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Reserved

Central Administrative Tribunal, Allahabad.

Registration O.A.No. 8 of 1987

Manik Chand Agarwal ...

Applicant

Comptroller & Auditor General of India
and 4 others ...

Respondents.

CONNECTED WITH

Registration O.A.No.9 of 1987

Rajesh Shankar Dubey and another ...

Applicants

Vs.

Principal Accountant General, U.P.
Allahabad and 4 others ...

Respondents.

Hon. Ajay Johri, AM
Hon. G.S. Sharma, JM

(By Hon. G.S. Sharma, JM)

In these two petitions under Section 19 of the Administrative Tribunals Act XIII of 1985, the applicants have challenged the orders of their transfer from the posts of Divisional Accountants to the posts of Accountants in the office of the Accountant General (Accounts and Entitlement) Allahabad and for a direction to the respondents not to compel the applicants to join as Section Officers (Accounts) in case it may result in the deletion of their names from the waiting list of Audit Cadre.

2. The petitions were not admitted and notices were ordered to be issued to the respondents to show cause as to why they should not be admitted. The petitions are admitted now. Since the common questions of law and facts are involved in these petitions they are being decided by this common judgment.

3. The relevant facts of these cases are that all the 3 ~~candidates~~^{applicants}, namely, Manik Chand Agarwal, Rajesh Shankar Dubey and Shyam Mohan Srivastava were initially appointed as Auditors in the then combined office of the Accountant General U.P, Allahabad on different dates in 1973 and were confirmed on the said posts ~~in~~ ^{on} 1980. According to the rules of the Department, on passing the Section Officer Grade (for short SOG)

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Examination, which is held in two parts, one becomes entitled to be placed in the list of Section Officers (for short SOs) and the candidates so enlisted become entitled to get appointment as SO according to their seniority in the said list when vacancies arise. The applicants of O.A.No.9 of 1987 passed part I of the said SOG examination in 1982 and part II examination in June 1984 while the third applicant Agarwal passed part I SOG examination in 1981 but could not succeed in part II examination held in 1982 and 1983. The Department of the Accountant General was bifurcated into two, namely, (i) Accountant General (Audit) and (ii) Accountant General (Accounts and Entitlement), w.e.f. 1.3.1984 and the employees of the combined office were asked to give their options for one of the two. All the applicants opted for Accountant General (Audit) (for short AG(A)) office but as there were no posts (vacancies for the applicants) in the AG(A) office, they were kept in the waiting list of that office. The applicant Agarwal after such option applied for appearing in the SOG examination part II of AG(A) side to be held on 16.1.1985 but his application was rejected by Accountant General (Accounts and Entitlement) (for short AG(A&E)) on 31.7.1984 though such powers could be exercised only by the Comptroller and Auditor General (for short C& AG)- respondent no.1. The application moved by the applicant Agarwal to C&AG in Aug.1984 for permission to appear in the said examination but despite his filing Civil Misc. Writ Petition No.352 of 1985 in the High Court of Judicature at Allahabad, the applicant has not been permitted to appear in the said examination so far.

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4. The applicants appeared in the examination for non-functional promotion post of Divisional Accountant's Grade Examination, which is ex-cadre post in the Accountant General's Office in 1984 and 1985 and on being declared successful the applicant R.S.Dubey was relieved for joining the post of Divisional Accountant (for short D.A/C) in the office of the Executive Engineer Irrigation- respondent no.4 in O.A.No.9 of 1987, the applicant S.M.Srivastava was relieved on 9.7.1985 to join as D.A/C in the office of the Executive Engineer Electrical and Mechanical, PWD, Faizabad- respondent no.5 and the applicant M.C.Agarwal was relieved on 9.1.86 to join as D.A/C in the office of the Executive Engineer PWD Tehri- respondent no.5 and all the applicants thereafter joined their respective posts.

