

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 89 of 2004

Allahabad this the 18/11 day of November 2004

Hon'ble Mr.A.K. Bhatnagar, Member(J)
Hon'ble Mr.D.R. Tiwari, Member (A)

Ishtiaque Ahmad Khan, Audit Officer, Office of the
P.A.G.(Audit) I U.P., Allahabad, Son of Late Mohd.
Idrish Khan, Resident of 231 C/2K Neem Sarai,
Allahabad.

Applicant

By Advocate Shyam Ji Das Kapoor

Versus

1. The Union of India through the Secretary, Ministry of Personnel, Public Grievances and Pension(Department of Personnel and Training), New Delhi.
2. The Comptroller and Auditor General of India, 10 Bahadur Shah Zafar Marg, New Delhi.
3. The Principal Accountant General, Audit-1, U.P. Office of the P.A.G. Audit-I, U.P. Allahabad.

Respondents

By Advocate Shri Amit Sthalekar

O R D E R

By Hon'ble Mr.D.R. Tiwari, Member(A)

By this O.A. filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for the following reliefs:-

- (i) That in view of the facts and legal position of the case this Hon'ble Tribunal may graciously be pleased to issue mandamus to respondent nos.2

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and 3 to take 1.1.2002 as the deemed date of applicant's promotion to the cadre of Audit Officer instead of 5.2.2002 and give him consequential relief.

- (2) That this Hon'ble Tribunal may be pleased to mandate respondent nos.2 and 3 to convene departmental promotion committee immediately for implementing consequential relief i.e. considering promotion of the applicant to the cadre of Senior Audit Officer in the current panel year 2004 as still there are vacancies in the cadre in the current year and the Panel for the year 2004 has already exhausted.
- (3) That this Hon'ble Tribunal may be pleased to mandate that in view of the cadres of Senior Audit Officers and Audit Officers being one in respect of work allotment, the date of applicant's promotion to Senior Audit Officer Cadre for all purposes including pay and allowances would be the date of vacancy against which applicant's promotion would be made irrespective of the date of D.P.C. meeting because for fault of the office the applicant need not suffer unnecessarily. Applicant's name would have been there in the Panel for 2004 had his date of promotion in the cadre of Audit Officer been taken rightly for considering promotion to the cadre of Senior Audit Officer."

2. Filtering out the details, the necessary factual matrix to decide the issue is that the applicant joined the Office of Accountant General, U.P., Allahabad in the year 1973 as an Auditor. On his passing the S.O.G.E. of 1982, he was promoted as Section Officer(Audit) on 06.10.83. In 1989 he was promoted as Assistant Audit Officer. On completion of 5 years Combined Service as S.O./A.A.O. as per the Statutory Rule 'Indian Audit and Accounts Department' (Accounts Officer/Audit Officer) Recruitment Rules, 1989,

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one becomes eligible for promotion to the post of Audit Officer but because of poor vacancy position in the Office, the applicant had to wait for more than a decade for becoming eligible for promotion to the said post. However, in 2001 he was considered for promotion and he was at serial no.1. As per the rule, the panel for each year is ready and one is promoted on 1st January each year. This is provided under the statutory rules and various administrative instructions issued by the C.A.G. Office Circular/letters dated 14.04.2000, 11.01.2000, and 07.12.1988, that is why it is provided that promotion panels for Group 'C' and 'B' post may be prepared well before the beginning of panel year so that empanelled persons are promoted against the available vacancies on the first working day of panel year(annexure.3).

