

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 693 OF 1995.
Cuttack, this the 5th day of September, 2002.

G.J.Nehru.	Applicant.
	Vrs.	
Union of India & Others.	Respondents.

FOR INSTRUCTIONS

1. whether it be referred to the reporters or not? No
2. whether it be circulated to all the Benches of the Central Administrative Tribunal or not? No

Manu
05/09/2002
(MANORANJAN MOHANTY)
MEMBER (JUDICIAL)

V. Srikanth
(V. SRIKANTAN)
MEMBER (ADMINISTRATIVE)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 693 OF 1995.
Cuttack, this the 5th day of September, 2002.

C O R A M;

THE HONOURABLE MR. V. SRIKANTAN, MEMBER (ADMINISTRATIVE)

AND

THE HONOURABLE MR. MANORANJAN MOHANTY, MEMBER (JUDICIAL).

...

Sri G.J. Nehru, S/o. Late Dr. G. Kodanda, Ramayya,
Aged about 58 years, At present working as
Audit Officer, Office of the A.G. (Audit) Orissa,
Bhubaneswar. APPLICANT.

By legal practitioner ; M/s. G. Rath, S.N. Mishra,
A.K. Panda, Advocates.

;Versus;

1. Union of India represented by Comptroller
and Auditor General of India, 10 Bahadur
Shah Zafar Marg, New Delhi- 2.
2. Accountant General (Audit) I, Orissa,
Bhubaneswar.

..... RESPONDENTS.

By legal practitioner ; Mr. A.K. Bose, Senior Standing
Counsel (Central).

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O R D E R

(ORAL)

MR. V. SRIKANTAN, MEMBER (ADMINISTRATIVE) : -

The matter regarding grant of an appropriate scale of pay to Audit Officers was considered and it was decided by the Government of India, Ministry of Finance, Department of Expenditure OM No.F-6(82)-IC/91 dated 22-09-1992 that Audit Officers in the scale of Rs.2375-3500/- with a minimum of three years of regular service as on 1-4-1992 were eligible for promotion as Sr. Audit Officers in the scale of pay of Rs.2200-4000/- on the basis of seniority cum fitness after following due process. For the purpose of promotion to Sr. Audit Officer, the crucial date of 1st October of the preceding year was fixed. For the promotion to the grade of Senior Audit Officer, initially 1.4.1992 was prescribed as the crucial date for eligibility for promotion as the new cadre came into effect from 1-4-1992, which was subsequently modified to September, 1992 as Govt. orders creating the cadre were issued on 22-9-1992. For the subsequent years, the crucial date was changed to 1st October. However, on receipt of clarification from the Govt. of India in 12/93, the crucial date of eligibility for promotion from the year 1994

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onwards was changed to 1st October of the year to which the panel pertains. Accordingly, an official to be eligible for promotion to the grade of Sr. Audit Officer, has to complete three years of regular service in the feeder grade latest by 1st October of the panel year.

2. Applicant was promoted as Audit Officer w.e.f. 5.11.1992 and completed three years of regular service as Audit Officer w.e.f. 5.11.1995 and accordingly was due to be promoted as Sr. Audit Officer w.e.f. 7.11.1995. However, the Applicant was informed by the Respondent No. 2 that the applicant was not eligible for promotion to the cadre of Sr. Audit Officer during the panel year of 1995 because he would not be completing three years of regular service as Audit Officer on the crucial date i.e. on 1. 10.1995 during the said panel year. The applicant preferred an appeal on 6-11-1995 to the Res.No.1 but did not receive any reply. Aggrieved by the fact that he was not being considered for promotion to the cadre of Sr. Audit Officer, even though he had completed three years as on 5-11-1995, the applicant has filed this Original Application under section 19

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of the Administrative Tribunals Act, 1985. The applicant also retired from Govt. service w.e.f. 30.11. 1995.