5. The Deputy Accountant General (Admn.) (for short DAG(A)) - respondent no.4 in O.A.No.8 of 1987 issued letter dated 2.6.1986 to the applicant M.C. Agarwal referring to the orders passed by the Principal Accountant General (for short PAG) promoting the applicant as SO in the AG(A&E) side from the date of his taking over charge. The applicant apprehended that on his accepting this promotional post to a higher functional grade in the AG (A&E) office, his name will be deleted from the waiting list of the AG(A) office and he will forfeit his claim for absorption in the AG(A) office even when vacancies arise. The applicant accordingly made representations and requested the PAG and DAG(A) to allow him to work as D.A/C and also prayed that till his representations were decided, he should not be relieved of his present post. The promotion and transfer of the applicant M.C.Agarwal was formerly stayed but on 17.10.86,

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the DAG (A) issued an order asking him to join by 28.10.86 as Accountant failing which his name was to be deleted from the waiting list of the AG(A) office. His this representation was rejected and he was again required by order dated 22.12.1986 issued by DAG (A) to join as Accountant within 15 days. He received another order dated 17.10.86 from the office of DAG (A) asking him to join as Accountant before 31.12.1986 and to furnish his explanation for his absence from 1.1.87 in case he is not reporting for duty as Accountant by the said date. On 26.12.1986, the AG(A&E) issued an order informing the applicant Agarwal that his name stood deleted from the waiting list and he was directed to report on or before 31.12.1986 to join his duty as SO in the office of AG(A&E).

6. The DAG(A) had issued similar letters dated 14.4.1986 referring the order passed by the PAG to the effect that the applicants of O.A.No.9 of 1987 have been promoted as SOs in the office of AG(A&E). In order to maintain their claim for absorption in the office of AG(A), the applicants made representations against the said order and the applicant S.N.Srivastava vide his letter dated 30.6.1986 also intimated to forego his promotion permanently to the post of SO in the office of AG(A&E) but these applicants were directed telegraphically on 2.7.1986 for joining as SOs. On their representations against this order, the applicants were asked by the DAG(A) by letter dated 9.10.1986 to join as Accountants. The applicants were thereafter informed by order dated 24.12.1986 issued from the office of DAG (A) to join as Accountants by 31.12.1986 and in case of their failure, to explain the reasons of non-compliance. The AG (A&E) vide his letter dated 24.12.1986 informed the applicants that their names have been struck off from the list of the office of AG(A) and asked them to join as SOs latest by 31.12.1986.

7. Aggrieved by these orders the present petitions have been filed by the applicants on the grounds that they having opted for AG(A) office and their names having been included in the waiting list for absorption in the office of the AG(A) on the occurrence of the vacancies, they could not be compelled by the authorities to join the promotional post of SOs in the office of the AG(A&E) so as to forfeit their claim of absorption in the office of the AG(A) and so long as there are no vacancies for the applicants in the office of the AG(A), they should have been allowed to continue to function as D.A/Cs and the various orders passed by the AG and DAG(A) to the contrary are illegal.

8. The petitions have been contested on behalf of some of the respondents and in the reply filed by the DAG(A), it has been stated that the Union of India is a necessary party to these cases and the petitions are not maintainable in ~~this~~ absence. As the applicant M.C. Agarwal, who was working in the Accounts side and as per instructions contained in the Manual of Instructions for Restructuring (for short MIR), he was entitled to appear in the SOG Examination of Accounts side only and his application to appear in the examination part II of the Audit side was, therefore, not entertained. After the decision of the High Court in his writ petition, the applicant (alone) was allowed, if so desired, to appear in the said examination but he did not apply for appearing in the examination thereafter. As the applicants failed to report to join their duties neither as Accountants nor as SOs, their claim for going to the office of the AG(A) stood forfeited and their names were rightly deleted from the waiting list. More than 100 SOs are still in

