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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO.2334/2000 &
M.A. NO.2771/2000

New Delhi this the 4th day of September, 2001.

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN

HON'BLE SHRI V.K. MAJOTRA, MEMBER (A)

1. B.Srikanth
S/o Shri L.B.S.Manian
R/o Sector-4/887, R.K.Puram
New Delhi.
2. R.K. Semwal
S/o Shri S.P.Semwal
R/o Sector-7/245, R.K.Puram
New Delhi.
3. Pravin Kumar Grover
S/o Shri Nandlal Grover
R/o A-/74-A, Hastal Road
Uttam Nagar, New Delhi. ... Applicants

(By Sh. A.K.Behera, Advocate)

-versus-

1. Comptroller & Auditor General of India
10, Bahadur Shah Zafar Marg
New Delhi-110002.
2. Director General of Audit
Office of the Director General of Audit
Central Revenues
New Delhi-110002. ... Respondents

(By Shri M.K.Gupta, Advocate)


O R D E R (ORAL)

Shri V. K.Majotra,M(A):-

MA No.2771/2000

MA No.2771/2000 for joining together in a single
OA is granted.

2. Whereas applicants 1 and 2 were appointed as
direct recruit Section Officers on 1.9.1992 in the
Indian Audit & Accounts Department in pursuance of
their selection in the recruitment tests of Section
Officer (Audit) held by the Staff Selection



Commission, applicant No.3 was appointed similarly on 4.1.1995. Whereas applicant No.1 appeared in the departmental test i.e. Section Officers Grade Examination (SOGEx) and qualified the same in November, 1997, applicants 2 & 3 qualified the SOGE in December 1996. Whereas the respondents are counting the eligibility of the applicants for promotion to the next higher grade i.e. Assistant Auditor Officer (AAO) not on the basis of their date of initial and continuous appointment as direct recruit Section Officers (Audit) after being appointed after selection by the Staff Selection Commission but from the date of declaration of the results of the SOGE in which the applicants qualified thereby depriving them the benefit of their service rendered prior to their passing the SOGE for the purpose of promotion. The applicants have sought that the service rendered by them from the dates of their initial appointment i.e. 1.9.1992 and 4.1.1995 respectively as direct recruit Section Officers before qualifying in the departmental test i.e. SOGE be treated to be regular service for the purpose of eligibility for promotion to the grades of AAO and AO and further promotions. They have also sought a direction to the respondents to consider them for promotion as AAO and further promotion and on being found fit promote them as such from the due dates.

2. In their counter reply, the respondents have stated that the applicants were appointed as Section Officer on regular basis with effect from 16.6.1998, 26.5.1997 and 26.5.1997 consequent upon their passing the SOGE Part II respectively. According to them, as



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the applicants had been appointed on probation for two years and as per the terms and conditions of their appointment, they were supposed to undergo a regular course of training and also qualify in the SOGE within the period of probation. They are treated to be appointed on regular basis with effect from their successful completion of training and qualifying the SOGE. The respondents have refuted the claim of the applicants that when a person is appointed on probation on a particular post, he is said to be holding the post substantively and his appointment is substantive. According to the respondents, a probationer means a Government servant employed on probation in or against a substantive vacancy in the cadre of a department. It does not mean that a person employed on probation holds the post substantively as sought to be projected. The respondents have further maintained that as regular service only counts for determining the eligibility for promotion as AAO, the period of 3 years as a crucial date is taken into account from the date of passing the SOGE and it is wrong to count 3 years from the date of initial appointment as Section Officer probationer. The respondents have also raised three preliminary objections. First that the applicants have not challenged the seniority list of the grade of Section Officer; the second that the application suffers from the vice of non-joinder of necessary parties and the third that the settled matters of promotion and seniority cannot be unsettled after lapse of time especially when parallel rights in favour of others have arisen during the period. The respondents have also stated that the OA is badly barred by limitation.

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4. We have heard the learned counsel of both sides and considered the material on record.