3. The main contention of the Applicant is that the orders fixing the crucial date of 1st October of the panel year for completion of three years regular service to become eligible for consideration for promotion to Sr. Audit Officer, is highly illegal, arbitrary, discriminatory and violative of Article 14 and 16 of the Constitution of India. He has contended that the only criteria for promotion is completion of three years regular service in the grade, and availability of post in the Grade of Senior Audit Officer and that unless an officer is considered otherwise unfit, he is eligible to be promoted as Senior Audit Officer, on a date following the date on which he completed three years of service. The Applicant has also referred to the case of Shri D.G.K. Murty, who was promoted as Audit Officer on 10.2.1992 in the Office of the Res. No. 2, and was subsequently promoted to the post of Senior Audit Officer w.e.f. 11.2.1995 and as such, according to the Applicant, he is entitled to be considered for promotion when he completed three years of regular service as Audit Officer.

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4. Respondents have filed their counter reiterating the fact that for promotion, an Audit Officer, should have the requisite service of three years on the crucial date as on 1st October, 1995. Accordingly, since the Applicant had not acquired such eligibility criteria of three years as on 1st Oct., 1995, he was not promoted to the post of Sr. Audit Officer in the panel year of 1995. The Applicant, also could not be promoted during the panel year of 1996 as he had retired on 30.11.1995. It has also been pointed out that the immediate senior and immediate junior of the Applicant, who had joined as Audit Officer on 5.11.92 along with the Applicant, were given promotion as Sr. Audit Officer only from 1-1-1996 as they have also completed the requisite years of service between 17-10-1995 to 5-11-1995.

5. Heard Mr. S. N. Mishra, learned counsel for the Applicant and Mr. A. K. Bose, learned Senior Standing Counsel for the Union of India appearing for the Respondents and perused the records.

6. It is strenuously argued by the counsel for the Applicant that fixation of the crucial date as 1st October is arbitrary and has adversely affected his chances of being promoted to the Sr. Audit Officer. His main argument was that since vacancies were there in the panel year of 1995, there is no need to

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have the crucial date such as 1st October, when the promotion is/was on the basis of fitness only. It has also been contended by the learned counsel for the applicant that 1st October 1995 has been fixed keeping in mind the fact that the ACRs are being written on the basis of financial yearwise and officers ^{ACPs} will be available for being considered by the DPC only ~~by~~ ^{between} 1st October but this principle is applicable only if the DPCs were to meet in the same year as the panel year. However, he argued that in this case the DPC had actually met sometime in December of the previous year 1994 and was preparing the list of the panel year of 1995 and the crucial date is taken as 1st October, 1995. In the said premises, he argued that fixing of the crucial date as 1st October was totally uncalled for.

7. So far as preparation of panel in advance is concerned, it is seen that Govt. instructions do provide for the same being prepared in advance of the panel year so that there will be no delay in conferring the benefits for the subsequent panel year. Govt. have also given detailed reasons for fixing the cut off date as crucial date for the eligibility for consideration of eligible officers by the DPC. Fixing of cut off date has been challenged in different forum but the same has been upheld as being a policy decision to which the Tribunal cannot interfere.

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8. The case of the applicant, is, however, slightly different. Normally, after the DPC meets and prepared the panel, the panel comes ^{being} to an end and as and when vacancy arises during the course of the panel year, the officers are promoted depending upon the availability of vacancies.
- u It is seen that ^{here} there has been no dearth of vacancies and sufficient vacancies are available to accommodate all the eligible officers. In this situation after the panel had been prepared the Audit Officers got promotion to the grade of Sr. Audit Officer, the day they completed three years of regular service as Audit Officers. Learned counsel for the applicant has argued that in this situation there was no need to have a crucial cut off date for eligibility. This is a peculiar circumstance. It is for the Respondents ^{to decide} ~~whether~~ in such a situation the crucial date was essential or not and whether the same benefits could have accrued to all the officers who are eligible had such crucial date not been fixed.

9. For the above reasons, this OA is disposed of to giving liberty to the Applicant to file a detailed representation to the Respondent No.1 within a period of one month ^{from to-day} ~~hence~~ and if the same is received, the Respondent No.1 shall consider the same and dispose of ~~such~~ representation through a reasoned and speaking order within a period of three months thereafter and communicate the result to the Applicant. There shall be no order as to costs.

J. Mohanty
05/09/2002
(MANORANTAN MOHANTY)
MEMBER (JUDICIAL)

V. Srikanth
(V. SRIKANTAN)
MEMBER (ADMINISTRATIVE)