

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH, ALLAHABAD.

O.A. NO.
~~10/6~~

10/6

1990

DATE OF DECISION _____

Ashok Kumar Mishra & 3 others

PETITIONER

Shri V.K. Berman

Advocate for the Petitioner(s)

~~Shri~~

Versus

Union of India & others

RESPONDENT

Shri K.C. Sinha

Advocate for the Respondent(s)

Shri S.P. Srivastava

CORAM :

The Hon'ble Mr. Justice K. Nath, VC.

The Hon'ble Mr. A.B. Gorthi, AM.

1. Whether Reporters of local papers may be allowed to see the judgment ? y4
2. To be referred to the Reporter or not ? y4
3. Whether their Lordships wish to see the fair copy of the Judgment ? y4
4. Whether to be circulated to all other Benches ? y4

GHANSHYAM

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RESERVED (6)

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
Registration D.A. No.1016 of 1990

Ashok Kumer Mishra and 3 Others....Applicants

Versus

Union of India & Others Respondents

Hon.Mr.Justice K.Nath, V.C.

Hon. Mr. A.B.Gorthi, Member(A)

(By Hon.Mr.Justice K.Nath, V.C.)

This application under Section 19 of the Administrative Tribunals Act, 1985 seeks a declaration that clause (10) of the order dated 15.12.88, Annexure-2 providing for reservation to the SC/ST category of Selection Grade Divisional Accountants under respondents 1 to 3 cannot be applied to the Divisional Accounts Officer grade I in the scale of Rs. 2000-3200. There is also a prayer to quash Recruitment Rules contained in Annexure-CA.4 and Annexure-CA.6 in so far as they concern the provision of reservation to the post of Divisional Accounts Officer grade I.

2. The applicants are Divisional Accounts Officers grade II in the scale of Rs. 1640-2900 with Comptroller and Auditor General of India (for short C.A.G.) as Head of the Department. Respondent No.1 is the Union of India through C.A.G. Respondent No.2 is Accountant General II (A&E) U.P. at Allahabad. By C.M.A. Nos 778/12 of 1990 and 130 of 1991 one Hiralal and Kamta Prasad Rahul with the three others, all belonging to the Scheduled Caste category, were impleaded as respondents 3 to 6 by order dated 12.2.91. Counter Affidavit on behalf of Hiralal has been filed by one Ram Prasad on 30.12.90; that

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on behalf of the rest has been filed by Kanta Prasad Rahul on 15.1.91. Respondents 1 & 2, of course, have filed their own Counter Affidavit dated 2.3.91 through Shri S.K.Misra, Senior Deputy Accountant General. The points raised in all the three Counter Affidavits are substantially similar.

3. The basic ground in the Original Application is that there has been one composite cadre of Divisional Accountants and the creation of the grade of Divisional Accounts Officer grade I (Gazetted) group 'B' in the scale of Rs. 2000-3200 is only a promotional avenue within the cadre and does not constitute creation of promotion posts hence does not attract the provision of reservation applicable to SC/ST categories for promotion posts. The substance of the defence is that the post of D.A.O. grade I (Gazetted) group 'B' aforesaid is a gazetted post as distinguished from Selection Grade Divisional Accountants, which are non gazetted ministerial group 'C' post, and constitute independent promotion post hence the benefit of reservation is available for those posts.

4. A brief history of the cadre will be useful. It is admitted by all the parties that before 1.7.88 there was one cadre of Divisional Accountants (for short, D.As) consisting of the ordinary grade of 50% posts in the scale of Rs. 1400-2600 and a Selection Grade to the extent of remaining 50% in the scale of Rs. 1640-2900. The Indian Audit and Accounts Department (Selection Grade D.A.) Recruitment Rules, 1987 (for short, 1987 Rules) came into force on the date of their publication in the official gazette. The date of the publication is not before us. However, the schedule attached to the Rules provided for Selection Grade D.A. with 1948 posts, in the scale of

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Rs. 1640-2900 described as group 'C' Non-gazetted ministerial. The mode of recruitment was promotion failing which by deputation etc from D.A. in the scale of Rs. 1400-2600 with 5 years regular service as D.A. It was a non-selection post to be filled by group 'C' D.P.C. consisting of 3 officers, namely the Senior Deputy Accountant General or a Deputy Accountant General or equivalent Incharge of Administration of cadre of D.A., another Dy.A.G. and an Accounts Officer. The Selection Grade D.As were to be placed on two years probation.

