

PETITIONER:
S. L. SACHDEV & ANR.

Vs.

RESPONDENT:
UNION OF INDIA & ORS.

DATE OF JUDGMENT 28/10/1980

BENCH:
CHANDRACHUD, Y.V. ((CJ))
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CHANDRACHUD, Y.V. ((CJ))
GUPTA, A.C.

CITATION:
1981 AIR 411 1981 SCR (1) 971
1980 SCC (4) 562
CITATOR INFO :
D 1989 SC1624 (11)

ACT:

Constitution of India, Articles 16, 309 and 32 & The Indian Posts & Telegraphs (Clerks in Savings Bank Control and Internal Check Organisation) Recruitment Rules 1969, Rule 4 and Item 3, Column 10 of Schedule-Provision that UDCs drawn from Audit offices being eligible for promotion to selection Grade on basis of 15% of Posts Head Clerks on basis of 20% of posts held by them in SBCO-ICO-Validity of.

Director-General in exercise of powers-Rules made by the president under Article 309-Whether can issue direction which is inconsistent with the recruitment rules.

HEADNOTE:

The Government of India created the Savings Bank Control Organisation and Savings Bank Check Organisation (SBCO-ICO). Amongst those who were invited to opt for service in the said organisation were UDCs in the Audit Offices, LDCs who had qualified for promotion to the UDC cadre in the Audit Offices, employees under the Post Master General and those from amongst the Time Scale Clerks in the P & T Accounts Organisation.

By a letter dated May 15, 1964 the P & T Board informed all the Heads of the Circles that the sanction of the President of India was obtained to the conversion of 10% posts in the cadre of UDCs in the SBCO-ICO into Selection Grade UDCs. But, by his letter dated May 29, 1965 addressed to all Heads of P & T Circles, the Director-General, Post & Telegraphs modified the policy of reservation of 10% of the post in the cadre of UDCs in the Selection Grade by directing, that the total number of Selection Grade Posts available for the UDCs who came from the Audit offices should be 10 of the total number Audit officer UDCs working in any particular circle of the Organisation.

On January 22, 1968, the Indian Posts & Telegraphs (Clerks in Savings Bank Control and Internal Check Organisation) Recruitment Rules, 1969 were framed regulating the recruitment to the cadre of UDCs and other posts in the SBCO-ICO. Col. 10 of Item 3 of the Schedule to the Rules provides that the appointment to the Selection Grade will be made from amongst UDCs with 10 years of service in that

grade in case of Audit Office Staff, or with five years' service in that grade in case of other UDCs. Later, the Supervisory Cadre in the SBCO-ICO was recognised. Creating a cadre of Head Clerks in place of the Selection Grade posts and fixing the number of posts in the said cadre at 20% of the posts of UDCs. By letter dated May 16, 1965, the Director General however, clarified the position by saying that "under the new scheme the audit office UDCs will get the post of Head Clerks to the extent of 20% of their strength instead of 10% as at present. The remaining posts of Head Clerks will go to the non-audit UDCs".

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The two petitioners who belonged to the P & T Audit Offices and had qualified the departmental examination for promotion as UDCs, joined the SBCO-ICO as UDCs. They challenged the classification of UDCs for the purposes of promotion to the Selection Grade/Head Clerks cadre on the basis of the sources from which they were drawn and the limiting of the promotional posts available to them to 10% in the case of Selection Grade post and 20% in the case of Head Clerk posts thereby resulting in promotion of their Juniors who had joined the organisation from the P & T Offices, as discriminatory, arbitrary and unreasonable. According to them the only criterion for promotion from amongst the UDCs in the SBCO-ICO could be the length of service in the cadre of UDCs, subject to fitness. The provision in Column 10 of Item 3 of the Schedule to the Recruitment Rules of 1969 was also challenged.

The respondents argued that persons drawn from different sources were not integrated into a common service and therefore different rules of promotion could be applied to the two classes and that the directive of the Director-General was aimed at further and better implementation of the Recruitment Rules.

Partly allowing the petition.

