

P.U. Joshi & Ors., Union Of India & Ors vs The Accountant General, Ahmedabad, & ... on 19 December, 2002

Equivalent citations: AIR 2003 SUPREME COURT 2156, 2003 AIR SCW 272, 2003 LAB. I. C. 435, 2003 (1) UJ (SC) 647, 2003 UJ(SC) 1 647, 2003 (1) SLT 146, 2002 (9) SCALE 738, 2003 (2) SRJ 592, (2003) 2 JCR 65 (SC), 2003 (1) SERVLJ 239 SC, 2003 (2) SCC 632, (2002) 9 SCALE 738, 2003 SCC (L&S) 191, (2003) 2 GUJ LR 1676, (2003) 4 LAB LN 413, (2003) 1 SCT 435, (2003) 1 SUPREME 501, (2003) 5 ESC 78, (2003) 2 GCD 1468 (SC)

Author: D. Raju

Bench: Doraiswamy Raju, Shivaraj V. Patil

CASE NO.:

Appeal (civil) 4679-4680 of 1996

Appeal (civil) 10983 of 1996

PETITIONER:

P.U. Joshi & Ors., Union of India & Ors.

RESPONDENT:

The Accountant General, Ahmedabad, & Ors., Basudeba Dora & Ors.

DATE OF JUDGMENT: 19/12/2002

BENCH:

Doraiswamy Raju & Shivaraj V. Patil

JUDGMENT:

J U D G M E N T D. Raju, J.

Civil Appeal No.4679 of 1996 has been filed by the appellants herein, who lost in their application filed before the Central Administrative Tribunal, Ahmedabad Bench, in O.A. No.162 of 1989, which came to be dismissed by an order dated 10.8.1994. Since their application for review in R.A.No.31 of 1994 also came to be dismissed by an order dated 12.10.1994, Civil Appeal No.4680 of 1996 has also been filed.

The various cadres of establishment in Indian Audit and Accounts Department relating to the office of the Accountant Generals in the States were bifurcated and restructured w.e.f. 1.3.1984 into (i) Accountant General (Accounts and Entitlement) and (ii) Accountant General (Audit). So far as the State of Gujarat is concerned, the combined office of the Accountant General, which had its main office at Ahmedabad with a Branch at Rajkot, was bifurcated into two separate offices, A.G. (Audit)

at Ahmedabad/Rajkot and office of the A.G. (A & E) at Rajkot/Ahmedabad. Prior to the said bifurcation, the combined office, among other categories, had in the Supervisory Cadres (a) Section Officers (those who were promoted after passing Subordinate Accounts Services Examination) subsequently known as "Section Officers Grade Examination", (b) Supervisors (those who were promoted on seniority-cum-rejection of unfit basis without passing SAS/SOG Examination; and (c) Selection Grade Section Officers/Selection Grade Supervisors (appointed subject to fulfillment of eligibility criteria Section Officers and Supervisors were promoted to this category on their fulfilling the required criteria of passing the examination and putting in the required service). Supervisors were appointed only in cases of non-availability of qualified Section Officers to man the supervisory posts and they were subject to reversion if adequate number of Section Officers were available. Further, the Section Officers were considered senior to Supervisors and the promotion channel to the higher post of Accounts Officers was open to Section Officers only and not to Supervisors. After restructuring of the Department w.e.f. 1.3.1984, so far as the A.G. (A & E) offices are concerned, these class of officers were categorized into (i) Section Officers (SOGE qualified hands - pre-revised scale Rs.500-900/-); (ii) Supervisors (unqualified hands - pre-revised scale Rs.500-

900); and (iii) Selection Grade Section Officers Selection Grade Supervisors whose pre-revised scale was Rs.775-1000. So far as A.G. (Audit) offices are concerned, as per the restructured pattern it had Section Officers 20% (SOGE qualified hands with pre-revised scale of Rs.500-900) and Assistant Audit Officers - 80% (higher post, SOGE qualified hands with pre-revised scale Rs.775-1000). Since in the newly constituted Audit Offices w.e.f. 1.3.1984, there was no cadre of Supervisors in the Audit Wing, the existing staff of Supervisors were not allowed to switch over to the Audit Office. In view of the above, option was given to such of those who desired to get reverted to Audit Offices, in which case they would be required to be reverted as Special Grade Auditors and then switched over to the Audit Offices from that cadre. Though free option was given to all the members of combined offices to remain either in the A & E Offices or to go over to the Audit Offices, the appellants in the above two appeals, who were in the combined establishment, had chosen to remain with A & E Office.

