

**Central Administrative Tribunal
Jaipur Bench, Jaipur**

O.A. No.531/2015

Reserved on :19.11.2020
Pronounced on :25.11.2020

**Hon'ble Mr. Dinesh Sharma, Member (A)
Hon'ble Mrs. Hina P. Shah, Member (J)**

Rajesh Chand Parashar S/o Shri Ratan Lal Parashar age about 51 yrs. Resident of 31 Vivek Vihar Jagatpura, Jaipur-302017 at present working as Assistant Audit Officer/CRA-II, O/O the Pr. A.G.(GSSA) Rajasthan, Jaipur.

...Applicant.

(By Advocate: Shri A.K.Garg)

Versus

1. Union of India, through secretary to Govt. of India, Department of Personnel & Training under Ministry of Personnel, Public Grievances and Pensions, North Block, New Delhi-110124 through its Secretary.
2. The Comptroller & Auditor General of India, 09 - Deen Dayal Upadhyay Marg, New Delhi-110124.
3. The Deputy Comptroller & Auditor General of India (Admn & Staff), 09 - Deen Dayal Upadhyay Marg, New Delhi-110124.
4. The Principal Accountant General (GSSA), Rajasthan, Janpath, Jaipur-302005.
5. The Principal Accountant General (A&E), Rajasthan, Janpath, Jaipur-302005.
6. Anshu Pareek AAO C/o office of The Principal Accountant General (GSSA), Rajasthan, Janpath, Jaipur-302005.

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...Respondents.

(By Advocate: Shri Lalit Mohan Bhardwaj)

ORDER

Per: Dinesh Sharma, Member (A):

In the present OA, the applicant has prayed for the following reliefs:-

"(1) To quash and set aside the impugned Gradation List 2014-15 showing position as on 01-03-15 prepared by Respondent No.4 vide which the seniority of humble applicant has been wrongly fixed at serial number 278 in Assistant Audit Officer cadre and also set aside letter dated 05-08-2015 Ann.1.

(2) To direct the respondents to fix the seniority of the applicant at proper place from the date from which he has been appointed on a regular basis to same or equivalent grade in his parent department i.e. 08-04-1999 or from 14-12-99 the date of judgment of the Hon'ble Apex Court.

(3) Any other relief which the Hon'ble tribunal deems fit in the facts and circumstances of the case may be allowed in favour of the applicant.

(4) Cost of the litigation may also please be awarded in favour of the applicant."

2. The applicant has stated that the Indian Audit and Accounts Department has separate field offices as audit office and account office in each State. The applicant had joined service on the post of Accounts Clerk in the office of

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Principal Accountant General (A&E) Rajasthan. Though he submitted a representation in the office of the P.A.G. (A&E) Rajasthan in the year 1992 to allow him to appear in the S.A.S. (Commercial Audit) examination, it was rejected stating that the accounts office officials were not eligible to appear in the examination. Though such Accounts Officers were allowed to appear in such examinations later, the applicant had already been promoted to the post of Assistant Accounts Officer, and as such stood excluded from appearing in the examination. The applicant appeared in this examination and passed it in the year 2012, when the AAOs in the accounts office were allowed, for the first time, by a circular in the year 2011. The applicant applied when a vacancy in the AAO cadre was circulated to all field offices on 02.05.2012 for filling on deputation-cum-absorption basis. Even before getting relieved to join this post, the applicant had, on 02.07.2012, made a representation (Ann. 7) seeking clarification about his seniority status in case of deputation-cum-absorption in Audit Office. He got a reply to make a representation before the PAG (GSSA) Office. Following this, he has made a representation, dated 12.10.2012 (Ann.-9) again, quoting the DoP&T OM dated 27.03.2001 (hereinafter referred to as "DoPT OM of 2001", copy Annexed with reply at Ann. R/14), in which it is clearly mandated that the services in the parent department at an

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equivalent post should be recognised for the purpose of seniority. When he did not get any reply, he made further representation dated 29.10.2012 (Ann.10), requesting to finalize his deputation only if applicant's past services in the same cadre in his parent office are duly honoured. On not getting a response, he further represented on 07.06.2013 for granting him benefit of past service in the parent cadre or to immediately repatriate him to his parent office if his past services in the parent cadre were not honoured (Ann. 11). He was informed by the office of the Principal Accountant General (G&SSA), Rajasthan that his representation had been sent to Heardquarters Office and it was under consideration at the Headquarters Office (Ann. 12). He reminded on 03.11.2014 quoting Hon'ble Supreme Court's decision in **S.I. Rooplal & Others vs. Lt. Governor through Chief Secretary, Delhi** [JT 1999 (9) SC 597] (Ann. 13). However, an order dated 11.02.2015 absorbing him in the Audit Office has been issued (Ann. 14). The applicant made further representation dated 05.03.2015, to inform him about the seniority position (Ann.15) and was given to understand that he has been placed at Sl. No.278. Since this position showed that his past service had not been taken into account, he further submitted a representation on 17.06.2015 (Ann-2), again quoting the decision of the Hon'ble Supreme Court in S.I.Rooplal's case (supra) and the

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DoPT OM of 2001. Since his request has not been considered in the Memo dated 05.08.2015 (Ann.A1), the applicant has filed this OA.

