

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. No. 579 OF 2003

Monday, this the 12th day of December, 2005.

CORAM:

HON'BLE Mr. K.V.SACHIDANANDAN, JUDICIAL MEMBER
HON'BLE Mr. N.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

M.P.Govindan Kutty
Audit Officer
Accountant General's Office (Audit)
Thiruvananthapuram : Applicant

(By Advocate Mr V.Chitambaraesh)

Vs.

Accountant General (Audit), Kerala
Thiruvananthapuram : Respondent

(By Advocate Mrs. K.Girija, SCGSC)

The application having been heard on 18.10.2005, the Tribunal on 12.12.2005, delivered the following:

OR D E R

HON'BLE Mr. K.V.SACHIDANANDAN, JUDICIAL MEMBER

The applicant working as Audit Officer claims that he is eligible for promotion as Senior Audit Officer alongwith Audit Officers who were promoted with effect from 03.01.2003 on completion of two years service as Audit Officers. The Accountant General, Kerala promoted four persons to the post of Senior Audit Officers with effect from 01.01.2001 who have assumed charge on the same day. He also ordered the promotion of the applicant with effect from 01.01.2001 as Audit Officer. But due to administrative reasons, the orders promoting the applicant as Audit Officer was issued only on 02.01.2001. As a result, the applicant could assume charge only on 02.01.2001 On completion of two years service the applicant was eligible for promotion to the grade of Senior Audit Officer as per the rules in vogue. Audit Officers who had completed two years of service as on 01.01.2003 were promoted as Senior Audit Officers with

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effect from the afternoon of 03.01.2003. The applicant was not considered since he has not completed two years of service as on 01.01.2003 on the technical ground that he had not completed two years service on 01.01.2003. The Accountant General ordered the promotion of the applicant with effect from 01.01.2001 but due to administrative reasons the order was issued only on 02.01.2001. He made Annexure A-1 representation. His claim was turned down (Annexure A-2).

2. The Ministry of Finance in furtherance issued a notification on 10.06.2002 as per which an Audit Officer with two years regular service in the grade shall be eligible for promotion to the grade of Senior Audit Officer as laid down under column 12 of the schedule. It is further stated in column 5 that it is non selection post. It is made clear that there is no stipulation in the Recruitment Rules of 2002 that on the crucial date of 1st January, an Audit Officer should have two years service for consideration for promotion to the grade of Senior Audit Officer. The crucial date of 1st January was fixed as early as in the year 2000 when there was no Recruitment Rules in force and after the formulation of Recruitment Rules with effect from 10.06.2002 no executive instructions issued prior to 10.06.2002 will hold good. The panel for promotion to the grade of Senior Audit Officer was available only on the afternoon of 03.01.2003. On this date, the applicant had completed two years of service as Audit Officer and was eligible for promotion. Again the applicant made Annexure A-3 representation. Annexure A-1 representation is issued without proper application of mind and therefore the said order is impugned in the OA and the applicant has sought the following reliefs:-

- i. To call for the records leading to the passing of Annexure A-2 order of the respondent and quash the same.
- ii. To declare that the applicant is entitled to be promoted as Senior Audit Officer on his completion of two years regular service as Audit Officer
- iii. To direct the respondent to promote the applicant as Senior Audit Officer immediately with effect from

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03.01.2003

iv. Call for the records leading to the passing of Annexure A-7 order and quash the same to the extent it promotes the applicant only with effect from 02.01.2001 or with effect from the date of assumption of charge.

