

(RESERVED)

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD.**

ORIGINAL APPLICATION NO.523/05

Dated this *Friday*, the 25th day of March, 2011.

CORAM:

HON'BLE SHRI S.N. SHUKLA, MEMBER (A)
HON'BLE SHRI SANJEEV KAUSHIK, MEMBER (J)

O.P.Khare retired Senior Accounts Officer
Office of the A.G.U.P. (A. & E) I S/o late Srl
Ganesh Prasad Khare r/o 17/16 Kasturba
Gandhi Marg, Allahabad.
(By Advocate: Shri A.N. Sinha)

... Applicant

Versus

1. The Comptroller and Auditor General of India
No.10 Bahadur Shah Zafar Marg, New Delhi.
2. The Accountant General Office of the A.G.U.P.
(A & E) I, Allahabad.
3. The Dy. Accountant General (Administration)
Office of the A.G.U.P. (A & E), Allahabad.

... Respondents

(By Advocate: Shri Pankaj Srivastava holding brief of
Shri Satish Chaturvedi, Counsel for the Union of India.).

ORDER

PER MR. SANJEEV KAUSHIK, MEMBER (J):

By way of the instant Original Application filed Under Sec. 19 of the Administrative Tribunal Act, 1988 the applicant seeks quashing of order dated 7.7.2004, rejecting his claim to give him benefit of actual pay w.e.f 16.05.1970 i.e. the date when his junior Shri Saheb Din was promoted as Selection Grade Auditor in the pay scale of Rs. 425-640 that of arrears as per office order dated 12.5.1994 passed by respondents. He further seeks that the respondent be directed to comply with the order dated 13.9.1991 passed by this Tribunal in O.A. No. 117/2008 which was affirmed by the Hon'ble

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Supreme Court by dismissing the Special Leave Petition filed by respondent on 18.2.1994.

2. The brief facts of the case are that the applicant retired as Senior Accounts Officer from the office of A.G. U.P. Allahabad. While he was in service he instituted Original Application No.117/2008 before this Tribunal for issuance of a direction to the respondents Principal Accountant General, U.P. to redetermine his seniority with reference to executive instructions contained in O.M. dated 22.6.1949 in the gradation list w.e.f. 1.3.1963 and to place him in the scale of Rs. 425/640 with retrospective effect from 16th of May 1970 that is the date from which his junior Shir Saheb Din was promoted to the selection grade and further seeks consequential benefits in the matter of fixation of pay and drawal of increments in Selection Grade (i.e. Rs.425-640) as per pay scale since May 1970 onwards. The above stated Original Application was disposed of by this Tribunal vide its order dated 13.9.1991. It is further submitted that in compliance of the order dated 13.9.1991 passed by this Tribunal the Dy. Accountant General (Administration) passed an order on 12.5.1994 whereby the applicant has been promoted on functional grade of Selection Grade in the scale of Rs. 425-15-560-EB-20-640 w.e.f. 16.5.1970 that is the date from which his junior Shir Saheb Din was promoted. The above stated benefit was granted notionally. Subsequently the order dated 12.5.1991 was clarified by another order dated 26.5.1994 whereby he was granted actual benefit from the date of passing of the order by this Tribunal in his O.A. on 13.9.1991. The applicant has alleged that the seniority list was finalized by the respondents without inviting any objections. Therefore, the same is not binding upon the applicant and consequent upon that the applicant is entitled the actual benefits from 16.5.1970. Against the above stated order the applicant filed another Original Application before this Tribunal i.e. No.707/1998 impugning order dated 26.5.1994 which was allowed by this Tribunal vide its order dated 29.4.2004 with a direction to the

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respondents to pass fresh order. In continuation of that the impugned order dated 7.7.2004 has been passed by the respondents (Annexure A.I) whereby his claim has been rejected. Hence the instant Original Application.

