

Central Administrative Tribunal
Principal Bench

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O.A. No. 79 of 1998

New Delhi, dated this the 11th May 1999

Hon'ble Mr. S.R. Adige, Vice Chairman (A)

S/Shri

1. J.P. Dhingra,
S/o Shri T.R. Dhingra,
Asst. Audit Officer,
O/o the Pr. Director of Comm. Audit
& Ex-Officio, Member, Audit Board III,
R/o House No.2, Indira Colony,
Model Town,
Panipat-132103.
Haryana.
2. Ashok Kumar,
S/o Shri Ajit Singh,
Asst. Audit Officer. Applicants

(By Advocate: Shri E.X. Joseph,
Sr. Counsel with Shri Praveen Khattar)

Versus

1. The Comptroller & Auditor General of India,
10, Bahadur Shah Zafar Marg,
New Delhi-110002.
2. The Principal Director of
Commercial Audit & Ex-Officio
Member, Audit Board III,
'A' Block Hutments,
Behind South Block,
New Delhi-110011.
3. Union of India through
the Secretary,
Ministry of Personnel, Public
Grievances & Pensions, North Block,
New Delhi-110001. Respondents

(By Advocate: Shri Madhav Panikar)

O R D E R

BY HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)

Applicants impugn respondents' orders dated
24.1.96 (Ann. A-1) and dated 25.7.97 (Ann. A-3)
and seek a declaration that they are entitled to be
granted the benefits contained in CAGI's orders

dated 7.9.87 (Ann. A-4) and dated 18.4.91 (Ann. A-5) and are entitled for the advance increments as laid down in the Scheme and other benefits:

2. By Circular dated 7.9.87 (Ann. A-4) CAGI liberalised the scheme of granting incentive on passing ICWA examination such that two advance increments became admissible on passing ICWA (Intermediate) Examination and four advance increments on passing ICWA (Final) Examination. By CAGI circular dated 18.4.91 (Ann. A-5) advance increments were allowed even to those who resigned from service before they were actually drawing the advance increments under the scheme. There was no mention of any Govt. of India order in the aforesaid two orders of CAGI.

3. Applicants themselves admit that Govt. of India ~~has~~ replaced the incentive scheme of advance increments to one of lumpsum amount w.e.f. 1.4.93 vide its O.M. dated 28.6.93 (Ann. A-6) and had appointed a Committee to lay down standards of incentive for each type of qualification. They further admitted that Govt. of India by order dated 31.1.95 (Ann. A-7) on considering the recommendations of the Committee sanctioned Rs.4,000/- in place of two advance increments on passing of ICWA (Intermediate) Examination and additional Rs.6,000/- in place of four advance increments on passing ICWA (Final) Examination i.e. Rs.10,000/- in place of six advance increments. Applicants who joined the Indian Audit & Accounts

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Dept. in June, 1972 and October, 1987 respectively state that they came to know about Govt. of India's aforesaid orders only after 26.2.96 on which date by office endorsement to the letter dated 24.1.96, the CAGI circulated the revised incentive Scheme w.e.f. 31.1.95.

4. Applicant No.1 asserts that he applied for permission to take up ICWA Examination in June, 1989 which was granted to him in July 1989 and he passed ICWA (Intermediate) Examination in June, 1993 and was granted two advance increments w.e.f. June, 1993. Thereafter he joined the ICWA (Final) Examination in September, 1993. He states that he attempted all the available opportunities but ⁿcould qualify in one Group in December, 1995 i.e. before the issue of letter dated 24.1.96 and qualified the remaining Group in June 1996 i.e. after the issue of CAGI's circular dated 24.1.96. He states that R-2 sanctioned Rs.6000/- lumpsum incentive in view of the ^{C.A.G.I's endorsement} ~~Govt. of India's orders~~ dated 26.2.96 and thus he has been denied the benefit which laid down in order dated 7.9.87.

5. Similarly applicant No.2 had applied for permission to join the ICWA Examination in June, 1988 and the same was granted to him in August, 1988. He passed the ICWA (Intermediate) Examination in December, 1989 and was granted two advance increments w.e.f. December, 1989. After which he got admission into the ICWA (Final) Examination in January, 1990 and attempted all the

available opportunities but ~~could~~² qualify in one Group in June, 1993, i.e. before the issue of respondents' order dated 24.1.96. He qualified in the remaining Group in June, 1996 i.e. after the issue of the aforesaid letter dated 24.1.96 and was accordingly sanctioned lumpsum incentive of Rs.6000/- but was denied the benefits which laid down in the order dated 7.9.87.