5. It is interesting that although ^{Selection} grade D.A.s were to be appointed by promotion from D.As in accordance with 1987 Rules, the Recruitment Rules for D.A were framed in the year 1988 known as Indian Audit and Accounts (Divisional Accountants) Recruitment Rules, 1988 (for short, 1988 Rules). These rules were also to come into force from the date of publication in the Gazette, but that date has not been brought on record of this case. The Divisional Accountants whose number was described as 2014 were stated in the Schedule to be group 'C' Non-gazetted ministerial post in the scale of Rs.1400-2600 to be filled by direct recruitment; the recruits were to be placed on two years probation.

6. The 1987 as well as 1988 Rules contained Rule 6 which provided for reservation of various categories including SCs/STs to be done in accordance with the orders of the Central Govt. as applicable to the persons employed in the Indian Audit and Accounts Department.

7. It was by the Govt. of India, Ministry of Finance, O.M. dated 13.10.88, Annexure-1 that the grade of Divisional Accountant to Gazetted group 'B' in the

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scale of Rs. 2000-3200 was introduced with effect from 1.7.88. The D.M. contains the order of the President of India to restructure the cadre of Divisional Accountants as follows :-

- " (1) D.A. (Ordinary): 50% of the cadre in the scale of Rs. 1400-2600,
- (2) Selection Grade D.A : 30% of the cadre in the scale of Rs. 1640-2900,
- (3) D.A. (Gazetted) group 'B': 20% of the cadre in the scale of Rs. 2000-3200.

The D.M. further says that guidelines for filling the post of D.A. (Gazetted) group 'B' would be issued by the C.A.G. These guidelines are contained in Annexure-2 dated 15.12.88. It begins with the statement that the "cadre composition" would be as detailed above in Annexure-1. Setting out the various guidelines, para 10 mentioned that there would be reservation for the concerned categories as per the Brochure for the group 'B' Gazetted D.A.O. post in the scale of Rs. 2000-3200. This para has been impugned in this case.

8. On 23.12.88 the C.A.G. issued a circular, Annexure-2 to the Counter Affidavit of Ram Prasad, with reference to the circular dated 13.12.88, Annexure-2 to the Original Application. This circular provides that there would be promotion from group 'C' to group 'B' (Gazetted) post from Selection Grade D.A., that the promotees in group 'B' (Gazetted) post would be placed on two years probation and their pay would be fixed under F.R. 22-C. Thereafter follow the Recruitment Rules for the post of Divisional Accounts Officer.

9. These are Indian Audit and Accounts Department (D.A.Os Recruitment) Rules, 1989 (for short, 1989 Rules), Annexure-6 to the Counter Affidavit of Kamta Prasad Rahul.

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These Rules were in force from the date of publication in the Gazette i.e. 22.7.89. The Schedule attached to the Rules described the post of the Divisional Accounts Officer, 700 in number, to be a group 'B' (Gazetted) non-selection post in the scale of Rs. 2000-3200. It was to be filled by promotion of Selection Grade D.A. with three years regular service in their grade by a group 'B' D.P.C., failing which by transfer etc. The D.P.C. was to consist of the cadre Controlling Officer of the rank of the Accountant General and two other officers of equal rank of Accountant General. The D.A.Os were to be placed on two years probation. Like 1987 and 1988 Rules, these rules of 1989 also contained the provision for reservation in favour of the concerned categories in Rule 6.

10. Finally, the C.A.G. issued circular dated 29.3.90, Annexure-1 to the Counter Affidavit of K.P. Rahul on the subject of "change in designation". This circular mentioned that the question of revising the designation of the post of the D.A's cadre ~~was~~ was under consideration and the decision taken was to revise the designations as follows:-

- (1) D.A. in the scale of Rs.1400-2600 - No change.
- (2) Selection Grade D.A.: in the scale of Rs.1640-2900 - designated as D.A.O. grade II (Non-gazetted).
- (3) D.A.O. in the scale of Rs.2000-3200 - designated as D.A.O. grade I (Gazetted) group 'B'.

The circular also said that amendment to the Recruitment Rules on these lines would issue in due course; our attention has not been invited to the contemplated amendment in the Recruitment Rules of 1987 which alone were in the picture because the designation of the D.A.O. had already been provided for in the Recruitment Rules of 1989.