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HELD 1. The Directions issued by Respondent 2 by his letters dated May 16, 1975 and May 29, 1965 that UDCs drawn from the Audit offices will be eligible for promotion to the Selection Grade on the basis of 10% of the posts or to the Head Clerks cadre on the basis of 20% of the posts, held by them in SBCO-ICO are quashed. [979 E-F]

The petitioners and the other UDCs will be entitled equality to promotional opportunities. They and others similarly situated as them shall be promoted to the Selection Grade/Head Clerks Cadre with effect from the dates on which they were due for promotion by applying the test of seniority-cum-fitness. [979 F-G]

2. The policy adopted by respondent 2 is discriminatory and unreasonable. Apart from the injustice in specific cases where UDCs drawn from the Audit Offices are attached to comparatively smaller circles, the classification made for the purpose of determining the promotional opportunities seems unreasonable and arbitrary. Since under the impugned directions, the number of Selection Grade/Head Clerks has to be 10% of the number of UDCs drawn from the Audit Offices, no promotional opportunities at all would be available to them in certain circles in which less than 10 UDCs drawn from the Audit Offices are working. These persons, for a purely fortuitous reason, will be denied for ever all promotional opportunities. That seems wholly indefensible. [976G, 977B-F]

3. The duties, functions and responsibilities of all the UDCs being identical, there is no reason why different tests should be prescribed for determining their respective

promotional opportunities and that too solely in reference to the source from which they are drawn. The test of educational qualifications can conceivably be an intelligible differentia bearing nexus with the object of ensuring greater efficiency in public services. But once a cadre is formed by recruiting persons drawn from different departments of the Government, there would normally be no justification for discriminating between them by subjecting one class to more onerous terms in the matter of promotional chances. The impugned directives are therefore unconstitutional. [977G-H, 978A-B]

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Balakrishnan v. Comptroller & Auditor General of India, 1976 Kerala Law Times 401 & C. K. Krishnamurthy v. Director General P & T 1978 Karnataka Law Journal 355, affirmed.

V. Subramanyam v. The Director General of Posts and Telegraphs, New Delhi WP 3935/75 decided on 18th November 1978 & V. S. Rajagopalan v. Post Master General WP 3796/75 decided on 24th November 1976, reversed.

4.No one can issue a direction which, in substance and effect, amounts to an amendment of the Rules made by the President under Article 309. The Recruitment Rules of 1969 do not provide for the kind of classification which is made by the Director General by his letters to the Heads of respective Circles of the new organisation. They only provide for classification on the basis of length of service in the new organisation. Any directive which goes beyond it and superimposes a new criterion on the rules will be bad as lacking in jurisdiction. [978B-E]

5. The distinction made between the two classes of UDCs, in the context of the length of their service for the purposes of promotion is not arbitrary or unreasonable. The staff of the Audit Offices which was engaged in the Savings Bank's work might well have faced retrenchment. Instead of subjecting them to that hardship, they were given the option of joining the new organisation. Experience-wise also, there would appear to be fair justification for requiring them to put in longer service in the new organisation before they are eligible for promotion to the higher grade. The provision in Col.10 of Item 3 of Schedule to the Recruitment Rules 1969 is therefore upheld. [979C-E]

JUDGMENT:

ORIGINAL JURISDICTION: Writ Petition No. 267 of 1979
(Under Article 32 of the Constitution)

E. X. Joseph and N. S. Das Bahl for the Petitioners.

L. N. Sinha, Att. Genl. of India and Hardayal Hardy for
RR 1 to 4.

S. L. Aneja for RR 5-10 and 13.

The Judgment of the Court was delivered by

CHANDRACHUD, C. J.-This is a Writ Petition under Article 32 of the Constitution by which the petitioners ask for an appropriate writ quashing the orders dated May 29, 1965 and May 16, 1975 issued by Respondent 2, the Director General of Posts and Telegraphs, New Delhi, and for striking down the provisions in Col. 10 of the Schedule to the Recruitment Rules, 1969.

Petitioner 1 joined the Posts and Telegraphs Audit Office of the Government of India at Delhi on July 31, 1956 as a Lower Division Clerk. In 1961 he qualified in the departmental examination for promotion as an Upper Division Clerk. On May 4, 1962 he joined the Savings Bank Control Organisation and Savings Bank Internal

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Check Organisation (SBCO-ICO), as an Upper Division Clerk. Petitioner 2 joined the P and T Audit Office at Madras on June 3, 1950 as a Lower Division Clerk. On passing the departmental examination he was promoted as an Upper Division Clerk on September 10, 1958. He joined SBCO-ICO on April 1, 1963 in the same capacity. He is due to retire on October 31, 1980.

