

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1166/ 198 9.

DATE OF DECISION September 27, 1989

D.D. Gupta _____ Applicant (s)

In person _____ Advocate for the Applicant (s)

The Director of Audit I & II, Respondent (s)
Commerce Works & Misc.

Shri P.H. Ramchandani _____ Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. P.K. Kartha, Vice Chairman (J).

The Hon'ble Mr. P.C. Jain, Member (A).

1. Whether Reporters of local papers may be allowed to see the Judgement ? yes.
2. To be referred to the Reporter or not ? yes.
3. Whether their Lordships wish to see the fair copy of the Judgement ? yes.
4. To be circulated to all Benches of the Tribunal ? No.

JUDGEMENT

(Judgement of the Bench delivered
by Hon'ble Mr. P.C. Jain, Member)

The applicant, who was an Audit Officer in the Cadre of Audit Officers under the administrative control of the Comptroller and Auditor General of India, has challenged in this application under Section 19 of the Administrative Tribunals Act, 1985, Office Order No. O.O. Admn I/99, dated 13.2.1989 (page 13 of the paper book) issued by the Office of the Director of Audit, Commerce Works & Misc., New Delhi, by which an officer junior to the applicant has been entrusted with the charge of a vacant post of Deputy Director of Audit in the office of the Director of Audit, Commerce Works & Misc. -I, New Delhi on the terms and conditions mentioned therein and has prayed for the following reliefs: -

"(i) Ad-hoc promotion of the Applicant to the post of the Dy. Director of Audit, with attendant benefits in terms of the general Orders of the Government of India, with effect from 24.2.1989, that is the date of

(Lia)

Applicant's return from leave after the date of entrustment of the ad-hoc charge of the post of the Dy. Director of Audit to the Applicant's Junior. Urgent issue of this Direction is prayed as the Applicant would be retiring on superannuation on 31.8.1989.

- (ii) Payment of compensation to the Applicant for the mental anguish and loss of prestige suffered by the Applicant from the date of denial of ad-hoc promotion/entrustment of ad-hoc charge of the post of the Dy. Director of Audit.
- (iii) Re-imbursement of the costs of this Application including all incidental expenses and interest thereon.
- (iv) Such other directions as are deemed just and necessary in the circumstances of the case."

2. The case of the applicant, in brief, is that he was the seniormost Audit Officer and in accordance with the instructions contained in Government of India, Department of Personnel & Training O.M. No.28036/8/87-Estt.(D), dated 30.3.1988 (copy at pages 15-18 of the paper book), he should have been entrusted with the charge of the vacant post of Deputy Director of Audit. According to him, entrustment of the charge of the vacant post of Deputy Director of Audit on an ad-hoc basis to an Audit Officer on a special pay of Rs.300/- per month amounts to making of an ad-hoc promotion and is thus contrary to the instructions contained in O.M. dated 30.3.88 ibid, which provides for ad-hoc promotion on the basis of seniority-cum-fitness only. He made a representation on 22.2.1989 to the Director of Audit, Commerce Works & Mis.-I, New Delhi followed by representations dated 27.2.1989, 28.2.1989 and 20.3.1989 (pages 19 - 24 of the paper book). In reply dated 14.3.1989 (page 25 of the paper book), the applicant was informed with reference to his letter dated 22.2.1989 that the entrustment of the charge of the post of Deputy Director of Audit was purely on ad-hoc basis and that it did not constitute promotion or appointment to IA&AS or higher scale of pay as apparently presumed by him.

He has also stated that vide D.O. letter dated 20.1.1989 (page 26 of the paper book), his willingness to be considered for the said appointment on ad-hoc promotion was sought and, therefore, a statement in reply to his representation to the effect that the impugned order did not constitute promotion etc. was not tenable.

3. We have heard the applicant who appeared in person and the learned Senior Counsel for the respondents, to whom notice had been issued on admission. We have also perused carefully the pleadings of the applicant as also the relevant papers in the departmental file, copies of which have been made available to us by the learned Senior Counsel for the respondents. We feel that the application can be disposed of at the admission stage itself.

4. It is not disputed that the applicant was the seniormost in the cadre of Audit Officers and he had the right to be considered for promotion, ad-hoc or officiating, to the post of Deputy Director, which is otherwise a cadre post for IA&AS. Proceedings of the Departmental Promotion Committee held on 25.1.1989 for preparation of panel for ad-hoc promotion of Audit Officers to the cadre of Deputy Directors shows that the applicant was considered along with 12 others who were in the zone of consideration for four posts of Deputy Director, two in Delhi and one each at the Branch Offices at Bombay and Calcutta, and that the Departmental Promotion Committee did not consider him fit for empanelment "keeping in view the records relating to the performance" of the applicant. The office of the Comptroller and Auditor General of India, while conveying their orders on the recommendations of the Departmental Promotion Committee in their letter dated 6/7-2-1989 conveyed the approval of the Headquarters office for entrusting the charge to the officers empanelled by the Departmental Promotion Committee, purely on an ad-hoc basis for a period of six months or till regular officers are posted against the vacant posts, whichever

