

(RESERVED)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD.

ALLAHABAD this the 6th day of September, 2005

Hon'ble Mr. A.K. Bhatnagar, Member- J
Hon'ble Mr. S.C. Chaube, Member- A.

Original Application No. 431 of 2004

Ashok Narain Tiwari, S/o Late Mahabir Prasad Tiwari,
R/o 447/132/3, Alopibagh, Allahabad.

.....Applicant

Counsel for the applicant : Sri M. Chaturvedi

V E R S U S

1. Union of India through the Secretary,
Government of India, M/o Finance,
D/o Expenditure, New Delhi.
2. Comptroller Auditor General of India,
10, Bahadur Shah Zafar Marg, New Delhi.
3. Principal Accountant General- I,
U.P. Allahabad.
4. Sr. DAG (Administration) Office of the P.A.G (A) I,
U.P. Allahabad.

.....Respondents

Counsel for the respondents : Sri Amit Sthalekar

O R D E R

BY HON'BLE MR. S.C. CHAUBE, A.M.

The applicant who retired as Audit Officer from the office of AG UP (A) I , Allahabad through this OA has sought direction to promote him as Sr. Audit Officer notionally w.e.f the date of completion of three years and to quash the letter dated 02.11.1999 regarding the prescription of crucial dated as 01.10.1992 for promotion to the grade of Sr. Audit

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Officer issued in contravention of the provisions of No. F.6 (82)/C/91 issued by M/o Finance D/o Expenditure, New Delhi letter dated 22.09.1992. He has also prays for direction for antedating his promotion to the post of Audit Officer w.e.f 01.10.1989 instead of 03. 10.1989 and fixation of his pay in Sr. Audit Officers Grade Along with consequential retiral benefits .

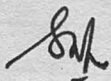
2. Briefly, the facts are that the Government Of India, M/o Finance D/o Expenditure vide memorandum date 22.09.1992 decided to provide a promotional grade in the scale of Rs. 2200-4000 as Audit/Accounts Officer who had completed minimum of three years service. The applicant has contended that having been promoted joined the post of Audit Officer on 03.10.1989 he has already completed 3 years on 02.10.1992 and was thus eligible for promotion to the higher pay in the Grade Rs. 2200-4000 in terms of letter dt. 28.10.1992 of Comptroller and Audit General of India and M/o Finance , D/o Expenditure. Dt. 22.09.92. The applicant approached AGUP (A) I and Comptroller and Audit General of India for his promotion to the post of Sr. Audit Officer in 1993 and 1994. However, the request of the applicant was turned down. As a matter of fact the applicant was intimated that the Comptroller and Audit General of India has turned down the request of the applicant as he did not have the requisite qualifying service on crucial date before his retirement and as such he

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was not considered for promotion as Sr. Audit Officer.

3. It has been contended by the applicant that the statutory provision contained in para 3 of the Government of India memo no. F.6 (82)-IC/91 dated 22.09.1992 has not be taken in to consideration in denying him the promotion as Senior Audit Officer; that the relevant provision can neither be changed nor annulled nor modified arbitrarily; that determination of crucial date of promotion to higher scale of pay as 01.10.1992 is without jurisdiction as there was no mention of any crucial date in Govt. of India letter; that the date of occurrence of vacancy is relevant date for considering the eligibility for promotion and not the date of appointment; that ante dating has been done in number of cases in the office and depriving the applicant the benefit of ante dating is discriminatory and, therefore, illegal etc.

4. Respondents on the other hand have contended that the applicant has retired from service on 31.10.1992 and the present OA has been filed in 2004. As such the OA is grossly time barred. They have further stated that the promotional scale of Rs. 2200-4000 with minimum of three years of regular service will be available for promotion as Sr. Audit Officer and crucial date was fixed as 01.04.1992 as fixed by the Comptroller and Audit General of India Order of 28.10.1992 (Annexure CA- 1) . They have further



stated that at no stage the Comptroller and Audit General of India stated that the applicant had completed 3 years as on 01.04.1992. As the applicant did not fulfil the condition of the order of 22.09.1992, therefore his representation was turned down vide office letter dated 29.10.1996 and communicated to the applicant by AG Audit (I) UP vide his letter dated 22.11.1996 .

