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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn.No. OA-1190/86

Date of decision: 14.8.92.

Shri G.P. Bhatnagar Applicant

Versus

Union of India through the Secy., Ministry of Finance and Others Respondents

For the Applicant Mr. E. X. Joseph, Advocate

For the Respondents Smt. Raj Kumari Chopra, Advocate.

CORAM:

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

The Hon'ble Mr.B.N. Dhoundiyal, Administrative Member

1. Whether Reporters of local papers may be allowed to see the Judgment? *Yes*
2. To be referred to the Reporters or not? *Yes*

JUDGMENT

(of the Bench delivered by Hon'ble
Shri P.K. Kartha, Vice Chairman(J))

The applicant, while working as Senior Accountant in the Office of the respondents, filed this application under Section 19 of the Administrative Tribunals Act, 1985, praying for the following reliefs:-

- (i) To set aside and quash the impugned order dated 15.6.1984 issued by respondent No.4 (Under Secretary to the Govt. of India, Planning Commission) cancelling the Planning Commission's order dated 14.2.1978, regarding
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his appointment as Senior Accountant in the pay-scale of Rs.425-640 on ad hoc basis w.e.f. 1.8.1977 and refixing his pay on the basis of the cancellation of the promotion w.e.f. 1.8.1977;

- (ii) to set aside and quash the orders and decisions in O.M. dated 25.7.1986, whereby it was declared that his appointment as Senior Accountant and his placement in the Selection Grade of Junior Accountant w.e.f. 1.8.1977, was irregular;
- (iii) to direct the respondents to treat his promotion w.e.f. 1.8.1977 as regular and to give him all consequential benefits on the basis of the same;
- (iv) to set aside and quash the decision of the respondents to recover a sum of Rs.9,715.05 from him on account of what is held as excess amount paid to him because of the retrospective cancellation of his promotion;
- (v) to direct the respondents that no amount can be recovered from the amounts paid to him as pay and allowances for the period from 1.8.77, when he worked in the post of Senior Accountant on the basis of the promotion order dated 14.2.1978; and

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(vi) to direct them to refund to him any amount which has already been recovered from him on the basis of the decision taken by them.

2. We have gone through the records of the case carefully and have considered the rival contentions. On 30.12.1986, when the application was admitted, the Tribunal passed an interim order directing that no recovery should be made by the respondents. The case of the applicant in brief is that he was appointed as Upper Division Clerk (U.D.C.) in the Accountant General's Office, Rajasthan on 18.4.1959. He was transferred to the Office of the Accountant General, Central Revenues, New Delhi, on 27.6.1964. He was confirmed in the post of U.D.C. on 25.10.1960.

3. Consequent upon the departmentalisation of Accounts w.e.f. 1.4.1976 and the transfer of accounting work from the Indian Audit and Accounts Department to the various Ministries of the Government, the applicant was transferred in public interest to the Departmental Accounting Organisation, i.e., Pay & Accounts Office, Planning Commission, New Delhi, w.e.f. 1.10.1976 as confirmed U.D.C. (which designation was changed to that of 'Auditor') on the pay which he was drawing on 30.9.1976.

4. The post of Selection Grade U.D.C. in the Indian Audit & Accounts Department was designated as Senior Accountant in the Departmental Accounts Organisation with

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the scale of pay of Rs.425-640 remaining the same. The applicant was considered by the D.P.C. for appointment to one of the two posts of Senior Accountant which fell vacant in the Planning Commission in 1977. On the basis of the recommendation of the D.P.C., he was appointed to the post of Senior Accountant, Pay & Accounts Office, Planning Commission in the scale of Rs.425-640 w.e.f. 1.8.1977 on an ad hoc basis and until further orders vide order dated 14.2.1978. He was given the benefit of fixation of pay under FR-22-C. He performed his duties of Senior Accountant w.e.f. 1.8.1987 onwards.

5. In the Indian Audit & Accounts Department, the applicant became eligible for promotion as Selection Grade U.D.C. (Auditor) when he completed ten years of service as U.D.C. (Auditor) (designated as 'Junior Accountant' in the Departmentalised Accounts Organisation). The Selection Grade U.D.C. is equivalent to Senior Accountant in the Departmentalised Accounts Organisation and he became eligible for the said post after completion of ten years of service as Junior Accountant. He had completed more than ten years of service as U.D.C. (Junior Accountant) as on 1.8.1977.

6. By pay order dated 28.3.1978, the initial pay of the applicant was fixed as Rs.580/- in the post of Senior

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Accountant. The pay-scale of the said post was revised to that of Rs.425-700 w.e.f. 17.12.1979, when the post of Senior Accountant was converted as non-functional post. By order dated 24.1.1980, his pay was fixed at Rs.580/- with a Personal Pay of Rs.40/- from 17.12.1979.

