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CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH  
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Original Application No: 368/88

~~Transfer Application No:~~

DATE OF DECISION: 26-4-94

Shri M.P. Joseph

Petitioner

Applicant in person

Advocate for the Petitioners

Versus

Union of India and others

-----Respondent

Shri P.M.Pradhan.

Advocate for the Respondent(s)

CORAM :  
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The Hon'ble Shri M.R.Kolhatkar, Member (A)

The Hon'ble ~~XXXX~~ Smt. Lakshmi Swaminathan, Member (J)

1. To be referred to the Reporter or not ? ☒
2. Whether it needs to be circulated to other Benches of the Tribunal ? ☒

Lakshmi Swaminathan  
(Lakshmi Swaminathan)  
Member (J)

(11)  
CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

Original Application No. 368/88

Shri M.P. Joseph

...Applicant

V/s.

Union of India through  
The Secretary  
Ministry of Finance  
Dept. of Expenditure  
New Delhi.

The Controller & Auditor  
General of India  
New Delhi.

The Accountant General (A&E)  
Bombay.

The Accountant General (Audit)  
Bombay.

The Director of Audit,  
Central, Bombay.

... Respondents

CORAM: Hon'ble Shri M.R. Kolhatkar, Member (A)

Hon'ble Smt. Lakshmi Swaminathan, Member (J)

Appearance

Applicant in person.

Shri P.M. Pradhan, counsel  
for the respondents.

JUDGEMENT

Dated: 26.4.94

¶ Per Smt. Lakshmi Swaminathan, Member (J) ¶

This case raises a general question of importance whether this Tribunal can go into the question of equation of posts, equation of pay etc. or whether the same should be dealt with by an expert body like the Pay Commission set up by the Government from time to time, and the decision left to the Government to consider whether to accept or not the recommendation of such high power advisory bodies taking into account also other relevant factors. The following facts are given which will be necessary to bring out the case of the applicant for consideration.

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2. The applicant joined the office of the Accountant General, Maharashtra, Bombay (AG) respondent No.3 on 17.5.1983 as an Auditor. In 1984, pursuant to the decision of the Government to bifurcate AG's office into Audit Wing and Accounts Wing with effect from 1.3.84, the Comptroller and Auditor General (C & AG) had formulated a scheme on 19.12.83 for bifurcation of the Indian Audit and Accounts Department (IA & AD) into two separate wings providing for all incidental and auxiliary matters thereto. Before the restructuring of the cadres, the staff working in the IA & AD were asked to exercise their option to serve in either of the two wings. An option had been given to the applicant vide AG's letter dated 27.12.83 to indicate his preference whether he would like to go into Audit Wing or Accounts Wing. The applicant states that he thought the audit side was more beneficial than the accounts wing and he opted for the audit wing. At that time he was put in the waiting list along with others who had opted for audit wing, due to lack of posts in the audit wing and he remained in the office of the third respondent till he joined the Audit wing on 25.3.87.

3. In 1984 he passed the departmental examination for Accountants for which he claims that he is entitled to be paid Rs. 30/- as qualification pay. After he passed the Departmental examination in Audit office in 1987, he has claimed that he should be paid qualification pay of Rs. 30/- attached to this examination.

4. Around 20.3.87 applicant was asked to exercise a second option for allotment to the audit wing which also he exercised in favour of the audit wing. He was transferred to the audit side on 25.3.87. He states that

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one Shri K.L. Sunny, who was junior to him was also transferred to the audit side with effect from 10.4.87 but is drawing a higher pay because he was transferred after 1.4.87 and got the benefit of upgradation.

5. According to the applicant the Government vide its order dated 12.6.87 in pursuance of the ~~recommendation of the~~ IVth Pay Commission brought the accounts side and audit side at par, excepting the post of Supervisor. According to the applicant the earlier order of Controller and Auditor General, which prompted him to opt for the audit side in 1984 was misleading inasmuch as he thought that the audit side was more beneficial than the accounts side. Under this order the effective date for implementation of the order was given as 1.4.87 while the applicant's claim is that the recommendation of the Fourth Pay Commission which has been accepted by the Government should take effect from 1.1.86 as applicable to other Government servants, particularly in Income Tax/Excise departments. Being aggrieved by the orders of the Government dated 12.6.87 and the other decisions of the Government relating to his service conditions in the audit wing after his transfer <sup>here</sup> the applicant has filed this application under section 19 of Administrative Tribunals Act.

6.- We have heard the applicant in person and counsel for the respondents, and have gone through the pleadings of the parties and other documents and records very carefully.