5. As respects the preliminary objection relating to the point that the seniority list of the grade of Section Officers has not been challenged by the applicants, the learned counsel of the applicants contended that the seniority is not the issue in this OA, it is the eligibility of the applicants for the purpose of counting the qualifying service for promotion to the next higher grade of AAO. The learned counsel of the applicant also submitted that after the applicants have qualified in the SOGE, the respondents have not issued any seniority list in the grade of Section Officer (Audit) and, therefore, the question of challenging the relative seniority list does not arise at all. *We are convinced about this reasoning and as such reject this objection of the respondents.*

6. As to the preliminary objection relating to non-joinder of necessary parties, the learned counsel relied on a decision of the Supreme Court in the case of **A. Janardhana v. Union of India & others**, (1983) 3 SCC 601 to contend that in the present OA, it is the policy matter or interpretation of rules which is in question and not the seniority of any employee. In the cited case too, the appellant had not claimed seniority over any particular individual in the background of any particular fact controverted by that person against whom the claim was made. The criteria adopted by the Union Government in drawing up the impugned seniority list was questioned. Thus it was held that the relief was claimed against the Union of India and not against any particular individual. It

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was further held that in such proceedings, the necessary parties to be impleaded are those against whom the relief is sought, and in whose absence no effective decision can be rendered by the court. In the present case, the applicants have not assailed any seniority list as no occasion for them has arisen for challenging any seniority list as no such seniority list has been issued after they qualified in the SOGE. In this view of the matter in the present case too, we find that the vice of non-joinder of necessary parties is absent. As to the third preliminary objection relating to unsettling the settled matters of promotion and seniority, the learned counsel of the applicants contended that the applicants belong to the first batch of direct recruit Section Officers in the Indian Audit and Accounts Department. Here too, the question of unsettling the settled matters of promotion and seniority does not arise at all as the question of eligibility of the applicants had arisen for the first time for the purpose of promotion to the grade of AAO and for further promotion. Exception claimed by the respondents as to limitation is also rejected.

7. The learned counsel for the respondents relying on a decision of the Hyderabad Bench of this Tribunal rendered on 19.8.1999 in OA No.1339 of 1996 in the case of M.Srinivasa Prasad & ors. v. The Comptroller & Auditor General of India & ors. contended that the applicants having joined accepting certain service conditions cannot demand their seniority, eligibility and promotion from the date of their initial appointment contrary to the rules and

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contrary to the acceptance of **specific conditions** at the time of their appointment. Drawing our attention to para 5.6.6 (iii) Chapter V of the Comptroller and Auditor General's Manual of Standing Orders (Administrative) Volume-I (Third Edition), he contended that the seniority of direct recruit Section Officers on probation is effective on their actual taking over charge of the post or on termination of the probation after passing of the SOGE, whichever is later. Such direct recruits will be eligible for appointment as Section Officers only after the fulfilment of various conditions and satisfactory completion of the period of probation. The learned counsel stated that the aforesaid decision of the Tribunal dated 19.8.1999 was carried by the applicants to the Hon'ble High Court of Judicature, Andhra Pradesh in Writ Petition No.21175 of 1999 where the view expressed by the Tribunal was held to be just and proper and the writ petition was dismissed.

8. The learned counsel of the applicants contended that the case of M.Srinivasa Prasad (supra) related to seniority of the direct recruits and not eligibility for promotion. He contended that the issue of seniority of the applicants vis-a-vis other individual employees has not been raised in this case. The applicants are concerned only with the entire period of probation which terminated on their clearing the SOGE to be computed towards eligibility for promotion. The learned counsel *relied* on the following decisions of the Supreme Court:-

1. R.Prabha Devi and others v. Government of India & ors., (1988) 7 ATC 63;
 2. The High Court of Punjab and Haryana and others v. The State of Haryana and
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others, (1975) 1 SCC 843; and

