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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

THIS THE 5th DAY OF JUNE, 2003

Original Application No.1351 of 2002

CORAM:

HON.MR.JUSTICE R.R.K.TRIVEDI,V.C.

HON.MAJ.GEN.K.K.SRIVASTAVA, MEMBER (A)

1. Association of Senior Audit Officers/Audit Officers of IA & AD, Office of Principal Accountant General (Audit I & II) U.P.Allahabad, through its General Secretary Shri S.Z Ishtiaque, Senior Audit Officer, Office of Principal Accountant General(Audit I & II),U.P. Allahabad.
2. Manik Chandra Misra, son of Late Shri M.B.Misra, B-100 Chandra Shekhar Azad Nagar, Teliarganj, Allahabad.

.. Applicants

(By Adv: Shri Rakesh Pandey)

Versus

1. Union of India, through Secretary, Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training), New Delhi.
2. Comptroller and Auditor General of India, 10, Bahadur Shah Zafar Marg, New Delhi.
3. Assistant Comptroller and Auditor General (N), 10, Bahadur Shah Zafar Marg, New Delhi.

.. Respondents

(By Adv: Shri Satish Chaturvedi)

O R D E R (Reserved)

JUSTICE R.R.K.TRIVEDI,V.C

Applicant No.1 is an Association of Senior Audit Officers and Audit Officers of Indian Audit and Accounts

Department, U.P. Allahabad serving in the office of Principal Accountant General, U.P., Allahabad. Applicant No.2 is member of the Association. The grievance of the applicants is against their classification by impugned order dated 29.7.1998 as Group 'B' officers in the pay scale of Rs 8000-275-13,500. The applicants have also challenged the order dated 11.10.2002(Annexure 8) by which their representation dated 8.7.2002 has been rejected.

The facts in short giving rise to the aforesaid dispute are that on the basis of the recommendation of the Vth Pay Commission, which became effective w.e.f. 1.1.1996, the pay scale of the post of Senior Audit officers was revised to Rs 8000-13,500. In view of the revision of pay scales of various cadres of employees re-classification became necessary. Consequently, respondent no.1 issued notification dated 20.4.1998 which provided that the Central civil posts carrying a pay or scale of pay with a maximum of not less than Rs 13,500 should be classified as Group 'A' posts. Copy of the notification dated 20.4.1998 has been filed as (Annexure 2). From perusal of the notification it is clear that it has been issued in exercise of powers conferred by the proviso to Article 309 read with Clause V of Article 148 of the Constitution ^{and} read with Rule 6 of the Central Civil Services CCS(CCA) Rules 1965.

The respondent no.1, however, by the impugned notification dated 29.7.1998, classified all the posts of Senior Audit Officers and Senior Accounts officers in the office of Comptroller of Auditor General of India and in all organised accounts cadre in the scale of Rs 8000-275-13,500 as Group 'B' posts. Aggrieved by the impugned notification applicants filed OA No.27 of 2001

in this Tribunal. The OA was disposed of on 27.5.2002(Annexure 6) by following directions:

"We have perused the records and in our opinion, it is necessary to decide the representation of the Association dated 15.11.1999 within a specified time for which the counsel for the parties have no objection. We, therefore, dispose of this OA finally with the direction to Comptroller and Auditor General of India to decide the representation filed before him in consultation with the Ministry of Personnel, Public Grievances & Pension (Department of Personnel & Training). In order to obviate delay, we grant liberty to the Association of Senior Audit officers Audit Officers to file a fresh representation alongwith order of this Tribunal within one month and the respondent no.2 to decide the same within three months from the date such a representation is filed before him. The OA is decided accordingly."

In pursuance of the above direction of this Tribunal applicant filed representation dated 8.7.2002(Annexure 7) which has been rejected by order dated 11.10.2002(Annexure 8) which has also been impugned in this OA.

We have heard Shri Rakesh Pandey learned counsel for the applicants and Shri Satish Chaturvedi learned counsel appearing for the respondents. The parties have

exchanged the counter and Rejoinder which have also been perused.

