

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACKORIGINAL APPLICATION NO. 77 OF 1996
Cuttack this the 13th day of March/2003

G.J.Nehru & Others

...

Applicants

-VERSUS-

Union of India & Others

Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? Yes
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? Yes


(M.R. MOHANTY)
MEMBER (JUDICIAL)
(B.N. SASMAL)
VICE-CHAIRMAN

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CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 77 OF 1996
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CORAM:

THE HON'BLE SHRI B.N. SOM, VICE-CHAIRMAN
AND
THE HON'BLE SHRI M.R. MOHANTY, MEMBER (JUDICIAL)

1. S/Shri G.J.Nehru, aged 58 years,
Son of Late Dr.G.Kodanda Ramayya, Retired
Audit Officer, Office of the Accountant
General (Audit) Orissa, Bhubaneswar -
at present residing at Type-IV-23, New A.G.
Colony, Nayapalli, Bhubaneswar-12
2. B.Sanyasi Rao aged 57 years, S/o. Late B.Subba Rao
3. R.A.Rama Sarma, aged 55 years, S/o. Late R.P.Sarma
4. P.Venkata Rao, aged 57 years, S/o. Late Poleru
5. C.H.S.Rao, aged 57 years, S/o. C.H.S.N.Murty
6. B.K.Basu, aged 58 years, S/o. Late T.P.Basu
7. Sadhana Das, aged 52 years, D/o. late L.M.Das
8. K.Prabhakara Rao, aged 51 years, S/o. Sri Suryanarayana
9. S.C.Rana, aged 56 years, S/o. late P.Rama
10. S.V.Raju, aged 57 years, S/o. late S.Ramanna
11. B.Shanmukha Rao, aged 54 years, S/o. late B.V.Ramaniah
12. D.S.N.Murty aged 55 years, S/o. late D.Satyaranayana
Murty
13. S.K.Mookerji, aged 52 years, S/o. late B.Mookerji
14. S.K.Mohanty, aged 53 years, S/o. Sri G.S.Mohanty
15. P.Appa Rao, aged 54 years, S/o. late P.Ramanna
16. G.V.N.Subba Rao, aged 55 years, S/o. late G.A.N.
Subramanyam
17. K.S.R.Murty Patnaik, aged 52 years, S/o.
late Gurumurty Patnaik
18. G.C.Rath, aged 49 years, S/o. Sri Dandapani Rath
19. S.Sudarsana Rao, aged 54 years, S/o. late
S.Seshadri Rao
20. N.G.Maitra, aged 53 years, S/o. late J.N.Maitra
21. J.C.Das aged 58 years, S/o. late B.Das
22. Amal Kumar Das, aged 56 years, S/o. late K.N.Das
23. S.Bhattacharya, aged 50 years, S/o. late P.K.Bhattacharya
24. B.S.N.Murty, aged 57 years, S/o. late B.N.Murty

25. C.C.Mohanty, aged 56 years, S/o. late S.C.Mohanty
26. G.V.Rao, aged 55 years, S/o. late G.Kotayya
27. G.S.Rao, aged 57 years, S/o. late G.N.Murty
28. B.K.Dasgupta, aged 58 years, S/o. late T.P.Dasgupta
29. B.B.Dash, aged 56 years, S/o. late S.N.Dash
30. M.Kameswar Rao, aged 55 years, S/o. late M.S.N.Murty
31. A.K.Nanda, aged 51 years, S/o. late A.N.Nanda
32. S.Bhubaneswar Rao, aged 52 years,
S/o. late S.Suryanarayan
33. K.C.Dey, aged 52 years, S/o. late Sarat Chandra Dey
34. D.G.K.Murty, aged 53 years, S/o. late Sri Rama Murty
35. K.Raja Rao-II, aged 53 years, S/o. late K.Narasimha Reddy
36. B.C.Patnaik, aged 50 years, S/o. Arjun Patnaik

All of them working as Audit Officers/Sr.Audit Officers in the Office of the Accountant General (Audit), Orissa, Bhubaneswar

