IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 04.09.2019

PRONOUNCED ON : 26.09.2019

CORAM :

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MR.JUSTICE N.SESHASAYEE

W.P.NO.5978 OF 2019 AND W.P.NO.7472 OF 2019
AND WMP.NOS.6902 & 8131 OF 2019

W.P.No.5978 of 2019:

1.Jayanthi Siva
2.K.Amirthalakshmi
3.R.Ramyaa Perundevi
4.Vrinda Sundar ... Petitioners

-Vs-

1. Union of India,
Rep. by the Comptroller and Auditor
General of India,
10, Bahadur Shah Zafar Marg,
New Delhi - 110 002.

2. The Central Administrative Tribunal,
Madras Bench, Rep. by Registrar,
City Civil Court Building,
High Court, Madras.

3. The Senior Deputy Accountant General(Admin),
O/o the Accountant General(A & E),
Chennai - 600 018. ... Respondents

W.P.No.7472 of 2019:

P.Premkumar ... Petitioner

-Vs-

1. Central Administrative Tribunal,
Madras Bench, Rep. by its Registrar,
City Civil Court Complex,
High Court, Chennai 600 104.

2. Union of India rep. by the
The Comptroller and Auditor
General of India,
10, Bahadur Shah Zafar Marg,
New Delhi -110 002.

3. The Senior Deputy Accountant General,
(A&E)(Admin),
Office of the Accountant General(A&E),
Chennai 600 018.

4. Principal Accountant General(A&E),
Tamilnadu,
Chennai - 600 018. ... Respondents

Prayer in W.P.No.5978 of 2019 :-

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari calling for the records of the 2nd Respondent culminating in the impugned order, O.A.No.1931/2017, dated 09.01.2019 passed by the 2nd Respondent to the extent that it upholds Office Orders 177, 178, 180 and 181 dated 20.11.2017 passed by the 3rd Respondent and quash the same.

Prayer in W.P.No.7472 of 2019 :-

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records in O.A.No.1862 of 2017, dt.9.1.2019 on the file of the 1st Respondent Tribunal and Quash the same and direct the Official Respondents 2 to 4 to confirm the promotion already granted by letter dated 01.02.2013 with effect from 07.09.2009 to the petitioner.

For Petitioners : Ms.L.Maithili (W.P.No.5978 of 2019)
Mr.S.Sadasharan (W.P.No.7472 of 2019)

For Respondents : Mr.V.Vijayshankar
(RR1 to 3 in W.P.5978/2019 &
RR2 to R4 in WP.7472/2019)

COMMON ORDER

[Order of the Court was made by N.SESHASAYEE, J.,]

The petitioners in this batch of cases are identically placed. On 01.02.2013, they were promoted from the post of Senior Accountant to Assistant Accounts Officer (Ad-hoc) with retrospective effect from 07.09.2009. Subsequently, they were found not eligible for the said promotion and were reverted back. This was challenged by them separately in O.A.No.1931 of 2017 before the Central Administrative Tribunal rather unsuccessfully, and this Order of the CAT, dated 09.01.2019 is under challenge in these petitions.

2.The background for the present writ petitions:

- The petitioners were working as Senior Accountants in the Office of the third respondent. The next promotional post was the post of Section Officer. This post since has been re-designated as Asssistant Accounts Officer.

- Basically, there are two streams of service within the Office of the third respondent. One is the Civil Accounts wing (henceforth in this Order would be referred to as Accounts) and the other is the Civil (Audit) wing (will be referred to as Audit)

- For the promotional post indicated above, those from the feeder category have to pass a qualifying exam. The qualifying examination is known by the name Section Officer Grade Examination both for the Accounts and Audit categories. For short, this examination would be referred to as SOGE (Accounts) and SOGE (Audit). This qualifying examination has two parts in both the streams: Part I and Part II. Accordingly, those who are serving in Accounts wing as well as in the Audit wing have to take SOGE (Accounts) Parts I and II, and SOGE (Audit) Parts I and II). After 2006, the Department did not conduct any SOGE (Accounts) Part II till 2016.

