

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No.222/87

Shri S.Rangaswami
V/s.

... Applicant.

Union of India, through
Secretary, Ministry of
Finance, New Delhi
and two others.

... Respondents.

CORAM: Hon'ble Shri M.Y.Priolkar Member (A)
Hon'ble Shri S.F. Razvi, Member (J)

Appearance

Applicant in person.

Mr. P.M.Pradhan for the
respondents.

JUDGEMENT

Dated: 1-5-1992

¶ Per Shri M.Y.PRIOLKAR, Member(A) ¶

The applicant, while serving as Audit Officer (Class II service) in the Indian Audit and Accounts Department was temporarily promoted on 7.8.1972 as Assistant Chief Auditor (Class I service). It was made clear in this promotion order that the promotion was not to the Indian Audit and Accounts Service (I.A.A.S.) but that the promotion was to a post temporarily vacant due to the permanent incumbent of the post being away on deputation/foreign service and his seniority will be only with reference to others promoted in the same office. While functioning in this promoted post, the applicant was entrusted exclusively with the charge of the higher post of Deputy Chief Auditor in the same office from 1.9.1974. The post of Deputy Chief Auditor carries the senior time scale of I.A.A.S. (Rs.1100-1600) and the applicant's grievance is that in this post he was allowed pay only as Temporary Assistant Chief Auditor (Rs. 1100 - 1500) on the ground that such arrangements were purely adhoc, they were not

regular promotees and the incumbents in such cases were not to be allowed pay in the senior time scale of I.A.A.S. The applicant states that he held this post without any additional remuneration till 29.10.1977, when he was transferred on promotion to a senior time scale post of I.A.A.S. While the only relief prayed for in the original application filed on 25.3.1987 was that the applicant should be declared to be entitled to the pay scale applicable to the post of Deputy Chief Auditor for the period he had performed the duties of that post, viz. from 1.9.1974 to 29.10.1977, subsequently by a miscellaneous application dated 20.6.1987, the applicant has contended that his officiating service should have been reckoned for the purpose of seniority in I.A.A.S. and accordingly, he should have been entitled for promotion to the Junior Administrative grade of I.A.A.S at least from 26.8.1980 instead of from 15.4.1981 when he was actually promoted to that grade on the basis of his substantive appointment to I.A.A.S. from 11.6.1976. An additional prayer has, therefore, been made in this miscellaneous application for fixing his pay accordingly in the Junior Administrative grade from 26.8.1980 and for paying him arrears of salary on this account also, with consequential revision of his pension, gratuity etc. The applicant had retired from Government service on superannuation on 31.8.1984.

2. The respondents have stated that by their reply dated 22.8.1977 to his representation, the applicant was informed that pay in the scale of Rs. 1100 - 1600 in the post of Deputy Chief Auditor on account of having looked after the charge of that post was not admissible as this was purely on adhoc arrangement in consonance with the scheme under

which he was promoted as temporary Assistant Chief Auditor and the time scale of Rs. 1100 - 1600 was meant only for those officers who are members of the I.A.A.S. and who are promoted from the Junior time scale of Rs. 700 - 1300. The applicant was again informed on 26.5.1981 of this same decision of the respondents in response to the applicant's further representation dated 9.12.1980. The respondents have also stated that the applicant retired on superannuation on 31.8.1984 and only, thereafter, on 22.9.1986 submitted a fresh representation on the basis of Andhra Pradesh High Court decision in a similar case. This representation was again rejected on 27.2.1987 against which the applicant filed the present application before the Tribunal on 25.3.1987. The respondents, therefore, contend that this application is barred by limitation as prescribed under Section 21 of the Administrative Tribunals Act, 1985. We find, however, considerable merit in the applicant's contention that the respondents in their earlier replies dated 20.11.1978 as well as 14.12.1978 had mentioned specifically that the Andhra Pradesh High Court decision of September 1978 in W.P. No. 824 of 1977 on which his representation dated 5.10.1978 was based had been stayed, and therefore the matter being admittedly sub*judice* then, it cannot be said that the position communicated to him in the year 1978 was final, as now contended by the respondents. Further, in reply to the applicant's representation 22.9.1986, the respondent No. 2 had replied on 27.11.1986 that the case was still under consideration. It was only in February 1987 that respondent No. 2 issued a final communication turning down his request. Since this application has been filed soon thereafter in March 1987, it will not

attract the bar of limitation prescribed in Section 21 of the Administrative Tribunal's Act, 1985.

