

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

ORIGINAL APPLICATION NUMBER 707 OF 1993

MONDAY THIS THE 30th DAY OF DECEMBER, 2002

HON'BLE MR. JUSTICE R.R.K. TRIVEDI, VICE-CHAIRMAN

HON'BLE MAJ GEN K K SRIVASTAVA, MEMBER (A)

D.B. Kauser,
s/o Late Shri Jagat Narain Saxena,
r/o 104 Dilkusha, New Katra, Allahabad-211 002
serving as Assistant Audit Officer (Commercial)
in the Office of the Accountant General (Audit)-II,
Uttar Pradesh.

....Applicant

(Applicant in Person)

V E R S U S

1. Secretary, Government of India,
Ministry of Home Affairs,
Department of Personnel & Training,
New Delhi-100 001
2. Secretary, Government of India,
Ministry of Finance,
Department of Expenditure,
New Delhi-100 001
3. Comptroller & Auditor General of India,
10, Bahadur Shah Zafar Marg,
New Delhi -110 002

....Respondents

(Counsel for the Respondents: Shri S. Chaturvedi)

O R D E R

Hon'ble Mr. Justice R.R.K. Trivedi, Vice-Chairman

We have heard Shri Pankaj Srivastava holding brief of Shri Satish Chaturvedi, learned counsel for the respondents and perused the records.

2. By this O.A. under section 19 of Administrative Tribunals Act, 1985, applicant has prayed for a direction to respondents to promote the applicant as Assistant Audit Officer (Commercial) w.e.f. 01.01.1989 against the existing vacancies in the cadre obtaining during the financial year 1988-89. The applicant has also prayed to quash the order dated 21.02.1985 issued by Shri Sunil Verma, Joint Director, Office of the Comptroller and Auditor General, New Delhi, ^{being} ~~as~~ ULTRA VIRES of the

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Article 148(5) of the Constitution of India.

2. In fact, the aforesaid claim of the applicant is based on the judgment of Cuttack Bench of this Tribunal dated 17.11.1989. The order dated 21.02.1985 was ^{successfully} challenged on the ground that it was violative of Article 148(5) of the Constitution of India. The order of the Cuttack Bench was challenged before Hon'ble Supreme Court in S.L.P. No.6322 of 1990, which was allowed by order dated 18.04.1996. Hon'ble Supreme Court held as under:-


"A plain reading of Article 148(5) of the Constitution shows that the said provisions are attracted when the conditions of service of persons serving in the Indian Audit & Accounts Department are to be prescribed by way of statutory rules. It is settled proposition of law that in the absence of statutory rules, the conditions of service can be prescribed by the executive instructions. The executive instructions can even supplement the rules. What is quoted above and was challenged before the Tribunal were the executive instructions issued by the comptroller and Auditor General of India. Learned counsel for the respondents has however, contended that the said instructions were never placed before the Comptroller and Auditor General of India. We do not agree with the learned counsel. It is not disputed that a conference of the Accountant Generals/Directors of all States was held from December 4, 1984 to December 6, 1984 and the said conference, it was resolved that minimum qualifying service in the Grade of Section Officers should be prescribed and as a consequence the impugned instructions were issued. The Tribunal in its judgment further deserved as under:-

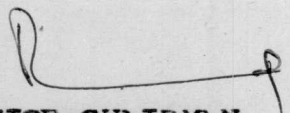
"In the said meeting a decision was taken that minimum three years experience is required in the Grade of Section Officers for promotion to the post of Assistant Audit Officer. The minutes of the Conference of the Accountant General/Directors of the Audit held from 4th December, 1984 to 6th December, 1984 were placed before the Comptroller and Auditor General who passed the following order on 21.01.1985."

The resolution was thus, placed before the Comptroller and Auditor General and thereafter the instructions were issued. We have no hesitation in holding that the instructions had the approval of the Comptroller & Auditor General of India.

This Court in Union of India & Another Vs. Amrit Singh 1994(I) SCC 269 considered the question whether the Comptroller and Auditor General of India is competent to issue administrative instructions and the question was answered in the affirmative."

3. As the controversy raised in this O.A. has already been settled, by Hon'ble Supreme Court in the aforesaid Judgment, the applicant is not ~~wound~~ entitled for any relief in this O.A. The O.A. is accordingly disposed of.
No order as to costs.


MEMBER (A)


VICE-CHAIRMAN

shukla/-