The counsel for the applicants has challenged the impugned order dated 29.7.1998 on the ground that recital of consultation under Article 148(5) is not correct. In fact, no consultation was done with Comptroller and Auditor General of India by respondent no.2 before issuing the notification and in absence of the consultation the notification is illegal and void and liable to be quashed. In support of this submission counsel for the applicants has placed reliance on the counter affidavit filed by the respondents in OA No.27/01 particularly paragraphs 7,10 & 11. He has also placed reliance on paragraph 9 to 10 of the counter affidavit filed in the present OA. The counsel for applicant has further submitted that by notification dated 20.4.1998 applicants were classified as Group 'A' employees and on account of which number of benefits accrued to the applicants. However, the applicants have been deprived of the benefits without ~~following~~ giving any opportunity of hearing and the impugned notification is violative of principles of natural justice and is liable to be quashed.

The last submission of the learned counsel for the applicants is that the notification is discriminatory as many similarly placed employees drawing pay scales of Rs 8000-275-13,500 have ^{been} allowed to be continued in Group 'A' service, whereas, Senior Audit officers and Senior Accounts officers have been classified as in Group 'B'

The notification is thus discriminatory and violative of Article 14 & 16 of the Constitution of India. The counsel for the applicant has placed reliance on following judgments:

- 1) Chief Justice of Andhra Pradesh and Anr. Vs L.V.A.Dikshitulu and Ors, AIR 1979 SC-193
- 2) B.Prabhakar Rao and Ors etc Vs State of Andhra Pradesh & Ors,AIR 1986 SC 210
- 3) State of Punjab Vs. Kailash Nath, A:IR 1989 SC 558
- 4) State of Bihar and Anr. vs Bal Mukund Sah, JT 2000 (3) SC 221
- 5) Subhesh Sharma Vs Union of India,AIR 1991 S.C-631

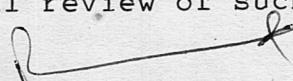
The learned counsel for the respondents, on the other hand, submitted that the decision of the Central Government to classify Senior Audit officers and Senior Accounts officers as Group 'B' officers, is a policy decision of the Government and its judicial review cannot be asked for by the applicants before this Tribunal. It is further submitted that the applicants were classified as Group 'B' employees from before the recommendation of the Vth Pay Commission and they are not entitled to be classified in Group 'A' service merely on account of enhancement in pay scale consequent upon the revision of the same on the basis of the recommendation of the Pay Commission. It is further submitted that there were valid and strong reasons to classify applicants in Group 'B' service, which have been mentioned in the order dated 11.10.2002 by which representation of the applicants has been rejected. It is also submitted that there is no question of discrimination as various other group of services have been reclassified in Group 'B' service in view of Office

Memorandum dated 12.6.1998 issued by Ministry of Personnel, Public Grievances & Pension (Department of personnel & Training) which was circulated in all the Ministries. Under this Office Memorandum fresh proposals were sent to classify the posts differently. The counsel for the respondents also submitted that for laying down a policy decision by the Government of India opportunity of hearing was not required to be given. Further, individual notice could not be given to members of the Association for changing their classification. The notification cannot be assailed on this ground.

The learned counsel for the respondents has placed reliance on following judgments:

- 1) Bhagwan Singh Gehlot Vs Union of India & Anr.
2003 (1) ATJ-540 (Jodhpur Bench)
- 2) M.P.Oil Extraction & Anr. Vs State of M.P. & Others, (1997) 7 Supreme Court Cases 592
- 3) State of A.P. Vs. V.C. Subbarayudu & Ors (1998) 2 Supreme Court cases 516
- 4) State of Rajasthan Vs. Sevanivatra Karmchari Hitkari Samiti, (1995) 29 Administrative Tribunals Cases 199
- 5) Prabhat Kiran Maithani & Ors Vs. Union of India and Anr. (1997) 2 S.C.R-911
- 6) Ugar Sugar Works Ltd Vs. Delhi Administration & Ors (2001) 3 Supreme Court Cases - 635
- 7) Union of India & Ors Vs. O.Chakradhar, 2002 SCC (L&S)- 361

We have carefully considered the submissions made by counsel for parties and also perused the material available on record. Hon'ble Supreme Court in number of its judgments has laid down that the Govt has a right to frame a policy to ensure efficiency and proper administration and to provide suitable channels of promotion to officers working in different departments and offices. Judicial review of such policy decisions is



not within the domain of the Tribunal. The Tribunal cannot substitute its own views for the views of the Government or direct a new policy based on the Tribunals view. For advantage the view expressed by the Hon'ble Supreme court in case of 'Government of Tamil nadu and Anr Vs Arumugham & Ors (1998) 2 Supreme Court cases -198 may be quoted which reads as under:

" The Tribunal ought not to have directed the Government to change its policy. The government has a right to frame a policy to ensure efficiency and proper administration and to provide suitable channels of promotion to offices working in different departments and offices. In Indian Railway Service of Mechanical Engineers'Association Vs. Indian Railway Traffic Service Association, (1994) 26 ATC page 352, this court reiterated that the correctness of a policy should not be questioned by the Tribunal. The appellants in their affidavit before the Tribunal have given in detail the history of these provisions and the justification for these provisions in the interest of efficiency and proper administration. The Tribunal cannot substitute its own views for the views of the Government or or direct a new policy based on the Tribunal's view of how the allocation should be made. The three groups which have been formed as far back as in 1977 for the purposes of allocation consist of officers performing different functions and having different prospects and different avenues of promotion. They cannot be equated for the purposes of Articles 14 and 16. In case of 'Govind Dattatray Kelkar Vs. Chief Controller of Imports & Exports, AIR 1967 SC page 839, this Court held that the concept of equality in the matter of promotion can be predicated only when promotees are drawn from the same source. If the preferential treatment of one source

in relation to the other is based on the difference between the two sources, the recruitment can be justified as legitimate classification. The reasoning directly applies in the present case. Therefore, the scheme does not violate Articles 14 or 16, nor is it arbitrary. The quota which should be fixed or the allocation which should be made for the purpose or deputing officers to the Tamil Nadu Revenue Subordinate Service is basically in the domain of the executive. Unless there is a clear violation of any provision of the Constitution, the Tribunal ought not to have given directions for formulating a new policy and a different quota."

The aforesaid view has been followed by hon'ble Supreme court in case of 'M.P.Oil Extraction and Anr (Supra) and it has been held that unless the policy decision is absolutely capricious, unreasonable and arbitrary and based on mere ipse dixit of the executive authority or is violative of any constitutional or statutory mandate, Court's interference is not called for. In case of 'V.C.Subbarayudu & Ors (Supra) Hon'ble Supreme Court held that it is matter of policy for the State Government, which in its wisdom decided to create a separate cadre in the State by absorbing the Divisional Accountants working on deputation in the state and who were under the administrative control of Accountant General. The Supreme Court cannot give any direction to the State Government to have a different policy and also absorb the SAS Accountants in its newly constituted service. In case of 'Ugar Sugar Works Ltd(Supra) Hon'ble Supreme Court held that judicial review of a policy decision is not within the domain of judiciary to test the correctness of a policy or to lay down whether such policy ought to be changed or ~~should~~ remain static as

long as the policy is not tainted by malafides, arbitrariness, irrationality, perversity, unfairness or unreasonableness.

From perusal of the aforesaid judgments of Hon'ble Supreme court it is clear, that interference with the policy decision of the government, can be only on limited grounds mentioned in the judgments. On behalf of the applicants the policy decision arrived at by the impugned notification dated 29.7.1998 have been mainly assailed on the ground of violation of Article 148 (5) of the Constitution of India.

The learned counsel for the applicant submitted that the respondents in the earlier counter reply filed in OA No.27/01 clearly admitted that there was no consultation with respondent no.2 and for this reason alone the impugned notification is liable to be quashed. The learned counsel has submitted that the word 'consultation' used in Article 148(5) of the Constitution is not a mere formality but it ^{creates} ~~causes~~ an obligation on respondent no.2 to protect interest of the employees serving under him. Reliance has been placed on judgments of Apex court. Hon'ble Supreme Court in case of 'Subhesh Sharma Vs. Union of India(Supra) considered the word 'consultation' used in Articles 124(2), 214 and 217. Relying on its earlier judgment reported in AIR 1982 Supreme Court 149 held as under:

"The majority opinion, expressed in AIR 1982 SC 149 not only seriously detracts from and denudes the primacy of the position implicit in the constitutional scheme, of the Chief Justice of India in the consultative process but also whittles down the very significance of "consultation" as required to be understood in the constitutional scheme and context. This bears both on the substance and the process of the constitutional scheme. The constitutional phraseology would require

to be read and expounded in the context of the constitutional philosophy of separation of powers to the extent recognised and adumbrated and the cherished values of judicial independence. Consistent with the constitutional purpose and process it becomes imperative that the role of the institution of the Chief Justice of India be recognised as of crucial importance in the matter of appointments to the Supreme Court and the High Court of the States."

