

APR 10
Judgment reserved

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD.

ORIGINAL APPLICATION NO. 610 of 1986.

• S.R.Chaudhary and 4 others applicants.

Versus

Principal Accountant General, U.P.

Allahabad and others Respondents.

Hon'ble O.S.Misra-AM

Hon'ble G.S.Sharma JM

(Delivered by Hon'ble O.S.Misra)

This is an application under section 19 of the A.T.Act,1985 in which the petitioners have challenged the order dated 14.7.1985 passed by the Principal Accountant General, U.P., Allahabad promoting the petitioners from the post of Divisional Accountant to that of Section Officer and the consequential order dated 8th October, 1986 transferring the petitioners from different places and posting them as Section Officers to Allahabad.

2. The admitted facts of the case are that the petitioners were initially appointed as Auditors in Indian Audit and Accounts Department. In order to get promotion to the post of Section Officer the petitioners had to pass departmental examination known as Subordinate Accounts Service Examination(hereinafter referred to as SAS) Examination. All the petitioners passed the said SAS Examination and also passed divisional test, which made them eligible for promotion as Divisional Accountants. They were promoted as Divisional Accountants on different dates. With effect from 1st March, 1984, bifurcation of the office of the Accountant General took place, as a consequence of which Audit and Accounts branch were separated. Petitioners, who were working as Divisional Accountants, were taken as the incumbents of the accounts branch without calling for options.

3. It is alleged that the petitioners, who were posted outside Allahabad, never came to know about the developments having taken place due to aforesaid bifurcation of the A.G. Office, Allahabad. By an order dated 15th December, 1985 Petitioners were asked to give their acceptance for promotion to the post of Section Officer within 15 days and they were also informed that failure to give consent would lead to their losing the chance of promotion for one year (copy at annexure 3 to the petition). Petitioners informed the respondents in writing foregoing their promotions to the post of Section Officer (copy at annexure-4). One of the petitioners, Sri Ram Murti Yadav, was informed that his request to forego the promotion to the post of Section Officer permanently has been received (copy of the said order dated 29th January, 1986 is at annexure-5). By an order dated 2nd April, 1986, the respondents stopped the special pay of Rs.35/- being paid to the petitioners, as a consequence of their refusal for promotion to the post of Section Officer (copy at annexure-6). By another order dated 14th April, 1986 the Principal Accountant General, U.P. Allahabad promoted the petitioners to the post of Section Officer and this order also stated that on promotion they would become finally allocated to A and E Office (copy at annexure-7). The respondents continued to pressurise the petitioners to join as Section Officers, and by a telegraphic order dated 16th April, 1986 the petitioners were asked to join the said posts immediately (copy at annexure-8).

4. Petitioners' grievance is that inspite of their having foregone promotion as Section Officer on permanent basis, they were promoted and are being pressurised to take up the posts of Section Officers at Allahabad. Petitioners had filed a representation on 22.4.1986 against the order dated 14th April, 1986 (copy at annexure-9) but the respondents continued to pressurise the petitioners and an order dated 2/9th July, 1986 was sent by A.G.II (A and E) to the employers of the petitioners to relieve the

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petitioners at once (copy at annexure-10). Petitioners, being aggrieved by this order again made a representation on 14th July, 1986 (copy at annexure-11). The respondents ,A.G.II, passed an order dated 22nd July,1986 by which the petitioners' transfers were stayed (copy at annexure-12). However, after a lapse of about 3 months, the respondent A.G.-II(A and E) passed the impugned order dated 8th October,1986 making transfers and postings of the petitioners on the posts of Section Officers(copy at annexure-13). The petitioners have alledged that several Divisional Accountants had foregone their promotion to the posts of Section Officers and the same had been accepted by the respondent, but the petitioners were being given discriminatory treatment inspite of their refusal to be promoted on the posts of Section Officers and they were being forced to join the said posts. It is further alleged that as a result of this transfer, the petitioners would be put to financial loss as they would be entitled to get a higher scale of pay of Rs.1640-2900, if they continued as Divisional Accountants. They have accordingly prayed for quashing the order dated 14th April,1986 promoting them as Section Officer and the order dated 8th October,1986 for relieving them with immediate effect from their present places of postings.

