

OPEN COURT

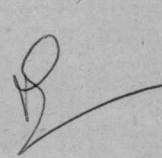
CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

ORIGINAL APPLICATION NO.1326 OF 1995

ALLAHABAD THIS THE 1st DAY OF AUGUST, 2003

HON'BLE MAJ. GEN. K.K. SRIVASTAVA, MEMBER-A
HON'BLE MRS. MEERA CHIBBER, MEMBER-J

1. Kailash Chandra
Aged about 49 years,
S/o Late Shri Dhanpati Lal,
R/o Nayapura, Karel,1,
Allahabad.
2. Harish Chandra Pandey,
aged about 43 years,
S/o Shri Jagan Nath Pandey,
R/o L.I.G.-114,
Govindpur, Allahabad.
3. D.C. Verma,
aged about 43 years,
S/o Shri Shiv Shankar Lal Verma
R/o M.I.G.-20,
Katju Baghia, Allahabad.
4. G.C. Goel,
Aged about 43 years,
S/o Shri Harish Chandra Goel,
R/o 172-B, Ashok Nagar,
Allahabad.
5. B.P. Gupta,
Aged about 41 years,
S/o Late Shri K.L. Gupta,
R/o 1188/820,
Daraganj, Allahabad.
6. Ram Yagya Upadhyay,
aged about 44 years,
S/o Shri Raj Dev Upadhaya,
R/o 174-E/2A,
Mehdauri Colony, Allahabad.
7. Umesh Narain,
aged about 40 years,
S/o Shri Raghubar Dayal Srivastava,
R/o 23/47/120-F,
Allahpur, Allahabad.
8. Tribhuwan Nath Tripathi,
aged about 45 years,
S/o Shri Deo Narain Tripathi,
R/o 6, Mini M.I.G.,
A.D.A. Colony, Muirabad,
Allahabad.



9. P.N. Singh,
aged about 43 years
S/o Late Shri Indra Pal Singh,
R/o 33-A, Jawahar Lal Nehru Road,
George Town, Allahabad.
10. Dev Suman Pandey,
aged about 44 years,
S/o Shri Ram Lakhan Pandey,
R/o 61-D/7-D/5,
Om Gayatri Nagar,
Allahabad.
11. Govind Jaiswal,
aged about 44 years,
S/o Shri Kishori Lal,
R/o 39/30, Adarsh Nagar,
(Bhawapur) Kareli,
Allahabad.

.....Applicants

(By Advocate Shri K.C. Sinha)

Versus

1. Union of India,
through Comptroller & Auditor,
General of India,
New Delhi.
2. Principal Accountant General,
Uttar Pradesh,
Allahabad.
3. Accountant General,
(Accounts & Entitlement)-II,
Uttar Pradesh,
Allahabad.


.....Respondents

(By Advocate Shri A. Sthalekar)

O R D E R

HON'BLE MRS. MEERA CHIBBER, MEMBER-J

This O.A has been filed by 11 applicants claiming a direction to respondent no.1 and 2 to absorb the applicants permanently in Audit side as Section Officer and Assistant Auditor Officer treating them to pass Section Officer Grade Examination in 1983, i.e., prior to bifurcation.