- The petitioners are all working in the Accounts wing. They had passed SOGE (Accounts) Part – I but had failed in Part – II. Since SOGE (Accounts) Part II, was not conducted from 2006, the Department Vide Circular No.31/NGE/2003, dated 12.08.2003 provided an opportunity inter alia for those who have passed SOGE (Accounts) Part-I to take SOGE (Audit) Part – II 'for their eventual absorption in Civil Audit Office.' This was further clarified by the department in Circular 44/NGE/2003, dated 16-12-2003, and the clarification states that those who passed SOGE (Accounts) Part I and SOGE (Audit) Part II in terms of the earlier Circular No.31, dated 12.08.2003, would not be eligible for promotion (by virtue of it) in the Accounts stream.

- In terms of Circular 31 referred to above, the petitioners herein, who having passed SOGE(Accounts) Part-I, took SOGE (Audit) Part-II, and successfully passed the same by January 2007.

- Subsequently, they made a request to the Department to treat this as satisfying the requirement for passing SOGE (Accounts) Part-II. This was initially rejected by the Department, and therefore, the petitioners herein preferred O.A.Nos.906 to 914 of 2007. In its Order dated 17.04.2009, the Central Administrative Tribunal directed that the marks taken in SOGE (Civil Accounts) and common papers in SOGE (Audit) should be clubbed 'as was done to identically situated persons with all consequential benefits'. (Inasmuch as the petitioners, though have not have passed SOGE (Accounts) Part-II, but were yet treated as having passed the same in view of they passing SOGE (Audit) Part-II in terms of the Order of the CAT referred to above, for convenience the same would be termed as 'deemed pass'.)

- While things stood thus, the Department has brought out a circular dated 08-07-2009 with a view to provide promotion for wait-listed SOGE passed officials [those who had passed both Parts I and II in SOGE (Accounts)] to the promotional post to break the stagnation in that wing. One of the decisions listed in the circular provided that all those who have passed SOGE (Audit) Part - II, 'will have to go on deputation to Civil Audit Offices of their choice for their eventual absorption in that wing'. This part of the Circular was challenged in O.A. Nos.775 and 830 of 2009 by the petitioners. The Tribunal Vide its Order dated 19-11-2009 allowed these applications, holding that the scheme of permitting those who have passed SOGE (Accounts) Part I to take SOGE(Audit) Part II, is framed for the benefit of those Accounts wing officers and hence, they cannot be compulsorily deputed to the Audit wing. The Department unsuccessfully challenged this before this court in W.P.Nos.8269 and 8270 of 2010, which came to be dismissed Vide order dated 16.09.2011. The S.L.P.No.5809 and 5810 of 2012 that were filed challenging the Orders of this court were also dismissed on 13.04.2012. Accordingly, the Order passed by the Tribunal in O.A.Nos.775 and 830 of 2009 was upheld.

- Following this, and by virtue of the fact that they have deemed pass, the Department Vide separate Office Orders, all dated 01.02.2013, promoted the petitioners herein, retrospectively from 07.09.2009 to the post of Assistant Accounts Officer(Ad-hoc).
- Thereafter, the Department came out with another circular, dated 16.07.2014, wherein it is indicated that promotion as AAO (adhoc) is available only to those who have passed SOGE (Civil Accounts) examination and not to those who were declared deemed pass by virtue of their pass in SOGE (Audit) Part-II. In effect, the circular meant that those

who have only deemed to have passed in SOGE (Accounts), having passed SOGE (Accounts) Part -I and SOGE (Audit) Part-II, will enable them to be considered for the post of AAO (Adhoc) when the regular vacancy arises, but, not within the scheme formulated Vide Circular 31, dated 25.03.2003, which was specially provided for those wait-listed candidates who had passed both SOGE (Accounts) Part I and II.