Respondent 1 to the Writ Petition is the Union of India, Respondent 2 is the Director General of P & T and Respondents 3 and 4 are the Post Master Generals of the Delhi Circle and the Tamil Nadu Circle respectively. Respondents 5 to 13, though junior to Petitioner 1 in the Delhi Circle, have been promoted as Selection Grade Clerks/Head Clerks in supersession of him. Respondents 14 to 47, though junior to Petitioner 2 in the Tamil Nadu Circle, have been promoted as Selection Grade Clerks/Head Clerks in supersession of him. The petitioners, in effect challenge their supersession to the post of Selection Grade Clerks/Head Clerks.

Until the year 1961, the Savings Bank work of the post office was under the supervision and control of the Indian Audit and Accounts Department of which the Comptroller and Auditor General of India is the Head. The branches of the Indian Audit and Accounts Department doing the Savings Bank work and the work of auditing P & T accounts were called P & T Audit Offices.

The Government of India having decided that the Savings Bank work should be taken over by the P & T Department, the audit offices were relieved of that responsibility by stages during the years 1961 to 1964 and a new Organisation called the Savings Bank Control Organisation and Savings Bank Internal Check Organisation (SBCO-ICO) was created on May 4, 1962. With the setting up of that organisation, volunteers were given the option of joining it. Amongst those who were thus invited to opt for service in the new Organisation were Upper Division Clerks in the Audit Offices, Lower Division Clerks who had qualified for promotion to the Upper Division Clerks' cadre in the audit offices, employees under the Post Master General and lastly those from amongst the time-scale clerks in the P & T Accounts Organisation. Employees belonging to the aforesaid departments who opted for service in the new Organisation were transferred thereto in the interest of public service.

In the audit department, 10% of the sanctioned strength of the posts of Upper Division Clerks were in the Selection Grade and promotion to those posts was made on the basis of seniority-cum fitness. By a letter dated May 15, 1964 the P & T Board informed all the Heads of Circles that the sanction of the President was obtained

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to the conversion of 10% posts in the cadre of UDCs in the SBCO-ICO into Selection Grade UDCs. But, by the impugned letter No. 56/4/65-SPB-I dated May 29, 1965 addressed to all Heads of P & T Circles, the Director General, Posts and Telegraphs modified the policy of reservation of 10% of the posts in the cadre of UDCs in the Selection Grade by directing, that the total number of Selection Grade posts available for the UDCs who came from the Audit Offices should be 10% of the total number of Audit office UDCs working in any particular Circle of the organisation. Thus, whereas, under the original intendment, if the total number of posts in the cadre of UDCs in the new Organisation was 100, 10 posts were available in the Selection Grade for all the UDCs, under the new policy if, out of the total strength

of 100, 40 posts were occupied by UDCs who had come from the Audit Offices, they would, as amongst themselves, be entitled to four posts only in the Selection Grade. Under the new dispensation, the test is how many UDCs from Audit Offices are working in the Circle, not what is the total strength of the UDC cadre in the Circle.

On January 22, 1968, the President of India, acting in exercise of his powers under Article 309 of the Constitution, framed rules regulating the recruitment to the cadre of UDCs and other posts in the SBCO-ICO. The rules are called "The Indian Posts & Telegraphs (Clerks in Savings Bank Control and Internal Check Organisation) Recruitment Rules, 1969". Brevity is obviously indicated and, for its sake, we will refer to these rules as the Recruitment Rules, 1969. Rule 4 provides that the method of recruitment to the various posts, the age limit, qualifications etc. shall be as specified in Columns 4 to 12 of the Schedule provide to the Rules. Column 4 of the Schedule provides that the post of Selection Grade UDCs is a non-Selection post. Column 9 provides that recruitment of Selection Grade UDCs will be exclusively by promotion. Column 10 provides that the appointment to the Selection Grade will be made from amongst Upper Division Clerks with 10 years of service in that grade in case of Audit office Staff, or with five years service in that grade in case of other Upper Division Clerks. This is one of the provisions of the Rules which is challenged as being discriminatory.

On the basis of the recommendations made by the Third Pay Commission, the Supervisory Cadre in the SBCO-ICO was reorganised with a view to providing better promotional avenues to the members of the staff. Accordingly, the Director General issued instructions by his letter dated April 10, 1975 that the existing provision relating to the Selection Grade Posts will be replaced by the creation of a cadre of Head Clerks and that the number of posts in the said

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cadre of Head Clerks will be fixed at 20 per cent of the posts of UDCs. By another letter dated May 16, 1975 the Director General clarified this position by saying:

"Under the new scheme the audit office UDCs will get the posts of Head Clerks to the extent of 20% of their strength instead of 10% as at present. The remaining posts of Head Clerks will go to the non-audit UDCs."