7. A preliminary objection was taken to this application that plural reliefs were claimed which cannot be taken together. At the time of hearing

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the applicant submitted that he is only seeking the following three reliefs namely:

- i) that following the decision of the C.A.T. Bangalore Bench in M. Nanjunda Swamy and others vs. Accountant General and others 1987(3)SLJ(CAT)531 he should be entitled to the benefit of the O.M. dated 12.6.87 from 1.1.86 instead of 1.4.87 as the pay commission's recommendations were accepted by the government from the earlier date;
- ii) he should be paid a second qualification pay for his passing the qualifying examination; and
- iii) that he has been discriminated in the transfer to the Audit wing and that his seniors were transferred later than him which has resulted in his junior, Mr. Sunny getting a higher pay.

8. The learned counsel for the respondents has submitted that none of the above claims of the applicant are admissible. He has referred to the judgement of the Supreme Court in Union of India Vs. Secretary, Madras Civil Audit and Accounts Association and another (SLJ 1992 (1) 194 ). In this case the Union of India through the Comptroller and Auditor General had filed SLP in the Supreme Court against certain judgements of this Tribunal, including the judgement of the Bangalore Bench of C.A.T. referred to above. The Full Bench of the C.A.T. had also agreed with the Bangalore Bench judgement that the petitioners were entitled to the benefits with effect from 1.1.86. Before the Supreme Court the question that arose for consideration was

whether the benefit under O.M. dated 12.6.37 issued by the Government of India, Ministry of Finance should be extended to the members of the Accounts Wing of the Indian Audit and Accounts Department with effect from 1.1.36 as in the case of Audit Wing or whether it should be from 1.4.37 as indicated in the said O.M. The Supreme Court considered in detail the relevant recommendations of the Fourth Pay Commission and the decisions of the Government of India relating to the bifurcation of Indian Audit and Accounts Department (~~I.A. & A.D. for short~~), the options given to the employees to opt for either the audit wing or accounts wing, creation of functional posts in the two cadres, scales of pay in the various cadres etc. from different dates to be decided by the government. The Supreme Court negatived the submission of the respondents in that case that both the officers in the two wings are entitled to get the same scale because before restructuring they belonged to one department. It was observed that the new posts to be created have to be identified and brought into the functional grades in future and the higher scales of pay cannot be made retrospectively with effect from 1.1.36. The Supreme Court did not agree with the decision of the Bangalore Bench of C.A.T and subsequent Full Bench decision of the C.A.T. taking the same view on the interpretation of the recommendation of the Pay Commission. Considering the circumstances that it was necessary to identify the need for the posts which is now brought under functional grade and to frame rules prescribing the eligibility etc. it was held that it would take time and could have been done only in the year 1987

giving effect to the scale of pay from 1.4.87 i.e. from the beginning of the financial year. The Supreme Court held:

" We are unable to see as to how the respondents can insist that they must be given higher scale with effect from 1.1.86. This claim is obviously based on the ground that some of the officers belonging to Audit Wing were given scales with effect from 1.1.86. But it must be borne in mind that they were eligible on that date for the higher scales. Likewise some of the officers of the Accounts wing who were eligible for higher scales were also given. But with reference to the second part of the recommendations categories of posts in the functional grades in the accounts wing had to be identified and created. The respondents who got the benefit of being upgraded now cannot claim that they must also be given same scales like others in respect of whom the recommendations of the Pay Commission were given effect to with effect from 1.1.86. There is a clear distinction between the two categories."

9. The applicant has in his rejoinder stated that the relief he is asking here was not considered by the Supreme Court inasmuch as the recommendation in respect of Senior Accountants under para 10.520 is not implemented though accepted with effect from 1.1.86. He would like the recommendations for IA & AD in this para to be given effect to in the same way as para 11.38

has been implemented with respect to other departments.

Para 10.520 reads as follows:

" The existing pay scales of posts in IAAD, both in the audit and accounts wings conform to the pay scales discussed in chapter 8. The scales of pay recommended there will apply to these posts except in the case of senior accountant (Rs. 425 - 700) on the accounts side, which may be given the scale of Rs. 1400 - 2600. Audit officers have been allowed a special adhoc allowance of Rs. 100/- per month by government in September, 1985 pending our report. We do not find adequate justification for continuance of this allowance with the revised scales of pay recommended by us."

10. It was observed by this Tribunal in Central Excise & Customs Non-gazetted Officers Association & Another Vs. Union of India and Ors. SLJ 1987(3)(CAT)512 decided by the Jodhpur Bench that the question of equating posts and equal pay for similar grades are matters primarily for the executive Government and expert bodies like the Pay Commission and not for this Tribunal. However, if it is found that any fundamental right has been curtailed or affected the court or Tribunal would be justified in intervening.