3. The respondents (official respondents, No. 1 to 5) have filed a reply stating that the applicant joined as Clerk in the year 1985 in the office of Respondent No. 5 (Principal Accountant General (A&E) Rajasthan), became Section Officer (adhoc) in the year 1997, regularised as such in 1999, and was promoted as Assistant Accounts Officer in that office in 2005. He appeared and passed the SAS Audit Examination in March 2012. Following a scheme announced vide circular dated 12.08.2003 (Annex R/1, hereinafter referred to as "circular of 2003") a scheme of absorption of SAS Civil Audit passed officials of A&E Offices as AAO in the Civil Audit Offices was introduced. The CAG office, vide their office letter dated 19.04.2012 (Ann. R/2) directed the Civil Audit Offices to fill up the vacancies under AAO cadre from the SAS (Civil Audit) Examination 2012 passed officials of A&E offices. A circular (Ann. R/3) was issued after this. The applicant applied, was selected, relieved from his parent department and joined the office of Respondent No. 5, following this circular, in the year 2012. He was also permanently absorbed, with effect from the date of his

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joining (14.08.2012), following instructions dated 21.11.2014 (Ann. R/8), by order dated 11.02.2015 (Ann. A/14). The respondents have accepted that representations, as stated in the OA, were made by the applicant and were forwarded to the CAG Office for clarification. They have denied the claim of the applicant about the applicability of the DoPT OM of 2001 (Ann. R.14) since this OM had clearly kept transfers within the CAG offices out of its purview. The seniority of the applicant, it is stated, has been fixed correctly in accordance with the instructions of the CAG office contained in the circular of 2003 (Ann. R/1).

4. The applicant has filed a rejoinder reiterating his claim and stating that the respondents have misinterpreted the DoPT OM of 2001, which was issued with the concurrence of the CAG. He has also annexed the qualifications quoted in the Recruitment Rules for the AAO, 2012 (Ann.16), and claimed that the passing of SAS examination was not a mandatory requirement for those getting absorbed after deputation.

5. The respondents have filed a reply to the rejoinder stating that passing of the examination was a mandatory requirement, and it had been repeatedly clarified (Annex.

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R/22) that it was so. The applicant had failed in his earlier attempt (in 2011) to clear all the papers and became eligible only when he passed the examination in the year 2012.

6. None appeared on behalf of Respondent No. 6, Private Respondent, nor filed any reply.

7. We have gone through the pleadings and heard the arguments of the learned counsels of the applicant and the official respondents (through video conferencing). There are three, cascading issues, involved in deciding this case. Firstly, whether the applicant has a right, following the decision of the Hon'ble Supreme Court in Rooplal's case (supra) and the DoPT circular of 2001, to have his past service in the parent office (under Principal Accountant General (A&E) Rajasthan) considered for the purpose of seniority in the new office (Office of Principal Accountant General (GSSA) Rajasthan). Secondly, if the answer to the first issue is in the negative, whether the respondents were right in absorbing the applicant in the new office, ignoring his categorical request for repatriation (if his request for past service could not be accepted). Thirdly, if the answer to the second issue is in the negative, whether the Tribunal can order such repatriation now, though not specifically

prayed by the applicant, under the prayer for "any other relief".

8. On the first issue, we find that the decision of the Hon'ble Supreme Court in S.I. Rooplal's case (supra) and the DoPTOM of 2001, *prima facie*, support the claim of the applicant for consideration of his past service on an equivalent post. We are reproducing the OM, here, in full:

"F.No.20011/1/2000-Estt(D)
Government of India
Ministry of Personnel, Public Grievances & Pensions
Department of Personnel & Training

New Delhi 110001
March 27, 2001

OFFICE MEMORANDUM

Subject: Seniority of persons absorbed
after being on deputation.