This is the other of the two impugned letters.

The petitioners contend that the classification of the Upper Division Clerks for the purpose of promotion to the Selection Grade/Head Clerks Cadre, on the basis of the sources from which they are drawn and the limiting of the promotional posts available to them to 10% in the case of Selection Grade Posts and 20% in the case of the posts of the Head Clerks has resulted in stagnation of the UDCs., who joined the new organisation from the Audit Offices. The petitioners' grievance is that UDCs. who joined that organisation from the P & T offices and who were junior to them in terms of the length of service in the U.D.C. cadre have been already promoted to the Selection Grade/Head Clerks cadre. This classification of the U.D.Cs. of the SBCO-ICO into two groups for the purpose of promotion on the basis of the sources from which they are drawn is challenged by the petitioners as discriminatory, arbitrary and unreasonable. According to them, since the promotional post is a non-selection post, the only criterion for promotion from amongst the U.D.Cs. in the SBCO-ICO can be the length

of service in the cadre of U.D.Cs., subject to fitness.

Shri E. X. Joseph, who appears on behalf of the petitioners has made a very neat argument, focussing with the help of telling illustrations the injustice which has been done to the petitioners and to those similarly situated. The learned Attorney General who appears for the Union of India and Shri Aneja who appears for the U.D.Cs. drawn from the other departments, have attempted to meet Shri Joseph's argument but we are left in no doubt that the policy adopted by the Union of India is discriminatory and unreasonable. Though it appears prima facie that U.D.Cs. in SBCO-ICO were drawn from four different sources, the sources are really two and not four. U.D.Cs. in that organisation were appointed from amongst those who were previously serving in the Audit Offices and secondly from amongst the other employees of the P & T Department. The recruitment rules of 1969 make a classification amongst the U.D.Cs. by providing that in so far as the U.D.Cs. drawn from the

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Audit Offices are concerned they will be eligible for promotion to the Selection Grade/Head Clerks Cadre after they put in a service of 10 years in the new organisation. In regard to the U.D.Cs. drawn from the P and T Department, the rules provide that they will be eligible for such promotion on completing five years' service only. Bearing in mind that the posts in the Selection Grade/Head Clerks Cadre are non-selection posts to which appointments are made by the test of seniority-cum-fitness, that is the farthest limit to which classification of the U.D.Cs. for the purpose of promotion could be carried.

It is difficult to appreciate the logic or the principle behind the direction that the Selection Grade Posts or the posts of Head Clerks which will be available to the U.D.Cs. drawn from the Audit offices will be determined on the basis of the existing strength, at any given time, of such Clerks in the particular circle. Since, under the impugned directions, the number of Selection Grade Posts/Head Clerks has to be 10% of the number of U.D.Cs. drawn from the Audit Offices, no promotional opportunities at all will be available to them in certain circles in which less than 10 U.D.Cs. drawn from the Audit Offices are working. It is indisputable that, according to the impugned directive, there have to be at least ten persons drawn from the Audit Offices in a Circle, in order that at least one promotional post may become available to them. We are informed, which again is not disputed, that in some small Circles, less than 10 U.D.Cs. drawn from the Audit Offices are working in the new organisation. These persons, for a purely fortuitous reason, will be denied for ever all promotional opportunities. That seems to us wholly indefensible.

Apart from the injustice in specific cases where U.D.Cs. drawn from the Audit Offices are attached to comparatively smaller Circles, the classification made for the purpose of determining the promotional opportunities seems to us unreasonable and arbitrary. It is contended by the learned Attorney General that persons drawn from different sources were not integrated into a common service in the instant case and therefore different rules of promotion can be applied to the two classes. We are unable to accept this contention. The duties, functions and responsibilities of all the U.D.Cs. in the new organisation are identical. They are all in the same cadre and they draw the same pay in the same grade. There is no reason then why different tests should be prescribed for determining their

respective promotional opportunities, and that too solely in reference to the source from which they are drawn. The test of educational qualifications can conceivably be an intelligible differentia bearing nexus

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with the object of ensuring greater efficiency in public services. But once a cadre is formed by recruiting persons drawn from different departments of the Government, there would normally be no justification for discriminating between them by subjecting one class to more onerous terms in the matter of promotional chances. The impugned directives are therefore unconstitutional.