5. The respondents have also invited our attention to the order dt.22.09.1992 that the promotion will be effective from the following months in which the officer completed 3 years service as Audit /Accounts officer provided vacancy existed . The applicant completed his 3 years on 03.10.1992 as such he was not found eligible for promotion. The respondents have further submitted that the applicant was intimated on 02.11.1999 that he was not eligible for promotion to the post of Sr. Audit Officer.
6. As regards antedating the date of promotion of the applicant from 03.10.1992 to 01.10.92. the respondents have stated that the change of date is not permissible under existing rules.
7. In his Rejoinder Affidavit the applicant has argued that vide M/o Finance D/o Expenditure notification dt.10.06.2002, the Central Government notified Indian Audit And Accounts Department (Sr. Accounts/ Sr. Audit Officer) recruitment Rules 2002 whereby the condition of eligibility of minimum service as



Accounts/Audit Officer was amended from three years to two years. It has , therefore, been pleaded by the applicant that his promotion to the level of Sr. Audit Officer should be considered by the authorities notionally as per revised condition of eligibility in terms of minimum service as Audit Officer for 2 years. It has been further contended that the request of the applicant for antedating his promotion from 03.10.1989 to 01.10.1989 has been rejected by a non speaking order .

8. We have heard the counsel for the parties and perused the pleadings.

9. Admittedly, the applicant having been promoted joined the post of Audit Officer on 3.10.1989,. A perusal of the office Memorandum dated 22.09.1992 would make it amply clear that the creation of a promotional grade of Rs. 2200-4000 for Audit and Accounts Officers will be effective from 01.04.1992 . There is a lot of substance in the contention of the respondents that the applicant completed 3 years service as Audit Officer on 03.10.1992 and hence he was not eligible for promotion. The respondents have also relied upon the letter dt.28.10.1992 of CAG of India vide which the crucial date for the remaining part of panel year 1992 i.e. for the period from April 1992 to December 31, 1992 will be April 01, 1992. Further the crucial date for eligibility of promotion for the panel year 1992 onwards will be October 1st of the

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preceding year. In view of this we are of the considered opinion that the claim of the applicant for ante dating of his promotion from 03.10.1989 to 01.10.1989 is untenable for want of any enabling provisions . As the promotion of the applicant cannot be ante dated in view of the existing rules of the department his prayer for promotion to the Gr. Of Sr. Audit Officer automatically falls through.

10. The applicant has relied upon M/o Finance, D/o Expenditure dated 10.06.2002 which reduced the minimum years of service as Accounts /Audit Officer from 3 years to 2 years. A close scrutiny of the notification would reveal that the same is effective from date of publication in the official gazette. There is no provision to render the application of this notification with retrospective effect. As such no comfort can be derived by the applicant from revised conditions of eligibility notified in 2002.

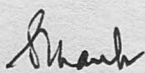
11. The respondents have vehemently argued that the applicant was informed as early as 22.11.1996 that since he did not have requisite qualifying service as on the prescribed crucial date, he cannot be deemed to have been promoted and given the benefit of higher pay. The present O.A has been filed after a lapse of almost 8 years when the prayer of the applicant was rejected by the competent authority. Thus we accept the contention of the respondents that the O.A is grossly time barred. As we are on



the point of limitation we are reminded of the judgment of the Apex Court in SS Rathore Vs. State of MP AIR 1990 SC Pg.10 wherein it was laid down that the cause of action shall be taken to arise on the date of the order of the higher authority disposing of the appeal or representation and repeated representations do not extend the limitation. As already stated above the representation of the applicant was rejected as early as 12.11.1996 and the present O.A having been filed in 2004 is grossly time barred.

12. Law of limitation may harshly affect a particular party but it has to be applied with all its rigors and the courts have no power to extend the period of limitation on equitable grounds (P. Ramachandran Vs. State of Kerla & Anr. JT 1998 (7) SC 21).

13. For aforesaid reason and case law cited above the O.A is dismissed. We make no order as to costs.


MEMBER- A.


MEMBER- J.

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