5. In the reply, filed on behalf of the respondents, it is stated that assertion made in sub-clause(e) of para 6 of the application is not correct. The correct position is that persons to the posts of Divisional Accountants are appointed by the Accountant General on the basis of a competitive examination known as Initial Recruitment Examination. However, persons working in the office of the Accountant General, who have passed the SAS Examination and are waiting promotions as Section Officers, can also be posted as Divisional Accountants after passing the Divisional Accountants Test, but after they are promoted as Section Officers they have to revert therefrom and join as Section Officers. The applicants were given promotion as Divisional Accountants as an interim measure until they got promotion as Section Officers. The applicants were also given Rs. 20/- p.m. as special pay in lieu of non-promotion as

Section Officers because of the non-availability of posts of Section Officers. Referring to the assertions made in sub-para(k) and (1) of para 6 of the petition, it is stated that in view of the instructions contained in the letter dated 12th January, 1984 of Controller and Auditor General of India, no option was to be given to the Divisional Accountants as their cadre is under Accountant General(II)(A and E) U.P. Allahabad and this was treated to be the post on the accounts side. It is also stated that the MIR scheme was widely circulated and some of the Divisional Accountants had also filed petitions challenging the scheme, but it was upheld by the Division Bench of the Allahabad High Court. In reply to the assertions made in sub para (o) and (p) of para 6 of the petition, it is stated that the consent for promotion was needed as previously they had sought deferment due to their personal reasons and the temporary deferment granted to them was not permanent. Respondents have admitted that the application of the applicants to forego promotions to the posts of Section Officers was received by them, but the same was rejected and they were informed about it. The assertion of the applicants that their application for foregoing promotions on permanent basis was accepted by the competent authority, is based on mis-interpretation of the letter dated 29.1.1986(annexure-5) to the petition. Referring to the case of Sri Ram Murti Yadav, it is stated that he has already been informed of the rejection of his request to forego the promotion. The Circular dated 24th September, 1985(photo copy as annexure CA-1) has clearly laid down the policy to be followed in cases where persons refuse promotions to higher grade. The Ministry of Home Affairs, Department of Personnel and Administrative Reforms have issued a circular on the subject. Both the circulars lay down the policy that the appointing authority may not accept the refusal of promotion of an employee and in that contingency the promotion should be enforced and if the officer still refuses the promotion, then disciplinary action may be initiated against the officer refusing promotion. In reply to

sub paras (r) and (s) of para 6 of the application, it is stated that SAS examination passed employees are granted special pay of Rs. 20/- for one year from the date of passing SAS examination and Rs.35/- p.m. from second year onwards while waiting for promotions as Section Officer. In terms of Controller and Auditor Generals' Circular dated 26.9.1981, special pay granted for waiting promotion as Section Officer is to be reduced to Rs.20/- p.m, in the case of employees, who refuse to accept the promotion as Section Officers. The order contained in Annexure-6 to the application was passed in accordance with the above-mentioned instructions of the Controller and Auditor General. Referring to sub-para(u) of para 6 of the application, it is stated that there is no direct recruitment to the post of Section Officer, only SAS passed and departmental candidates can be posted as Section Officers. After bifurcation of the office in Accounts and Audit Wings, a large number of Section Officers were transferred to audit and the remaining ones are being allocated from the waiting list. Number of SAS passed candidates required for posting as Section Officers is less than the actual requirement and the work in the office is being hampered. It was necessary to utilize the services of SAS examination passed candidates who were working elsewhere and the petitioners were promoted and posted as Section Officers in accordance with the genuine requirements of the main office of the A.G., U.P.. The allocation of the petitioners to A.G. Office does not put them to any loss as the scales of pay in the Audit and Accounts sides are the same. Referring to sub-para (u) of para 6 of the application, it is stated that no order staying the transfer was issued and telegram mentioned as Annexure-XII to the application was to the effect that the relieving of the petitioners was stayed till further orders pending decision on their representations. In reply to the contents of sub-para (dd) of para 6 of the application, it is stated that the IV-th Pay Commission has recommended two scales of pay for Divisional Accountants viz. 1400-2600 and 1640-2900. For the Section Officers the Commission has recommended two scales of (1) Rs. 1640-2900 and (2) Rs.2000-3200. It is stated that in the event of the

