

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.2251/99

New Delhi this the 22nd day of December, 2000.

HON'BLE MR. JUSTICE V. RAJAGOPALA REDDY, VICE-CHAIRMAN  
HON'BLE MR. GOVINDAN S. TAMPI, MEMBER (ADMNV)

Sh. T.C.Gambhir  
Audit Officer  
Office of the Director General of Audit  
Central Revenues, I.P.Estate  
New Delhi - 110 002. .. Applicant

(By Advocate: Shri Naresh Ghambir, proxy of Shri  
V.P.Sharma)

-Versus-

1. Controller & Audit General of India  
Bahadur Shah Zafar Marg  
New Delhi - 110 002.
2. The Director General of Audit  
Central Revenues, I.P.Estate  
New Delhi - 110 002.
3. Deputy Director (Admn.)  
Office of the Director General of Audit  
Central Revenues, I.P.Estate  
New Delhi - 110 002.
4. Senior Audit Officer (Admn.)  
Office of the Director General of Audit  
Central Revenues, I.P.Estate  
New Delhi - 110 002.
5. Shri Bahadur Singh  
Audit Officer  
Office of the Director General of Audit  
Central Revenues, I.P.Estate  
New Delhi - 110 002.
6. Shri Mohinder Minhas  
Audit Officer  
Office of the Director General of Audit  
Central Revenues, I.P.Estate  
New Delhi - 110 002. ... Respondents

(By Advocate: Shri M.K.Gupta, for R-1 to R-3)

O R D E R

By Mr. Govindan S. Tampi, Member (A)

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Seniority in the grade of Audit Officers in the  
Directorate General of Audit, Central Revenue, New Delhi  
is under challenge in this OA.

2. The applicant, who joined as an Auditor in 1982 in the office of the respondents became the Section Officer in 1986 and was promoted as Assistant Audit Officer (Class II post) in 1990 and became an Audit Officer in March, 1997. S/Shri Balbir Singh Sharma and Mohinder Minhas, respondents 5 and 6 were also working as Assistant Auditor Officer and were seniors to him. However, when the vacancy for the promotion to the grade of Audit Officers arose in 1996 both Shri Balbir Singh Sharma and Mohinder Minhas declined to take the promotion and the same was accepted. They were subsequently promoted in October and December, 1997, i.e., a few months after the applicant was actually promoted as Audit Officer in March, 1997. Still in the gradation list of Audit Officers as on 1.3.1999, issued on 16.6.99 he had been shown below the said two individuals. Hence this challenge.

3. Heard both the counsel for the applicant and the official respondents. None appeared for the private respondents 5 and 6, though notices have been issued to them as well. The learned proxy counsel appearing for the applicant, *S. Narend Gaurhi* reiterates his pleas in the OA and states that his having been promoted and having joined as Audit Officer in March, 1997 itself, he could not be declared as junior in that cadre to respondents 5 and 6 who had chosen not to take the promotion on an earlier date for their own reasons. He cannot be made to suffer for the actions of the respondents, though they were originally his seniors as they have declined to be promoted and were actually promoted only after one year.

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4. Shri M.K. Gupta, learned counsel appearing for the respondents states that in accordance with the instructions in force in the respondents organisation the "officers categorised as 'fit' should be placed in the panel in the order of their seniority in the grade from which promotions are to made". As the respondents 5 and 6 were originally senior to the applicant and their place in the approved panel for the year 1997 was above the applicant, they were assigned seniority above him and correctly so. Accepting the plea of the applicants would mean that the respondents 5 and 6 are being punished twice over which was not correct. Further, the applicant was not the seniormost among the persons who had become Audit Officers following the refusal of the respondents to take up the promotion in 1996 and, therefore, granting the applicant the seniority in place of the respondents would mean assigning him a position even above his natural seniors, who had become Audit Officers earlier, following the refusal of respondents 5 and 6, which cannot be permitted. The learned counsel, therefore, pleads that the application be dismissed as being devoid of any merit.

4. We have given careful consideration to the rival contentions. While the applicant pleads that he be placed above his original seniors who became Audit Officers on a stage later than his date of promotion, the respondents indicate that their having been placed in the Select Panel of 1997 above him, they should get the seniority. We are not convinced of the plea by the respondents. Admitting that applicant was originally junior to the respondents 5 and 6 in the feeder cadre, it has to be accepted that the latter had chosen to decline promotion when their turn came

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in 1996 and were obviously debarred from promotion till completion of one year, i.e., till October and December 1997 respectively. In between the applicant was promoted as Audit Officer and had assumed charge on 10.3.97 and served for nearly 10 months in that capacity. The respondents who have on their own volition chosen to have the promotion postponed by a year cannot stake their claim of seniority as if they have been actually promoted before the applicant in March, 1997. Their seniority in the grade of Audit Officer can be only from the date on which they assumed charge in that capacity and not earlier. Otherwise it would go against violation of the conditions under which their option to refuse promotion was originally accepted and they were debarred from promotion for one year. This does not, in any way, mean that they are being punished twice over as claimed by the learned counsel for the respondents. They are only being granted the status which they chose to accept while they refused the promotion in 1996. In the circumstances, they cannot gain seniority over the applicant in the grade of Audit Officer. We are also not convinced of the plea on behalf of the respondents that placing the applicant above the respondents 5 and 6 would be granting him seniority even over his natural seniors who have become Audit Officers before him in March, 1997. This is a wrong assumption. Grant of seniority to the applicant above respondents 5 and 6 would only mean that they would come down below the applicant in the seniority list as Audit Officers and not that he would gain seniority over his other natural seniors, who have become Audit Officers prior to March, 1997. This is as it should be.

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6. In the result, the application succeeds and is accordingly allowed. The Gradation List of Audit Officers as on 1.3.1999 is quashed with a direction to the respondents to issue a fresh list, placing respondents 5 and 6 - Balbir Singh Sharma at Serial No.15 and Mohinder Minhas at Serial No.16 - below the applicant, who is presently shown at Serial No.23. This should be done within three months from the date of receipt of a copy of this order. We would add that the revision of seniority for the applicant vis-a-vis respondent No.5 and 6 would not make him senior to others who have become Audit Officers before him, and who would continue to be his seniors in their cadre. The application is disposed of as above. However, in the circumstances of the case, we do not order any costs.

(S. INDAN S. TAMPI)  
MEMBER(A)

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(V. RAJAGOPALA REDDY)  
VICE-CHAIRMAN(J)