UNION OF INDIA AND ANR.

v.

AMRIK SINGH AND ORS.

OCTOBER 14, 1993

[A. M. AHMADI AND N. VENKATACHALA, JJ.]

Indian Audit and Accounts Department (Administrative Officers, Accounts Officers and Audit Officers) Recruitment Rules, 1964:

Comptroller and Auditor General—Issue of Administrative instructions by—Instructions relating to promotion of Section Officers in Indian Audit and Accounts Department—Provision in instructions not covered by Rules—Instructions held not inconsistent with rules—Comptroller and Auditor General held competent to issue instructions.

Constitution of India, 1950: Article 148(5). Comptroller and Auditor General—Power to issue administrative instructions.

The Indian Audit & Accounts Department (Administrative Officers, Accounts Officers and Audit Officers) Recruitment Rules, 1964 were made by the President of India under the proviso to Article 309 and clouse (5) of Article 148 of the Constitution after consulting the Comptroller & Auditor General of India. The rules contained provisions which provided for certain matters relating to recruitment for the posts of Administrative Officers, Assistant Accounts Officers and Assistant Audit Officers in the Indian Audit and Accounts Department. Subsequently, instructions dated March 21, 1978 were issued by the Comptroller & Auditor General of India, which they also contained a provision relating to promotion of Section Officers in the Indian Audit and Accounts Department. The Instructions required completion of five years of service by 1st April, 1978 by a person as a Section Officer to make him eligible for empanelment and consequent promotion as Accounts Officer. However, in the case of Scheduled Caste/Scheduled Tribes Section Officers, the eligibility period for empanelment was four years of service on the crucial date.

Respondent-1, a member of the Scheduled Caste and a Section Officer was not eligible for empanelment for promotion as Accounts Officer in the subsequent year in that he had not completed four years of

service as on 1st April, 1978. Respondent Nos. 2 and 3, who had completed five years of service as Section Officers before 1st April, 1978 were ampanelled and promoted as Accounts Officers. Respondent-1 questioned their promotion by filing a Writ Petition in the High Court of Punjab and Haryana contending that (i) the instructions issued by the Comptroller and Auditor General being inconsistent with the matters for which provisions were made in the Rules, could not have come in the way of his promotion as Accounts Officer though he had not put in the required service for eligibility for empanelment under the Instructions and (ii) the instructions were not issued by the Comptroller and Auditor General with the requisite competence. A single Judge of the High Court allowed the Writ Petition holding that the impugned provision in the Instructions was inconsistent with the provisions contained in the Rules and the Instructions issued by the Comptroller and Auditor General of India were without competence. Consequently, he issued a direction to the appellants to consider the case of Respondent-1 for promotion to the post of Accounts Officer from the date on which his claim for promotion was ignored.

The order of the single Judge was appealed against by the Union of India and Accountant General, Punjab before a Division Bench of the High Court which was dismissed. Against the judgment of the Division Bench of the High Court, appeal was filed in this Court.

Allowing the appeal of the Union of India and setting aside the orders of the High Court, this Court,

HELD : 1. The provision in the Instructions provides for an essential matter relating to service conditions of persons in the Indian Audit and Accounts Department in respect of which no provision is made in the Rules. There is no provision found in the Rules, which stipulates the criteria that makes a Section Officer eligible for promotion to the posts of Assistant Accounts Officers. Therefore, it is impossible to say that the provision relating to the matter of number of years of service as Section Officer which makes a Section Officer eligible for empanelment and promotion as Accounts Officer, is that which goes against or is inconsistent with any of the provisions in the Rules, inasmuch as none of the provisions therein relates to such matter. Hence, the provision in the Instructions is, in no manner, inconsistent with any of the provisions in

the Rules and consequently the provision in the Instructions is not void. A
[266-H, 267-C-D]

2. The Comptroller and Auditor General of India has the necessary competence to issue Departmental Instructions on matters of conditions of service of persons serving in his Department as its Head, even after Rules are made by the President on conditions of service of such persons B
in exercise of his powers under Article 148(5) of the Constitution. It is no doubt true that the administrative Instructions so issued on matters relating to conditions of service of persons in the Department cannot prevail over the Rules issued by the President if the same comes in conflict with any provision made in the Rules on such matter. The provision in the C
Instructions under consideration does not come in conflict with, nor is it inconsistent with, provisions in the Rules, for the matters dealt with in them are altogether different. Hence, the provision in the Instructions under consideration has been made with the required competence by the Comptroller and Auditor General of India. [267-F, G, 268-A, B]

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Accountant General and another **v.** *S. Doraiswamy and Anr.,* **A.I.R. (1981) S.C. 783, relied on.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1445 of 1988.

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From the Judgment and order dated 13.11.1984 of the Punjab & Haryana High Court in L.P.A. No. 787 of 1984.