From the aforesaid observations of Hon'ble Supreme Court it is clear that word 'consultation' used in Article 148(5) of the Constitution cannot be termed a mere formality. The consultation should be effective and meaningful. In the present case, it has to be seen, as to whether, this mandatory requirement of consultation has been done or not.

At this stage, it may be pointed out that this Tribunal while directing respondent no.2 to decide the representation of the applicants clearly directed that 'Comptroller and Auditor General of India to decide the representation filed before him in consultation with the Ministry of Personnel and Public Grievances (Department of Personnel and Training)'. This direction was given in context of the submissions made by parties. In paragraph 10 of the counter affidavit filed in OA No.27/01 the stand taken by the respondents was as under:

"That it was considered that the requisite consultation with CAG had not taken place as the respondent no.1 issued the notification without referring the file back with the input from Ministry of Finance. Accordingly

after the issue of modified notification dated 29.7.1998, the respondent no.2 has recently, in July 2001, written to the respondent no.1 to re-examine the issues."

The direction by this Tribunal was given in context of the aforesaid averment made that that consultation was not done with CAG. The impugned order dated 11.10.2002 has been passed by respondent no.2 under the aforesaid direction which clearly states that the representation of the applicants have been considered in consultation with the Ministry of Personnel, Public Grievances and Pensions and also in consultation with Ministry of Finance as directed by this Tribunal. After completing the process of consultation the representation of the applicants has been rejected. All the parties to the OA were bound by this direction. It is not the case of the applicants that the recital mentioned in the order dated 11.10.2002 is incorrect and the consultation has not been done. In our opinion, as the direction of this Tribunal has been complied with, the requirement of consultation has also been complied with and the notification dated 29.7.1998 cannot now be assailed on this ground. Even if at initial stage there was a lacuna it has been completed subsequently under the order of this Tribunal and the applicants cannot have any grievance.

In the impugned order dated 11.10.2002 reasons have been advanced in paragraphs I to V where the Senior Audit Officers and Senior Accounts officers have been classified as in Group 'B' service. It has also been stated that scientific posts sanctioned at the level of Group 'B' and 'C' which were upgraded to the scale of Rs 8000-13,500 on Situ basis in accordance with the provisions of Career Advancement Scheme applicable to scientific organizations are also classified as Group

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'B'. It has also been stated that grant of Group 'A' status to Senior Audit Officers and Senior Accounts Officers would have ~~been~~ impinged on, proper cadre management as Senior Audit officers are eligible for induction to Junior Time scale of organised group 'A' accounts services. Thus, there ~~is~~ ^{were} valid and sound reasons for classifying the Senior Audit officers and Senior Accounts officers in Group 'B' service. The submissions of the counsel for applicants that there is discrimination, ~~and it~~ cannot be accepted as the similar treatment has been given to other employees serving in the same pay scale of scientific organizations. We have already observed earlier that interference with the policy decision is not within the domain of this Tribunal. The scope of interference is very limited. This Tribunal examined the serious ~~flow~~ in process of consultation and directed to remove it which has been carried out and nothing remains there, thereafter calling for inference by this Tribunal. We have also no doubt that in matters of policy decisions opportunity of hearing is not required to be given. The Constitution protected the interest of the employees of Accounts department by directing that the conditions of service shall not be effected except by consultation with Comptroller and Auditor General of India which is an effective protection. In number of judgments Hon'ble Supreme Court has expressed this View. Thus the impugned notification cannot be assailed on the ground that hearing was not given to be applicants. Even if it is accepted for the sake of argument, that applicants were entitled for hearing, that has also been complied with as the applicants were given opportunity to file representation. They raised all possible pleas which

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have been considered and examined by the respondents and thereafter the order has been passed. Thus, we do not find any illegality either in the notification dated 29.7.1998 or in the order dated 11.10.02 calling for our interference.

For the reasons stated above, the OA is ~~debar~~ ^{of decided} of ~~merits~~ and is accordingly dismissed. There will be no order as to costs.



MEMBER (A)



VICE CHAIRMAN

Dated: June 5, 2003

Uv/