3. The respondent had filed a detailed argument note contending that the applicant was promoted as Audit Officer with effect from 02.01.2001. He assumed charge on the same day. As per Recruitment Rules, post of Sr. Audit Officer is to be filled up by promotion of Audit Officers with two years regular service in the grade. The crucial date for determining eligibility for promotion is 1st January of the panel year. As the applicant did not complete two years as on 01.01.2003, he was not eligible to be considered for promotion during the panel year 2003. In reply to a representation of a Service Association to change the crucial date for preparing the promotion panel from 1st to the first day of the next calendar month following the month in which an AO completes two years, CAG vide letter dated 13.01.2003 intimated that the crucial date for promotion panels was decided as January 1st instead of October 1st based on Government instructions and therefore, it was not possible to accede the demand of the Association. Accordingly, the applicant was informed on 25.02.2003 that he was not considered for promotion as he did not complete the required period of service of two years as on 01.01.2003 for promotion as Senior Audit Officer. Out of the five Audit Officers who had completed two years service on the crucial date of 1st January, four Audit Officers were promoted to the grade of Senior Audit Officer with effect from the date of assumption of charge vide order dated 01.01.2003 (Annexure R-1). The last person in the panel was promoted as Senior Audit Officer on 01.04.2003 (Annexure R-2). The applicant had not completed two years of service as Audit Officer on the crucial date of 1st January 2003, his name was not considered by the DPC which met on 30.12.2002. The applicant was promoted as Audit Officer on 02.01.2001. There was no vacancy of AO on 01.01.2001. The applicant was promoted against the vacancies which arose on promotion of three Audit Officers as Sr. Audit Officers on

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01.01.2001 (Annexure R-3). Out of the three persons promoted, two persons were in field and one person was at Branch office, Thrissur. The charge assumption report were received from this office on 02.01.2001 and that of the remaining persons was received on 02.01.2001. Unless the charge assumption reports were received, the office is unable to confirm vacancy in the cadre. The promotion of the applicant was issued on 02.01.2001 after confirming the availability of vacancies. Hence, there is no administrative delay as alleged by the applicant. As per instructions for preparing the panels, the crucial date for determining the eligibility of officers for promotion to the various cadres is 1st January of the panel year. The applicant admits that he assumed charge only on 02.01.2001. As he did not complete the required period of service of two years on 01.01.2003, he was not eligible for promotion as Sr. Audit Officer. In exercise of the powers of Clause 5 of Article 148 of the Constitution and after consultation with the CAG of India, the President promulgated Recruitment Rules for the post of Senior Accounts Officer/Senior Audit Officer which was published in the official gazette on 29.06.2002. As per the Recruitment Rules, Audit Officers with two years regular service in the grade are to be considered for promotion as Senior Audit Officer as against three years service required under the earlier instructions. The procedure to be followed by DPC has been prescribed in Government of India OM dated 30.12.1976 as amended from time to time. The Government of India revised the crucial date for eligibility for promotion as 1st January of the panel year vide O.M dated 17.09.1998 (Annexure R-4). Keeping in view of the circular dated 14.06.1999 in respect of the panel year 2000 onwards the crucial date for promotion would be 1st January of the panel year (Annexure R-5). The contention of the applicant that that he had completed 2 years service as Audit Officer as on 01.01.2003 is not tenable. The applicant assumed charge only on 02.01.2001 and would complete two years service on 01.01.2003. Only those who assume charge as Audit Officer on or before 01.01.2001 would complete two years service on 01.01.2003. Orders for considering the crucial date on which the Government servant eligible for promotion are issued separately by

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Government of India and are applicable to all cadres/services. Annexure a-1 representation was rejected by Annexure A-2 order since the applicant did not fulfill the eligibility criteria. As the applicant did not complete two years service as Audit Officer as on 01.01.2003, he has no right to seek promotion as Sr. Audit Officer as on 01.01.2003. There is no merit in his contention that his right under Article 14 and 16 of the Constitution were violated.

4. The original OA was permitted to be amended. The applicant has filed a rejoinder reiterating his contentions in the original OA and further added that the applicant who was promoted on 02.01.2001 had completed two years on 01.01.2003. On 02.01.2003, the applicant had completed two years and one day in that cadre. Therefore, he had completed two years on 01.01.2003. Even in Annexure R-4 it is stated that Recruitment Rule should be amended to include the change in the crucial date. The Accountant General is the competent authority to order promotion and has ordered to promote him as on 01.01.2001. But for the administrative delay, the applicant should not be penalised.

