

(11)

Central Administrative Tribunal  
Principal Bench: New Delhi

OA No.907/88

New Delhi this the 22nd day of March, 1994.

Shri N.V. Krishnan, Vice-Chairman (A)  
Shri B.S. Hegde, Member (J)

Shri A.K. Sahai,  
A-16 Nem Colony,  
Harduaganj Thermal Power Station,  
Kasimpur (Aligarh) ...Applicant

(By Advocates Sh. V.C.Sondhi with Sh.S.P. Sharma)

Versus

1. The Comptroller and Auditor  
General of India, New Delhi.
2. The A.G.-I(A&E),  
Allahabad (UP) ...Respondents

(By Advocate Sh.M.L. Verma, though none appeared)

ORDER

(Hon'ble Mr. N.V. Krishnan)

This application was filed by the applicant when he was employed as Project Audit Officer in U.P. State Electricity Board where he has gone on deputation from the Accountant General of U.P. Allahabad and was on leave. The prayer made is that he should be declared to be in the strength of the Accounts and Entitlement Office, Allahabad and he may be given all consequential benefits of pay and allowances and promotion depending upon his seniority in that office.

2. This grievance of the applicant has arisen in the following circumstances:-

2.1 The Comptroller and Auditor General of India had notified the reorganisation of the combined Audit and Accounts Office into separate Accounts and Entitlement Office and Audit Office under the Accountant General. The particulars of the scheme were notified by the

Accountant General, U.P., respondent No.2 by the Annexure-B. Para-9 of the Scheme relates to allocation of officers between the Audit and Accounts cadre. It requires the members of the staff to exercise their option whether they would like to be allocated to the Accounts and Entitlement Office or to the Audit Office.

2.2 The applicant exercised an option on 24.1.84 (Annexure 'C') expressing his desire to be allocated to the Audit Office, U.P. Allahabad.

2.3 It is stated in the OA that as the applicant could not be absorbed, as there were no vacancies in the Audit office, he was placed at serial No.63 in the waiting list.

2.4. It is further averred in the OA that the employees who are placed on the waiting list will get a further option when an offer of appointment is given to them in terms of their option as provided in para-3.3.2 of the Manual of Instructions for Restructuring of cadres in the Indian Audit and Accounts Department. An extract of this provision has been filed as Annexure 'D', which reads as follows;-

"3.3.2 If the number of applicants found fit for allocation to Audit Office is more than the number of posts available at various levels in the Audit Office (as determined and sanctioned - vide Chapter-II para 24) the combined Audit and Accounts office will prepare a waiting list of eligible applicants for audit cadres and notify the cadrewise list by display on the notice boards. Persons who are on the waiting list and not

immediately appointed to audit cadres from the date of reorganisation are eligible for declining transfer to the Audit Office at the time of actual appointment to Audit cadres. Separate instructions will be issued to deal with shortfall in applicants for filling up any categories of posts in the Audit Offices and excess in the Accounts & Entitlement Offices due to such shortfall. Such instructions will be necessary after the two offices become operational and will depend on actual situation obtaining in each pair of offices."

2.5 The applicant did not hear about the allocation till 1986. It is stated that after exercising option he was sent on deputation to the U.P. State Electricity Board from 31.1.84. The applicant came to know that his juniors were being considered for promotion and, therefore when he made enquiries he was informed that he had already been allocated to the Audit Office by a letter dated 14.8.85 which was reiterated by a telegram dated 10.2.86.

2.6 He then made a representation to the 2nd respondent on 13.11.86 (page 26 of the paperbook) in which it is stated that when he came to know of this position on his visit to Allahabad on 20.10.86 he exercised option for retention in the Accounts and Entitlement office. He was informed by the same respondent that his allocation to the Audit office was sent through registered post on 20.8.85 at the U.P.S.E.B. Agra with whom he was on deputation and it was confirmed by telegram dated 10.2.86.

2.7 The applicant then addressed the U.P.S.E.B. on 17.12.86 (page 28 of the paperbook) and in reply he was informed by their letter dated 18.12.86 (Annexure-E) that no such letter or telegram are on record in their office.

2.8 In the circumstances the applicant made further representation to the first respondent (page 32 of the paperbook) which does not carry a date. As he did not get a reply, he has filed this O.A.

3. On notice, a reply has been filed on 8.12.88 by the Director (Staff) of the first respondent's office through Sh. M.L. Verma, Government Standing Counsel.

3. It is admitted that the applicant, who had exercised his option to be absorbed in the Audit Office was kept at serial No.3 of the waiting list. It is then stated in para 6.3 as follows:-

"Such wait listed persons had a further choice at the time of allocation either to decline their transfer to Audit Office or to remain in the Accounts Office. For this purpose an office order was issued directing the persons either to accept or decline their transfer within a week of the receipt of said order."

3.2 In para 6.5 of reply it is further stated as follows:-

"Office order No.A.G(A&E)-I/Admn.I/50/132 dated 14.8.1985 (Annexure R-I) allocating the Petitioner to Audit Office was sent to him through registered dak to the U.P.S.E.B., Agra, the place of deputation where he was posted. He was directed to accept or decline his allocation to Audit within one week from the receipt of the said order but no reply was received; as such a telegram dated 10.2.1986 was further issued informing him his final allocation to Audit. Post copy of the telegram was also sent vide Registered Post. This time also he did not respond. It may also be seen from D.D.I.A. U.P.S.E.B, Agra, letter, included as Annexure 'E' by the applicant, that he only states that the letter and telegram are nont 'on record' in his office and that if any letter addressed to him had been sent it might have been redirected to him."