... Applicants

By the Advocates

M/s.Ganeswar Rath
S.N.Misra
A.K.Panda
S.R.Mohanty

VERSUS

1. Union of India represented by the Comptroller and Auditor General of India, 10, Bahadur Shah Zafar Marg, New Delhi-110 002
2. Accountant General (Audit), Orissa, Bhubaneswar-1

... Respondents

By the Advocates

Mr.A.K.Bose
Mr.B.Dash

ORDER

MR.B.N.SOM, VICE CHAIRMAN: This Original Application has been filed by Shri G.J.Nehru and 35 other Audit Officers/Sr.Audit Officers of the Office of Accountant General (Audit), Orissa, Bhubaneswar, against alleged arbitrary and discriminatory treatments meted out to them by the Respondents in so far as promotion of officers of this category

to the posts of Audit Officer/Senior Audit Officer and Deputy Accountant General is concerned.

2. The facts of the case in brief are that in the year 1984, Comptroller and Auditor General of India decided to reorganise the combined Audit and Accounts offices into two separate offices, viz., Audit Office and Accounts and Entitlement Office (in short A.O. & A & E Office) under Accountant General with cadres of their own. By virtue of notification under Annexure-A/2 dated 26.12.1983 issued by the Accountant General, Orissa, Bhubaneswar, all the staff of his office were called upon to exercise their choice for their allocation by either to Audit Office or to A&E Office/31.1.1984. In the said notification, conditions of service, career prospects in the Audit Office were also given in details. The notification also prescribed the procedure for allocation of officers and staff to the Audit and Accounts cadres. The applicants have stated that on their exercising options they were allotted to the Audit cadre considering that they were senior in the combined cadre. Thereafter, on the recommendation of the 4th Central Pay Commission, the Government decided that parity should be brought in the pay scales of the staff of A&E Office and other Accounts Organisation. Accordingly, the Government created posts of Senior Accountants, Assistant Accounts Officer in the pay scales of Rs.1400-2600 and Rs.2000-3200/- respectively at par with Senior

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Auditors and Assistant Audit Officers in the Audit Offices as well as in other Accounts Offices.

The applicants' grievance is that as a result of this decision of the Government, persons, who were junior to them in the combined office and were allotted to A & E Office, were also placed in the same scale of Rs.2000-3200/- as that of the seniors in the Audit Offices. Subsequently, the promotional prospects of the juniors in the combined office (who were allotted to Accounts side) became brighter and such persons were promoted as Accounts Officers and Senior Accounts Officers (Group-B category) earlier than the applicants, who were erstwhile seniors and were allotted to Audit Offices. The applicants further alleged that although promotion to the cadre of Deputy Accountant General (Group-A) is made from the combined eligibility list of Audit Officers and Senior Accounts Officers of the Indian Audit and Accounts Services (in short I.A.& A.S.) the officers in the Accounts side, because of faster promotional avenue being available to them got higher representation than the Audit Officers. Had they not opted for the career in the Audit Office, they would have enjoyed better promotional prospects. The applicants have further stated that even though they ventilated their grievance before the competent authorities vide their representation at Annexure-6, the same did not yield any fruitful result and that is why, being aggrieved that equal opportunity has been denied in their case, they have approached this Tribunal under

Section 19 of the A.T.Act, 1985, for redressal of their grievance.

3. The Respondents have, in their counter, controverted the issues raised by the applicants by stating that restructuring was a normal management initiative for improving efficiency in the organisation and the new organisation (Audit Office) was created by redeploying the existing manpower based on individual preference. They have stated that when the ~~came~~ restructuring into effect from 1.3.1984, 80% of Auditors' and Section Officers' posts were upgraded and placed in the higher scale of pay, whereas no change in the pay scales was made in respect of Accounts and Entitlement group of ~~officials~~. In other words, restructuring of the Department into Audit & Accounts and Entitlement Office resulted in promotion of those officials, who opted for the Audit side, with reference to the seniority in their newly created cadre. It is only with effect from 1.4.1987 that corresponding posts of Assistant Accounts Officers were created in A.E.O. The Respondents have further stated that the applicants having voluntarily opted to come over to Audit stream with higher scale of pay became a separate and independent cadre and had no connection with the cadre in the A. & E. Office. It is their further stand that when the Government of India decided to provide further promotional grades in the scale of pay of Rs.2200-4000/- w.e.f. 1.4.1992, the scheme was implemented in both the Wings of I.A. & A.S. and here also there was no discrimination made. The

Respondents have also stressed that the main thrust of the application is revolving round the point of **seniority** that the senior should always march ahead of the junior. The seniority theory can be hardly applied here, they stated, because, w.e.f. 1.3.1984, the Department was reorganised and two separate Wings, viz., Audit Office and Accounts & Entitlement Office with independent and distinct existence was created for all intended purposes. They therefore, have concluded that this Original Application, being devoid of merit is liable to be dismissed.