(6)

is earlier, subject to the conditions laid down in CAG office circular No.4936 GEI/183-82 dated 1.9.82, as amended from time to time. The office circular dated 1.9.1982 ibid pertains to entrusting the charge of D.A.G. level posts to Accounts/Audit Officers during short-term vacancies (31 days or above). It is also stated that the Government of India had enhanced the quantum of special pay payable to Accounts/Audit Officers holding the charge of D.A.G./Deputy Director posts from Rs.100 per month to Rs.150 per month (since increased to Rs.300 per month with effect from 1.1.1986) and that the period upto which such ad-hoc arrangement could be made had been increased from 120 days to one year. It had also conveyed the decision to allow the seniormost suitable (well-suited for the purpose) Accounts / Audit Officers to work as Deputy Accountant General / Deputy Director for an initial period of six months which could be extended for a further period of six months, depending on the performance of such officers during the first six months and on the specific recommendations of the concerned Accountant General / Director of Audit. It was also laid down that while making recommendations for such arrangements, reasonable recognition should be given to 'merit' of the officers in addition to their seniority. The nature of the arrangement was to be purely temporary and ad-hoc. A form for issuing the relevant Office Order for entrusting such a charge was also enclosed. It may be mentioned that the impugned office order dated 13.2.1989 is exactly in the same form. Additional guidelines to be followed by these officers while making proposals for filling up of vacant Deputy Accountant General level posts on ad-hoc basis in their offices were issued vide CAG Office Confidential letter No.439-GE.I/8-87, dated 6.2.1987. In these additional instructions, the criteria for determining the zone of consideration and the requirement of constituting a Selection Committee were laid down. The Selection Committee was to recommend the name(s) of seniormost A.O.(s) with the best record for the entrustment of the ad-hoc charge of the

vacant post of Deputy Accountant General / Deputy Director of Audit. The Departmental Promotion Committee had followed the instructions contained in the circular dated 1.9.1982 and 6.2.1987 and as such, we do not find any infirmity either in the process of selection or in the formal orders issued in pursuance of the selection and approval thereof.

5. The applicant has primarily relied on the instructions contained in the Department of Personnel & Training O.M. dated 30.3.1988, already referred to earlier. The relevant portion applicable to the case of the applicant is contained in para 4 (iii), which is reproduced below for facility of reference: -

"4 (iii) Where ad hoc appointment is by promotion of the officer in the feeder grade, it may be done on the basis of seniority-cum-fitness basis even where promotion is by selection method as under-

- (a) Ad hoc promotions may be done only after proper screening by the appointing authority of the records of the officer.
- (b) Only those officers who fulfil the eligibility conditions prescribed in the recruitment rules should be considered for ad hoc appointments. If however, there are no eligible officers, necessary relaxation should be obtained from the competent authority in exceptional circumstances.
- (c) The claims of Scheduled Castes and Scheduled Tribes in ad hoc promotions shall be considered in accordance with the guidelines contained in the Department of Personnel and A.R. Office Memorandum No.36011/14/83-Estt.(S.C.T.), dated 20.4.1983 and 30.9.1983. "

6. A perusal of the above shows that ad-hoc appointment is to be done on the basis of seniority-cum-fitness even where promotion is by selection method, but it is to be made only after proper screening of the records of the officer. This is what has been exactly done in this case, and, therefore, we find no violation of the instructions issued by the Department of Personnel & Training on 30.3.1988.

(Signature)

(8)

7. In reply to his representation dated 22.2.1989, the applicant was informed by the office of the Director of Audit, CW&M-I, New Delhi that the arrangement made vide the impugned order does not constitute promotion etc. Though it is not a case of regular promotion inasmuch as it is specifically stated to be so and the incumbent is not allowed to exercise statutory powers vested in the said post under the C.C.S. (C.C.&A.) Rules, 1965 and the arrangement is purely ad-hoc, we have examined this case as if it were a case of promotion because remuneration of Rs.300 per month as special pay has been allowed to the incumbent under this arrangement. The analysis of the facts of this case shows, as discussed above, that even then there is no violation of the instructions issued either by the CAG or by the Department of Personnel & Training.

8. The prayer of the applicant for payment of compensation to him for the mental anguish and loss of prestige suffered by him from the date of denial of ad-hoc promotion / entrustment of ad-hoc charge of the post of the Deputy Director of Audit, is in the nature of a claim for torts and does not fall within the jurisdiction of this Tribunal as it is not a service matter.

9. In view of the above discussion, we are of the view that there is no merit in this application, which is accordingly rejected. Partis will bear their own costs.

(P.C. JAIN)
MEMBER (A)
27/9/89

(P.K. KARTHA)
VICE CHAIRMAN (J)
27/9/89