3. Upon notice the respondents filed detailed Counter Affidavit in which they contested the claim of the applicant on the ground that the instant Original Application deserves to be dismissed on the ground of *res judicata* as the applicant is filing successive original application for the same very relief which had already been granted to the applicant. On merit it is submitted by the respondents that in compliance of the order passed by this Tribunal the applicant had already promoted notionally w.e.f. 16.5.1970 and the actual benefits of the promotional post were granted w.e.f. 13.9.1991 from the date when the order was passed by this Tribunal. It is further submitted that the contentions of the applicant that the Dy. Accountant General (Admn.) who has passed the order is not competent has already been gone into by this Tribunal and the same has been decided against the applicant by holding that the order is not without jurisdiction. It is further submitted that by the order dated 29.4.2004 passed in O.A. No.707/1998, the respondents are directed to pass fresh order after going into the question whether the seniority matter has become final after inviting objections and whether the applicant had raised any objection as per order issued by the Tribunal and the letter issued by the C.A.G. . In conformity with the direction given by this Tribunal the matter was examined and the impugned order dated 7.7.2004 has been passed. It is further clarified in para No.14 of the Counter Affidavit that a gradation list is published every year on the basis of seniority position as on 1st of March of the year. This is an open document and is always available to be seen by the employee. If any employee had raised any objection then the same is considered by the respondents before finalization of the same. Particularly, in every Seniority List objections were called from the employees. Therefore there is no occasion that the individual be asked to submit the objections.



Once the tentative seniority list is circulated then it is for the employee to raise objection if he feels aggrieved against the tentative seniority list. Since no representation has been received from the applicant's side, therefore, the final seniority list was circulated. With regard to the grant of pay scale of Rs. 425-640 for the post of selection grade Auditor is concerned, the same made applicable effective from 1st January 1973 on implementation of the recommendation of the Third Pay Commission and accordingly the applicant was granted notional benefits w.e.f. 1.1.1973 and actual benefits from 13.9.1991 when his Original Application was allowed. They have prayed dismissal of the Original Application.

4. We have heard counsel for the parties i.e Shri A.N. Sinha for the applicant and Shri Pankaj Srivastava holding brief of Shri Satish Chadurvedi for the respondents. The learned counsel for the applicant submitted that despite the clear orders of this Tribunal dated 19.8.2004, the respondents has deliberately not granted him the pay scale of Rs. 425-640 w.e.f. 16.5.1970 and granted from the date of passing of the order in O.A. i.e. on 13.9.1991. Once the order dated 26.5.1994 granting him notional benefits w.e.f 16.5.1970 has been set aside by this Tribunal by allowing his Original Application No. 707/1998 with a direction them to pass a fresh order, therefore the respondents are bound to reconsider and grant him the benefit from the date of order i.e. 16.5.1970. He further submitted that once the order of this Tribunal dated 13.9.1991 has been affirmed by the Hon'ble Supreme Court by dismissing Special Leave Petition filed by the respondents vide its order dated 18.2.1994 therefore, the respondents are bound to grant him the benefits. Lastly he submitted that the impugned order dated 7.7.2004 rejecting his claim is without application of mind and reiterated what has been already passed by the respondents at earlier point of time, therefore, the same be quashed by allowing the O.A.

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5. On the other hand the Counsel for the respondents has vehemently argued that his earlier Original Application i.e. O.A. which was disposed of on 13.9.1991, it is nowhere directed by this Tribunal to grant him actual benefits from the date of promotion of his junior. It is further submitted that in his subsequent Original Application i.e. O.A. No. 70/1998 which was disposed of on 29.4.2004 though this Tribunal quashed the order dated 26.5.1994 but direction has been given to pass a fresh order after going into the question where the seniority matter has become final after inviting objections and whether the applicant has raised any objection. He further submitted that as averred in the Counter Affidavit that the applicant has not raised any objection against the tentative seniority list, therefore, he cannot raise vice that he was not having personal knowledge that whether the objection has been called or not. Seniority List is a public document, therefore it is for the employee to be vigilant and to file objection if he is aggrieved against the tentative Seniority List. It is further submitted that in compliance of the order passed by this Court on 29.4.2004 the impugned order dated 7.7.2004 has been passed which is a self speaking order. Therefore the instant Original Application be dismissed with cost.

