

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Allahabad this Tuesday, the 27th day of October, 2020

Original Application No. 330/00791/2019

Hon'ble Mrs. Justice Vijay Lakshmi, Member (J)
Hon'ble Mr. Navin Tandon, Member (A)

Pradeep Agrawal, aged about 35 years, Son of Gopal Das Agrawal, Resident of B-27/88 G02 Plot No.9A Ravindrapuri Colony Varanasi, Presently posted as Senior Auditor Divisional Audit Office, Varanasi.

...Applicant

By Advocate : Shri Uday Chandani (In Court)

V E R S U S

1. Union of India through Principal Director of Audit North Eastern Railway, Gorakhpur,
2. Principal Director of Audit, Northern Central Railway Ganga Building A Block G.M. Office Complex Subedarganj, Allahabad.
3. Comptroller and Auditor General of India, 10 Bahadur Shah Jafar Marg, New Delhi.
4. Principal Director of Audit North Eastern Railway, Gorakhpur.
5. Senior Audit Officer/Administration/North Eastern Railway, Gorakhpur.

...Respondents

By Advocate: Shri Rajnish Kumar Rai (Online)

(Reserved on 07.10.2020)

O R D E R

By Hon'ble Shri Navin Tandon, Member (Administrative)

Through Video Conferencing.

1. The applicant is aggrieved by the impugned order dated 15.04.2019 (Annexure A/1) wherein he has been reverted to the

post of Auditor from Senior Auditor on the ground that he has not completed three years of service in the new unit.

2. The applicant has made the following submissions in the original application:-

2.1 He was selected through CGL 2011 Examination conducted by SSC. Accordingly, he joined the Indian Audit and Accounts Department in the capacity of Auditor in North Central Railway, Allahabad on 18.12.2012. He successfully completed his probation on 18.12.2014. On mutual transfer basis, he joined the office of North Eastern Railway on 21.12.2015.

2.2 Rest of the O.A. is about details of his appearing in SAS examination. This is a subject matter of OA 330/812/2018, hence is not relevant to repeat here.

3. The applicant has prayed for the following reliefs:-

"8-RELIEF SOUGHT FOR: In view of the facts and grounds mentioned above, the applicant prays for the following reliefs:

- (A) *To issue a direction in the nature of certiorari quashing the order dated 15.04.2019 passed by the respondent no.5.*
- (B) *To issue a direction in the nature of mandamus directing the respondent no.3 and 5 to provide all benefits and the revised pay scale of the post of Senior Auditor to the applicant w.e.f. 15.04.2019 till today.*
- (C) *To issue an order or direction may deem fit and proper in the facts and circumstances of the case.*
- (D) *To award the cost to the applicant."*

4. The respondents in their reply have submitted that a person becomes eligible for promotion to the post of Senior Auditor after completing three years service as Auditor in a

particular field office. The applicant completed three years as Auditor in North Eastern Railway unit only on 21.12.2018. However, he was promoted on 21.06.2017 which was not as per rules. This mistake has been corrected by issue of the order dated 15.04.2019 (Annexure A/1). No recovery has been made during the pendency of this OA.

5. The applicant has submitted his rejoinder wherein no new point has been brought out.

6. Heard the arguments of learned counsel for both the parties and perused the records made available to us in PDF Form. The arguments were on the same lines as the written pleadings.

FINDINGS

7. The impugned order dated 15.04.2019 (Annexure A/1) reads as under:

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Auditor may be treated as 'null and void" and he
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8. The impugned order states that the applicant was promoted as Senior Auditor on 21.06.2017. At the time of promotion, he was not eligible for promotion as he had not completed required three years service in this office (i.e. Office of the Principal Director of Audit, North Eastern Railway, Gorakhpur). Therefore, a meeting of Review Departmental Promotion Committee took place on 15.03.2019, wherein it was decided that the promotion w.e.f. 22.06.2017 should be treated as null and void. Accordingly, he is reverted to the post of Auditor w.e.f. 22.06.2017.