petitioners' joining as Section Officers, they will get the chance of going in the scale of Rs.2000-3200 while in Divisional Accountants Cadre, there is no such scale and even a junior Section Officer will draw the same salary as the Senior in the Divisional Accountants cadre. The respondents denied the allegations contained in para 6(ff) of the application that the promotion and transfer orders of the petitioners were made to harass them. It is also stated that the petitioners have not made any representation after passing of the orders dated 8th October, 86 and as such the application is liable to be dismissed as premature. The respondents have stated that the prayer contained in paras 7 and 8 of the application can not be granted.

6. The petitioners filed rejoinder-affidavit, in which it is reiterated that the SAS passed candidates after qualifying Divisional Accountants Test Examination have the discretion to accept the promotion to the post of Section Officer or not to accept the said promotion. The petitioners have challenged the interpretation of the two Circulars filed by the respondents and have asserted that the aforesaid Circulars do not apply to cases where promotion is declined forever. They have also denied the assertion of the respondents that there was any shortage of Section Officers in the A.G. Office. It is also stated that the post of Divisional Accountant is better in status in the division, than that of Section Officer in A.G. (Accounts) Office. They have further asserted that the petitioners request to forego promotions permanently to the posts of Section Officers has been accepted. Applicants have further stated that the Pay Commission has recommended the scale of pay of Rs. 2375-3500 for the Accounts Officer to be filled-in by promotion from the Senior Scale Divisional Accounts. Other assertions made in their application have been reiterated and reaffirmed.

7. A supplementary counter-affidavit was filed by the respondents in which the allegation made by the applicants that SAS passed candidates after passing Divisional test have the discretion

to accept the promotion or not has been denied. It is asserted that it is the discretion of the Administrative Authority to accept the declination of the promotion or not. The allegation made in para 4 of the rejoinder-affidavit is denied and the the contents of para 6 of the counter-affidavit are reiterated and reaffirmed. Similarly the contents of paras 5,6, and 7 of the rejoinder affidavit are denied. It is stated that the correctdate of circular mentioned in para 10 of the rejoinder affidavit is 24.12.75 and not 24.9.1985 as mentioned in para 13 of the counter-affidavit. Similarly the correct date of the circular mentioned in para 10 of the counter-affidavit is 1.10.1981. It is reiterated that one cannot be allowed to forego one's promotion without the acceptance of the competent authority who is empowered to initiate disciplinary action for not accepting the promotion and thereby disobeying the orders. In reply to the contents of para 14 of the rejoinder-affidavit, it is stated that as on date, which is a subsequent event, thirty Section Officers' Grade Examination Passed Accountants were waiting for their promotion but even after posting these available persons against existingvacancies, the shortage will exist. The promotion orders of the applicants were made against vacancies existing at that time and that more qualified persons are being transferred to the audit office and there will again be a shortage in Section Officers Cadre in the Accounts wing.