3. A.N. Sehgal and others v. Raje Ram Sheoran and others, 1992 Supp (1) SCC 304.

In the matter of R. Prabha Devi (supra), it was held that the rule making authority is competent to frame rules laying down eligibility conditions for promotion to a higher post. When qualifications for appointment to a post in a particular cadre are prescribed, the same have to be satisfied before a person can be considered for appointment. Seniority in a particular cadre does not entitle a public servant for promotion to a higher post unless he fulfils the eligibility conditions prescribed by the relevant rules. A person must be eligible for promotion having regard to the qualifications prescribed for the post before he can be considered for promotion. Seniority will be relevant only amongst persons eligible. The learned counsel has drawn a particular distinction here between the seniority and eligibility for promotion. According to him, both are entirely different fundamentally. He contended that where rules exist, seniority will be governed by the rules and where the rules do not exist, the seniority will be governed by the general principles or guidelines for fixation of seniority. In the present case, however, the issue of seniority has not been at all raised. It is the fulfilment of the eligibility conditions for promotion that has been raked up in the present matter.

9. In the matter of the High Court of Punjab and Haryana (supra), it was held that when persons are appointed to be district judges or persons are promoted to be district judges, the act of appointment

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as well as the act of promotion is complete and nothing more remains to be done. Confirmation of an officer on successful completion of his period of probation is neither a fresh appointment nor completion of appointment. It was held as follows:-

"Such a meaning of confirmation would make appointment a continuing process till confirmation. Confirmation of district judges is vested in the control of the High Court for the reason that if after the appointment of district judges the Governor will retain control over district judges until confirmation there will be dual control of district judges. The High Court in that case would have control over confirmed district judges and the Governor would have control over unconfirmed district Judges. That is not Article 235."

11. In the matter of A.N. Sehgal (supra), it has been held "that in normal service jurisprudence a direct recruit would always be recruited and appointed to a substantive vacancy and from the date he starts discharging the duty attached to the post he is a member of the service subject to his successfully completing the probation and declaration thereof at a later date and his appointment relates back to the date of initial appointment, subject to his being discharged from service on failure to complete the probation within or extended period or termination of the service according to rules."

12. The learned counsel also drew our attention to SR 2(15) which defines the term "probationer" which means a government servant employed on probation in or against a substantive vacancy in the cadre of a department. The learned counsel also brought about that in the establishment of Comptroller and Auditor General of India itself in respect of Indian Audit and

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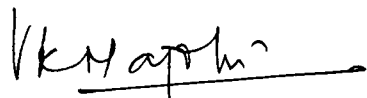
Accounts Service direct recruits, the respondents themselves were counting the service rendered by the employees during the period of probation before qualifying in the SOGE for the purpose of promotion to the next higher grade. The learned counsel termed this action of the respondents as discriminatory and violative of the Articles 14 and 16 of the Constitution of India.

13. In the facts and circumstances of the present case, we find that the ratio of the case of M.Srinivasa Prasad (supra) is not applicable here and we go along with the learned counsel of the applicants whose contentions are supported by the ratio in the cases of 1. R.Prabha Devi and others v. Government of India & ors., (1988) 7 ATC 63; 2. The High Court of Punjab and Haryana and others v. The State of Haryana and others, (1975) 1 SCC 843; and 3. A.N.Sehgal and others v. Raje Ram Sheoran and others, 1992 Supp (1) SCC 304 and conclude that it is just and proper that the service rendered by the applicants from the dates of their initial appointment i.e. 1.9.11992 and 4.1.1995 as direct recruit Section Officers before qualifying the SOGE should be deemed to be regular service for the purpose of eligibility for promotion to the grade of AAO and AO and further promotion. We do hold so accordingly and also direct the respondents to consider the applicants for promotion as AAO and for further promotions on being found fit for promotion as such from the due date

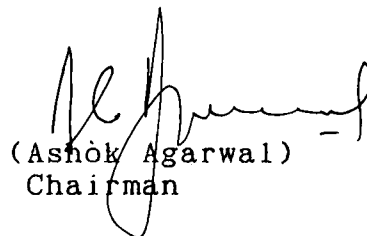
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after reckoning their service rendered from the dates of their initial appointment as direct recruit Section Officer (Audit). The respondents are further directed to comply with the aforesaid directions within a period of three months from the date of receipt of a copy of this order. The OA is allowed in the above terms with no order as to costs.



(V.K. Majotra)
Member (A)



(Ashok Agarwal)
Chairman

/sns/