- Based on this, the petitioners were stripped of their promotions and were reverted back. This circular dated 16.07.2014 was challenged by the petitioners separately before the CAT, and the Tribunal allowed these petitions, and required the Department to issue notice to the petitioners, before it gave effect to the said circular dated 16-07-2014.

- These Orders of the CAT requiring the Department to issue notice to the petitioners were challenged before this Court, and they came to be dismissed. Following this show-cause notices were served on the petitioners why the retrospective promotions given to them should not be withdrawn and the consequential overpayment of pay and allowances for the period when they did not actually work in the promotional post should not be recovered. These show cause notices were challenged by the petitioners in O.A.1141/2017 and that came to be dismissed as premature by the Tribunal Vide its Order dated 19-07-2017.

- After considering the cause offered to the notices, the department Vide its separate Orders, all dated 20-11-2017 reverted back all the petitioners (both in W.P5978 of 2019 and W.P.7472 of 2019) to their Original Post of Senior Accountant, and directed recovery of pay and allowances excessively paid to them for the period from 07.09.2009 to 25.04.2017, the period during which they did not actually work in the promotional post.

- This was challenged by the petitioners, grouping themselves into in two batches in O.A.1862 of 2017 and O.A.1931 of 2017. These two applications were dismissed by the Tribunal by its Common Order dated 09-01-2019. The core point in defence of these applications by the department was that the petitioners though have been considered as deemed to have passed SOGE (Accounts) Part I and Part II, still they would not be eligible for the benefit under the Circular No.31, dated 12-08-2003, which was intended only for those wait-listed Senior Accountants who remain stagnated in the same post for want of vacancy in the promotional post.

* The present writ petitions are directed against this common Order of the Tribunal.

3. The crux of the contentions of the petitioners as could be gathered from the supporting affidavits are that, inasmuch as the petitioners had passed the qualifying examinations in SOGE (Accounts)Part I and SOGE(Audit) Part II in terms of the Orders of the Tribunal in O.A.Nos.906 to 914 of 2007, and accordingly were held deemed to have been passed SOGE(Accounts), and subsequently their right to be considered for promotion in Accounts Wing itself Vide Order in O.A.Nos.775 and 830 of 2009, (the latter came to be confirmed), hence they are entitled to be promoted as AAO (Ad-hoc) in the Accounts wing, they were granted promotion retrospectively from 07-09-2009. Snatching this well deserved promotion obtained on merit and after a prolonged litigious struggle Vide a subsequent Order dated 16.07.2014 is bad in law.

4. The essence of the response of the fourth respondent disclosed in the counter is that a scheme was formulated Vide Circular dated 25-03-2009, which provided for (a) regularising all Adhoc Section Officers (now AAO) in to regular temporary Section Officers; (b) creation of new posts of ASO and (c) promoting the wait-listed personnel who had passed SOGE (Accounts) Parts I & II to that post. Secondly, the scheme for switch-over exams that enabled those who had passed SOGE (Accounts) Part I to appear for SOGE(Audit) Part II was introduced only thereafter, Vide circular dated 12-08-2003. This circular dated 25-03-2009 was neither withdrawn, nor was it challenged in Court. It was hence, the third respondent promoted the petitioners retrospectively Vide his Orders dated 01-02-2013 and forwarded it to the second respondent, the latter raised objection and pointed out the earlier Circular dated 25-03-2009. It was hence, the promotion earlier given Vide Orders dated 01-02-2013 was cancelled, and excess salary earned for the period not actually served in the promotional post of AAO(Adhoc) was demanded. A promotion given mistakenly in ignorance of an existing Rule, will not confer any right to occupy the promotional post, and inasmuch as recalling the Order promoting the petitioners retrospectively was in effect has only set right the mistake earlier committed, it does not suffer from any legal infirmity. This apart, all the petitioners have since been promoted when their time for promotion arrived routinely.

