

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY 400614

TRANSFERRED APPLICATION NO. 155/86

Mr. P T Abraham
K-6, I N D Colony
Powai
Bhandup
Bombay 400078

Applicant

v/s.

1. Union of India

2. The Director of Audit
Defence Services
L-II Block, Brassy Avenue
New Delhi 110001

3. Joint Director of Audit
Defence Services
Admiral's House
1 Cooperage Road
Bombay 400039

& 8 others.

Respondents

Coram: Hon'ble Vice Chairman B C Gadgil
Hon'ble Member(A) P Srinivasan

JUDGMENT

(Per: B C Gadgil, Vice-Chairman)

DATED : 14.10.1987

Writ petition No. 2394/84 of the file of the High Court of Judicature at Bombay is transferred to this Tribunal for decision. The applicant (original writ petitioner) was appointed as an Auditor in the office of the Senior Deputy Director of Audits, Defence Services, Southern Command with effect from 13.3.74. The scale in which he was so appointed was Rs. 330-560. Exhibit-1 of the respondent's reply is a copy of that order. Though in the writ petition a number of contentions have been raised by the applicant, during the course of arguments all of them have not been agitated before us. Hence, we propose to mention those facts which are relevant for considering the contentions urged before us.

2. Communication dated 26th December 1983 (vide Exhibit-2 to the respondent's reply) shows that the Government of India has sanctioned the following pay scales for the Auditors in the Audit Offices:

Auditor: 20% Rs. 330-560
80% Rs. 425-800

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The said communication shows that the pay scales are made in recognition of the functions to be performed by the Auditors. The actual audit is to be done by the Auditor in the higher grade while the lower grade will be for training and routine duties etc. It further provides that the promotion to the higher grade would be on the basis of seniority-cum-fitness and that this has to be done on recommendations of the Departmental Promotion Committee (DPC, for short). These two grades were made effective from 1.3.1984. The grievance of the applicant is that he was not given the higher pay scale. He, therefore, filed the writ before the High Court contending that he is entitled to a higher grade of Rs. 425-800. The respondents resisted the claim by filing their reply. In substance they contend that the higher grade was fixed on the basis of functional difference and that such grades were to be allowed on recommendations of the DPC. It was contended that the case of the applicant was considered by such Committee and he was not found fit for the said promotion. The consideration was made after taking into account the Annual Confidential Reports (ACRs, for short) of the applicant. The respondents contend that in view of the above position the applicant is not entitled to claim a higher grade of Rs. 425-800.

3. As stated earlier the applicant has not agitated all the contentions raised in the petition and he restricted his arguments to few of them. Initially after the introduction of the two scales the Auditors were designated as Junior Auditor (who would be in the scale of Rs. 330-560) and Auditor (who would be in the scale of Rs. 425-800). On 19.6.1984 (vide Annexure-III to the respondent's reply), these designations have been changed and Junior Auditor in the scale of Rs. 330-560 is to be designated as Auditor while Auditor in the grade of Rs. 425-800 is designated as Senior Auditor. It is the contention of the applicant that the functions of the Auditors in both the grades is just one and the same and that therefore all the Auditors are entitled to a higher grade of Rs. 425-800. It is in this way he claims that he is also eligible for a higher scale

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of Rs. 425-800. We have already observed that the two different scales have been prescribed in 1983 on the basis of difference in function. This is clear from Annexure-I. In this background it will not be possible for the applicant to contend that on the basis of Annexure-I each and every Auditor is entitled to a higher scale of pay. It was then submitted that the applicant is actually doing the work of a Senior Auditor. However, the respondents have denied that position. We may also observe that the applicant himself contended in ground no. 3 that he ought to have been promoted to the said higher scale on the basis of seniority-cum-fitness and withholding of such promotion is illegal. The claim of promotion to such higher grade would negate the contentions of the applicant that all the Auditors are doing one and the same work and that all are entitled to higher pay scale. It was submitted by the applicant that all the Auditors except the applicant have been given senior scale. However, during the course of arguments it transpired it is not a correct position as there are some Auditors who have not been given senior grade as the DPC did not recommend their names.

4. It was then contended by the applicant that some of his juniors have been granted higher scale as Senior Auditor and that therefore he should also be promoted to that scale. It is material to note that the respondents have submitted that the case of the applicant has been considered by the DPC and he was found not suitable for promotion. It is for this reason that some of his juniors have been so promoted to the higher grade. Consequently the applicant cannot make a valid grievance simply because he is superseded and some of the juniors have been promoted to the higher grade.

5. The applicant however stands on a better footing on account of certain events which were not before the DPC. The applicant earned adverse remarks in the ACRs for the years 1981-82, 1982-83. The DPC considered the cases of the applicant and the other Auditors for promoting them to the senior grade. These adverse

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remarks of the applicant were taken into account by the DPC. The respondents have themselves admitted that the case of the applicant was considered on the basis of the ACRs. The applicant had filed a Writ Petition No. 2900/83 in the Bombay High Court for quashing the said adverse remarks. It is now admitted position that that petition was allowed on 2nd July 1985 and the adverse remarks for both the years have been quashed. The Department preferred appeal no. 820/85 before the Division Bench of the said High Court. That appeal was admitted only with regard to the adverse remarks for the year 1982-83. It is not disputed that the said appeal was dismissed on 1.10.1987. Thus the net result is that the adverse remarks for the two years stand expunged. As stated earlier the DPC took into account these remarks when a decision was taken some time before 1.3.1984 and the applicant was not promoted. The applicant rightly contends that the consideration of his case is required to be done after ignoring the above mentioned adverse remarks which have been expunged by the High Court. The applicant urged that we should ourselves direct that the applicant should be promoted to the higher grade of pay scale. In our opinion this course is not permissible. The Tribunal cannot direct the promotion of an applicant before it. All that ~~we~~ could be done is to direct reconsideration of the case of the applicant if the earlier consideration was vitiated on account of certain factors. Hence we pass the following order:

ORDER

- (1) The respondents are directed to convene a Review Departmental Promotion Committee for considering the case of the applicant as on 1.3.1984 for promotion to the higher grade pay scale of Rs. 425-800. It is further directed that in such Review the adverse remarks for the years 1981-82 and 1982-83 should not be taken into account as they have been expunged by the High Court.

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- (2) The Review Departmental Promotion Committee should take appropriate decision within four months from to-day.
- (3) The application partly succeeds.
- (4) Parties to bear their own costs.

B C Gadgil
(B C Gadgil)
Vice-Chairman

P Srinivasan
(P Srinivasan)
Member(A)

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