

DEBRAJAN RAY & ORS.

v.

COMPTROLLER & AUDITOR GENERAL
OF INDIA AND ORS.

November 13, 1984

[R. S. PATHAK AND V. BALAKRISHNA ERADI, JJ.]

Administrative Law—Scheme framed by office of Accountant General, West Bengal by Office Order No. TM 96 dated June 8, 1966 for promoting Upper Division Clerks who had not passed Subordinate Accounts Service Examination—Whether violative of Arts. 14 and 16 of the Constitution—Held—No—Scheme upheld.

At one time all holders of supervisory posts in the office of the Accountant General, West Bengal were required to pass the Subordinate Accounts Service Examination before crossing the age of 45 years. In 1966, for improving the working of the office of the Civil Accountants General, a scheme was framed by an Office Order No. TM 96 dated June 8, 1966. The scheme provided that passing the Subordinate Accounts Service Examination would not be a necessary qualification for holding supervisory posts where the work involved was entirely of an accounting-cum-administrative nature and the knowledge of rules and accounts of a very high standard was not required. To be eligible for promotions the Upper Division Clerks and Section Grade Clerks should have put in not less than 20 years of service in the Upper Division Clerical Cadre and should have exhausted all chances of appearing in the Subordinate Accounts Service Examination or by reason of being over 45 years of age were no longer eligible to appear at the Subordinate Accounts Service Examination. The appointments were temporary and the appointees were not eligible for further promotion. A number of appointments were made under the scheme. The appellants challenged the appointments on the ground that in confining the zone of eligibility to Upper Division Clerks who had not passed the Subordinate Accounts Service Examination the scheme brought about an invidious discrimination which was violative of Arts. 14 and 16 of the Constitution. A single Judge of the High Court quashed the scheme. An appeal filed by the Comptroller and Auditor General of India was allowed by a Division Bench of the High Court. Hence this appeal by special leave.

Dismissing the appeal,

HELD : The scheme was intended to provide a separate avenue of promotion for those Upper Division Clerks who had put in 20 years of service or more in their cadre and who had exhausted all their chances of appearing at the

A Subordinate Accounts Service Examination for promotion to supervisory posts, or who having crossed the age of 45 years, were no longer eligible to appear in the Examination. These indicia distinguished that category of Upper Division Clerks from others. If the scheme had been thrown open to Upper Division Clerks who still enjoyed the possibility of recruitment to the Subordinate Accounts Service, the intent underlying the scheme would have been defeated.

B The appellants, although senior in length of service to the respondents promoted under the scheme, were still eligible to appear in the Subordinate Account Service Examination and the opportunity of advancement in their regular promotional channel was still available to them. Those promoted under the scheme were not entitled to further promotion to any higher post. The impugned scheme follows a clearly defined classification having a reasonable nexus to the object of the classification. Those who fall outside the scheme cannot complain of discrimination, for intelligible differentia exist between those included within the scheme and those outside it. The framing and implementation of such a scheme falls within the scope of administrative policy, and having regard to the object underlying the scheme as well as its careful definition there is no basis for complaint by the appellants. [48 H; 49 A-F]

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State of Jammu and Kashmir v. Triloki Nath Khosa and Ors., [1974] 1 S.C.R. 771, not relevant.

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1033 of 1979.

Appeal by Special leave from the Judgment and Order dated the 6th July, 1978 of the Calcutta High Court in Appeal from Original Order No. 497 of 1970.

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R.K. Garg, V. J. Francois and N.M. Popli for the Appellant.

Harbans Lal, R.N. Poddar and C.V.S. Rao for the Respondent.

F The Judgment of the Court was delivered by

PATHAK, J. This appeal by special leave raises an interesting question respecting the recruitment of Upper Division Clerks for appointment as Accountants in the office of the Accountant General, West Bengal.

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It appears that at one time all holders of supervisory posts in the office of the Accountant General, West Bengal were required to pass the Subordinate Accounts Service Examination. The examination consisted of two parts. Every eligible employee was entitled to five chances to pass the Part I examination, and having passed that he had to pass the Part II examination before he crossed the age of 45 years. In 1966 the Comptroller and Auditor General of India