3. The main grievance of the applicant is that because of laxity, administrative instructions could not be adhered to in the preparation of the Audit Officer's panel for the year 2002, which resulted in delayed promotion for the officers and they were promoted on 05.02.2002. It has been stated that the applicant was at serial no.1 and he was to be promoted on 01st January of the year 2002 and as vacancies were available on that date itself because 17 promotions were made in February, 2002 and it has been presumed that these vacancies did not arise in February(a copy of promotion order of 05.02.2002 is at annexure-4). It has been pleaded that for whatever reasons the promotions were delayed, delay could have been rectified by taking resort to "deeming provisions" in service jurisprudence. It has been strongly contended that in the interest of ... pg.4/-

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substantial justice, applicant's date of promotion would have been deemed to be on 01.01.2002 though this could have entitled the applicant for pay and allowances from the date of actual promotion.

4. The applicant made a detailed representation dated 03.04.2003 to the C.A.G. of India, there is Cadre Controlling Authority i.e. Principal Accountant General deemed to be Audit U.P. to the effect that he be/promoted w.e.f. 01.01.2002. His representation could not find favour with the competent-authority and he received the impugned order dated 07.11.2003 which did not give any reason and he was simply informed that his request regarding deemed date of promotion had not been acceded to by the Headquarters Office(annexure.1) After this rejection letter, the applicant again made an application dated 14.12.2003 to the Principal Accountant General for onward transmission to the C.A.G. stating therein that other course open to the authorities for remedying the situation and doing substantial justice to the applicant. This application is at annexure-6 and has not been replied so far.

5. Being aggrieved, the applicant has assailed the impugned order on multiple grounds mentioned in paragraph no.5 and its sub paragraph. The main ground for challenge is that the statutory provisions and various departmental instructions have not been given effect to by the competent authorities. It has also been contended that he is being deprived of the deemed promotion, ^{which} is violative of Article 14 of the Constitution of India. He would suffer great loss because his delayed promotion in the present cadre would deprive him of his

promotion to the next cadre of Senior Audit Officer w.e.f. 01.01.2005. He has also stated that he was not considered by the D.P.C. for 2004 panel as he has not completed 2 years service on 31.12.2003. He will be incurring financial loss every month in pay and allowances. It would also result in long run in the loss of his pensionary benefits.

6. The respondents, on the other hand, have resisted the contentions/submissions of the applicant by filing a detailed counter-affidavit, and have submitted that the work relating to the preparation of panel of A.A.O. to the Audit Officer was started in October, 2001, taking into account the deemed vacancies because of retirement, deputation etc. Immediately C.A.G. Office was approached on 21.11.2001 for approval of the size of panel for 2002 as per instructions contended in the Headquarters letter dated 01.11.2001. The C.A.G. Office approved the size of panel of 29.11.2001. Meanwhile two A.Os had died, therefore, C.A.G. Office was approached again for revise size of panel and the approval was received on 12.12.2001. Accordingly, the D.P.C. was held on 24.12.2001 and on the same date it was sent to C.A.G. Office, which they returned with certain objections. Meanwhile one of three D.P.C. members nominated by the Headquarters Office had gone out side the India on official duty, the Headquarters' Office was requested to nominate the replacement of the above members. As the replacement of S.C. Members was not available at Allahabad at that time, the D.P.C. could not meet immediately. After the panel was drawn by the D.P.C. on 30.01.2002 and the Headquarters' Office conveyed its approval on 05.02.2002, the promotions were made on the same date. In view of this, they have...pg.6/

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argued that there was no administrative laxity but due to unavoidable and genuine reasons the promotion could not be effected earlier and they were given effect only from 05.02.2002. They have also submitted that the representation of the applicant could not be acceded to and it was rejected on the ground that there was no rule for giving deemed promotion. His second representation again on 15.12.2003 on the same ground to C.A.G. was not forwarded because it did not contain any fresh material. In view of these reasons, the respondents have submitted that O.A. has no merit and be dismissed.

7. We have heard the learned counsel for both the parties at length and have considered the rival submissions made by the counsel from either side, and perused the record.