11. Having carefully considered the submissions of the parties, the records and the cases cited before us, we are unable to agree with the submission of the applicant that the decision of the Government to give higher scale of pay should be with retrospective from 1.1.86 instead of 1.4.87. The thrust of the applicants'



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argument in the written arguments dated 17.2.94 is that his case is different from the reliefs claimed by the parties before the Supreme Court case (supra). According to him since there is a separate recommendation for IA & AD in para 10.520, why the para 11.38 meant for other departments should be extended to IA & AD. His plea is, therefore, that the Government having accepted the recommendations of the Fourth Pay Commission in para 10.520 with effect from 1.1.86, the pay scale of Senior Accountants in the scale of Rs. 1400 - 2600 should be implemented from 1.1.86 instead of 1.4.87 as stated in order dated 12.6.87.

It will be necessary to extract para 11.38 of the Fourth Pay Commission Report in which the following recommendations were made:-

"We have considered the matter. There has all along been parity between the staff in the IA & AD and accounts staff of other departments, which has been disturbed by restructuring the IA & AD into two separate cadres, Viz. Audit cadre and accounts and establishment cadre and giving higher pay scales to a major portion of the staff on the audit side. The audit and accounts functions are complementary to each other and are generally performed in many Govt. offices in an integrated manner which is necessary for their effective functioning. The staff in these offices perform functions of internal check and audit suited to the requirements of each organisation which are equally important. There is direct recruitment in the scale of 330 - 560 in all the audit and accounts cadres through Staff Selection Commission/Railway Recruitment Board from amongst university graduates. We are therefore of the view that there should be ~~board~~ parity in the pay scales of the staff in IA & AD and other accounts organisations. Accordingly we

recommend that the posts in the pay scale of Rs. 425 - 700 in the organised accounts cadres may be given the scale of 1400 - 2600. In the Railways this will apply to the post of sub-head in both the ordinary and selection grades. We also recommend that this should be treated in future as a functional grade requiring promotion as per normal procedure. The proposed scale of 2000 - 3200 of section officer may also be treated as a functional grade. With the proposed scales, there will be no selection for any of the posts. As regards the number of posts in the functional scales of Rs. 1400 - 2600 and Rs. 2000 - 3200, we note that about 53 per cent of the total posts of junior/senior auditor and 66 per cent of the total posts of ordinary and selection grade of section officer in IA & AD are in the respective higher scales. Government may decide the number of posts to be placed in the scales of (i) 1400 - 2600 and (ii) 2000 - 3200 in the other organised accounts cadres taking this factor into consideration. All other accounts post may be given the scales recommended in Chapter 8."

12. From paras 11.38 and 10.520, it is seen that both the paragraphs deal with staff and posts in IA & AD and that <sup>there</sup> should be broad parity in the scales of staff in the IA & AD and other Accounts organizations; ~~and~~ that the scale of Senior Accounts in Rs. 1400 - 2600 are functional grades and Government may decide the number of posts <sup>to</sup> be placed in this scale. In the light of these recommendations, it is not possible to accept the applicant's arguments that since the Government has accepted the recommendations in para 10.520, it must implement the revised scales in the functional grade

also from 1.1.86, uniformly. Dealing with the similar question in Union of India and ors. Vs. Secretary Madras CA & C (Supra) <sup>the</sup> Supreme Court held: (at p. 197).

"...the question is whether there was apparent reason to give different dates of implementation of the recommendations of the recommendations of the Pay Commission in respect of the members of the Accounts Wing and whether such an implementation Articles 14 and 16 in any manner? It is not in dispute that after the report of the Pay Commission the Government considered the matter and accepted the substantial part of the recommendations and gave effect to the revised scales of pay with effect from 1.1.86. It is clearly indicated in the report that in regard to recommendations in other matters the Government will have to take specific decisions to give effect to them from a suitable date keeping in view all the relevant aspects including the administrative and accounting work. The second part of the ~~recommendations~~ relates to treatment of scales of pay of Rs. 1400, 2000 and Rs. 2000 - 3200 as functional grades requiring promotion as per normal procedure and also the number of posts to be placed in these scales of pay. These recommendations clearly fall in the category of other recommendations and the Pay Commission itself has indicated that in respect of such recommendations the Government will have to take specific decisions to give effect from a suitable date. The Government, therefore, had to take the decision in respect of number of posts to be placed in these scales of pay"

13. Therefore, taking into account the above position, the terms of reference of the Pay Commission applied to all the categories of Government servants, and his plea that in view of the recommendations in para 10.520, the scale of Rs. 1400 - 2600 should be effective from 1.1.86 in IA & AD alone is rejected.