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3.3 It is further stated in para 6.8 of the reply that on the basis of the applicant's seniority in the Audit Office, he was promoted as Assistant Audit Officer by the order dated 14.4.87 - stated to be annexed as Annexure R-II but not annexed. It is also stated that the applicant has since accepted the promotion. He joined this office on 1.7.88 after reversion from the U.P.S.E.B, Agra.

4. The matter came up for final hearing before us when none appeared on 5.11.93. We then noticed that the registered letter stated to have been issued to the applicant by the respondents on 14.8.85 has been marked as Annexure R-I in para 6.5 of the reply. That Annexure is not on record. We felt that this document was vital for the proper disposal of this case and, therefore, we directed the first respondent to produce the original record in which this letter has been issued to the applicant alongwith proof of despatch by registered post. A direction was given to the Registry to issue notice to this effect to respondents 1 and 2. The case was fixed for hearing on 8.12.93.

5. The matter came up thereafter on 7.1.94 when we had some doubts about the service on the respondents. This matter has now been clarified by the Registry in its note that the notice dated 9.11.93 was sent by special messenger and served on the first respondent on 17.11.93 and hence the service is complete. Similarly, notice on the second respondent was sent by registered post No.814 dated 12.11.93 but the acknowledgement is still awaited. Therefore, the service is deemed

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to be complete. In the circumstances, we treat that the respondents have been served with notice in respect of our order dated 5.1.94. As none is present today for the respondents, we have heard the learned counsel for the applicant.

6. The matter was finally heard on 19.1.94, when only Sh. V.C. Sondhi, counsel for the applicant was present. None was present for the respondents. An oral order was dictated allowing the O.A. Before the fair copy of the order could be signed, we noticed that two important points required clarification. They are i) notwithstanding that the OA is against the order dated 14.8.85 allocating him to the Audit Office and that he has prayed for a declaration that he is on the strength of the Accounts and Entitlement Office, Allahabad, yet, when the OA was pending, he joined the Audit Office on 1.7.88 without taking the permission of the Tribunal and, therefore, the effect of this action on the OA had to be considered, and ii) in case the OA is allowed, he will not only be entitled to consequential benefits but also liable to consequential liabilities <sup>and</sup> if, perchance, he does not get any promotion in the Accounts and Entitlement Office and a recovery has to be ordered. Therefore, the learned counsel for the applicant was heard again on 23.2.94.

7. In regard to the first issue he contended that this action cannot be held against him, as he had already filed the O.A. seeking a contrary relief. In regard to the second issue he said that the applicant was not treated to be on the rolls of the Accounts and Entitlement office from

14.8.85 when the order of allocation to Audit Office was passed and allegedly sent by registered post to the U.S.S.E.B for delivery to him. Therefore, he should be considered for promotion from that date onwards, in case his juniors were promoted. On that basis, the applicant was prepared to suffer the liability, if any, and was prepared for any recovery, if due, in case it was found that he has actually received more <sup>emoluments</sup> from the Audit Office, then he would have received if he had been allocated to the Accounts and Entitlement Office.


8. We have carefully considered the matter.

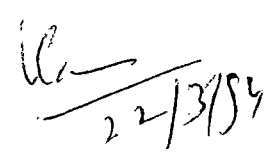
9. Neither respondent No.1 nor respondent NO.2 has cared to appear before us and no records have been produced to substantiate their claim that the order dated 14.8.85 allocating the applicant to Audit Office, subject to his rejection of this allocation within a week, was sent by registered post, as averred in the reply. In the circumstance, we are of the view that the averment made by the applicant has to be accepted. He would, therefore, be entitled to relief, if the other issue relating to joining the Audit Office without our permission is decided in his favour.

10. We have, given anxious thought to the effect of his joining the Audit Office on 1.7.88 when this OA was pending. This O.A. was filed on 11.5.88. Para 3 of the O.A. gave particulars of the order against which the OA was filed, i.e., the order dated 14.8.85, but copy was not filed. It is stated that by that order he has been allocated

to the Audit Office, without giving him an option. He has also stated in para 1. of the OA that he has been repatriated from the U.P.S.E.B. to his parent office w.e.f. 31.1.88 and that he was on leave. The only interim order prayed for is to direct the second respondent (Accountant General-I Accounts & Entitlement) to process his pension case, as he was due to retire in November, 1988 in anticipation of the final decision in the OA. He could very well have requested for being taken on duty by the second respondent provisionally. In any case, if he was still serious about the OA and the prayer made therein he could have first sought the permission of the Tribunal to join the Audit Office, without prejudice to the stand taken by him in this O.A. Not having done so, we feel, the applicant's conduct is contrary to the prayer made by him in the OA, particularly when he joined on 1.7.88 and was due to retire in November, 1988. It appears to us that he was, perhaps, satisfied with the promotion given to him in the Audit Office from 14.4.87. We are of the view that by this conduct he has forfeited the reliefs prayed for in this O.A. and we order accordingly.

11. The O.A. is disposed of, as above. No costs.

  
(B.S. HEGDE)  
Member(J)

  
(N.V. KRISHNAN)  
Vice-Chairman

Sanju.