9. Perusal of the impugned order indicates that the only issue involved in this case is to find out if the applicant was eligible for consideration of promotion on 22.06.2017, when he was promoted.

10. The issue of considering the service rendered in the previous unit is no more res-integra. Hon'ble Supreme Court in catena of judgments has held that the service in the previous unit cannot be ignored for the purpose of eligibility [see ***Renu Mullick Versus Union of India and Others, (1994) 1 SCC 373 and Pratibha Rani & others Vs. Union of India & others in Civil Appeal No. 3792/2019 arising out of SLP No. 31728/2018***].

11. In ***Union of India & others Vs. C.N. Ponnappan (1996) 1 SCC 524***, Hon'ble Apex Court has decided as under:-

"The service rendered by an employee at the place from where he was transferred on

compassionate grounds is regular service. It is no different from the service rendered at the place where he is transferred. Both the periods are taken into account for the purpose of leave and retrial benefits. The fact that as a result of transfer he is placed at the bottom of the seniority list at the place of transfer does not wipe out his service at the place from where he was transferred. The said service, being regular service in the grade, has to be taken into account as part of his experience for the purpose of eligibility for promotion and it cannot be ignored only on the ground that it was not rendered at the place where he has been transferred. In our opinion, the Tribunal has rightly held that the service held at the place from where the employee has been transferred has to be counted as experience for the purpose of eligibility for promotion at the place where he has been transferred."

12. Hon'ble Supreme Court in the matter of **M.M. Thomas & Ors. Vs. Union of India & ors. (2017) 13 SCC 722** has held as under:-

"Having heard the learned counsel appearing for the parties and upon perusal of the record, we are of the view that the words of the aforesaid Rule require five years' regular service "in the respective regions". Thus, these words must be understood to mean that the candidates should have served in the respective regions, that is, the regions where they were posted earlier and the region where they seek promotion all together for five years. Thus if a candidate has served in one region and then transferred to another, and seeks promotion in that region, the rule does not require that the candidate must have acquired experience of five years in the region where he seeks promotion, for being considered eligible. What is necessary is a total experience of five years."

13. Conclusions of Hon'ble Supreme Court in **M.M. Thomas (Supra)** is very clear that acquired experience in the previous unit cannot be ignored. We find parity in the words "in the respective regions" in the above cited case and "particular field office" in the present case.

14. In view of the foregoing, it is clear that the insistence of the respondent department in not considering the service in the previous unit is not in accordance with law laid down by Hon'ble Supreme Court.

15. We can not fail to notice the discrepancy in the process of the respondents. As per the respondents though the applicant was promoted w.e.f 21.06.2017, he was eligible for promotion only from 21.12.2018. However, the Review Departmental Promotion Committee (for brevity, DPC hereinafter) which met on 15.03.2019, deliberated only about treating the earlier promotion order as null and void. A question needs to be asked as to why it did not consider postponing his promotion w.e.f. 21.12.2018, the date on which the applicant became eligible for promotion as per the respondents. The impugned order is silent as to where was the need to revert the applicant.

16. Reversion causes trauma to the employee, and his social status is adversely affected within the organisation as well as in society. This step should be taken only when it is unavoidable. In the present case, as explained above, we do not find that the Review DPC and the Competent Authority have acted in a transparent fashion, and it can certainly be classified as malafide action.

17. In view of the above, the Original Application is allowed. The impugned order is quashed and set aside. The applicant is to continue in the post of Senior Auditor w.e.f. 22.06.2017, the

date on which he was originally promoted. He shall be entitled to the arrears for this entire period.

18. Considering the circumstances of the case as described above, we impose a cost of Rupees Ten Thousand Only (Rs. 10.000/-) which should be paid to the applicant by the respondents.

19. We direct the respondents to complete this entire exercise within 4 weeks of the date of receipt of certified copy of this order.

(Navin Tandon)
Member (Administrative)

(Justice Vijay Lakshmi)
Member (Judicial)

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