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the waiting list for their eventual transfer to the office of the AG(A). On the other hand, there is acute shortage of trained hands in the office of the AG(A&E). The applicants ~~can~~ ^{could} go to the office of AG(A) only as Accountants as their names were entered in the waiting list as Accountants. The post of D.A/C is an ex-cadre post. The applicants have no lien to continue on that post. This Tribunal in Registration O.A.No.610 of 1986 S.R.Chaudhary Vs. Union of India has decided that passing of SAS (SOG) examination will not entitle an employee to work as D.A/c forever and he can be directed to join as SO when required by the Department. It has also been stated that SOG examination passed candidates working as D.A/Cs have to be reverted to their parent cadre on their promotion as SOs as such candidates awaiting their promotion are given special pay in lieu of promotion. As there was acute shortage of SOs in the office of the AG(A&E), the deferment of their promotion by the applicants could not be accepted and there was no mala-fide on the part of the authorities in this respect. After considering the representations of the applicants, it was decided that they were in the waiting list of Accountants and as such, their services could be utilised as Accountants till their turn came for transfer to the office of AG(A). As the applicants avoided to report to the headquarters for more than 8 months, their names were deleted from the waiting list of Accountants and they were directed to join as SOs and the contentions raised by the applicants to the contrary are not correct.

9. In the rejoinders filed by the applicants it was stated that the rights of all persons, whose names were entered in the waiting list in the office of AG(A) were protected under Paras 3.3.2 and 3.9.2 of the MIR

and it was provided that till their names continue in the waiting list, they will have the benefit of absorption in the office of the AG(A) as and when vacancies are available and there will be no direct recruitment till the waiting list is exhausted. It was also provided that an employee has an option to decline his transfer to the office of the AG(A) at the time of actual appointment and in other respects the names could not be deleted from the waiting list.

10. Both the petitions were heard together and it was contended on behalf of the applicants that in view of the admitted facts ~~that~~ the applicants who had joined the combined office of the Accountant General U.P., Allahabad, had opted to join the office of the AG(A) on bifurcation w.e.f. 1.3.1984 and as they could not be absorbed in the office of the AG(A) immediately, their names were entered in the waiting list. It was also contended that the applicants were eligible for their appointment as SOs but as there were no vacant posts for their promotion when they passed the qualifying examination, they were appointed as D.A/Cs and were getting the special pay of Rs.35/- per month and the said posts were higher than the posts of Accountants in the office of the AG(A&E) and they could not be ordered to be reverted to lower posts. Placing reliance on para 3.2.1 of the MIR, it has been further contended that persons who are on the waiting list will cease to be on the said list for any grade if they are promoted to another functional grade in the office of the AG(A&E).

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and as such, the applicants were fully justified in refusing their promotion as SOs in the office of the AG(A&E). The applicants also summoned the D.O.letter dated 8.5.1987 of the CAG to the AG(A&E) to consider the representations of D.S.Pande and R.C.Jain who were working as D.A/Cs and to review all such cases. The copy of the D.O.letter has been produced on behalf of the respondents and it shows that the CAG had directed the Accountant General that the names of such Accountants in the waiting list who had been appointed as D.A/Cs on their acceptance of such appointments, should have been deleted from the waiting list. He further requested the Accountant General to review such cases of D.A/Cs and asked those persons either to revert back immediately to the parent cadre of Accounts or to continue as D.A/Cs subject to deletion of their names in the waiting list. The letter further directed that if in the meantime some D.A/Cs have already joined as SOs, it is not necessary to reopen their cases and their names must ~~have been~~ be deleted from the waiting list. The contention of the applicants is that the Accountant General should review their cases also in the light of this order.

11. The learned Senior Standing Counsel appearing on behalf of the respondents placed his reliance on the decision of a Bench of this Tribunal in O.A.No.610 of 1986 S.R.Chaudhary VS. Principal Accountant General made ~~decided~~ on 12.12.1986 and contended that all the applicants, in the meantime, have joined promotion posts in the office of the PAG and they have now no claim to go to the office of the AG(A). It was further contended that on the receipt of the D.O.letter dated 8.5.1987 from the CAG a reference was made to him by the PAG to reconsider his suggestions as the same were likely to cause administrative difficulties in view of the acute

shortage of SOs in his office and the CAG vide his subsequent letter dated 29.1.1988 finally agreed that Sri R.C.Jain had since joined as SO, no further action should be taken in his case and on the same ground no further action can be taken in the case of the applicants. In support of his contention, the learned Sr. Standing Counsel has filed a D.O letter dated 4.4.1988 addressed to him by the Sr. DAG(A) along with a copy of D.O.letter dated 29.1.1988 from the CAG to PAG.