While matter stood thus, when the Fourth Central Pay Commission's recommendations were made and accepted by the Government of India w.e.f. 1.1.1986, the "Selection Grade" was abolished from all non-gazetted cadre in all the Departments of Government of India all over India, including the Department of IA & AD. The orders in this regard were issued by the Government of India on 13.9.1986 and from that date the Selection Grade was abolished. As a result of which, the Supervisory set up in A & E Office and Audit remained from 13.9.1986 as follows :-

"A & E Offices	Audit Office
(i) Section Officers (SOGE qualified hands) (Revised pay-scale Rs.1640-2900 w.e.f. 1.1.86)	(i) Section Officers 20% (SOGE qualified hands) (Revised pay-scale Rs.1640-2900 w.e.f 1.1.86)
(ii) Supervisors (Unqualified hands) (Revised pay-scale	Asstt. Audit Officers 80% (SOGE qualified hands) (Revised pay-scale

Rs.1640-2900 w.e.f. 1.1.86). Rs.2000-3200 w.e.f. 1.1.86)."

As part of the Scheme of implementation of the Fourth Central Pay Commission's recommendations and bringing the pay-scales of cadres of A & E Offices and Audit Office at par with each other, the Government of India issued orders of upgradation of posts of Section Officers in A & E Offices w.e.f. 1.4.1987 and accordingly the office of the Comptroller and Auditor General of India, New Delhi, by its proceedings dated 17.8.1987 upgraded 80% of posts of Section Officers into Assistant Accounts Officers cadre w.e.f. 1.4.1987. In consultation with the Comptroller and Auditor General of India and in exercise of powers conferred under Article 148 of the Constitution of India, the President of India made the IA & AD (Assistant Accounts Officers) Recruitment Rules, 1989 applicable w.e.f. 1.4.1987, as a consequence of which the set up of the Supervisory Cadre for A & E Offices w.e.f. 1.4.1987 stood as follows :-

"(i) Section Officers 20% Pay-scale Rs.1640-2900 (SOGE qualified hands)

(ii) Asstt. Accounts Officers 80% Pay-scale Rs.2000-3200 (SOGE qualified hands having 3 years regular service in the grade)

(iii) Supervisors Pay-scale Rs.1640-2900 (unqualified hands to the extent (i) & (ii) are not applicable)"

Since the pay-scales were to be brought on par in both the offices with eligibility criteria on the same lines and inasmuch as there was no cadre of Supervisors in Audit Stream but only the cadres of Section Officers/Assistant Audit Officers cadre of qualified hands alone existed, the criteria of passing SOG Examination to get into the pay-scale of Assistant Accounts Officers (i.e., Rs.2000-3000 in the revised pay-scales) and for promotion to Assistant Accounts Officers was prescribed by the Comptroller and Auditor General of India in terms of the directions issued by the Government of India under their letter dated 12.6.1987. As and when the selection grade was abolished w.e.f. 1.1.1986, then the existing Selection Grade Supervisors, who were already holding the higher scale of post identical to Assistant Accounts Officers cadre, were allowed to continue in that scale treating their pay as "personal pay" to them. The grievance of the appellants, who are Supervisors in the office of A & E, had been that since pay-scales of Supervisors and S.Os. are identical and duties and responsibilities of Supervisors/S.Os./A.A.Os. are similar, they should also be given promotion to

(i) S.G. Supervisors posts in the pay-scale of Rs.2000-3200 or (ii) promotion to Assistant Accounts Officers in the pay-scale of Rs.2000-3200. In staking such claims, according to the Department, the appellants ignored the fact that the selection grade posts no longer exist in any Department all over India w.e.f. 1.1.1986 when the revised pay-scales came into force and no exception could be made in respect of IA & AD Department alone and that in the absence of any scheme for promotion of Supervisors to the cadre of Assistant Accounts Officers, the only course open to the appellants was to take SOG Examination to get promoted as Section Officers and thereafter as Assistant Accounts Officers on fulfillment of the required eligibility criteria in terms of the Recruitment Rules, as per which any one to become eligible to the post of Assistant Accounts Officer should pass the Section Officers Grade Examination and possess three years service in the grade and that, therefore, the Supervisors, who have not even passed the Section Officers Grade Examination, are not eligible for

consideration for promotion as Assistant Accounts Officers or for being placed in the scale of pay of A.A.Os.

