

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

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T. A No. 356/87

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DATE OF DECISION

9.7.1991

ARUN LAXMIKANT CHATI

Petitioner

SHRI MOHAN SUDAME

Advocate for the Petitioner(s)

Versus

COMPTROLLER AND AUDITOR GENERAL
OF INDIA Phirozshah Kotla Marg,
New Delhi, and 7 ors.

Advocate for the Respondent(s)

Me. RAMESH DARDA

CORAM

The Hon'ble Mr. U.C. SRIVASTAVA, Vice-Chairman,

The Hon'ble Mr. P.S. CHAUDHURI, MEMBER (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH
CAMP AT NAGPUR

T.A. NO.356/87

Arun Laxmikant Chati,
238 Hanuman Nagar
Nagpur

.... Applicant

V/s

Comptroller and Auditor General of India
Phirozshah Kotla Marg
New Delhi and 7 others.

.... Respondents

CORAM : HON'BLE JUSTICE SHRI U.C.SRIVASTAVA, Vice-Chairman,
HON'BLE SHRI P.S.CHAUDHURI, MEMBER (A)

APPEARANCE

Shri Mohan Sudame,
Adv, for the applicant

Shri Ramesh Darda, Counsel,
for the respondents, (Govt)

ORAL JUDGMENT:
(PER : U.C.SRIVASTAVA, Vice-Chairman) : DATED: 9.7.1991

The applicant, who at the relevant point of time was working as Section Officer in the office of Joint Director of Audit Post and Telegraph Department, Nagpur, filed writ petition no.1200/1985, which is transferred to this Tribunal for decision, praying that the order of promotions of respondent No.5 and also the promotion orders of respondents No.6,7 and 8 and also the further promotion order of respondent No.5 dated 1.3.84 be quashed and that respondents 1 to 4 be directed to promote the applicant as Section officer and also as Assistant Auditor with retrospective effect i.e., from the date on which his juniors

we're so promoted
(and for all the consequential benefits.)

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2. The applicant was appointed as LDC in 1957 in the office of Director of Audit and Accounts, P and T, Nagpur. He was confirmed on 1.3.1960. He was promoted to the Post of UDC only in 1965, although he had passed the departmental promotion examination in 1962, as there was a ban for further promotion. The next promotional post is Subordinate Accounts Service for which another departmental examination known as SAS, which is in two parts, is required to be passed. The applicant passed both the parts of SAS and so became fully qualified for being promoted to the post of Section Officer. But the applicant was not promoted and his juniors were promoted in 1974 and 1976 and it was only in 1979 that he was so promoted. The applicant contended that decentralisation of the P and T Audit Offices was done for Administrative convenience. Before decentralisation the Nagpur P and T Audit Office was covering four States viz. Rajasthan, Madhya Pradesh, Gujarat and Maharashtra. The decentralisation was to take place in stages in a phased manner. Jaipur Audit Office for Rajasthan was formed on 1.12.1969 and Bhopal Audit Office for Madhya Pradesh on 1.7.1971. The new offices were manned by staff volunteering to go there from the parent office at Nagpur. In order to protect the promotional avenues of staff from the parent office at Nagpur the new offices should invite volunteers from the parent office for being promoted to higher grades. An agreement was arrived at between the Government of India and all India Non-Gazetted Audit and Accounts Association in this and giving promotion to the

staff from the parent office and the relevant clause on which the applicant relies is :

"(ii) Staff of all categories of the parent office, to be selected on the basis of their seniority amongst the volunteers who go on promotion to the new office on permanent transfer".

The applicant has also stated that the SAS Manual of Comptroller and Auditor General was followed and consequently this Manual also governs the matter of promotion. It is submitted that para 180 of this Manual reads as under :

"180 & No person who has not passed the Departmental examination prescribed in Section II of this Chapter is eligible for appointment to the Subordinate Accounts Services.

Provided that the Comptroller and Auditor General may, on his own initiative, himself waive this requirement in special cases."

3. On behalf of the respondents it has been contended that the DPC did not find the applicant suitable in preference to others and that is why he was passed over by others. The criteria for promotion is fitness-cum-seniority. A reference is made to para 178 of this Manual, which reads as under :

"178: subject to the orders contained in this Chapter and subject also to any orders which may be issued from time to time by the Comptroller and Auditor General, appointments to the Subordinate Accounts Service are made by the Accountants General etc, partly by confirmation of eligible Apprentices/SAS Accountants on probation but mainly by promotion of the eligible clerks in their offices and the

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Divisional Accountants under their control (subject always to the condition that the eligible persons are also qualified in the opinion of the appointing authority by ability, character and experience to discharge adequately and efficiently the duties required of the incumbent of a post in the Subordinate Accounts service).".

The rule thus vests various powers in the appointing authority and emphasis is on ability character and experience.

4. So far as the character and experience of the applicant are concerned there is no denial of the facts that the applicant's character is good and he has sufficient experience. His ability has not been questioned by the appointing authority and nothing has been brought to our notice that the appointing authority at any point of time judged him to be unsuitable for promotion and that any warning or notice or any other material to that effect was issued and he improved subsequently.

5. The cases are to be referred to DPC according to SAS rules and no case has been referred to the DPC and the appointing authority cannot substitute himself for DPC which has jurisdiction in the matter. No rule or order has been brought to our notice that the suitability need not be judged by DPC. There is no affidavit and there is nothing on record by which it can be stated that the applicant is found not suitable and reasons for the same. They have not also stated why the applicant was found unfit when he was given promotion after promotion earlier. Accordingly, the non-promotion of the applicant is arbitrary and unwarranted by law.

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6. We hereby direct that the applicant's promotion shall be deemed to be the date on which his juniors were promoted. The promotion will be notional and his seniority will be fixed according to this placement. Arrears will, however, be payable from the date he assumes charge of the upgraded post.

P.S. Chaudhuri

(P.S. CHAUDHURI)
MEMBER (A)

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(U.C. SRIVASTAVA)
VICE-CHAIRMAN