K. Lahiri, S.N. Terdol and P. Parmeswaran for the Appellants.

H.S. Parihar for the Respondents. F

The Judgment of the Court was delivered by

VENKATACHALA, J. Two short questions which require to be answered by us in deciding this appeal are, these : G

> 1. Is the provision in the Instructions dated March 21, 1978 issued by the Comptroller & Auditor General of India, prescribing the minimum period of service as Section Officer to make him eligible for promotion as Accounts Officer inconsistent with any of the provisions in the Indian Audit & Accounts Department (Ad- H

ministrative Officers, Accounts Officers and Audit Officers) Recruitment Rules, 1964, and hence void?

2. Was the Comptroller and Auditor General of India competent to issue administrative Instructions dated March 21, 1978?

The Indian Audit & Accounts Department (Administrative Officers, Accounts Officers and Audit Officers) Recruitment Rules, 1964, to be referred to as 'the Rules', were made by the President of India under the proviso to Article 309 and clause (5) of Article 148 of the Constitution after consulting the Comptroller & Auditor General of India. The Rules contained provisions which provided for certain matters relating to recruitment for the posts of Administrative Officers, Assistant Accounts Officers and Assistant Audit Officers in the Indian Audit and Accounts Department. Subsequently, when Instructions dated March 21, 1978 were issued by the Comptroller & Auditor General of India, they also contained a provision relating to promotion of Section Officers in the Indian Audit and Accounts Department, which read :

> "Section Officers with completed five years service in the grade as on 1st April last are considered eligible for empanelment for promotion as Accounts Officer in the subsequent year. In the case of *Scheduled Caste/Scheduled Tribe Section Officers, the eligible period for empanelment is four years of service on the crucial date, but they cannot be promoted until completion of five years service as Section Officers.*"

Respondent-1, a member of the Scheduled Caste, was a Section Officer in the Office of the Accountant General, Punjab and hence a member of the Subordinate Accounts Service. As on 1st April, 1978, he was not eligible for empanelment for promotion as Accounts Officer in the subsequent year in that he had not completed four years of service as Section Officer required to make him eligible for empanelment and consequential promotion as Accounts Officer, Class-II, under the above provision of the Instructions. However, respondents 2 and 3, who had completed five years of service as Section Officers before 1st April, 1978 and became eligible for empanelment for promotion as Accounts Officers under the said provision of the Instructions, were empanelled for promotion as Accounts Officers and promoted as Accounts Officers as provided for therein. Respondent-1 questioned the empanelment and promotion of respondents-2 and 3 as Accounts Officers from that of Section Officers by filing a Writ Petition, C.W.P. No. 2485 or 1978 in the High Court of Punjab & Haryana. The ground urged in support of the Petition was that the Instructions which required completion of four years of service by 1st April, 1978 by a person as a Section Officer to make him eligible for empanelment and consequent promotion as Accounts Officer being inconsistent with the matters for which provisions were made in the Rules, could not have come in the way of his promotion as Accounts Officer though he had not put in the required service for eligibility for empanelment under the Instructions. Another ground urged was that the aforesaid Instructions could not have come in the way of his promotion, in that, they were not issued by the Comptroller and Auditor General with the requisite competence. A learned single Judge of the High Court allowed the Writ Petition by his Order dated July 26, 1984 finding *inter alia* that the impugned provision in the Instructions relied upon by the respondents was inconsistent with the provisions contained in the Rules and the Instructions issued by the Comptroller and Auditor General of India were without competence. Consequently, he issued a direction to the Union of India and the Accountant General, Punjab to consider the case of respondent-1 (petitioner in the Writ Petition) for promotion to the post of Accounts Officer from the date on which his claim for promotion was ignored.

That order of the learned single Judge was appealed against by the Union of India and Accountant General, Punjab, before a Division Bench of the same High Court in a Letters Patent Appeal, which was dismissed by its Judgment dated November 13, 1984. The present appeal by Special Leave is directed against that judgment of the Divison Bench of the High Court. It is how, the need has arisen for us to render our decision on the questions adverted to at the outset. Therefore, we shall deal with and decide those questions.

Question-1 :

Here, we have to first examine the provisions in the Rules to find out as to what are all the matters provided for therein as regards recruitment to the posts of Administrative Officers, Assistant Accounts Officers and Assistant Audit Officers in the Indian Audit and Accounts Department. Rule 2 of the Rules declares that the Rules apply to the posts of the Administrative Officers, Assistant Accounts Officers and Assistant Audit

Officers in the Indian Audit and Accounts Department. Rule 3 thereof states the classification of the posts mentioned in rule 2, the scales of pay attached to such posts, the method of recruitment and other matters relating thereto shall be as specified in columns 2 to 13 of the Schedule given thereunder.