6. We have considered the rival submissions and perused the records. From the pleadings we have gathered that the applicant is seeking actual benefits as Selection Grade Auditor w.e.f. 16.5.1970 and not from 13th May 1991 on the pretext that his junior Shir Saheb Din was promoted and granted Selection Grade Auditor in the pay scale of Rs. 425-640 from that date. For the better appreciation of the controversy involved the order passed in first original application filed by the applicant be considered. The operative part of the order dated 13.9. 1991 reads as under;

“ In view of what has been said above obviously the applicant's seniority is to be governed by O.M. of 1949 and the respondents are directed to refix the seniority of the applicant and

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grant him same pay scale which his junior is getting. It has not been stated by the other parties that the seniority list is issued during this period and no objection was filed. It means that the seniority list is issued and objections were not involved. The applicant will be entitled to the relief that the previous seniority is to be counted from the date when he entered into service and he will be granted the notional seniority as well as the pay scale as has been mentioned in O.A. of 1988 instructed above. But in case the seniority matter has become a closed chapter after inviting objections to it, the applicant may be given notional benefit of pay scale. So far as his seniority is concerned the list will not be disturbed by placing him above those whose placement has already been become final by decision or action on the part of the applicant."

7. From the perusal of the above it is clear that the respondents has been directed to grant him the benefit to the applicant notionally in pay scale. It is no where stated that while fixing the seniority of the applicant with retrospective effect, he will be given actual payment for the period when he even did not work on the higher post. Accordingly the respondents passed an order on 12.5.1994 whereby fixing him notionally in the grade of Rs. 4250640 w.e.f. 16.5.1970 from the date when his junior Saheb Din was promoted to the grade, which was subsequently modified on 26.5.1994 wherein it is clarified that the applicant on his promotion as Selection Grade Auditor w.e.f. 16.5.1970 will be allowed only notional benefit of pay and actual benefit will be allowed to him from the date of passing of the order in O.A. No. 13.9.1991. The relevant part of the above stated letter are reproduced hereinbelow:

" In compliance of the order dated 13.09.1991 of the

Central Administrative Tribunal in O.A. No.117/88 Sri O.P.



Khare (retired Sr. A.O. P. No.A.50) is notionally promoted to the functional grade of Selection Grade Auditor in the scale of Rs. 425-15-560.EB-20-640/- w.e.f. 16.05.1970 i.e. the date from which is junior, Sri Saheb Deen was promoted to the grade.

Sri O.P. Khare is required to exercise option for pay fixation the functional grade as per existing orders."

" In continuation of the office order No.Admn. I/Gr.I/36 dated 12.5.1994 it is hereby clarified that as per instructions received Headquarters office Sr.O.P. Khare (retired Sr. A.O.P. No. A/50) on his promotion as Selection Grade Auditor w.e.f. 16.05.1970 will be allowed only notional benefit of pay and actual benefit will only be allowed to him from the date of the Hon'ble Central Administrative Tribunal's order i.e. 13.9.1991."

Moreover admittedly applicant did not work on promotional post and was granted notional promotion. Therefore, the principle of no work no pay is applicable.

8. Thereafter the impugned order dated 7.7.2004 has been passed by the respondents. By the impugned order the respondents have complied with the direction given by this Tribunal in its order dated 29.4.2004 to verify that whether the objections were invited before finalization of the seniority list. The relevant part of the order dated 29.4.2004 also reads as under;

"7. Accordingly, the O.A. succeeds and is allowed. Order dated 26.5.1994 is quashed. The A.G. (A&E), U.P. Allahabad (Respondent No.2) is directed to pass a fresh order after going into

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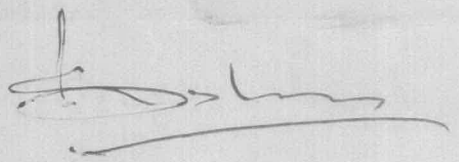
the question whether the seniority matter has become final after inviting objection and whether the applicant had raised any objection as per order issued by the Tribunal and the letter issued by the C.A.G. No costs."

9. Therefore we find that the impugned order has been passed in conformity with the direction by this Tribunal after noticing the fact that the applicant has not raised any objection against the tentative seniority list which was circulated. The applicant has been given the benefit of promotion as Selection Grade Auditor notionally w.e.f. 16.5.1970 and actually from the date of order i.e. 13.9.1991.

10. For the reason what is stated above, we find no reason to interfere with the impugned order and hence the O.A. being devoid of merits is dismissed.

No costs.


MEMBER (J)


MEMBER (A)

Sj*