The claim of the appellants, based on denial of equality of opportunity and equal protection, was rejected by the Tribunal, both in the order dated 10.8.1994 and subsequently in the order dated 12.10.1994. It may be incidentally pointed out at this stage that similar claims were projected by persons similarly placed before the Central Administrative Tribunal, Chandigarh Bench, in O.A. No.561/HP/89 and O.A. No.1017/HP/91 and the said Tribunal also by its decision dated 9.9.1993 rejected a similar challenge. Yet another claim projected before the Central Administrative Tribunal, Principal Bench, New Delhi, in Registration O.A.No.1502/88 and this Bench of the Central Administrative Tribunal also rejected the claim of the applicants therein.

While that be the position, similar claims projected by some of the aggrieved persons before the Central Administrative Tribunal, Bench at Cuttack in the State of Orissa, in O.A. No. 144/81 came to be allowed on the ground that since the directions issued by the Government envisaged a common seniority list of Section Officers and Supervisors performing identical nature of duties, there was no justification to thereafter discriminate them for purposes of promotion or pay-scales and consequently directed the Department to grant promotion considering their seniority inter se if they are otherwise suitable on the date on which they are entitled to be promoted, with further directions relating to their entitlement to promotional monetary benefits and other benefits flowing from such promotions, setting out also a time limit within which such orders have to be implemented. It is against this judgment of the Cuttack Bench of the Central Administrative Tribunal that Civil Appeal No.10983 of 1996 came to be filed, by the Union of India and the Department concerned.

Heard the learned counsel on either side. The stand on behalf of the appellants-private parties is that their service rights are to be governed by the rules relating to their service as on the date of bifurcation on 1.3.1984 and that the rules and the service conditions cannot be altered to their detriment by the subsequent rules. It is also contended that the appellants, working as Supervisors, are also performing duties that are discharged by the Assistant Accounts Officers and they would, therefore, be entitled to the scale of pay of Rs.2000-3200 of A.A.Os. (earlier SG Supervisors) on the principle of 'equal pay for equal work'. The denial of promotional prospects to the category of Supervisors, like the appellants, is also challenged on the ground of arbitrariness and hostile discrimination. Lastly, it was contended that before bifurcation though it was assured that the pay structure for the Accounts and Entitlement offices would be the same as the one before bifurcation and the existing promotional prospects and selection grade will be applicable mutatis mutandis, it was not actually adhered to after bifurcation and for this reason also, relief as prayed for ought to be granted. Inspiration was sought to be drawn, based on the reasoning of the Cuttack Bench of the CAT, which order is the subject-matter of challenge in the appeal filed by the Union of India and others.

Per contra, on behalf of the Union of India and the Department concerned, it is contended that in the light of the statutory rules made after bifurcation, governing the recruitment to the posts of Assistant Accounts Officers, one should pass the Section Officers Grade Examination and possess three years experience in the grade as Section Officers and inasmuch as the appellants and persons

similarly placed in other States have not got qualified themselves by passing the SOG Examination, they are ineligible to be considered for promotion as A.A.Os. It is also contended that in the teeth of the rules made under Article 148 of the Constitution of India by the President of India in consultation with the CAG of India duly published on 11.3.1989 effective from 1.4.1987, no reliance can be placed on administrative instructions issued by the Authority of CAG to assert any claim of rights in derogation of the statutory rules. The appellants and persons similarly placed, who opted to remain in the Accounts and Entitlement stream, had to conform to the relevant rules applicable and that even as per the instructions relied upon by the appellants themselves, they could not assert successfully their claims. It is contended further for the respondent-Department that the right of the Government to bifurcate departments and suitably restructure them in the interests of better administration and in order to ensure greater efficiency is unquestionable and as long as the appellants do not conform to the revised pattern and satisfy the requirement of the statutory rules governing the service conditions, no grievance of denial of equal opportunity or discrimination could be made, for and on behalf of the appellants. So far as the promotional prospects are concerned, it is contended that even Supervisors, whose pay-scale is identical to Section Officers having more than three years of regular service in the cadre of Supervisors, cannot automatically claim for being promoted as A.A.Os. and it is only when they qualify in the SGO Examination they become eligible for consideration and promotion. In challenging the decision of the Cuttack Bench of the CAT, it is strenuously contended that constitution, frame and reconstitution and restructuring of departments, creation and abolition of posts therein are matters of policy depending upon administrative exigencies and exclusively within the discretion of the Government and as such the same could neither be challenged nor the Tribunal could substitute its views to that of the Government, as to how it should be. As to the reasoning based upon the common seniority list, it is contended for the Department that such common seniority list of Supervisors and Section Officers was prepared only for the limited purpose and for the period to facilitate the grant of non-functional selection grade and that inasmuch as Supervisors do not really belong to the category of Section Officers.