3. In an identical case decided by the Andhra Pradesh High Court on 7.9.1978 (Manoharlal v. Union of India and others - W.P. No 824 of 1977) while dealing with the similar contention of the respondents as in the present case that the applicant was not promoted to the post of Deputy Chief Auditor but was only entrusted with the duties of Dy. Chief Auditor and the pay scale of Rs. 1100 - 1600 was meant only for members of the I.A.A.S. cadre, the High Court observed that there are no specific rules prohibiting such promotion and rejected the plea of the respondents that only those belonging to I.A.A.S. cadre would be eligible for appointment as Dy. Accountant General (~~an~~ equivalent post to the Dy. Chief Auditor). We have perused the scheme (Annexure R2) under which the applicant was promoted temporarily as Assistant Chief Auditor on adhoc basis. This scheme, which was introduced with the approval of the President, is silent regarding posting of such temporarily promoted officers to hold charge of senior time scale posts of I.A.A.S. nor does it contain any provisions as to how, in case any such officers are so posted, they should be remunerated for holding charge of higher posts. We are in respectful agreement with the finding of the Andhra Pradesh High Court in Manoharlal's case that for the period he has actually functioned in the higher post, he is entitled to be paid in the scale of that post. It was also held in that case that the communication dated 7.1.1975 from the Assistant Comptroller and Auditor General in which it is stated that the petitioner cannot be

permitted to exercise the statutory powers vested in the regular incumbent of the post on the ground that such temporarily promoted officers holding charge of the post of Dy. Accountant General and an I.A.A.S. officer promoted as Dy. Accountant General are not officers of the same rank or grade is merely the view of the officer issuing the communication and was not acceptable to the Courts. In the present case, however, the applicant admits that out of the total period from 1.9.1974 to 29.10.1977 that he had worked as Deputy Chief Auditor, for about six months and eight days (in two spells) he had held the post of Deputy Chief Auditor I when he did not discharge the statutory and disciplinary powers of that post whereas for the rest of the period he had held the post of Dy. Chief Auditor II when he had discharged all the duties and functions of that post, as no disciplinary and statutory duties were attached to that post, being concerned only with Audit functions. We are, therefore, of the view that the applicant is entitled to be paid in the pay scale of the post of the Deputy Chief Auditor during the period he held that post except for the period when he held the post of Dy. Chief Auditor I involving statutory and disciplinary functions.

4. The second relief for seniority on the basis of his officiating service in senior time scale from 1.9.1974 and consequential earlier promotion to the Junior Administrative grade of I.A.A.S. from 26.8.1980 has been prayed belatedly by the applicant by his miscellaneous application dated 20.6.1987 after he had retired from service on 31.8.1984. No representation on this issue

had been submitted to the respondents at any time. This was also not one of the issues being agitated in Manoharlal's case, cited above, before the Andhra Pradesh High Court. We are, therefore of the view that this prayer is hit by the provisions of limitation under Section 21 of the Administrative Tribunal's Act, 1985 and it is, accordingly, rejected.

5. The applicant, thus, succeeds in part. The respondents are directed to re-fix the pay of the applicant in the pay scale applicable to the post of Dy. Chief Auditor for the period 1.4.1974 to 29.10.1977 except for the two spells from 26.10.1974 to 18.12.1974 and from 14.7.1975 to 28.11.1975 and pay him the difference in salary and allowances within a period of three months from the date of receipt of a copy of this order. He will also be entitled to consequential benefits, if any, in accordance with rules. No order as to costs.

Syafar Ali
(S.F. RAZVI) 115/92

MEMBER (J)

M. Y. Priolkar
(M. Y. PRIOLKAR)
MEMBER (A)

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