5. The respondent had filed additional reply statement contending that the applicant should not be equated with other Audit Officers appointed to the grade on or before 01.01.2001 and had completed two years service as on 01.01.2003. The respondent's office promoted three Audit Officers as Senior Audit Officers vide Annexure R-3 dated 01.01.2001. It is admitted that Shri N.R.Mohan who was holding an ex-cadre post was promoted under the next below rule vide order dated 07.03.2001 with effect from the date of assumption of charge of his immediate junior in Annexure R-3 order. (Annexure R-6) The promotion under next below rule was not linked to vacancy. Annexure A-5 dated 27.06.2001 is not applicable in the case of the applicant as the said order was issued for considering the persons who could be eligible for promotion against the vacancy which existed on 1st January, but could not be promoted only because 1st January happened to be a holiday. The benefit

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of the order cannot be extended to the applicant as 1st January, 2001 was not a holiday. The procedure to be followed by DPC prescribed separately by Government of India and availability of vacancy are factors for consideration for promotion to the cadre of Sr. Audit Officer.

6. The respondent had filed additional reply statement contending that in the original application there was no challenge of Annexure A-7 order. The applicant has accepted the promotion as Audit Officer and the fact that he would complete two years on 02.01.2003, after which he claims to be promoted as Senior Audit Officer with effect from 03.01.2003. He cannot plead ignorance of Annexure A-7, he ought to have challenged the same earlier and not through an amendment. Various administrative formalities have to be undergone before issuing orders of promotion and the applicant cannot enforce the effective date of promotion through a Court of Law. The applicant was not denied promotion as Audit Officer but was granted his due promotion on 02.01.2001. It is true that the respondent has made an internal note that those in the recommended list for promotion as Audit Officer in January 2001 (which includes the applicant as well as his seniors) should be promoted with effect from 01.01.2001 or with effect from the date of assumption of charge of Senior Audit Officers whichever was later. Such a note was made under the belief that those promoted as Senior Audit Officer would assume charge and report assumption of charge on 01.01.2001 itself. As held in a decision reported in (2003) 5 SCC 388 (MD, UP Land Development Corporation & Ors Vs. Amar Singh and Ors.) Further it is argued that an internal notes and orders are meant for official purposes and the same cannot be relied on by the applicant or are not to be produced before court.

7. We have heard Mr. V.Chitambaresh, learned counsel for the applicant and Mrs. Girija, ACGSC for respondent. The learned counsel for the parties has taken us to various pleadings, evidence and materials placed on record. The learned counsel for the applicant argued that he is fully qualified for promotion as Audit Officer. Due to the administrative

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9. We have given due consideration to the arguments, materials and evidence placed on record. The crux point for consideration of this Court is whether the applicant is entitled for the promotion as Sr. Audit Officer is whether the applicant is entitled for the promotion as Sr. Audit Officer with effect from 01.01.2004. There is no discrimination

to the applicant and no vested right for promotion.

Senior Audit Officer with effect from 01.01.2004. There is no discrimination from 02.01.2001 have later been by order dated 24.12.2003, promoted as Mr. Radhakrishna Kurup, who were promoted as Audit Officer with effect of the Apex Court to substantiate her contention. The applicant as well chapter is devoted for this subject. She has also referred various decisions Reference is also placed on Halsbury's Law of England wherein the entire on 02.01.2001 would be completing two years only on 02.01.2003 preceding the vacancy year. The applicant having assumed charge only crucial date for determining promotion is 1st January immediately persuasively argued and submitted a argument note containing that the learned counsel for respondent on the other hand

have been considered.