We have carefully considered the submissions made on behalf of both parties. Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of Policy and within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions envisaged in the Constitution of India and it is not for the Statutory Tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State. Similarly, it is well open and within the competency of the State to change the rules relating to a service and alter or amend and vary by addition/substruction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate. Likewise, the State by appropriate rules is entitled to amalgamate departments or bifurcate departments into more and constitute different categories of posts or cadres by undertaking further classification, bifurcation or amalgamation as well as reconstitute and restructure the pattern and cadres/categories of service, as may be required from time to time by abolishing existing cadres/posts and creating new cadres/posts. There is no right in any employee of

the State to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a Government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service.

So far as the grievances of the appellants and private parties-respondents in the above cases are concerned, they have no sound or valid basis in law. Before even bifurcation on 1.3.1984, the posts of Supervisors, Selection Grade Supervisors as well as Section Officers and Selection Grade Section Officers existed separately. Section Officers were considered senior to Supervisors and promotion to higher posts of Accounts Officers was open to Section Officers only and not to Supervisors. After bifurcation, since there was no cadre of Supervisors in the Audit Offices, the question of accommodating them in the Audit Offices as Supervisors did not arise. With the implementation of the recommendations of the Fourth Central Pay Commission, 'Selection Grades' were abolished from all non-gazetted cadres in all Departments of Government of India all over the country, including the Department of IA & AD. As observed by the Bench of the CAT at Cuttack which held in favour of the private parties on some other ground, it will be too late in the day to put the clock back by claiming to resurrect the abolished selection grade which was found to be already non-functional, too. As noticed supra, the supervisory cadre for A & E offices w.e.f. 1.4.1987 came to consist of (a) Section Officers 20% (SOGE qualified hands);

(b) Assistant Accounts Officers 80% (SOGE qualified hands with further experience of three years regular service in the grade) and (c) Supervisors (unqualified hands to the extent whenever clauses (a) and (b) were not available only. As noticed earlier, a Supervisor (unqualified) has to undertake SOG Examination to be promoted as Section Officers and thereafter only get promoted as A.A.O. Merely because the pay-scales were similarly granted to these unqualified Supervisors on par with Section Officers alone apparently due to alteration and restructuring in the set up of offices those Supervisors, who had not even passed the SOG Examination, therefore, could neither be appointed on promotion as Section Officers nor could claim equal status with the SOG Examination qualified persons to straightaway get promoted as A.A.Os., to which the feeder category is only Section Officers and not Supervisors. It is necessary to notice here that Supervisors even earlier could not have been promoted to the higher post of Accounts Officers. In addition to it, the other criteria of three years regular service as Section Officer, before becoming eligible for consideration to be appointed as A.A.Os. on promotion also must be satisfied. The Cuttack Bench of the CAT, which decided the matter and which decision is challenged by the Department in Civil Appeal No.10983 of 1996, committed a grave error in taking it for granted equality in status and grade persons like the private parties-respondents on par with Section Officers with higher qualifications merely because a common seniority list was prepared ignoring the fact that it was not for purposes of further promotion but for the limited purpose of giving only the benefit of non-functional selection grade.

Consequently, as long as the appellants in Civil Appeal Nos.4679-4680 of 1996 and respondents in Civil Appeal No.10983 of 1996 have not acquired the qualification of passing the SOG Examination and got promoted to the post of Section Officers and put in three years regular service as such, which alone constituted the feeder category for further promotion as A.A.Os., there is no scope for

according promotion to them despite the fact that there may be vacancies available in the A.A.Os. The Tribunal, which passed the order, which is the subject-matter of challenge in Civil Appeal No.10983 of 1996, was not right in directing the promotion to them in derogation of the statutory rules under which they are ineligible for any such promotion.

The plea based on the denial of equal opportunity and equal protection of laws has rightly been rejected in the light of the principles laid down by this Court in the decisions noticed by the Bench of the Tribunal, which rendered the decision in respect of the appellants, who serve in the State of Gujarat. Likewise, it was impermissible for the Bench of the Tribunal at Cuttack to have further directed to give the promotional monetary benefits and other benefits flowing from such promotion when they will not be entitled to any such relief under the statutory rules, which the Tribunal itself could not, on its own, either bypass or alter or give a go-by too or direct the department to ignore and contravene.

For all the reasons stated above, Civil Appeal Nos.4679-4680 of 1996 shall stand dismissed. Civil Appeal No.10983 of 1996 filed by the Union of India and others shall stand allowed and consequently the order passed in O.A. No.144 of 1991 shall stand set aside. There will be no order as to costs.