12. The stand of the applicants with regard to the submissions made on behalf of the respondents is that the applicants had joined as SOs in the office of the AG (A&E) under protest ~~and~~ subject to the result of their case and they cannot be debarred from placing their claim for absorption in the office of the AG(A). They have further placed their reliance on an unreported judgment of the Hon. Supreme Court in C.A.No.2674 of 1986 Sudhish Chand Vs. Comptroller and Auditor General of India and others and contended that this judgement has to be applied instead of the judgment of the Tribunal on which the reliance has been placed on behalf of the respondents.

13. We have very carefully considered the contentions raised on behalf of the parties and have also perused the judgments relied upon on their behalf. In our opinion, there appears to be no real conflict between the judgment of this Tribunal and the judgment of the Hon. Supreme Court. In the case of S.R. Chaudhary(Supra) the Tribunal had held that the D.A/Cs had no absolute right to refuse their promotion as SOs. It was further held that there was no monetary loss to them on their appointment as SOs and they had not acquired any right to continue as D.A/Cs and the competent authority in his discretion could utilise their services in the manner considered proper and in public interest.

14. In the case of Sudhish Chand (Supra), their Lordships of the Supreme Court after examining the provisions of paras 3.3.2, 3.9.2 and 11 of MIR issued the following clarification making the same as rule of the Court :-

"1. Those employees in the Accounts and Entitlement Office functioning in an ordinary grade or a selection grade who had opted for absorption in the Audit Office and are kept in the waiting list will continue to have the benefit of absorption in the Audit Office as and when vacancies become available in that office ;

2. Employees who are in the waiting list will cease to be in the waiting list for any grade, if they are promoted to a higher functional grade in the Accounts and Entitlement Office and on such promotion their option for absorption in the Audit Office will stand finally revoked ; and

3. In cadres where direct recruitment is made against the quota presently prescribed for the purpose in the Audit office, no such direct recruitment will be made as long as there are persons in the waiting list for the corresponding grade."

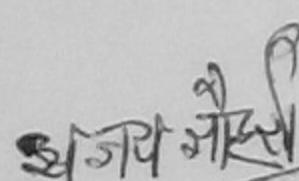
In our opinion, rule 2 as laid down above fully demolishes the case of the applicants and they having been promoted to higher functional grade of the SOs in the AG(A&E), their option for absorption in the office of the AG(A) stands finally revoked. We find nothing on the record to show that the applicants had joined as SOs in the office of the AG(A&E) under any direction issued by this Tribunal. There is also nothing on record to show that the applicants had done so under any protest. In any case, the provisions of the MIR as clarified and made rule of the Court by the Hon. Supreme Court do not contemplate any exception such as joining the promotional post under protest etc., and the case of the applicants so far as this controversy is concerned should be deemed to have been closed for ever.

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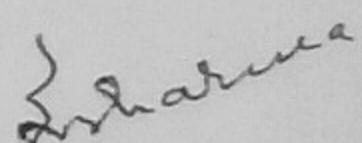
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15. We have examined the case of the applicants even otherwise. The applicants were given an option to join the office of the AG(A+E) even as Accountants which was objected by them on the ground that it was much inferior post and they could be reverted to such post only by way of punishment. The applicants were then offered the promotional post of SOs which they ultimately joined after prolonging the matter for a considerable time. As they have joined as SOs their cases cannot be reviewed now even under the DO letter dated 8.5.1987 of the CAG relied upon by them. The applicant M.C. Agarwal had claimed an ^{additional} ~~interim~~ relief on the basis of the judgment of the High Court but we were not addressed on that point and as already stated above, all the petitions were heard together and only the points common to all the applicants were argued and pressed as discussed above and in view of what has been stated above, we find that the applicants are not entitled to any relief in these petitions.

16. The petitions are accordingly dismissed but in the circumstances, we pass no order as to costs.



MEMBER (A)



MEMBER (J)

Dated 21.4.1988

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