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11. Having regard to the above history, this Original Application was filed on 22.11.90 with the case that throughout its history there was only one combined cadre of Divisional Accountants, and that the post of the Selection Grade Divisional Accountants, subsequently designated as D.A.O. grade II, and Divisional Accountants in the scale of Rs.2000-3200, subsequently designated as Divisional Accounts Officer grade I (Gazetted) group 'B', were all within that combined cadre although limited to specified percentage of the strength of the cadre. It is urged that the scheme only provided for giving promotional avenues for Divisional Accountants and therefore the post of D.A.O. grade I ¹ does not constitute promotion post for which reservation could be legally provided. The contention is that reservation must be confined to the initial posts of Divisional Accountants in the scale of Rs.1400-2600 and it cannot be extended to Divisional Accounts Officer (Gazetted) group 'B' in the scale of Rs.2000-3200.

12. On the contrary, the respondents' case is that the post of Divisional Accounts Officer grade I are independent promotion post and reservation, as in promotion, is applicable.

13. We have heard Shri V.K.Burman for the applicants, Shri K.C. Sinha for respondents 1 & 2 and Shri S.P.Srivastava for the remaining respondents and have gone through the material on the record.

14. The first question is whether the cadre of Divisional Accountants, Selection Grade Divisional Accountants and Divisional Accounts Officers (Gazetted)

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is one cadre or whether the post of Divisional Accounts Officers (Gazetted) are independent promotion posts outside the cadre. It is admitted, as already mentioned, that before 1.7.88 there was only one combined cadre of Divisional Accountants and Selection Grade Divisional Accountants known as "Divisional Accountants cadre." The Govt. of India decision in the D.M. dated 13.10.88, Annexure-1 is the crucial document on the point. The subject matter of the D.M. is described as "creation of promotional avenues for Divisional Accountants". It is stated that the Pay Commission had recommended for opening promotion for Divisional Accountants to the post of Accounts Officer in the scale of Rs. 2375-3500, but on the Govt's inability to accept the recommendation, the staff side gave up the claim for promotion as Accounts Officer "if promotion at a suitable percentage to the scale of Rs. 2000-3200 by upgradation of Selection Grade Divisional Accountant posts in the Division is accepted". The President accordingly decided that "the cadre of Divisional Accountants in C&A.G. shall be restructured as follows :-

- (1) Divisional Accountants (Ordinary grade)
Rs. 1400-2600 - 50%
- (2) Divisional Accountants (Selection Grade)
Rs. 1640-2900 - 30%
- (3) Divisional Accountants (Gazetted) group 'B'
Rs. 2000-3200 - 20%

15. It will be immediately noticed that after considering the staff side representation, the Govt. decided for "promotion by upgradation" and for that purpose "restructured" the cadre of Divisional Accountants. It is significant that all the three classes of employees in consequence of restructuring were described as

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Divisional Accountants; none of them was described as a ~~Divisional~~ Divisional Accounts Officer. The decision does not say that there would be any increase in the strength of Divisional Accountants or of any of the restructured categories; indeed, the strength as Selection Grade Divisional Accountants was reduced from 50% to 30% and the reduction of 20% was made good by providing for the group 'B' (Gazetted) grade of Divisional Accountants.

16. It may be mentioned in this context that in para 8 of the Counter Affidavit of respondents 1 & 2 it was stated that by order ^{dated} 13.10.88, Annexure-1 the cadre of Divisional Accountants has been split into three categories (mentioned above) and new posts in the scale of Rs.2000-3200 had been sanctioned to the extent of 20% of the strength of the cadre. This statement is specifically denied in para 5 of the applicants' rejoinder dated 18.3.91. Moreover, an inherently inconsistent stand in that regard has been taken in paras 13 and 14 of that Counter Affidavit. In para 13, it is stated that there were 913 posts of Divisional Accountants on 1.7.90 of which Divisional Accounts Officers grade I were 182. In para 15, it is stated that promotions to the post of D.A.O. grade I in 1989 and 1990 were done by determining the number of posts on the basis of 20% of the total posts available in the Divisional Accountants cadre as a whole. The inescapable conclusion is that the number of posts of D.A.O. grade I at any moment of time were determined as a percentage of the cadre of the Divisional Accountants cadre as a whole and consequently the posts of D.A.O. grade I were within the cadre, and not additional or new posts outside the cadre. This situation is clearly in accordance with the Govt. of India's decision

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contained in the O.M. dated 13.10.88, Annexure-1.