Apart from this consideration, we are unable to understand how the Director General could issue any directive which is inconsistent with the Recruitment Rules of 1969 framed by the President in the exercise of his powers under Article 309 of the Constitution. Those rules do not provide for the kind of classification which is made by the Director General by his letters to the Heads of respective Circles of the new organisation. It may be recalled that the Recruitment Rules only provide for a classification on the basis of the length of service in the new organisation. Any directive which goes beyond it and superimposes a new criterion on the Rules will be bad as lacking in jurisdiction. No one can issue a direction which, in substance and effect, amounts to an amendment of the Rules made by the President under Article 309. That is elementary. We are unable to accept the learned Attorney General's submission that the directive of the Director General is aimed at further and better implementation of the Recruitment Rules. Clearly, it introduces an amendment to the Rules by prescribing one more test for determining whether U.D.Cs. drawn from the Audit Offices are eligible for promotion to the Selection grade/Head Clerks Cadre.

The High Court of Kerala in Balakrishnan v. Comptroller & Auditor General of India and the High Court of Karnataka in Krishnamurthy C.K. v. Director General, P & T have struck down the impugned directions issued by the Director General P & T on the ground that they are discriminatory and therefore unconstitutional. These decisions of the Kerala and the Karnataka High Courts are correct. In fact, it is significant that the Union of India did not file any appeal against those decisions and has acquiesced in them. The High Court of Andhra Pradesh in V. Subramanyam v. The Director General of Posts and Telegraphs, New Delhi and the High Court of Madras in V. S. Rajagopalan v. post Master General seem to have rejected the writ petitions filed before them by persons similarly situated as the petitioners, by holding that no

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discrimination was involved in fixing separate quotas for the purpose of promotion between the U.D.Cs. drawn from the Audit Offices and the other U.D.Cs. With respect, we consider the decisions of the High Courts of Andhra Pradesh and Madras as incorrect.

The petitioners have also challenged the provision in Column 10 of item 3 of the Schedule to the Recruitment Rules of 1969 which provides that U.D.Cs. drawn from Audit Offices must put in 10 years of service for acquiring eligibility for promotion whereas other U.D.Cs. are eligible for promotion after putting in 5 years' service. We are not inclined to entertain that challenge since the impugned provision has been in force since 1969 and it was not until the filing of this petition in 1979 that any objection was taken to its legality. Besides, we are of the opinion that

considering the history leading to the formation of the new organisation, SBCO-ICO, the distinction made between the two classes of U.D.Cs. in the context of the length of their service for the purposes of promotion is not arbitrary or unreasonable. The staff of the Audit Offices which was engaged in the Savings Bank's work might well have faced retrenchment. Instead of subjecting them to that hardship, they were given the option of joining the new organisation. Experience-wise also, there would appear to be fair justification for requiring them to put in longer service in the new organisation before they are eligible for promotion to the higher grade. That challenge has therefore to be repelled.

In the result, we allow the writ petition partly and quash the directions issued by respondent 2 by his letters of May 16, 1975 and May 29, 1965 to the effect that U.D.Cs. drawn from the Audit Offices will be eligible for promotion to the Selection Grade on the basis of 10 per cent of the posts held by them or to the Head Clerks' Cadre on the basis of 20 per cent of the posts held by them in SBCO-ICO. They and the other U.D.Cs. will accordingly be entitled equally to promotional opportunities. We direct that the petitioners, and others similarly situated as them, shall be promoted to the Selection Grade/ Head Clerks Cadre with effect from the dates on which they were due for promotion, by applying the test of seniority-cum-fitness. Since we have upheld the provision in Column 10 of item 3 of the Schedule to the Recruitment Rules, 1969, the petitioners will have become eligible for promotion after completing 10 years' service in SBCO-ICO. Since the demotion of the respondents or any of them is likely to lead to undue hardship to them and to some administrative confusion, the Government may create supernumerary posts to which the petitioners and others similarly situated as them, may be promoted. We are informed that consequent upon the judgments of the High

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Courts of Kerala and Karnataka, the Government has adopted a similar course in the Kerala and Karnataka Circles.

The Writ Petition thus succeeds partly. The petitioners will be entitled to their costs from the first respondent, the Union of India.

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Petition partly allowed.

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