out from Annexure A-4 gradation list and therefore, the applicant should seniors as Senior Accounts Officers which again is 01.01.2001 as borne 01.01.2001 or with effect from the date of assumption of charge of his Accountant General directed the promotion of the applicant with effect from Accountant General on completion of two years service. The considered for promotion on completion of two years service. The issued on a prior date will hold good. The applicant is entitled to be time when there was no Recruitment Rules and after the formulation of the grade of Senior Audit Officer. The crucial date of 1st January was fixed at a relevance. Column 12 and 5 only stipulates that two years regular service vide GSR 234 dated 10.06.2002, the crucial date of 1st January has lost its actually took place on 02.01.2001. Coming into force of the new Rules ordered the promotion with effect from 01.01.2001 even though promotion attaches, there was a days delay in issuing orders. The respondent had

Officer despite the fact that the applicant was actually promoted as Audit Officer from 02.01.2001 and whether that will reckon the required prescribed period of two years or the date of promotion itself will reckon the said period so as to enable the applicant for promotion as Senior Audit Officer in the panel year 2003. It is admitted fact that vide Annexure R-8, the applicant alongwith others were promoted with effect from 01.04.2004. The claim of the applicant that he is entitled for such promotion with an ante date from 01.01.2003 and he has lost one year period to hold the post of Sr. Audit Officer which has resulted in the gross loss of benefits including pensionary benefits. Vide Annexure A-7, the applicant was promoted as Audit Officer from the post of Assistant Audit Officer in the scale of pay of Rs. 7500-250-12000 with effect from the date of assumption of charge. Out of the three promoted in that order, Mr. S.S.Mani retired. The case of the applicant is that due to latches on the part of the administration, the promotion order was issued only on 02.01.2001 and he had taken charge on the same day. Vacancy was available since, the Sr. Audit Officer promoted to that cadre has assumed charge as on 01.01.2001. It was purely due to administrative reasons one day delay had occurred and the order was issued only on 02.01.2001. Had his promotion been made at the correct time as Audit Officer on 01.01.2001, he would have completed two years of service and could have promoted him as Sr. Audit Officer on 01.01.2003. Now his promotion as Senior Audit Officer is delayed by one year with repercussion in the monetary benefit and service record. The respondents on the other hand are relying on Annexure A-7 and contended that the applicant's promotion was on 02.01.2001 and assumed charge on 02.01.2001 as two years service as Audit Officer would be over only by 92.01.2003 and entire chapter of Halsbury's Law of England has been cited. The relevant portion of which is cited as under :-

" 211. Calendar month running from arbitrary date : When the period prescribed is a calendar month running from any arbitrary date, the period expires upon the day in the succeeding month, corresponding to the date upon which the period starts, save that, if the period starts at the end of

a calendar month which contains more days than the next succeeding month, the period expires at the end of that succeeding month.

If a period of one calendar month includes the last day of February, there must be 29 or 28 days, according as the year is or is not a leap year."

4. At paragraph – 203, a year is also defined as under :

" 203, Statutory definitions of year . The term 'year' besides denotes the solar year of the calendar, may also mean any like period of time running from a date arbitrarily fixed by the statute, contract or otherwise."

The learned counsel for respondent further argued that the period starts at the end of a calendar month which contains more days than the next succeeding month, the period expires at the end of that succeeding month. He further submitted that the term 'year' besides denotes the solar year of the calendar, may also mean any like period of time running from a date arbitrarily fixed by the statute, contract and otherwise. We really appreciate the initiative taken by the respondents in bringing up such minute interpretation by Halsbury's Law of England. On going through the said provision, it is not squarely applicable in this case. Since it denotes broad outline of the definition and when we evaluate the facts with reference to such definition it may not strictly suit to the case at hand. Admittedly, the applicant was not considered for promotion for the [panel year 2003 on the ground that he had not completed two years service as Audit Officer as on 01.01.2003. By Annexure R-1, the respondents contended that the assumption of charge is a very crucial aspect for deciding the vacancy and applicant could not be considered for the said promotional post on completion of two years of service towards a clear vacancy. The reason for non vacancy was that charge assumption of two persons were received in the respondent's office on 01.01.2001 and that the other remaining persons were received on 02.01.2001. In the absence of such a report, they are not able to confirm the vacancy in the cadre. Only after confirmation on the basis of the charge assumption report, the promotion order of the applicant was issued on 02.01.2001 and it cannot be said as