Column 2 of the Schedule, relating to the matter "No. of posts" mentions the number of posts and vests in the Comptroller and Auditor General of India the power to increase and decrease the number of such posts. Column 3 of the Schedule, relating to the matter "Classification", refers to the service concerned in the Rules as "Central Services Class-II Gazetted (Non-Ministerial)". Column 4 of the Schedule relating to the matter "Scale of pay", refers to scale of pay of the posts of Administrative Officers and monthly 'special pay' carried by the post along with the scale of pay. Column 5 of the Schedule, relating to the matter "Whether Selection post or Non-selection post", states that 50 per cent are 'non-selection' posts. Column 6 of the Schedule, relating to the matter "Age limit for direct recruits" states as "Not applicable". Column 7 relating to the matter "Educational and other qualification required for direct recruits", states "Not applicable". Column 8, relating to the matter "Whether age and educational qualifications prescribed for the direct recruits will apply in the case of promoters, states "Not applicable" in respect of the promotees. Column 9, relating to the matter "Period of probation, if any", states "Not applicable". Column 10, relating to the matter "Method of recruitment to the post whether by direct recruitment or by promotion or by transfer and percentage of the vacancies to be filled up by various methods" states "By promotion". Column 11, which relates to "recruitment by promotion, transfer, grades from which promotion/transfer to be made", states that "*Promotions* : Subordinate Accounts Service/Subordinate Railway Audit Service Cadres". Column 12, relating to the matter "If a D.P.C. exists what is its composition", states "Class-II DPC". Column 13, relating to the matter "Circumstances in which the UPSC is to be consulted in making recruitment", states "As required under the UPSC (Consultation) Regulations".

As seen from the above provisions, it becomes obvious that provisions are not made therein in respect of all matters relating to recruitment to posts of Administrative Officers/Assistant Accounts Officers/ Assistant Audit Officers in the Indian Audit and Accounts Department. In any event, there is no provision found in the Rules, which stipulates the criteria that makes a Section Officers eligible for promotion in the Indian Audit and

Accounts Department to the posts of Assistant Accounts Officers of that A
Department.

Then, if the matter for which provision is made in the aforesaid Instructions dated March 21, 1978 is seen, it relates to the matter or criteria that makes a Section Officer of the Indian Audit and Accounts Department eligible for empanelment for promotion as Assistant Accounts Officer in B
that Department, after such Section Officer puts in the requisite number of years of service as holder of that post. Therefore, it is impossible for us to say that the provision relating to the matter of number of years service as Section Officer which makes a Section Officers eligible for empanelment and promotion as Accounts Officer, is that which goes against or is C
inconsistent with any of the provisions in the Rules, inasmuch as none of the provisions therein relates to such matter. Hence, the provision in the above Instructions dated March 21, 1978 is, in no manner inconsistent with any of the provisions in the Rules and consequently the provision in the Instructions is not void. This is our answer to Question-1.

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Question-2 :

This question relates to competence of the Comptroller and Auditor General of India to issue Instructions dated March 21, 1978. As has been held by us in dealing with Question-1, the matter for which provision under E
consideration is made in the Instructions of March 21, 1978, is not a matter covered by any provision in the Rules. If so. was it not competent for the Comptroller and Auditor General of India to make such provision is the point which now needs our examination. As is held by this Court in *The Accountant General and another* v. *S. Doraiswamy and others*, A.I.R. (1981) F
S.C. 783, the Comptroller and Auditor General of India has the necessary competence to issue Departmental Instructions on matters of conditions of service of persons serving in his Department as its head, even after Rules are made by the President on conditions of service of such persons in exercise of his powers under Article 148(5) of the Constitution. It is no doubt true that the administrative Instructions so issued on matters relating G
to conditions of service of persons in the Department cannot prevail over the Rules issued by the President under clause (5) of Article 148 of the Constitution, if the same comes in conflict with any provision made in the Rules on such matter. As already pointed out by us in dealing with Question-1, the provision in the Instructions under consideration does not H

A come in conflict with, nor is it inconsistent with, provisions in the Rules, for the matters dealt with in them are altogether different. On the other hand, the aforesaid provision in the Instructions provides for an essential matter relating to service conditions of persons in the Indian Audit and Accounts Department in respect of which no provisions made in the Rules. B Hence, we hold that the provision in Instructions under consideration has been made with the required competence by the Comptroller & Auditor General of India and that is our answer to Question-2.

We are, therefore, of the view that the order of the learned single Judge of the High Court made in the Writ Petition and the Judgment made C by the Division Bench of the High Court in Letters Patent Appeal are liable to be interfered with and set aside and the Writ Petition of Respondent-1 is liable to be dismissed.

In the result, we allow this Appeal, set aside the Orders of the learned single Judge and Division Bench of the High Court in the Writ D Petition and the Letters Patent Appeal respectively, and dismiss the Writ Petition of Respondent-1 filed in the High Court. However, in the facts and circumstances of the case, we make no order as to costs.

T.N.A. Appeal allowed.