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considered it necessary to take measures for improving the working of the offices of the Civil Accountants General because it had been reported by the Directors of Inspection that the accounting-cum-administrative work was suffering considerably and the quality of local inspection was poor. It was also felt that some accounting-cum-administrative supervisory posts could be filled by clerks who had not been able to pass the Subordinate Accounts Service but who had long years of experience and a good record of service and possessed sufficient administrative ability. It was expected that while this measure would afford an avenue of promotion to Upper Division Clerks who had no hope of entering the regular channel of promotion through the Subordinate Accounts Service examination, it would release more Subordinate Accounts Service accountants for inspection work and other important assignments requiring greater technical knowledge and application. Accordingly, a scheme was framed by an Office Order No. TM 96 dated June 8, 1966 for filling up some of the posts of a purely accounting-cum-administrative nature by Upper Division Clerks (including Selection Grade Clerks) who were not members of the Subordinate Accounts Service. They were to be known as Accountants. This was to be effected without reducing the total number of existing posts for which the Subordinate Accounts Service men were eligible. The scheme provided that in view of the acute shortage of Subordinate Accounts Service personnel for intensive local audit of a large number of schemes and programmes then in operation the offices would be reorganised in such a way that passing the Subordinate Accounts Service Examination would not be a necessary qualification for holding supervisory posts where the work involved was entirely of an accounting-cum-administrative nature and the knowledge of rules and accounts of a very high standard was not required. It was stipulated that Upper Division Clerks and Selection Grade Clerks who had not passed the Subordinate Accounts Service Examination should be taken on the basis of their experience, administrative ability and a good record. There was no reservation of posts for those Clerks. The scheme only made them eligible for holding those posts. To be eligible the Upper Division Clerks and Selection Grade Clerks should have put in not less than 20 years of service in the Upper Division Clerical Cadre and should have exhausted all chances of appearing in the Subordinate Accounts Service Examination or by reason of being over 45 years of age were no longer eligible to appear at the Subordinate Accounts Service Examination. The appointments were temporary and their continuance would depend upon the satisfactory performance of their duties assessed on the basis of six monthly reports. It was made

A clear that they would not be eligible for promotion as Assistant Accounts Officers. It seems that a fair number of such appointments were made with effect from June 15, 1966 by the Accountant General, West Bengal by his letter No. ADMN/37 dated June 9, 1966.

B The appellants who had originally been appointed as Upper Division Clerks in the office of the Accountant General, West Bengal and at the relevant time were permanent Selection Grade Clerks on their reversion from temporary appointments as Clerks-in-charge in different sections of the office of the Accountant General, West Bengal, filed a writ petition challenging the appointments under the scheme alleging that they were entitled to be considered for appointment to those posts. They contended that in confining the zone of eligibility to Upper Division Clerks who had not passed the Subordinate Accounts Service Examination the scheme brought about an invidious discrimination which was violative of Arts.14 and 16 of the Constitution.

D By his judgment and order dated June 2, 1970 a learned Single Judge of the Calcutta High Court allowed the writ petition and quashed the scheme. An appeal by the Comptroller and Auditor General of India was allowed by a Division Bench of the High Court by its judgment and order dated July 6, 1978. It set aside the judgment of the learned Single Judge and dismissed the writ petition.

E Before us, learned counsel for the appellant raises substantially the same point which was pressed before the High Court in the writ petition. The principle contention is that the scheme violates Arts.14 and 16 of the Constitution because in defining the conditions of eligibility there is no reasonable basis for discriminating between those who can no longer appear at the Subordinate Accounts Service Examination and those who can still do so.

F G H It is evident that the scheme was intended to provide a separate avenue of promotion for those Upper Division Clerks who had put in 20 years of service or more in their cadre and who had exhausted all their chances of appearing at the Subordinate Accounts Service Examination for promotion to supervisory posts, or who having crossed the age of 45 years, were no longer eligible to appear at that Examination. These indicia distinguished that category of Upper Division Clerks from others. The entire purpose of the scheme was to provide an avenue of promotion for those Upper Division Clerks

who because they were no longer eligible to appear at the Subordinate Accounts Service Examination would be compelled otherwise to stagnate in their existing cadre. An incentive was thus provided to them. There was the hope that efficiency and industry in their present posts would be rewarded promotion. If the scheme had been thrown open to Upper Division Clerks who still enjoyed the possibility of recruitment to the Subordinate Accounts Service, the intent underlying the scheme would have been defeated. The appellants, although senior in length of service to the respondents promoted under the scheme, were still eligible to appear in the Subordinate Accounts Service Examination and the opportunity of advancement in their regular promotional channel was still available to them. It may be observed that promotion under the scheme was purely temporary and further continuance on the promotional post depend upon the satisfactory performance of duties monitored every six months. They were barred from promotion as Assistant Accounts Officers, and therefore after promotion to the supervisory posts of Accountants under the scheme they were not entitled to further advancement or promotion to any higher post. On the other hand, the appellants, in the event of their success at the Subordinate Accounts Service Examination, were entitled to substantive appointment by promotion to supervisory posts, and thereafter eligible for further promotion to still higher posts. We are satisfied that in providing a separate channel of promotion governed by its own conditions of eligibility the impugned scheme follows a clearly defined classification having a reasonable nexus to the object of the classification. Those who fall outside the scheme cannot complain of discrimination, for intelligible differentia exist between those included within the scheme and those outside it. The framing and implementation such a scheme falls within the scope of administrative policy, and having regard to the object underlying the scheme as well as careful definition we see no basis for complaint by the appellants.

Our attention was invited by learned counsel for the appellants to *State of Jammu and Kashmir v. Triloki Nath Khosa and Ors.*⁽¹⁾ but learned counsel has been unable to show how that case is relevant on the facts of the instant case.

The appeal fails and is dismissed but, in the circumstances, there is no order as to costs.

H.S.K.

Appeal dismissed.