7. By order dated 27.9.1983, respondent No.4, however, cancelled the Planning Commission's order dated 14.2.1978 and stated that the applicant was promoted to officiate as Senior Accountant in the pay-scale of Rs.425-700 w.e.f. 1.8.1981. His pay fixation was also ordered on the basis of the retrospective cancellation of his promotion on ad hoc basis w.e.f. 1.8.1977.

8. On 9.3.1984, the respondent No.4 issued another order in supersession of the order dated 27.9.1983 by which the applicant was given the revised fixation of pay from 1.8.1977 on the basis of the retrospective cancellation of promotion.

9. The applicant was informed by Memorandum dated 25.5.1984 that the orders of promotion w.e.f. 1.8.1981 instead of 1.8.1977 were issued on the basis of instructions received from the Controller General of Accounts as the earlier orders of promotion w.e.f. 1.8.1977 were issued erroneously.

10. Respondent No.4 issued another order dated 15.6.84 stating that the applicant was promoted to officiate as

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Senior Accountant w.e.f. 1.8.1981. By O.M. dated 25.7.1986, he was also informed that the excess payment made to him during the period from 1.8.1977 to 31.7.1981, was recoverable from him. The applicant has called in question this decision of the respondents on the ground that no show-cause notice was given to him before cancelling the promotion. He has also contended that the promotion given to him w.e.f. 1.8.1977 was legally in order. He has also challenged the proposed recovery of a sum of Rs.9,715.05 from his pay as had been decided by the respondents.

11. The case of the respondents in brief is that the applicant was given promotion erroneously w.e.f. 1.8.77 by taking into account the service rendered by him prior to his unilateral transfer to the Accountant General, Central Revenues, New Delhi, which was not permissible in terms of para.2 of the Controller General of Accounts O.M. dated 22.12.1977. When this mistake came to light, the same was sought to be rectified by appointing the applicant as Senior Accountant w.e.f. 1.8.1981, after he had completed 17 years of service subsequent to his unilateral transfer to the Accountant General, Central Revenues, New Delhi.

12. The admitted factual position is that the appointment of the applicant as Senior Accountant w.e.f. 1.8.1977, was

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made on the basis of the recommendation of the duly constituted Departmental Committee. Such appointment was on promotion. The post of Senior Accountant carried responsibilities and duties of greater importance than those attached to the post of Junior Accountant. For this reason, his pay was fixed under FR-22-C.

13. Another aspect of the matter is that promotion cannot be cancelled from retrospective date and no recovery of the salary and allowances can be made retrospectively for the period when the applicant held the post of Senior Accountant.

14. The Central Civil Accounts Service (Group 'C') Recruitment Rules, 1978 provide, inter alia, that the recruitment to the grade of Senior Accountant shall be as follows:-

"(a) vacancies in the grade of Senior Accountant in each cadre shall be filled up by the appointment of Junior Accountants who have rendered not less than ten years of service and are approved by the departmental promotion committee in each cadre on the basis of seniority-cum-fitness;

(b) for the purpose of sub-clause(s) service shall include service rendered in a corresponding grade in a regular establishment in any Ministry or in the Indian Audit and Accounts Department or in the organisation of erstwhile Chief Pay and Accounts Officer."

15. In the O.M. dated 22.12.1977, issued by the Controller General of Accounts on the subject of promotion of Junior Accountant as Senior Senior Accountant, it has been stated that persons with 17 years of service as on

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1.4.1977, can be accommodated against the available posts of Senior Accountants. Pending the finalisation of the Recruitment Rules, such persons could be promoted on ad hoc basis w.e.f. 1.8.1977 as Senior Accountants wherever they are working.

16. In view of the foregoing discussion, we are of the opinion that the cancellation of the promotion of the applicant as Senior Accountant by the impugned order, dated 25.7.1986, is not legally sustainable. We, therefore, set aside and quash the impugned orders dated 15.6.1984 and 25.7.1986, issued by the respondents. The applicant shall be deemed to have been promoted as Senior Accountant w.e.f. 1.8.1977 on regular basis and he would be entitled to all consequential benefits on the said basis. We further direct that the respondents shall not effect recovery of a sum of Rs.9,715.05 or any other amount from the pay and allowances of the applicant for the period from 1.8.1977 to 1.8.1981 on the ground that he had been paid in excess of what was due to him. The interim order passed on 30.12.1986 is hereby made absolute. There will be no order as to costs.

B.N. Dhoondiyal
(B.N. Dhoondiyal) 14/8/82
Administrative Member

P.K. Kartha
(P.K. Kartha) 14/8/82
Vice-Chairman (Judl.)