for appointment to 56 years for the post of Assistant Accounts Officer (Accounts) and Assistant Audit Officer (Audit). As per para 11 of the Rules. This limit of 56 years is to be counted as on the closing date of receipt of applications for deputation on permanent absorption basis. The transfer of the applicant to the Audit Office arose in May, 2015 on his passing SAS (Civil Audit) Examination is not relevant as the age limit is applicable to closing date of receipt of application and not date of the appointment to the post on passing of the qualifying examination.

5. The provision in the Rules is for a maximum of six chances to clear the SAS (Civil Audit) Examination, Part I and Part II and additional four chances are given only to those who have passed the five papers by availing the six chances. The applicant had been declared "Pass" in SAS (Civil Audit) Examination in May, 2015.

6. The Recruitment Rules prescribe a maximum age of 56 years for appearing in the examination. This is logical in view of the fact that the RR provides for several chances i.e. six chances in this case and candidates may avail these six chances over several years. Hence, it is necessary to fix a maximum age for applying for the examination. Applicant produces IA & AD (AAo) Recruitment Rules wherein in Para 12(ii) of IA & AD (AAO) Recruitment Rules clearly states that the maximum ages limit for appointment by deputation shall not be exceeding 56 years on the closing date of receipt of application. Respondent does not produce any document/rule overruling this provision of recruitment rule by any statutory amendment by which applicant is found ineligible for appointment. As per clause 12 (a)(ii) which prescribes that maximum age limit for appointment by deputation shall not exceed 56 years as on closing date of receipt of application, is squarely applicable in the case of the applicant. An administrative order cannot overrule the statutory Recruitment Rules.

7. Applicant appeared in the examination in August, 2011, March, 2012, September, 2012, February, 2013, August, 2013, February, 2014 and August, 2014, but could not qualify the exam. The applicant qualified the exam only in March, 2015. Hence, it is obvious that he has put in a lot of effort to qualify the exam and his effort should not be allowed to go waste.

Further, applicant is supported by the RR which prescribes 56 years as maximum age of receipt of application. Applicant cannot rewrite or amend receipt of application as date of appointment without amending the statutory rules.

8. For the foregoing discussion, the OA is allowed. No costs.

**(P. GOPINATH)**  
**MEMBER (A)**

**(SANJEEV KAUSHIK)**  
**MEMBER (J)**

Dated:  
**ND\***