8. We have heard the arguments of the learned counsel for the parties and have also perused the records. Learned counsel for the respondents placed reliance on the letter dt. 2.4.1986 (at annexure-6) which is addressed to the Executive Engineer B.C.M Mahoba,Hamirpur in which it is stated that Sri Ram Murti Yadav Divisional Accountant presently posted in the Division has permanently declined to take promotion as Section Officer in Indian Audit and Accounts Department and as such he is not entitled to get Rs.35/- as special pay for not being promoted as Section Officer. This letter makes a request that the special pay of Rs.35/-

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may be reduced to Rs.20/- p.m., w.e.f. from 13.2.1986. The contention of the learned counsel for the applicants is that the wording of the above letter should be interpreted as the acceptance of the request of Sri Ram Murti Yadav for foregoing promotions on permanent basis by the competent authority. Learned counsel for the respondents denied this claim of the petitioners and stated that this letter merely states that Sri Ram Murti has made a request for foregoing promotions on a permanent basis, but it does not indicate the acceptance of the competent authority. We have considered this matter and we are of the opinion that the contention of the petitioners in the absence of any evidence indicating acceptance of the competent authority, can not be accepted. The second para of the above mentioned letter lends support to this view. The practice that SAS passed candidates waiting promotion as Section Officers are given a special pay of Rs.20/- in the first year of the waiting period, which is raised to Rs.35/- in the second year, is not disputed by the applicants. It appears that Sri Ram Murti Yadav was drawing Rs. 35/- special pay w.e.f. from the second year of the waiting period and this was reduced to Rs.20/- P.M. when he was offered the post of Section Officer and he declined the promotion which was deferred by the competent authority as a temporary basis. It is not the case of the applicants that the special pay of Rs.20/- p.m., was admissible to them by virtue of their passing the Initial Recruitment Examination for Divisional Accountants. A person, who passed only the Initial Recruitment Examination and did not pass the SAS examination would not be entitled to the special pay of Rs.20/- p.m.. In view of this, the order of reducing the special pay from Rs.35/- to Rs.20/- cannot be termed as illegal, or causing harassment to the petitioners. Such an order was passed in accordance with C and A.G. Circular dated 26.9.1981, a copy of which was filed by the respondents without their counter-affidavit.

9. We have also examined the contention of the petitioners that they had any right to refuse promotion to the posts of Section Officers. The instruction contained in the Government of India, Department of Personnel and Administrative Reforms Circulars dated 22nd November, 1975 and 1st October, 1981 lay down the policy to be followed in the case where persons refuse promotions to a higher grade. This circular makes three important points as below:

- i) In order to discourage refusal of promotion by government servants it provides that those officers who refuse promotions should not be issued any fresh offer of promotions for a period of 1 year from the date of such refusal;
- ii) When the reasons adduced by the officer for his refusal of promotion are not acceptable to the appointing authority then he should enforce the promotion on the officer; and
- iii) In case the officer still refuses to be promoted then even disciplinary action can be taken against him for refusing to obey his orders.

These instructions make it abundantly clear that the petitioners have no inherent right to refuse promotion.

10. We have also considered the contentions of the petitioners that they will be put to financial loss by accepting promotion as Section Officers. The scale of pay of a junior Section Officer is the same as the senior scale of Divisional Accountant and in addition there is a higher scale of pay for the senior Section Officer which is not admissible to a Divisional Accountant. The contention of the petitioners that as Senior Divisional Accountant, they would be eligible for promotion as Accounts Officer in the scale of Rs.2375-3500 is a very weak argument as the number of posts of Accounts Officers is bound to be smaller than the number of posts of Accounts Officers in the office of the Accountant General. In any case, they have not acquired any right to continue as Divisional Accountants and the competent authority has the right to utilize their services in the manner considered necessary in

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public interest . Similarly the contention of the petitioners that many more persons qualified in the SAS examination were available for posting as Section Officers has also been found incorrect as the respondents have clearly stated that even after utilizing 30 persons qualified as SMS passed candidates, there would be a still shortage of such persons in their office.

11. We also find that there is no illegality or arbitrariness in the passing of the impugned orders by the respondents and there is nothing on the record to suggest that this has been done with a view to harass or jeopardise the petitioners' interest or service careers as alleged in their application.

12. For the reasons mentioned above, we are of the opinion that there is no ground for interfering with the orders of promotion and transfer issued by the respondents and the petition is dismissed without any order as to costs.

Member-A

Bhawna
12.12.86

Subarna
12/12/86
Member-J

JSingh/12.12.1986.