2. It is submitted by the applicants that they were working as clerks in the year 1983 when they passed the Section Officer Grade Examination in the year 1983. On 01.03.1984 Office of the Accountant General was bifurcated into two wings namely; Audit and Accounts. Accordingly willingness was asked from all those S.O.G.E. where they would like to continue in the Accounts department or would like to go into Audit department. As per applicants they gave their willingness for being absorbed in the Audit department. However, their names were kept in the waiting list so that they could be absorbed in the Audit department as and when the vacancies become available. In the mean time applicants continued to work as Divisional Accountants on ex-cadre posts but on 14.04.1986 applicants were promoted as Section Officers in A&E office and finally allocated in the Accounts and Entitlement office. (Page 42). It is submitted by the applicants that some of the applicants gave representation immediately thereafter taking the objection that since they have been kept on the waiting list for being absorbed in the Audit department, therefore this promotion should not be enforced on him as it would deprive him of his right to be absorbed in the Audit department (Page 52). Yet the department wrote letters in December 1986 to all those officers where applicants were working as Divisional Accountants to send the applicants back in the Accounts Department so that they could join as Section Officer, else disciplinary action would be taken against them (Page 58-61). It is the case of applicants that ^{dept. of} ~~would~~ forced them to join back in the Accounts department by threatening disciplinary action against them. They gave their representation in the year 1993 which was rejected on 10.11.1994 whereby Shri Umesh Narain was informed that his request regarding permanent transfer to the Audit Office has not been acceded

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to on the ground that the Recruitment Rules for the post of Assistant Audit Officer in the ^{field} ~~filed~~ offices of I.A. and A.D. do not provide for permanent transfer/absorption of Assistant Accounts Officer (Page 38). Therefore, the applicant's counsel have submitted they had no other option but to file the O.A.

3. The only point raised by the applicant's counsel in this case was that once they had given their willingness before ^{for being} ~~absorption~~ in the Audit Department and they were also kept in the waiting list, they could not have been forced to take further promotion in the Accounts Department and should be absorbed in the Audit Department.

4. Respondent's counsel on the other hand has taken a preliminary objection to the maintainability of the O.A itself by stating that applicant's request was rejected first time in the year 1984 and vide order dated 14.04.1986 their names were struck by from the waiting list, therefore, if any cause of action had arisen ^{in year} in the year 1984 or at best in the year 1986, therefore, they should have challenged the O.A within one year from the said date as they could not have ~~been extended~~ the period of limitation simply by filing one representation or another and then come to the court after a decade to agitate the grievance about their names having been struck off from the waiting list of those persons who had given their willingness for being absorbed in the Audit Department. He has thus, submitted that this O.A is liable to be dismissed on this ground alone. In support of his contention he has relied upon 1995 Supp (4) SCC 593 in the case of Administrator of Union Territory of Daman and Div and Others Versus R.D. Valand. He has also relied on AIR 1976 SC 2617 in the case of State of

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Orissa Versus Sri Pyarimohan Samantaray and Others. Even otherwise he has submitted that S.O.G.E. examination ^{is} held almost every year and only those persons are absorbed in the Audit Department who come within the number of vacancies available in the grade as per their seniority.

5. In the instant case, after the willingness was given by the persons concerned four seniormost persons were absorbed in the Audit Department as per their seniority and thereafter S.O.G.E. has been held almost every year and people must have been absorbed as per the lists prepared. Whereas applicants have now been promoted as Accounts Officer, therefore, they do not have any right to be absorbed as Audit Officer in the Audit Department.

6. He has further submitted that as it is, as per applicants' own averments ~~that these~~ applicants were down below in the waiting list and since only four persons were absorbed from the said list in the year 1984, the persons who are above applicants cannot be ignored in any case nor can any direction be given to absorb the applicants by ignoring the claims of those persons as that itself would be discriminatory and arbitrary. He has thus, submitted that there is no merit in the O.A., the same may, therefore, be dismissed.

7. We have heard both the counsel and perused the pleadings as well.

8. It would be relevant to quote paragraph 3.2.1 (Chapter III) wherein it is specifically stated that allocation will be made according to the suitability and Administrative requirement

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with due regards to the seniority. The screening committee will draw up the list of persons selected for allocation to the Audit office for each of the functional grades according to the number of posts in corresponding grades available on 01.03.1984 and the senior most persons will be allocated and transferred to the Audit Office. It further provides that if the number of persons selected is in excess of number of posts/vacancies in the Audit office, the remaining persons will be continued to remain in the Accounts and Entitlement office and draw up in existing scales, they will be transferred to the Audit office according to their position in waiting list, i.e., according to their seniority, as and when vacancies will arise in the Audit office. Perusal of this Rule position shows that the allocation or absorption had to be done as per seniority. It is not the case of the applicants that any person who was junior to them was absorbed as Section Officer in the Audit Department.