5. The learned counsel for the petitioners argued that inasmuch as in O.A.Nos.906 to 914 of 2007, the Tribunal has directed that the marks obtained in SOGE (Accounts) and common papers in SOGE(Audit) has to be clubbed, followed by an order in O.A.Nos. 775 and 830 of 2009 that those who had thus passed are

entitled to be considered for the promotion, which also came to be confirmed in W.P.Nos.8269 and 8270 of 2010, it is too late in the day for the Department to rely on a circular dated 25.03.2009, that the petitioners are not eligible for promotion to AAO(Ad-hoc) post. In any of the earlier proceedings the Department has not brought this to the notice of the Tribunal.

6. Per contra, the learned counsel for the Department would argue that the order in O.A.Nos.775 and 830 of 2009 were passed in ignorance of the circular, dated 25.03.2009. And, this circular though in existence, yet was not brought before the Tribunal and this court in the earlier rounds of litigations, since, the point involved then was either, if the petitioners who passed SOGE (Audit) Part II could be compulsorily deputed to the Audit wing, or, if passing SOGE(Audit) Part II could be equated to passing SOGE(Accounts) Part II in order petitioners could be declared to have passed both SOGE(Accounts) Part I & II, and not the effect of the Circular dated ***25.03.2009** on the service of those who were deemed to have passed both the SOGE (Accounts) exams such as the petitioners. And, when retrospective promotion as AAO(Ad-hoc) was granted to the petitioners, it was appeared to have been granted in ignorance of the Circular dated ***25-03-2009**, and when this pointed out by the 2nd respondent, the mistake done earlier was corrected.

7.1 This Court considers that the petitioners appear to be interpreting the Orders passed in O.A.775/2009 and O.A830/2009, which later came to be confirmed in W.P.8269 of 2009 and W.P. 8270 of 2009, to seek an advantage for themselves.

7.2 It is now an indisputable fact that the petitioners were deemed to have cleared both SOGE (Accounts) exams, even though technically they had not passed SOGE (Accounts) Part II examination. This definitely would grant them an opportunity to be considered for promotion to AAO (Adhoc) in the Accounts Wing. The point however is, will that enable them to gatecrash into the scheme covered by Circular dated ***25-03-2009**, and qualified by another Circular dated 08-07-2009, for obtaining promotion to the wait-listed SOGE passed officials [those who had passed both Parts I and II in SOGE (Accounts)] to the promotional post, a scheme put in place solely to break the stagnation in that wing.

8. The petitioners do not dispute that the Circulars dated ***25-03-2009** and 07.09.2009, which provide for creating a new post called Section Officer (temporary), and posting the Section Officer (adhoc) to the newly created post by regularising the said post, and then to promote the wait-listed SOGE(Accounts) passed candidates., i.e. those who had passed both SOGE (Accounts) Part I & II exams to the post of Section Officer

(Adhoc).

9. The Circular No.44, that enabled those who passed Part I in SOGE(Accounts) to participate in Part II exam in SOGE (Audit) itself came to be issued only on 16-12-2003. There is nothing in this Circular to supersede the effect of the earlier Circular dated ***25-03-2009.** It is now an admitted fact that the petitioners had passed Part II exams in SOGE(Audit) by January, 2007, and now the Department had come with a circular dated 25-03-2009, which inter alia provided:

> "i) All ad-hoc Section Officers in A&E offices will be regularised by converting existing posts of ad-hoc Section Officers into regular temporary posts of Section Officers. The posts held by them before their promotion as adhoc Section Officers would continue to be held in abeyance.
>
> ii) New posts of adhoc Section Officers will be created to promote all waitlisted SOGE(Accounts) passed officials. Existing posts held by these officials would be kept in abeyance.
>
> iii)Officials declared passed on their passing common papers taken as part of SOGE(Audit) belonging to offices or categories where SOG (Accounts) examinations have been suspended, will not be promoted as adhoc Section Officers as indicated in (ii) above. "

In this scenario, if the Common Order of the Tribunal in O.A.775/209 and 830/2009 is turned to, the question before the Tribunal was to grant them promotion in the Accounts Wing by virtue of their deemed pass in SOGE(Accounts) as Adhoc Section Officer in terms of Circular dated ****12.08.2003** and Circular No.16, dated 25-03-2009. In upholding their right to be considered for the promotion, the Tribunal directed the respondents (Department) "to consider the case of …. the applicants, who are otherwise fit for regularisation under the scheme formulated without insisting on them to go on deputation against their will. However, we make it clear that we not passing any order on the merit of the other conditions of the impugned Order dated 08-07-2009."