an administrative delay. It is also borne out from records that the Recruitment Rules for the post of Sr. Accounts Officer / Sr. Audit Officer which were published in the official gazette on 29.06.2002. As per that Recruitment Rules, an Audit Officer with two years regular service are to be considered for promotion as Sr. Audit Officer against three years service required in the earlier instructions subject to the DPC and as per the latest amendment dated 17.09.1998. The Government of India revised the crucial date as 1st January of the panel year (Annexure R-4) and as per Annexure R-5 this was made effective with effect from the panel year 2002.

10. The respondents had categorically admitted that " it is true that the respondents had made an internal note that those in the recommended list for promotion as Audit Officer in January 2001 (which includes the applicant as well as his seniors) should be promoted with effect from 01.01.2001 or with effect from the date of assumption of charge of Sr. Audit Officers whichever was later. Such a note was made under the belief that those promoted as Sr. Audit Officer would assume charge and report assumption of charge on 01.01.2001 itself. However, the charge assumption report of Shri A.Ismail as Sr. Audit Officer was received in the office of the respondent only on 02.01.2001. A true copy of the telegram received on 02.01.2001 in respect of the assumption of charge of Shri A. Ismail as Sr. Audit Officer is produced herewith and marked as Annexure R-7. It is respectfully submitted that unless the charge assumption report of those promoted as Sr. Audit Officers were actually received, the orders of promotion of the officers to be promoted as Audit Officers cannot be issued, since ascertainment of actual vacancy in the cadre of Audit Officer can be done only after receipt of charge assumption report of Sr. Audit Officers. Therefore, it is very clear that as per office note the Accountant General has directed that the applicant is to be promoted as on 01.01.2001 as Audit Officer was the real intention of the respondent. But A. Ismail has submitted charge assumption report on 02.01.2001 the applicant was not able to be promoted . Annexure A-8 order promoting the applicant is as follows:-



11. Subsequent promotion order was passed much earlier and made effective from 01.01.2004 or from the date of assumption of charge whichever is later.

“Principal Accountant General is pleased to promote the following Audit Officers to the cadre of Senior Audit Officers in the scale of pay of RS.8000-275-13500 with effect from 01.01.2004 or from the date of assumption of charge whichever is later.”

Officers in the scale of pay of RS.8000-275-13500 with following Audit Officers to the cadre of Senior Audit Officers in the scale of pay of RS.8000-275-13500 with effect from 01.01.2004 or from the date of assumption of charge whichever is later.”

made effective from 01.01.2004 or from the date of assumption of charge by the incumbent. Therefore, it is borne out that Ismail's assumption of charge was a afterthought. Admittedly, it is borne out from materials that concept was a afterthought. Admittedly, it is borne out from materials that the Accountant General has specifically directed to promote the applicant from 01.01.2001 as Audit Officer. The respondents need not waited upto 02.01.2001 for passing an effective order. (Annexure A-7). Therefore, we find that there is latches on the part of the lower authorities or an omission/redd tapism that erupted in passing the belated order Annexure A-7 which resulted in great disadvantage of the applicant for his non promotion. Therefore, we are of the view that the mistake that has been committed by a lower authority against the specific instructions of the Head of Department that the applicant should have been promoted from 01.01.2001 which as indicated required in the office note, should not stand in the way of the promotion prospective of an employee especially when that service will adversely affect his pay and allowance and other extreme benefit. The next limb of argument that was advanced by the learned counsel for applicant is that even assuming that he has been promoted on 02.01.2001 as Audit Officer he completes two years and one day as on 01.01.2003 and therefore denial of promotion is not justified. It is also borne out that as per Annexure A-5 communication the DOPT decided that even a vacancy was available on 1st January but the officer became on the panel could not be promoted only because the 1st January happened to be a holiday, the officer promoted on the 1st working day of the panel year may be treated to have completed one year qualifying service as on 1st January of the next panel year and accordingly contingent of 1st January becomes a holiday only be evoked.