9. It has also ^{been} stated in para 4.9 of the O.A. itself, that applicant's name ~~was~~ figured in the waiting list at serial nos. 79, 281, 190, 350, 362, 310, 654, 210, 224, 360 and 467 respectively. Meaning thereby that there were number of other persons who had also given their willingness and were above the applicants in the waiting list, so long ~~those~~ persons were also kept in the Accounts Department definitely applicants cannot have a better claim than their seniors. Even ⁱⁿ at the ~~action of~~ representation it is stated that applicants' ~~counsel~~ have not given any name of the persons who had been absorbed in Audit Department while he was lower in the waiting list than the applicants. Therefore, in our considered opinion, the reliefs as sought for by the applicants cannot be given to them at all. Even otherwise from applicants own averments, it is seen that their first representation was rejected on 27.09.1984 stating therein

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that preference for allocation to Audit Office under paragraph 10 of Annexure 3.1.2. of M.I.R. was available only to those S.O.G.E. passed Auditors who were awaiting promotion as on 1.03.1984 and it does not hold good for those persons whose results were declared after February 1984 (Page 34).

10. Perusal of the order dated 14.04.1986 further shows that at the time when applicants were promoted as Section Officers in the scale of Rs.500-900/- it was specifically stated in para 2 as follows:-

"On promotion, they will stand finally allocated to Accounts and Entitlement Office, irrespective of whether they were on the waiting list of Accountants for allocation to Audit."

Therefore, cause of action had arisen in favour of applicants at this stage. If the applicants were aggrieved, they should have challenged the order at that very stage. Even thereafter vide letters dated 9.10.1986, 23.12.1986, and 24.12.1986 (Page 55 to 60) all these letters were written in the office where applicants were working as Divisional Accountants informing them in specific ^{2 terms B} argument that the names of the following S.O.G.E. passed Accountants working as Divisional Accountants stand deleted from the waiting list of Accountants for allocation to Audit Office as they have not joined in the office as Accountants for their eventual allocation, in their turn to the office of the Accountant General ' Audit-I, U.P.. Therefore, this was the stage when applicants if aggrieved ought to have challenged these orders. But admittedly no such effort was made by them to challenge these orders in 1986.⁸⁷ Applicants gave their representation in the year 1993 which was rejected on 10.11.1994 but this does not give them a fresh cause of action to agitate the matter which should have been agitated

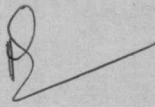
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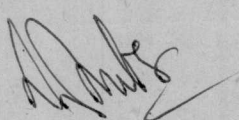
in the year 1986, when their names were specifically deleted from the waiting list.

11. In this occasion it would be relevant to quote the extract made from the judgment given by Hon'ble Supreme Court in the year 1976. In this case, on rejection of his representation against his supersession by his juniors in select list, the ^{appellant} ~~panel~~ allowed some 11 years ^{to} go by before filing the writ petition for quashing that list. It was held by the Supreme Court that petition is liable to be dismissed on ground of inordinate and unexplained delay.

12. In the instant case, it would be relevant to state that period of limitation prescribed under the Administrative Tribunals Act 1985 is one year from the date of cause of action. Since we have stated above that the cause of action ~~had~~ stated in favour of applicants in the year 1986., therefore, he ought to have filed the O.A within one year from the said date.

13. Admittedly this O.A was filed in the year 1995 i.e., almost after nine years from the date of cause of action. Therefore, we feel that this O.A. is barred by limitation. Accordingly, this O.A. is dismissed on the question of limitation as well as merit both. No costs.


Member-J


Member-A

/Neelam/