10. Thus, the only aspect where the Tribunal has granted the petitioners a relief was to grant them a reprieve from forced-deputation to Audit Wing, but as to the rest it did not gave any directions to bend the rest of the conditions to accommodate the petitioners. As already indicated this Order was confirmed by this Court in WP.8269 of 2009 and WP.8270 of 2009.

11. What emerges is that when a certain parity was achieved in eligibility criterion for promotion, that would enable the petitioners only to seek promotion in the SOGE (Accounts) wing itself without any need to submit to the circular dated 08-07-2009 and let themselves absorbed in commercial Audit Wing. But that at any rate does not grant them the right to pierce the wait-listed group of officials who had passed both Part I & II of SOGE(Accounts) as on ***25-03-2009.** To state it differently, the petitioners would be eligible to be considered for promotion to the post of AAO(Ad-hoc) to which they would not have been otherwise entitled to but for the Order of the Tribunal in O.A.775/2009 and O.A.830/2009, but still they do not have right to jump the queque to seek promotion retrospectively.

12. As to what is to follow, the argument of the respondent counsel states it all. This Court is in absolute agreement with the said submissions. This indeed is also the view of the Tribunal. What has happened is only correcting an erroneous promotion granted retrospectively. The second part is to require the petitioners to repay the excess salary they had earned for the period they had not served in the promotional post. This is also absolutely in order.

13. In conclusion this court does not find any merit in the case of the petitioners and both the petitions are liable to be dismissed. However, so far as repaying the excess salary repayable, the same is directed to be realised in 36 monthly installments, or such number of installments not beyond the date of superannuation of the petitioners, whichever is earlier. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VI)
Dated: 04.10.2019

*** Corrected as per order of this Court dated 23.01.2020 Para 6,7.2,8,9 & 11**
sd/- Assistant Registrar(CS III)
Dated: 19.03.2020

//True Copy//

Sub Assistant Registrar

tsg/ds

To:

1.The Comptroller and Auditor General of India,
Union of India
10, Bahadur Shah Zafar Marg,
New Delhi - 110 002.

To be substituted to the order already despatched on 11.10.2019

2. The Central Administrative Tribunal,
Madras Bench,
Rep. by Registrar,
City Civil Court Building,
High Court, Madras.

3. The Senior Deputy Accountant General(Admin),
O/o the Accountant General(A & E),
Chennai - 600 018.

4. The Principal Accountant General(A&E),
Tamilnadu,
Chennai - 600 018.

5.Jeyanthsiva D/o. Late G. Raja
No.1/1 Happy Home
Pallavaram Salai
Nesapakkam
West K.K. Nagar, Chennai 600 078.

6.K. Amirthalakshmi
D/o. M.N. Parthsarathy
H 100, Subramanian Colony Velacherry
Chennai 42.

7.D. Ramyaa Perundevi
D/o.V.R. Rajagopalan
No.225/5, Rohii Flats, Anna Nagar West Extension
Chennai 600 101.

8.Vrinda Sundar So.E.K. Venugopalan
No.98, Chidambaranan Street
Ramkrishnan Nagar, Chennai 600 087.

+1cc to Mr.V.Vijayshankar, Advocate, S.R.No.82832, 82834
+1cc to Mr.S.Sadasharan, Advocate, S.R.No.82749
+1cc to Ms.L.Maithili, Advocate, S.R.No.82834

W.P.No.5978 of 2019 and W.P.No.7472 of 2019

RSI(CO)
CS/09/10/2019
SP(19/03/2020)