

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW**

**Reserved on 21.07.2015.
Pronounced on 30.07.2015.**

Original Application No.490/2011

**Hon'ble Mr. Navneet Kumar, Member (J)
Hon'ble Ms. Jayati Chandra, Member (A)**

Niranjan Kumar, aged about 44 years, S/o Late Bal Govind R/o Village Parvar Paschim, Mohanlalganj, District Lucknow.

-Applicant.
By Advocate: Sri Amit Verma for Sri A. Moin.

Versus.

Union of India through

1. Sectetary, Ministry of Post, Dak Bhawan, New Delhi.
2. Director General, Postal Department, Lucknow Division.
3. Director of Audit, Post & Telecommunicaiton, Lucknow.

-Respondents.

By Advocate: Sri T.B. Singh.

O R D E R

By Ms. Jayati Chandra, Member (A)

The applicant has filed this O.A. under Section 19 of Administrative Tribunals Act, seeking the following relief(s):-

(a). To direct the respondents to promote the applicant as Auditor at par with Sri Chandra Prakash with all consequential benefits as directed by this Hon'ble Court by means of Judgment and Order dated 30.01.2006 within a specified time.

J. Chandra

(b). To direct the respondents to fix the pay of the applicant correctly in the pay scale of Rs.5200-20200/- with grade pay of Rs.1800/- w..f. from the date the same was accorded to Sri Chandra Prakash or the date of effect of order dated 28.06.2010.

(c). to pay the cost of this application.

(d). Any other order which this Hon'ble Court deems just and proper"

2. The facts of the case which are averred by the applicant are that the applicant alongwith another Sri Chandra Prakash had been sponsored by the Employment Exchange against a Group-'D' post as required by the respondents. Such recruitment was for persons with a qualification of 8th passed but after being selected both Sri Chandra Prakash and the applicant the respondents were denied appointment on the ground that they have qualified upto 12th standard. Sri Chandra Prakash filed an O.A.589/1994, which was decided by means of an order dated 02.11.2002, by which the respondents were directed to give appointment to Sri Chandra Prakash. The said Sri Chandra Prakash was subsequently given appointment on the post of Group-'D'. As the applicant was a similarly situated person and he had not been given an appointment letter, he filed O.A.No.580/2002. By means of an order dated 30.01.2006, the OA was allowed and it was held that his case was identical to that of Sri Chandra Prakash as such the applicant is entitled to the same treatment as Chandra Prakash. He was also held to be entitled to the consequential benefits of seniority, fixation of pay, payment of arrears of pay etc. The respondents filed a Writ Petition No.989 (SB) of 2007 which is still pending. No stay order has been granted by the Hon'ble High Court. In view of the above, the applicant filed

C.C.P.No.64/2006. Thereafter, he was granted appointment on the post of Group-'D' in the pay scale of Rs.2550-3200/-. His pay was also fixed and arrears from 07.03.2002 to 06.05.2010 were also given to him. However, the respondents have fail to give full parity of treatment as of Sri Chanra Prakash as Chandra Prakash has been promoted as Auditor on 18.07.2007 but the applicant is still continuing in the post of Group'-D'. Moreover, his pay has not been correctly fixed in accordance with the order dated 28.06.2010 as issued by CAG. Hence, this OA.

3. The respondents have contested the claim of the applicant by filing their counter affidavit denying the averments of the applicant stating therein that the applicant has been given appointment in accordance with the direction dated 30.01.2006 passed in O.A.No.580/2002. He has been appointed on the post of Peon on 07.05.2010 and the pay of the applicant has been fixed and payment of arrears of pay has also been made for the period from 07.03.2002 i.e. the date the applicant had initially applied to 06.05.2010. Both appointment and payment made to the applicant have been done provisionally subject to the outcome of the writ petition pending before the Hon'ble High Court. The applicant cannot claim parity with Sri Chandra Prakash as Chandra Prakash was promoted on the post of Auditor w.e.f. 18.07.2007 after passing the departmental examination. Moreover, the pay of the applicant in the post of MTS has been fixed in accordance with the 6th Central Pay Commission Recommendations w.e.f. 01.01.2006.

4. The applicant has filed Rejoinder Affidavit to the Counter Affidavit filed by the respondents more or less reiterating his contentions as raised in the OA stating therein that he could not have passed the departmental examination as no departmental examination has been held. However, since the order dated 30.01.2006 passed in O.A.No.580/2002 entitled him parity with Sri Chandra Prakash including fixation of seniority the respondents bound to hold the departmental examination for the post of auditor particularly as there is no stay order in the writ petition filed before the Hon'ble High Court.

5. We have heard the learned counsel for both the parties and perused the material available on record.

6. The case of the applicant is simply that the parity of treatment with Sri Chandra Prakash applicant in O.A.No.589/1994. By order dated 30.07.2006 passed in O.A.No.580/2002 the following order are being passed:-

"12. The rejection of the applicant's representation is therefore, illegal and the order dated 22.10.2002 is quashed and set aside. As the applicant was offered the appointment as early as in 1994, and as his case is identical to that of Shri Chandra Prakash, the applicant is entitled to the same treatment as Chandra Prakash. The OA therefore full succeeds. The respondents are directed to pass identical orders as in the case of Chandra Prakash, from the date as of the appointment of Shri Chandra Prakash. The applicant is also entitled to consequential benefits of seniority, fixation of pay, payment of arrears of pay from the date the applicant had initially applied for i.e. March, 2002.

The orders be complied with within a period of two months from the date of communication of this order No costs."

7. In compliance of this order the applicant has been issued appointment order dated 16.03.2010 by which the applicant has been appointment on the post of Group-'D' Peon on the pay scale of Rs.2550-3200/-. By an order dated 5.7.2010, he has also been awarded certain arrears. Since, the order of the O.A.No.580/2002 is in favour of the applicant in the matter of consequential benefits of the seniority, the applicant is entitled to consideration for promotion on the post of auditor coming into the eligibility zone when the said Sri Chandra Prakash was considered. It is clear from the chronology of events that the date of departmental examination for the post of auditor was prior to the actual appointment of the applicant. Hence there is no other alternative with the respondents but to hold a supplementary departmental examination for consideration of the applicant for promotion to the post of auditor. In case he succeeds in the said supplementary departmental examination he would be given notional promotion and pay fixation w.e.f. from the date on which the same are given to said Sri Chandra Prakash and his actual pay given to him from the first date of taking over the said promotion as and when a post of auditor is available. Needless to say that such order shall be subject to final outcome of the writ petition pending before the Hon'ble High Court. Coming to the issue of pay fixation, the applicant has not provided any statement etc. to show how his pay scale has been wrongly fixed in relation to said Sri Chandra Prakash. In absence of any

such document, Relief No.2 cannot be granted to him. However, liberty is given to him to file separate case, in case he is so advised.

8. With the above observations, the OA is disposed of. No order as to costs.

J. Chandra
(Ms. Jayati Chandra)
Member (A)

Navneet Kumar
(Navneet Kumar)
Member (J)

Amit/-