4. We have heard Shri Ganeswar Rath, the learned counsel for the applicants and Shri A.K.Bose, learned Senior Standing Counsel for the Respondents. We have also perused the records placed before us.

5. The entire argument of the applicants is based on the thesis that the interests of the seniors are to be protected always. They have argued that the Respondents, while creating a new organisation, called Audit Office, had held out promise of higher scale of pay to all members with better promotional prospects, which remained true till 1.4.1987. After 1.4.1987, the officers of A & E O were not only granted the same higher scale of pay as that of the Audit Officers, but were offered more promotional prospects. The applicants have shown the variation in career prospects between Audit Group and the A & E O group vide Annexure-A/1 and A/5 series. They have further argued that by providing better career prospects to the officials of A & E group, the Respondents had violated the provisions of Articles

14 and 16 of the Constitution, because equality of opportunity was denied to the officials of Audit Group and thus, they were discriminated.

6. We have given our anxious thoughts to see whether the applicants, in any manner, were discriminated against by the Respondents with effect from 1.4.1987. To answer the issues raised by the applicants, we have gone through the judgment of the Apex Court in the case of Union of India & Others vs. Secretary Madras Civil Audit and Accounts Association (1992) 20 A.T.C. 176. The main issue, as raised in the instant case ~~is~~ is centering round the question of parity in employment, equal pay for equal work and whether the provisions of Article 14 could be applied in the case of equal career prospects between officials of Audit Office and Accounts and Entitlement Office. The Hon'ble Apex Court, while answering the issue, held, "it is well settled that equality before the law means that among equals, the law should be equal and should be equally administered and that like should be treated alike. However, the principle does not take away from the State the power to classify persons for legitimate purpose". Little later, directly answering whether variation in the scales of pay between these two Wings amounted to violation of Articles 14 and 16 of the Constitution, the Hon'ble Apex Court held, "it is true that all of them before restructuring belong to one Department, but, that by itself, cannot be a ground for attracting

Articles 14 and 16 of the Constitution."

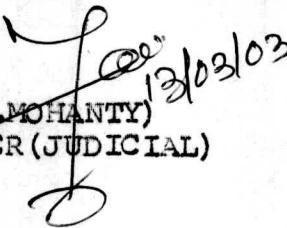
Proceeding further, the Hon'ble Apex Court held, "there is, in our opinion, no escape from the conclusion that Equality of Opportunity in matters of promotion, must mean equality as between members of the same class of employees, and not equality between members of separate independent classes".

7. With the above observations of the Apex Court dealing with the very same matter which was earlier agitated by Madras Civil Audit & Accounts Association and now being agitated by this group of applicants, our answer to the issue raised is that after becoming two separate entities under the Department, the claim of equality under Article 16 of the Constitution was not tenable, though the demand for parity could always be made. During the oral arguments in this matter, we had also made anxious queries with the learned counsel for the applicants, if at all the issue with regard to variation in career prospects ^{between} the officers in the Audit Office and Accounts & Entitlement Office, was taken up before the ^{5th Central} Pay Commission, an expert body which is eminently suited for dealing with such matters, we did not have the benefit of full information in the matter.

8. In view of foregoing discussions, we are of the view that the issues as raised by the applicants in this O.A. lie eminently within the domain of the cadre controlling authority to consider and decide and we have no doubt that the cadre controlling authority

would examine the matter in their wisdom, as and when the applicants bring up the matter before them.

With the above observation, we dispose of this Original Application. In the circumstances, there shall be no order as to costs.


(M.R. MOHANTY)
MEMBER (JUDICIAL)


(B.N. SOM)
VICE-CHAIRMAN

By/