17. The O.M. having authorised the C&A.G. to issue guidelines for filling the posts of Divisional Accountants (Gazetted) group 'B', the latter issued the guidelines circular, Annexure-2 dated 15.12.88. Clause (1) speaks of "cadre composition and sets out all the three categories, indicating that they all constitute one cadre. Clause (2) requires that the percentage of the various categories shall ~~be~~ be worked out on the total number of regular posts of Divisional Accountants as on the first of July every year; and clause (3) sets out that for 20% Divisional Accountants (Gazetted) group 'B', suitable number of Selection Grade Divisional Accountants would be upgraded. Clause (4) says that Divisional Accountants (Gazetted) group 'B' would be designated as Divisional Accounts Officers. That was the direction when the change of designation came: Divisional Accountants (Gazetted) group 'B' came to be designated as Divisional Accounts Officers. It will be appreciated that change of name is entirely a formal matter and cannot affect the substance of the subject. Further clause (5) provided that the post of the D.A.O. would be a non selection post to be filled by promotion on the criterion of seniority subject to fitness of Selection Grade Divisional Accountants. Clause (11) significantly sets out that the posts of Divisional Accounts Officers shall be identified by the Accountant General and the State Govt. might be informed that the cadre of Divisional Accountants has been restructured.

18. It will be seen that according to the various clauses of the circular, Annexure-2 there was a composite

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cadre, that suitable number of posts of Selection Grade Divisional Accountants were to be upgraded and after upgradation were to be designated as posts of Divisional Accounts Officers and that the whole exercise constituted a restructuring ^{of} cadre of the Divisional Accountants. All this was done in order to create promotional avenues for Divisional Accountants as contemplated in the O.M. dated 13.10.88.

19. The contention of the learned counsel for the respondents is that even so the appointment to the post of Divisional Accounts Officer grade I is described to be by way of promotion. That submission misses the essence of the nature of promotion: the O.M. in unmistakable terms provides for "promotion by upgradation" and in that context ordered "the cadre of Divisional Accountants to be restructured" into the specified categories. The scheme did not provide for promotion to a post ~~in~~ outside the feeder cadre; in substance it is only a grant of a higher scale. It is true that by subsequent letter dated 23.12.88 with reference to the circular dated 15.12.88, the C&A.G. again provided for promotion from group 'C' ministerial to group 'B' (Gazetted) and required the salary of the group 'B' (Gazetted) staff to be fixed under F.R. 22-C, but the claim has to be appreciated as an integrated whole. The C&A.G. could not act beyond the scope of the policy decision contained in the O.M. dated 13.10.88, Annexure-1, and since that policy did not contemplate a promotion in its true juristic concept but only by way of upgradation and restructuring to open promotional avenues, the C&A.G. was not competent to treat the post of Divisional Accountant (Gazetted) group 'B' as a truly promotion

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post. What the C&A.G. believed to be the position in his circulars of 15.12.88 and 23.12.88 could only be accomplished either by a policy decision of the Govt. of India in modification of the policy contained in O.M. dated 13.10.88 or by framing appropriate Recruitment Rules. The Recruitment Rules came in 1989 and were in force from 22.7.89. It is from this date i.e. 22.7.89, that the concept of promotion canvassed for by the respondents would be effective because the Govt's decision contained in O.M. dated 13.10.88 would be deemed to be superseded/modified by the Recruitment Rules of 1989.

20. It is interesting that the C & A.G. took upon himself the responsibility of giving a new name to the Divisional Accountants (Gazetted) group 'B' post by his circular of 15.12.88. The O.M. had only described the post to be Divisional Accountants (Gazetted) group 'B'. The O.M. had authorised the C& A.G. to issue guidelines for filling these posts and not for changing the nomenclature of the post. The upshot is that despite being designated as Divisional Accounts Officer in the circular dated 15.12.88, they continued to be only Divisional Accountants of a gazetted rank. The Recruitment Rules of 1989, of course, gave them the name of Divisional Accounts Officer and it could only be with effect from 22.7.89 that that nomenclature of the designation could stick.

21. It is also interesting that in his circular dated 29.3.90, the C & A.G. changed the designation of Selection Grade Divisional Accountants to be Divisional Accounts Officer grade II (Non-gazetted).

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The Recruitment Rules of 1987 described them only to be Selection Grade Divisional Accountants. The C & A.G. realised the difficulty in changing the designation and stipulated in the circular of 29.3.90 that amendments to the Recruitment Rules would issue in due course. We are not aware whether the 1987 Rules have been amended in this regard.

22. What we want to put across is that the mere change of the nomenclature does not change the true nature of the post. On a careful consideration of all the features of the case and the material before us we hold that before 22.7.89, when the Recruitment Rules of 1989 were enforced, the post of Divisional Accounts Officer was only an upgraded post of Divisional Accountants in the course of restructuring and does not constitute a promotion post as known to the Service Jurisprudence. That being so, clause (10) of C.& A.G.'s letter dated 15.12.88, Annexure-2 cannot be applied to the posts of Divisional Accounts Officers during the period prior to 22.7.89.