Therefore, it will not squarely applicable in the applicant's case and the benefit cannot be extended to the applicant. We find that till the Recruitment Rule which was notified on 10.06.2002, two years completion was a mandate but from the implementation of the Recruitment Rules a specific provision Clause 5 has been incorporated. Considering the fact that he has assumed charge on 02.01.2001 as Audit Officer, the date of consideration for next promotion as Sr. Audit Officer invariably be when he completes two years service. The contention that the applicant will not complete two years regular service as on 02.01.2003 cannot be accepted. We are of the view that the applicant had completed two years service as on 01.01.2003 it is to be presumed that the applicant is entitled to be promoted as Audit Officer from 01.01.2001 as intended by the Accountant General and any dilution made by the lower authorities should not adversely affect the right of the applicant. Therefore, we direct the respondent to reconsider the case of the applicant in any case, if not with relaxed standard, declare him that he has completed two years service as on 01.01.2003 and grant all consequential benefits.

12. The learned counsel for respondent has taken us to a decision reported in 2003 (2) KLJ 978 (UOI & Ors Vs. K.J.George & Ors) and argued that the effective time when a day would come to an end would be 12.00 PM on that day. On going through the said decision, we find that such an order is not applicable in this case because it was in a different circumstance so as to find out when the day starts. Another decision reported in (1995) 5 SCC 628 (M.K.Gupta Vs. UOI & Ors), promotion being a non recurring action is subject to limitation. It is supported by AIR 1974 SC 2271 (P.S.Sadasivaswamy Vs. State of Tamil Nadu) in which it will not apply in this case. We are not adjudicating on legitimate right of the party where no limitation has been prescribed. The promotion of the applicant even as per Recruitment Rules is due on 01.01.2003. The cause



of action arises from the date on which promotion accrues. Therefore, it cannot be said that there is any delay. We are in respectful agreement by the decision reported ion (2003) 5 SCC 388 (MD, UP Land Development Corporation & Ors Vs.Amar Singh & Ors.). The internal orders and notes of the office are meant for official purposes only and should not be produced before the court in support of claims of the employees. But when the Court adjudicate the point, it becomes necessary to find out what was the intention of the authority promoting the employee for which the Court can rely on the internal notes which is placed in the reply statement. That is the crucial point raised by the applicant.

13. We are not inclined to stand to technicalities whereby an employee is deprived of his legitimate right. It is further argued by the respondent that there cannot be a deemed order of promotion with an earlier date. This Court is not ordering any deemed order of promotion but from the records available this Court finds that the intention of the higher authority is to promote the applicant on 01.01.2001 as Audit Officer which has grossly flouted by the junior officials. In that respect, this Court is only directing the respondent to correct their order. The question of deemed date of promotion does not arise in this case.

14. In the conspectus of facts and circumstances, we are of the view that the applicant has made out a case and is entitled to be promoted as Audit Officer with effect from 01.01.2001 as intended by the Accountant General and therefore, we direct the respondent to pass appropriate order declaring that the applicant is entitled for promotion as Sr. Audit Officer from 01.01.2003 reckoning his service as Audit Officer from 01.01.2001. This shall be done within a period of two months from the receipt of a copy of this order and grant all consequential benefits

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notionally without any arrears during such period since he has not shouldered higher responsibilities but the benefit should be extended for all other service purposes.

15. The OA is allowed as above. In the circumstances, no order as to costs.

Dated, the 12th December, 2005.

N.R.K.

N.RAMAKRISHNAN
ADMINISTRATIVE MEMBER



K.V.SACHIDANANDAN
JUDICIAL MEMBER

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