

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

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

Original Application No. 330/00812/2018

Alongwith

Original Application No.330/00809/2018

Hon'ble Mrs. Justice Vijay Lakshmi, Member (J)

Hon'ble Mr. Navin Tandon, Member (A)

Original Application No. 330/00812/2018

Pradeep Agrawal, aged about 34 years, Son of Gopal Das Agrawal, R/o B-27/88 G02 Plot No.9A Ravindrapuri Colony Varanasi, presently posted as Senior Auditor Divisional Audit Office, Varanasi.

. . .Applicant

By Advocate : Shri Udai 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)

Original Application No. 330/00809/2018

Sudhir Kumar Singh, aged about 30 years, Son of Brij Kishor Singh, R/o Plot No.557 (LIG) Ram Chandra Shukla Park Bhujauli Colony District-Deoria presently posted as Junior Hindi Translator in the office of Principal Director of Audit North Eastern Railway, Gorakhpur.

. . .Applicant

By Advocate : Shri Udai 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, Eastern Railway, Fifth Floor New Koilaghat Building 14 Stand Road Kolkata-700001.
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. These two original applications are similar in nature and, therefore, are being adjudicated through this common order.
2. The applicant in both these original applications are aggrieved that their result for Subordinate Audit/Accounts Service Examination (SAS) has been withheld by the respondents.
3. The facts of the two cases are similar. For reference purpose, the facts of OA No.812/2018 are being stated herein.
4. The applicant has made the following submissions in the original application:

4.1 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, where he successfully completed his probation on 18.12.2014. He appeared in the SAS examination in September 2015 where he was able to pass 6 papers successfully.

4.2 On mutual transfer basis, he joined the office of North Eastern Railway on 21.12.2015.

4.4 He again applied for SAS examination in August 2016 in which he was able to pass two more papers. He was not able to pass the only one remaining paper in SAS examination in March 2017 supplementary exam.

4.5 He applied for the SAS examination September, 2017. However, he was informed verbally that the applicant's candidature has been rejected on the ground of incomplete service of two years in a particular field office. He respected the instructions given to him verbally and did not agitate the matter further.

4.6 On completion of two years of his stay at North Eastern Railway office in December 2017, he sought permission for appearing in SAS May 2018 supplementary examination. He was allowed for the same and accordingly, he appeared in the examination.

4.7 The respondents vide letter dated 12.06.2018 sought an explanation from him which was replied on 18.06.2018 (collectively Annexure A-4).

4.8 The respondents have passed the impugned order dated 28.06.2018 (Annexure A-1) wherein the two papers passed by the applicant in the year 2016 and attempt in March 2017-2018 examination have been declared null and void.

5. Learned counsel for the applicant has prayed for the following reliefs:

"8. RELIEF SOUGHT:

That in view of the facts mentioned above, the humble applicant prays for the following relief(s)

- (a) Set-aside the impugned order dated 28.06.2018 passed by Director of Audit North Eastern Railway, Gorakhpur (Annexure no.A-1).*
- (b) Direct the respondents to declare the results of the applicant regarding SAS examination dated August 2016 and March 2017 as exempted in the passed papers and treat candidature of the applicant for Main SAS Examination May 2018 as valid and which has been wrongly withhold.*
- (c) Pass any other orders deemed fit and proper in the facts and circumstances of the case.*
- (d) award cost of the applicant."*

6. The respondents have filed their reply in which the following averments have been made:

6.1 The applicant has joined North Eastern Railway, Gorakhpur on his own request on mutual basis on 20.12.2015. Thereafter, his seniority as well as their consequential benefits are governed by Manual of Standing Order (Admn) Vol-I (for brevity, M.S.O. hereinafter).

6.2 He was eligible to appear in SAS examination only after completion of two years in the new office i.e. after 20.12.2017. He was allowed to appear in examination in August, 2016 and March 2017 inadvertently. Therefore, he cannot be allowed the benefits of paper passed in the said examination.

6.3 The eligibility criterion for SAS examination is specified in Rule 9.2.6 of M.S.O. However, in absence of updated copy of M.S.O. in the office, the applicant was allowed to participate in the examination.

6.4 Since the applicant has not completed two years in the office of North Eastern Railway, he was not eligible to appear in the SAS examination.

7. Heard the learned counsel of both the parties and perused the pleadings made available to us in PDF form.

8. Learned counsel for the applicant brought our attention to various communications issued by Comptroller and Auditor General (for brevity, C&AG hereinafter) to stress that HOD of his office has carefully scrutinised his application and then only he was allowed to participate in the examinations.

9. Learned counsel for the respondents brought our attention to the new updated rule 9.2.6 wherein it has been clearly mentioned that he should have completed two years in a particular field office. He clarified that the words "particular field office" have been added in the new M.S.O. published on 05.11.2013.

FINDINGS

10. Rule 9.2.6 of M.S.O. (Annexure CR-1) reads as under: -

**"CAG's Manual of Standing Orders
(Administrative) Vol.I (Third Edition)**

Only persons who have put in minimum of 3 years continuous service in one or more of the following capacities in a particular field office of IA&AD and who have successfully

completed their probation period are eligible to appear for the examination."

11. It is also brought out that the requirement of three years mentioned in Rule 9.2.6 has been relaxed to two years in the relevant period under consideration of the present original application.

12. It is undisputed that the applicants are otherwise eligible to appear in the SAS examination except for two years period of working in the new office i.e. North Eastern Railway.

13. The SAS examination is being conducted by C&AG and not by individual department/unit. This examination is conducted to test the competency of its employees. For this purpose C&AG has specified eligibility conditions as per rule 9.2.6 of MSO. The respondent department have placed reliance on the words "particular field office" to mean that the applicant should have completed two years in North Eastern Railway Gorakhpur.

14. There is no dispute regarding assignment of bottom seniority at the new unit when a person goes on transfer from one unit to another at his own request. The dispute is only regarding the eligibility criterion of completing three years (relaxed to two years in the present case) in the new unit.

15. 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].

16. 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."

17. 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."

18. 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.

19. 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.

20. In view of the above, the original application is allowed. The impugned order is quashed and set aside. While considering the eligibility for appearing in the SAS examination, the service rendered in the previous unit also has to be counted. The examination where the applicant(s) have been successful cannot be treated as null and void. Further, the respondents are directed that the result of the examination, where applicant(s) have appeared must be announced within 15 days from the date of receipt of a certified copy of this order. No costs.

(Navin Tandon)
Member (Administrative)

(Justice Vijay Lakshmi)
Member (Judicial)

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