23. It is well settled that a vacancy arising at a time has to be filled in the manner of the Rules or provisions as applicable at that time. Subsequent Recruitment Rules cannot affect the precedent mode of Recruitment unless the Recruitment Rules are made retrospective. The Rules of 1989 are not retrospective; they came into force only with effect from 22.7.89 on publication in the Gazette. The case of Y.V. Rangaiya Vs. J.Srinivasa Rao 1983 SC 852 may be seen in this connection. We hold therefore that provision for reservation as for promotion posts and contemplated in para 10 in C & A.G.'s

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letter dated 15.12.88, Annexure-2 cannot be made applicable to the post of Divisional Accounts Officers in the case before us because they concerned vacancies of the year 1988.

24. The learned counsel for the applicants have also referred to a decision dated 31.5.88 ^{of this Bench} in S.A. No.414/87 N.K. Saini and Others Vs. Director General, R.D.S.O. & Others connected with two other cases to show that in case of restructured posts the provisions of reservation would not apply. It appears that by restructuring of group 'C' Scientific staff of the R.D.S.O. 60% of the posts were re-allocated to CDAs grade in the scale of Rs.650-960 and the remaining 40% posts were allocated to the SDAs grade in the scale of Rs.550-750 and ^{accordingly} 36 posts of SDAs were placed in the grade of CDAs. On promotion to these upgraded posts reservation was applied. The Bench held that reservation could not be made applicable to the upgraded posts. The decision thus supports the claim of the applicants.

25. The applicants have also sought to quash the Recruitment Rules of 1987 and the Recruitment Rules, 1989, Annexures 4 & 6 respectively to the Counter Affidavit of Kamta Prasad Rahul in so far as Rule 6 thereof provides for reservation on promotion to the post of Selection Grade Divisional Accountants and Divisional Accounts Officers. This case is not concerned with the promotion to the post of Selection Grade Divisional Accountants and therefore we need not express any opinion upon that subject; but so far as the post of Divisional Accounts Officers are concerned, there is no illegality; the only qualification is that they become operative from 22.7.89 and do not

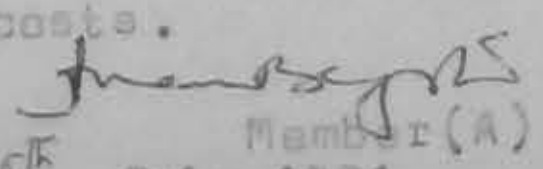
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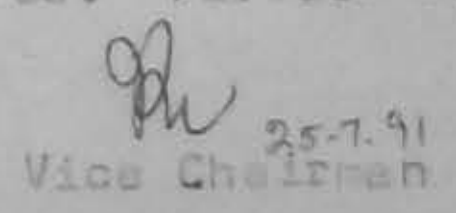
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effect any of the posts which fell vacant prior to that date. In this connection, we may say that on the enforcement of the Recruitment Rules, the decision of upgradation and restructuring would cease to be effective and the cadre of the Divisional Accountants will be deemed to have been reduced to the extent of the posts contemplated by the Recruitment Rules of 1989. It is well established that the strength of a particular cadre is within the exclusive powers of the Govt.; it may be increased or reduced. By the mere fact that on account of the Recruitment Rules of 1989, a portion of the strength of the Divisional Accountants cadre is separated and is constituted to become the cadre of the Divisional Accounts Officers, the provision for promotion to that cadre would not suffer from any infirmity. The case of Dr. Chakradhar Paswan Vs. State of Bihar and Others (1988) 2 SCC 214 (Para 8) and M. Subramaniam Vs. General Manager, Southern Railway (1987) 5 ATC 626 of the Madras Bench of this Tribunal may be seen in this connection.

26. For reasons recorded above, the petition is partly allowed and it is directed that clause (10) of C & A.G's letter dated 15.12.88, Annexure-2 shall not be applied in making appointments to those posts of Divisional Accounts Officers which are subject matter of this case. The promotion to those posts shall be made on the criterion of seniority subject to fitness as a non-selection post from amongst the Selection Grade Divisional Accountants (now designated as Divisional Accounts Officers grade II (Non-gazetted)). In other respects, the application is dismissed. Parties shall bear their costs.


Member (A)


25.7.91
Vice Chairman

Dated the 25th July, 1991
RKM