

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA NO.1414/87

DATE OF DECISION:12.02.1993.

SHRI N.VISWANATHAN

....PETITIONER

VERSUS

UNION OF INDIA THROUGH THE
SECRETARY, MINISTRY OF FINANCE
AND OTHERS

....RESPONDENTS

CORAM:-

THE HON'BLE MR. JUSTICE V.S. MALIMATH, CHAIRMAN
THE HON'BLE MR. I.K. RASGOTRA, MEMBER (A)

FOR THE PETITIONER

SHRI D.N. PURI, PROXY
COUNSEL FOR SHRI E.X.
JOSEPH, COUNSEL.

FOR THE RESPONDENTS

MRS. RAJ KUMARI CHOPRA,
COUNSEL.

JUDGEMENT(ORAL)
(HON'BLE MR. JUSTICE V.S. MALIMATH, CHAIRMAN)

The petitioner, Shri N.Viswanathan was an Administrative Officer in the office of the Comptroller and Auditor General of India on 1.10.1987 when he filed this Original Application, under Section 19 of the Administrative Tribunals Act, 1985 in which he has sought for the striking down of the provision which reads "without, however, affecting the interse seniority as Accounts Officer/Audit Officer in a particular Cadre" occurring in sub para 3 of schedule III to the Indian Audit and Accounts Service (Recruitment) Rules 1983 as violative of Articles 14 and 16 of the Constitution. He has further sought a consequent prayer for quashing the combined eligibility list of Accounts/Audit Officers as on 1.7.1987 for promotion to the Indian Audit and Accounts Service circulated by respondent No.2 as per

(6)

Annexure-2 and for a mandamus to the second respondent to prepare a fresh combined eligibility list in accordance with law.

2. The sub para 3 of Schedule-III of the aforesaid rules reads:-

"The names of eligible Accounts Officers/Audit Officers, shall for the purpose of combined eligibility list to be arranged in the order of date of their appointments as Section Officers (or corresponding posts) without, however, affecting the inter-se seniority as Accounts Officer/Audit Officer in a particular cadre."

3. Promotion to the posts of Accounts Officer and Audit Officer are being made regionwise, there being 50 regions in the country. Further promotion for Accounts Officers/Audit Officers is required to be made on all India basis to the cadre of IA&AS Junior Time Scale in the pay scale of Rs.2200-4000. As the opportunities for promotion to the cadres of Accounts Officers and Audit Officers in different regions were not on par, it so happened that in some regions junior persons got accelerated promotion whereas seniors had to wait for long spells of time in other regions. Taking note of this situation for the purpose of the considering the cases of everyone in the feeder category coming from all regions on a just and equitable basis the impugned rule was formulated. Though in the normal circumstances seniority would depend upon the date on which the person entered the particular cadre, but having regard to the situation explained earlier the Rule Making Authority thought that the All India eligibility list for consideration for promotion to

(6)

the Junior Time Scale Scale should be prepared taking into account not the date of entry into the cadre of Accounts Officers/Audit Officers but the dates on which the officials entered the lower cadre of Section Officers. This, obviously would result in persons who had become Accounts Officers earlier in one region being placed below those who had become Accounts Officers/Audit Officers later in other regions. It is in this background that the validity of sub para 3 was impugned in other cases and a Full Bench of the Tribunal examined this question in K.Ranganathan and others vs. The Accountant General (Accounts and Entitlements) Karnataka and Others reported in Full Bench Judgements of Central Administrative Tribunal (1989-91) Vol.II 28. The validity of sub para 3 of Schedule III of the Rules has been upheld by the Full Bench. The same argument of the incongruous situation flowing from the operation of the Rules was keenly debated before the Full Bench. The Full Bench after giving its anxious consideration negated the similar contention and upheld the validity of sub para 3 of Schedule III of the Rules. The relevant part of the Full Bench judgement reads:

"The respondents assert that on an in-depth examination of all alternatives, it was found that the inequalities in avenues of promotion got accentuated on account of widely disparate avenues available in the cadre of Accounts Officers in different units. They felt that these inequalities could be optimised for onward promotion if the length of service was reckoned in the cadre of Section Officers in the overall Eligibility List, without however disturbing the inter se seniority of the incumbents as Accounts Officers within the same unit. We have examined this aspect, with reference to the relevant service particulars of some of the incumbents in the respective cadres and are convinced

(14)

that the department has really taken recourse to administrative ingenuity and pragmatism as juste milieu- a golden mean--in resolving this vexed problem of seniority in the larger interests of its employees. The applicants therefore cannot have any legitimate grievance in this regard."

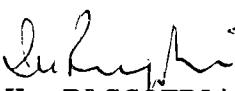
4. In view of the authoritative pronouncement of the Full Bench of the Tribunal it is not open to us to examine the petitioner's contention to the validity of the impugned operation of sub para 3 of Schedule III of the Rules. Hence the petitioner is not entitled to the first and principal prayer in the O.A. The second prayer is only a consequential one meaning thereby a direction is sought for redrawing the combined eligibility list in the event of the Tribunal granting the first prayer for quashing the impugned rule. As the petitioner has failed to secure the first relief, he would not be entitled to the consequential relief of securing a direction for recasting the combined eligibility list.

5. From what has been laid down by the Full Bench it is obvious that no grievance can be made if a person who became Account Officer later than the petitioner in another region gets a higher rank in the combined eligibility list having regard to his commencing as Section Officer earlier than the petitioner. Hence the petitioner cannot claim any relief by pointing out that a person who had become Accounts Officer later than him in another region had secured a higher place than him in the combined eligibility list. The only protection which has been given and which is the limited protection in the impugned rule is of maintaining the inter-se seniority in the unit to which the particular person

belongs. This means that even if on the basis of the continuous officiation in the cadre of Section Officer one becomes entitled to secure a higher place in the combined eligibility list he will not be entitled to maintain such a position over a person who started his career as Section Officer later on in point of time but had in fact become Accounts Officer earlier in point of time. The inter-se seniority in the cadre of Accounts Officer has to be maintained for that purpose. A person who is senior from the point of view of the cadre of Section Officer has to be pushed down. That is precisely what has been done in this case and the petitioner's inter-se seniority from the Kerala unit to which he belongs has not been shown to be affected in any manner. Our attention was drawn to the rank held by the petitioner in the combined eligibility list at serial No. 145 and that of Shri Gopala Pillai, also of Kerala Unit having been placed above at serial No. 143. Though Shri Gopala Pillai became Section Officer on 23.5.1966 and long after the petitioner became Section Officer on 19.5.1964, Shri Gopala Pillai has been placed above the petitioner because in the cadre of Accounts Officer Shri Gopala Pillai secured a higher rank than the petitioner, the post having been filled up by the process of selection placing Shri Gopala Pillai above the petitioner. No instance has been pointed out by the petitioner of anyone who became Accounts Officer later than him, having been placed above him on the ground that the said person commenced his career as Section Officer from a date earlier than the petitioner. We are, therefore, satisfied that so far

as the petitioner is concerned, his ranking has been done strictly by applying the principal laid down by sub para 3 of Schedule III of the rules. We, therefore, do not find any error or infirmity, justifying interference.

6. For the reasons stated above, this petition fails and is dismissed. No costs.



(I.K. RASGOTRA)
MEMBER (A)



(V.S. MALIMATH)
CHAIRMAN

'San'