8. During the course of arguments Shri S.J.D. Kapoor, counsel for the applicant reiterated the facts and the legal grounds pleaded in the O.A. He relied on the decision in the case of Shri B.M. Jha Vs. Union of India of Principal Bench, New Delhi in O.A. No. 2308 of 1992, decided on 11.01.2000. He further relied on Union of India Vs. K.B. Rajoria 2000 S.C.C. (L&S) 665 to contend that notional promotion granted from retrospective date is counted as a regular service and for promotion it is as good as qualifying service as if one has actually worked. He contends that notional promotion counts for payment of pay and allowances and in case some one is denied this, he will be entitled for arrears of pay and allowances. Shri Kapoor even

went to the extent of submitting that in this case he is not pleading for payment of salary and allowances etc., his argument is limited to the point of counting the service of the applicant only for the purpose of his promotion to the next grade so as to enable him to complete 2 years of service for the next promotion. He has relied on the Circular on the subject of holding of D.P.C., avoidance of delay(annexure-3) and contends that this Circular has not been followed in letter and spirit and there has been a clear breach of principles laid down in this circular regarding avoiding of delay in holding of D.P.Cs, which shows the laxity on the part of the respondents. Finally he concluded his arguments by saying that the respondents may be directed to give notional promotion to the applicant which would entitle him to be eligible for next promotion on time.

9. Counsel for the respondents Shri Amit Sthalekar opposes the contention of counsel for the applicant and he also relies on the facts stated in the C.A. He has specifically referred to paragraph no.6 of the counter affidavit and submits that there has been no delay as the process for preparing the panel commenced in October,2001 and all efforts have been made by the administration to complete the panel on time. However, they could not complete the entire process because of unavoidable reasons. He has drawn our attention to the same Circular on the subject of holding of D.P.Cs, last line of which reads as follows:-

".....reasons thereof may please be indicated in the said annual return in the following proforma, showing unavoidable reasons."

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His emphasise is on the fact that even in the Circular
^{, Counsel for} relied on by the applicant leaves room for indicating
of reasons due to some unavoidable circumstances.

Despite the best effort put in by the administration
some delay has occurred because of unavoidable circum-
stances prevailing in this case.

10. The question which arises for consideration
is whether the action of the respondents is justified
in view of the facts and circumstances mentioned above.
We noticed that administration has put in the best
efforts to complete the panel on time but unfortunately
they have not been able to do so. It is for this reason
that Circular on this subject has been issued from time
to time emphasising on the importance of avoidance of
delay in the matter of promotion of eligible staff.
We find, in this case, there is a proforma of annual
return so as to monitor the cases of delay in the matter
of promotion. This proforma is to be filled in and if
some unavoidable circumstances crop in the reasons therefor
has to be indicated in this proforma. Inspite of all
these precautionary measures, this case has been delayed
by more than a month because of the reasons explained by
the respondents. We have no reason to disbelieve the
reasons for delay explained by the respondents. In view
of this O.A. is liable to be dismissed.

11. As regards the reliance of the counsel for the
applicant on the case law cited by him, we find that
the facts of the case in hand are quite different from
the facts mentioned in those cases and hence they are
distinguishable. It may also be noticed that the

Judgments cited by the counsel for the applicant referst to the payment of pay and allowances for notional promotion made in accordance with certain rules. The case of Rajoria(supra) is also not applicable in this case/in that case notional promotion granted earlier has been held to be of regular nature of service for the purpose of promotion to the next higher grade. In view of this, the arguments of counsel for the applicant is not acceptable as in the cases cited by him, notional promotion has already been granted under certain provisions of Recruitment Rules and the cases or the authorities for the purpose that certain consequential benefits accrued out of notional promotion. In this case, the notional promotion was not granted because there is absence of any provision in the Recruitment Rules. Counsel for the applicant also could not demonstrate under what rule respondents could have agreed to his proposal for grant of notional promotion.

12. In view of the facts and circumstances, and discussions made above, the O.A. is devoid of merit and is accordingly dismissed. No order as to cost.

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Member (A)

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Member (J)

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