The undersigned is directed to say that according to our O.M.No.20020/7/80-Estt(D) dated May 29, 1986 (copy enclosed) in the case of a person who is initially taken on deputation and absorbed later (i.e. where the relevant recruitment rules provide for "transfer on deputation/transfer"), his seniority in the grade in which he is absorbed will normally be counted from the date of absorption. If he has, however, been holding already (on the date of absorption) the same or equivalent grade on regular basis in his parent department, such regular service in the grade shall also be taken into account in fixing his seniority, subject to the condition that he will be given seniority from

- the date he has been holding the post on deputation,

or

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- the date from which he has been appointed on a regular basis to same or equivalent grade in his parent department,

whichever is later

2. The Supreme Court has in its judgment dated December 14, 1999 in the case of Shri S.I. Rooplal & Others Vs. Lt. Governor through Chief Secretary, Delhi JT 1999 (9) SC 597 has held that the words "whichever is later" occurring in the Office Memorandum dated May 29, 1986 and mentioned above are violative of Articles 14 and 16 of the Constitution and, hence, those words have been quashed from that Memorandum. The implications of the above ruling of the Supreme Court have been examined and it has been decided to substitute the term "whichever is later" occurring in the Office Memorandum dated May 29, 1986 by the term "whichever is earlier".

3. It is also clarified that for the purpose of determining the equivalent grade in the parent department mentioned in the Office Memorandum dated May 29, 1986, the criteria contained in this Department Office Memorandum No.14017/27/75-Estt(D) (pt) dated March 7, 1984 (copy enclosed), which lays down the criteria for determining analogous posts, may be followed.

4. These instructions shall take effect from the December 14, 1999, which is the date of the judgment of the Supreme Court referred to above.

5. In so far as personnel serving in Indian Audit and Accounts Departments are concerned, these instructions are issued in consultation with the Comptroller and Auditor General of India. However, these orders (in keeping with paragraph 4 of the Office Memorandum dated May 29, 1986 as referred to above) will not be applicable to transfers within the Indian Audit and Accounts Department which are governed by orders issued by the C&AG from time to time.

6. The above instructions may be brought to the notice of all concerned for information, guidance and necessary action.

DIRECTOR (Establishment)"

9. The respondents have countered the claim of the applicant based on this OM, mainly on the ground that paragraph 5 of this OM of 2001 keeps transfers within the Indian Audit and Accounts Departments out of the purview of the decision. According to them, it is their circular of 2003 which governs how the seniority in such cases will be determined. The applicant has argued that this is a wrong interpretation. There can be no exception to what the Hon'ble Supreme Court has called to be unconstitutional and secondly, the circular of 2003 was in a different context (not applicable to those who had already become AAOs/SOs). A plain reading of the paragraph 5 of OM cited above will make it clear that this OM keeps transfers within the Indian Audit and Accounts Departments beyond the purview of the decision. The applicant has not challenged the constitutional validity of such exception made in this OM. He has, in fact, banked upon this OM to support his claim. Hence, it will not be correct to strike down the non-consideration of past service only on the basis of this OM. This brings us to the circular of 2003 and we are reproducing that too, in full here:

"OFFICE OF THE COMPTROLLER & AUDITOR GENERAL OF INDIA:NEW DELHI

Circular No.31/NGE/2003
No.611-NGE(App)37-2003

Dated: 12 August, 2003

To

1. All Heads of Departmtns in I.A.& A.D.
2. A.C.(C)/Director (P)
3. G.F.II/NGF(Estt)NGE(JCM)/Examination/O.E. & Bills(Estt).
Audit (Rules)

Subject:- Permission of A&E staff to appear in S.O.G.E.
(Civil Audit) for their eventual absorption in Audit stream.

Sir/Madam,

It has been decided to allow following categories of candidates from A&E stream to appear at the S.O.G.E. (Civil Audit) for their eventual absorption in Civil Audit Offices:

- a) Those who have already passed Part II of S.O.G.E. (Civil Accounts) and are still awaiting promotion as Section Officer (Accounts) or Adh-hoc Section Officers (Accounts) who are still awaiting regularization as Section Officers will have to clear only the remaining papers of Part II of S.O.G.E. (Civil Audit). Their appointment as Section Officer (Audit) shall be reckoned from the date of joining to the post after clearing remaining papers of Part II of S.O.G.E. (Civil Audit).
- b) Those who have passed Part I of S.O.G.E. (Civil Accounts) will have to clear Part II of S.O.G.E. (Civil Audit).
- c) Those who have not cleared some of the papers of Part I Part II of S.O.G.E. (Civil Accounts) will have to clear the remaining papers of S.O.G.E. (Civil Audit).
- d) Fresh candidates subject to conditions laid down in para 92.16 of C.A.G. M.S.O. (Admn) Vol.1.

2. The candidates of A&E offices passing S.O.G.E. (Civil Audit) will be absorbed in Civil Audit offices against vacancies in Section Officer's cadre remaining unfilled due to non-availability of eligible audit staff for promotion as Section Officer.
3. The seniority of candidates of A&E stream getting absorbed in Civil Audit stream after passing S.O.G.E. (Civil Audit) would be determined as below:

(i) All the A&E candidates on their absorption as Section Officers (Audit) shall rank below the promotees of Civil Audit Office promoted as Section Officer (Audit) on the same occasion.