14. With regard to the applicant's claim for a second qualification pay for passing the Auditors qualifying examination in 1987, the Learned counsel for the respondents has drawn our attention to para 5 of the Notice dated 27.12.83, annexure A 1 to the application. This provides that in the Audit offices, passing of a departmental examination for auditors will be necessary for confirmation and promotion to the higher grade; para 11 of the Notice also provides that the benefit of any incentive increment or any special pay or qualification pay secured during the pendency of the waiting list will be carried to the Audit office. In view of these provisions and the subsequent instructions dated 25.11.86, since the applicant continues to draw the qualification pay granted in the Accounts wing, his claim for another qualification pay for passing the departmental examination in the Audit side, does not appear to be tenable. Hence this prayer is <sup>also</sup> rejected.

15. The arguments of the applicant with regard to the third issue is given in para 9 of his written argument dated 23.8.93. The seniority of the persons transferred to Audit immediately after him as per the gradation list on 1.3.87 and

and 1.3.88 prepared by the respondents is reproduced below:

As on 1.3.87 gradation No.	As on 1.3.88 gradation No.	Name.	Remarks with date of <u>transfer</u>
212	662	Smt.C.Anandavally	Transferred
219	663	Mr.J.R.Chitilapally	
227	665	Mr. M.P.Joseph	Applicant.
228	666	Mr. K.L.Sunny	Transferred
230	667	Mr.R.R.Deshmukh	
249	668	Mr.P.Basu.	

According to the applicant he has been transferred to Audit in preference to Serial numbers 212 and 219 who were seniors and Serial No.228 who was junior. His contention is that if his seniors Smt. Anandavally and Shri J.R. Chitilapally were transferred earlier to him, he would have remained in Accounts wing till 1.4.87 and got the promotion in their place like his junior Mr. Sunny. The learned counsel for the respondents has stated that the above gradation list is not relevant for the purposes of allocation of persons to the audit cadres and their inter-se seniority. The relevant provision of the Manual of Instructions for Restructuring of Cadres in IAAD issued by authority of the Comptroller & Auditor General of India as a supplement to the Manual of Standing Orders (Administrative) Volume 1(1983 -84) in para 3.16.2.

This paragraph reads as follows:

" Wherever the Accountant General of any State has two or more localised cadres for any categories of staff (e.g.Bombay-Nagpur, Ahmedabad -Rajkot) the reconstituted Accounts & Entitlement and Audit Offices will also for the present have two local cadres each. For purposes of applications for allocation to the audit cadres, however, the two cadres will be notionally merged for each category with inter-se seniority reckoned from the date of appointment to the particular category, which being the same the date of entry into service in IAAD deciding seniority, which latter being the same the date of birth deciding seniority."

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The learned counsel for the respondents submitted at the bar that the dates of appointment and transfer of the above referred four officials are:

	Date of appointment	Dates of transfer
1. Smt.C.Anandavally	20.5.83	16.4.87
2. Mr.J.R.Chitilapally	19.5.83	10.4.87
3. Mr.M.P.Joseph	17.5.83	26.3.87
4. Mr.K.L.Sunny	17.5.83	10.4.87

Taking into account the dates of appointment, of the applicant and Mr. Sunny, and para 3.16.2 of the instructions they had to be allocated to the audit cadres earlier than the other persons in the above list who were appointed to that category later. Between Mr.Sunny and the applicant, since both had been appointed to IA & AD on the same date, by taking the date of birth, the applicant has to be reckoned as senior. Therefore, there is no discrimination against the applicant in his transfer to the Audit Wing and it has been done as per the relevant instructions. All these persons had been absorbed in the Audit side before the issue of the order dated 12.6.87. The Respondents have submitted that the applicant is not entitled to any benefit caused by subsequent developments, as their action was valid at that time. However, they have also stated in their reply that the Department Anomaly Committee was looking into the problem of Senior-junior anomaly due to the upgradation in the office. However, the result of this action was not placed before us. In view of the above position, we are unable to accept the plea of the applicant that he has been discriminated in the date of his transfer to the audit side but we do hope that the Government will take the decision

on the anomaly of pay of seniors and juniors  
expeditiously, and in <sup>any</sup> case not later than four  
months from the date of receipt of this order.

16. In the result we find no merit in the  
application and it is dismissed. However, in the  
circumstances, there shall be no order as to costs.

*Lakshmi Swaminathan*  
(Lakshmi Swaminathan)  
Member (J)

*MR Kolhatkar*  
(M.R. Kolhatkar)  
Member (A)

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