6. Applicants contend that they had appeared in the ICWA Examination only because of the assurance contained in the order dated 7.9.87 in regard to the grant of advance increments, and the benefits of the Scheme cannot be withdrawn after they had appeared in the aforesaid Examination and passed the same. They contend that they have spent considerable amount of money in preparing the aforesaid examination and they would not have undertaken this difficult task unless the Scheme of 7.9.87 had laid down various benefits such as grant of advance increments on passing the aforesaid Examination. They contend that the impugned orders are hit by doctrine of promissory estoppel and are unjust and unfair and unreasonable.

7. Respondents in their reply challenge the O.A. They assert that the lump sum incentive given to the applicants is in accordance with the CAT Hyderabad Bench judgment dated 11.4.97 in O.A.No.678/96 A.A.Narasimha Murthy Vs. Comptroller & Auditor General of India & ors. holding that the revised order dated 6.1.96 could have only prospective effect. They state that applicants were

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granted 2 advance increments for passing the ICWA (Intermediate) exam in accordance with the then applicable scheme. They however, failed to clear the ICWA (Final) Exam. before the issue of the circular dated 24.1.96 replacing the scheme of sanction of advance increments by lump sum incentives and could do so only in June, 1996 when the provisions of the circular dated 24.1.96 were well known to them, and cannot now claim the benefits of the scheme as it stood prior to its modification. Respondents deny that applicants have been deprived of any right that accrued to them. They state that the incentive scheme laid down in the order dated 7.9.87 had been duly revised and modified vide circular dated 24.1.96 much before June, 1996 when applicants passed the ICWA(Final) Exam. and they have been duly allowed the lump sum incentive as admissible in terms of the revised scheme in force on the date of passing the examination.

8. Applicants have filed their rejoinder in which they have denied respondents' contentions and broadly reiterated their own.

9. I have heard Shri E.X. Joseph learned Sr. Counsel for applicants and Shri Madhav Panikar for respondents.

10. Shri Joseph has reiterated the grounds urged in O.A., namely the applicant had acted on the assurance held forth by the department in regard to the grant of advance increments if they passed the ICWA exam., the benefits of the scheme could not be withdrawn after they had appeared in the exam. and also passed the

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same. He has contended that the order issued on 24.1.96 if applied to the applicants would amount to giving retrospective effect to the said order which is not legally tenable. It has been emphasised that the impugned order is hit by promissory estoppel, and is unjust, unfair and unreasonable, particularly as the issue of the revised impugned order amounted to taking away the accrued rights of applicants. Various judgments have been cited by Shri Joseph in support of his contentions including M.P Sugar Mills Vs. State of U.P. AIR 1979 SC 621; Anil Kumar Gupta Vs. Punjab University 1991(2) SLR 481; Ramana Vs. I.A. Authority of India AIR 1979 SC 1629; UOI Vs. Anglo Afghan Agencies AIR 1968 SC 718 (para 23); and Kuldeep Kaur Vs. Punjab School Edu. Board 1991(1) SLR 531.

11. I have considered the matter carefully.

12. It is not the case of the applicants that the grant of advance increments was a part of the terms and conditions of their appointment. The advance increments were only by way of an incentive to encourage employees already in service to obtain higher qualification. The advance increments admissible to those who passed the ICWA (Intermediate) Exam. was separate and distinct from the advance increments admissible to those who passed the ICWA (Final) Exam.; and what is important to note is that the claim for grant of advance increments on the part of the employees, and the fulfilment of the promise on the part of respondents to pay the same, would arise only ^{if} on the employees actually passing the exam. and not merely on appearing for it. Applicants

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admittedly have been paid the 2 advance increments for clearing the ICWA(Intermediate) Exam. In so far as the ICWA(Final) Exam. is concerned, applicants' right to claim the incentive accrued, and respondents' ^{obligation} ~~obligation~~ to make payment of the same arose, only upon applicants clearing the ICWA(Final) exam. in June, 1996, but meanwhile on 24.1.96 the incentive scheme had been modified such that payment of advance increments was replaced by payment of a lump sum amount, and admittedly this lump sum amount has also been paid to them. Applicants also admit that they came to know of the modification in the incentive scheme after 24.2.96, that is before June, 1996 when they cleared the ICWA(final) Exam. It would have been a different matter if applicants had cleared the ICWA(Final) Exam. before 24.1.96 in which case their right to claim 6 advance increments and not a lump sum amount would have accrued before the scheme were modified, and in that case if they had been denied the 6 advance increments, respondents could rightly have been held responsible for taking away the vested right of applicants by retrospective application of an order, but that is not the case here.

13. It therefore cannot be said that respondents actions are unjust, unfair or unreasonable and take away the vested rights of applicants by retrospective application of an order, or that it is hit by promissory estoppel and in the facts and circumstances noticed above, the rulings relied upon by Shri Joseph do not advance applicants' case.

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14. The OA is therefore dismissed. No costs.

S.R. Adige
(S.R. ADIGE)
VICE CHAIRMAN (A).

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