(ii) Among the A&E candidates of the same batch of S.O.G.E. (Civil Audit), their seniority in the cadre of S.O. (Audit) would be determined as per their inter-se seniority in the parent A&E office subject to provisions of para 5.7 of C.A.G. M.S.O. (Admn) Vol.1. However, in the cases of A&E candidates coming to a Civil Audit office from more than one A&E offices, their seniority would be determined as per their length of service in the feeder cadres in their respective offices.

4. The candidates from A&E stream will have their pay protected on their absorption as Section Officer (Audit) in Civil Audit Offices.

5. Hindi version will follow.

Yours faithfully,

(Manish Kumar)
Asstt. Comptroller & Auditor General (N)"

10. This circular talks about how the seniority of A&E staff (to which the applicant here belongs) will be determined against the promotees of Civil Audit Officers promoted as Section Officer (Audit) on the same occasion (examination). It also talks about how it shall be determined amongst other officers of the same batch of the A&E officers coming from same batch or from more than one A&E offices. The applicant has argued that this circular was issued in a context different from his case. We find some merit in this argument. There is no reference to this circular in the

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letter/circular issued with respect to absorption of A&E officers in the year 2012 (Ann. R/2 or R/3), following which the applicant applied for absorption. Thus, it cannot be said with certainty that the applicant was aware his seniority would be determined as per this circular of 2003. We also notice that it was not only him, but also his superior authorities, who were not clear about this matter. They would not have, otherwise, sought clarification in this regard. Thus, there is no doubt that, there was uncertainty, not entirely unjustified, in the applicant's mind and in the minds of his superiors, about what instructions of the CAG would be applicable in this matter, when the request of the applicant for absorption was forwarded. However, since it has been later confirmed by the CAG that the instructions issued in circular of 2003 applied to the absorption of the applicant and since the DoPT OM of 2001 specifically exempted matters under the Indian Audit and Accounts Departments, we are unable to give a specific direction to the respondents to give the applicant benefit on the basis of past service on an equivalent post.

11. This brings us to the second issue, about whether the respondents were right in absorbing him in the Audit Office, in spite of his categorical request to do so only if his past

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services were recognised. There is no dispute regarding facts here. The applicant had, much before his absorption, requested for his repatriation if his request for consideration of past service was not met. The request was duly forwarded to the concerned authorities and the applicant was informed about it being under consideration by the Headquarters. The applicant has filed this OA before us, when despite such requests, he was absorbed, by an order in 2015, with effect from his date of joining in 2012. The respondents have not uttered a word in their reply to explain why he was not repatriated if his request for grant of seniority for past service was not acceptable. It was stated by the learned counsel for the respondents, during arguments, that it was not acceptable to put any condition on absorption. We find it would have been more reasonable to reject such request for conditional absorption rather than absorbing him without even informing that such condition was not acceptable. This would have avoided him (promoted in 2005, having a salary of Rs 24,850) being placed under those promoted in 2012 getting a salary of 15,100/-, as shown in the Gradation List (Annex. IA). We find the request of the applicant, in the light of the circumstances mentioned in Para 10 above, as fully reasonable. He had done whatever was within his powers to do, to request for a consideration which he bona fide believed he had right to claim. He has also requested for

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repatriation if his claim was not to be accepted. Such request for repatriation, made before his absorption, should certainly have been granted, if it was not possible for the respondents to accommodate the request for giving benefit of past seniority to the applicant on absorption.

12. The third issue is whether, in the light of our discussion on the two issues above, we can grant any relief other than what are specifically prayed by the applicant in sub para (1) and (2) of para 8 of O.A. We feel it is necessary to do so in this case, to meet the ends of justice. The applicant had himself sought this relief from the respondents if they were not able to grant his request for protection of his seniority. It is only fair to grant him what he had prayed before the authorities, if the main relief cannot be given on some technical grounds.

13. For the aforementioned reasons, we dispose of this OA, with direction to the official respondents, to give him the benefit of seniority on account of his past service in the equivalent cadre, following the DoPT OM of 2001 (Ann. R/12). If, for any reason, it is not possible for them to do so, the order dated 11.02.2015 absorbing the applicant in the Audit Office should be quashed qua the applicant and he

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should be immediately repatriated to his erstwhile parent cadre [Pr. A.G. (A&E) office, Rajasthan, Jaipur]. Orders in compliance of this decision and for grant of all consequential benefits, which could have occurred to him on his notional continuance in the parent office, should be granted to him within 6 months from the date of receipt of a certified copy of this order. No costs.

(Hina P. Shah)
Member (J)

(Dinesh Sharma)
Member (A)

/kdr/