

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY

Tr. Application No. 219 of 1986

Smt. Pushpalata Krishnan,
"Meghalok",
Kosamgonagar,
Borivli (West),
Bombay-400 092

.. Applicant
(Petitioner)

Vs

1. Accountant General
(Accounts & Entitlement),
101, Queen's Road,
Bombay-400 020.)
2. Director of Audit (Central),
Madhu Industrial Estate,
Pandurang Budhkar Marg,
Bombay-400 013.)
3. Accountant General (Audit) I,
Maharashtra,
101, Queen's Road,
Bombay-400 020.)
4. Accountant General (Audit) II,
Maharashtra, Nagpur.)
5. The Comptroller & Auditor
General of India,
New Delhi.)
6. Union of India.) .. Respondents

Coram: Hon'ble Vice-chairman B.C.Gadgil

Hon'ble Member (A) J.G.Rajadhyaksha

Appearances:

1. Mrs. Mhatre, Advocate
for the applicant.
2. Mr. S.R. Atre, Advocate
(for Mr. P.M. Pradhan, Advocate)
for the Respondents.

JUDGEMENT (Per J.G.Rajadhyaksha) Date: 20/2/1987.

Applicant had filed a Writ Petition in the High Court of Bombay. That Writ petition was numbered 2118 of 1984. It has been transferred to this Tribunal and is now numbered Transferred Application No. 219 of 1986.

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The applicant is at present serving in the office of the Accountant General (Audit) I Maharashtra, Bombay and filed a writ petition primarily against the Accountant General (Accounts and Entitlements), Bombay and others for redressal of a grievance.

The facts leading to the dispute in brief are that the applicant joined service as a Lower Division Clerk on 1.8.1968 in the Office of the Accountant General, Maharashtra, Bombay. On setting up the Office of the Accountant General (Central), her services came to be placed at the disposal of the Accountant General (Central) as a Lower Division Clerk in September, 1971. In due course she came to be promoted on 2.8.1974 as an Auditor (U.D.C.) though she continued to work in the office of the Accountant General (Central). On 1.4.1976 the office of the Accountant General (Central) came to be redesignated as the Office of the Director of Audit (Central) (and will be hereafter referred to as DAC). On 27th of December, 1983 applicant received a copy of a circular issued by the Director of Accounts conveying the decision of the Comptroller and Auditor General about restructuring of the Indian Audit and Accounts Department. This restructuring was to become effective on 1.3.1984. This circular was followed by a letter accompanied by virtually the same circular as slightly expanded by the Accountant General, Maharashtra. Applicant was asked to offer her preference for either the audit or the accounts wing. In pursuance of this circular the applicant was transferred from the office of the DAC to the office of the Auditor General (Audit)

Maharashtra and it is this transfer that is being challenged by her on certain grounds. The reliefs that the applicant seeks are:

- a) that the Tribunal may quash or set aside the office circular dt.27th December, 1983 annexed as Ex.'C' to the application (Original Writ Petition).
- b) the Tribunal may issue a direction to the Respondents to withdraw and cancel the transfer order dt.5th March, 1984 whereby applicant was transferred to the office of Accountant General (Audit) Maharashtra. She further prays that she may be placed in the higher scale namely Rs.425-800 prescribed for senior auditors.
- c) All future promotions from Auditors' cadres to the cadre of Senior Auditors should be made subject to the results of the application.
- d) There were other incidental prayers.

2. In order to understand the dispute properly a few facts may first be mentioned. Initially, there was the office known as Accountant General, Bombay, which, on formation of the State of Maharashtra, was described as Accountant General, Maharashtra, Bombay. It is not much relevant, but for information it may be mentioned that the Accountant General Bombay had a branch office at Nagpur which was later upgraded to the office of A.G.II Maharashtra, leaving Bombay office to be known as A.G.I Maharashtra, Bombay. On 1.9.1971 the office of Accountant General (Central) was set up to deal with Central Government transactions which until then were being looked after by the Accountant General, Maharashtra, who also looked after the State

Government transactions. On 1.4.1976, the Accountant General (Central) was designated 'Director of Audit' (Central), Bombay. On 1.3.1984 the entire Indian Audit and Accounts Department was restructured in such a way that the 'Audits' and 'Accounts' Wings were separated and placed under separate Accountants General. At this juncture of time the accounts work of Central Government was transferred to Pay and Accounts Offices in various Ministries and therefore, the organisations in existence then were:

- 1) Director of Audit (Central),
- 2) Accountant General (Accounts and Entitlement), Maharashtra, Bombay.
- 3) Accountant General (Audit), Maharashtra, Bombay.

Thus while the DAC continued to look after Central Government transactions the Accountant General Maharashtra, I. Bombay got bifurcated into Accountant General, Maharashtra (Audit) I, Maharashtra, Bombay and Accountant General (Accounts and Entitlements) Maharashtra, Bombay. Initially, when the DAC was set up in 1971, as Accountant General (Central), it had no staff of its own and, therefore, the Accountant General, Maharashtra was required to place the services of certain staff at the disposal of the Accountant General Central i.e. DAC. We learnt later in the course of arguments that approximately 54 Selection Grade Auditors, 348 Jr. Scale Auditors and 62 LDCs were placed at the disposal of DAC from time to time. Later, with the restructuring, when the staff

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was asked to exercise option, those recruited directly in DAC were not offered any preference as they had ab initio joined the Audit Department. Those who were, so to say on "loan" to the DAC from the organisation of the Accountant General, Maharashtra, were asked to indicate their preference for the Audit Wing as well as the Accounts Wing, and bearing in mind their preference they were allocated to the cadres to be controlled by the Accountant General (Audit) I and the Accountant General (Accounts and Entitlement) in Maharashtra, Bombay. The DAC was the cadre controlling authority for staff directly recruited in the DAC or finally allocated to the DAC. A manual of instructions for restructuring of cadres in the Indian Audits and Accounts Department was issued in 1983-84 to guide the cadre authorities in the matter of allocation of staff, exercise of option by the staff and the control of the cadre, generally.

The applicant's grievance is that she has all along been treated as belonging to the DAC and, therefore, she should not have been transferred from DAC to Accountant General Audit I Maharashtra. She claims that by such illegal and unilateral transfer, she has been rendered junior to Auditors who have remained in the DAC and who consequently have been placed in the senior grade of Rs.425-800. It is her further claim that in any case she should have been in the grade of Rs.425-800 and by denial of this right she is adversely affected;

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not only in seniority but also monetarily.

3. We have heard Mrs. Mhatre for the applicant and Mr. S. R. Atre (for Mr. P. M. Pradhan) assisted by Mr. T. K. Iyer, Senior Deputy Accountant General, Maharashtra, Bombay for the Respondents.

Mrs. Mhatre gives the history of the organisation and its restructuring as well as the history of services of the applicant. She points out that applicant's promotion on 2.8.1974 as Auditor was ostensibly against the promotion quota in the cadre of the Accountant General (Central). The notice dated 27.12.83 (which is at page 34 of the compilation) gives the intimation of restructuring of the Indian Audit and Accounts Department. It clearly shows that the applicant was treated as being on the staff of the DAC. Otherwise there was no occasion for the circular to be addressed to her. Then referring to page 38, she points out that a letter was addressed to the applicant accompanied by another circular of 27.12.1983. Until then and even later, there was no indication that there was a common cadre or that the Accountant General Maharashtra was the cadre controlling authority for the applicant. This letter and the circular (at page 39) treated applicant as being in the cadre under Accountant General, Maharashtra, though in fact she belonged to the DAC. Since applicant was already with the Audit Wing of the Department there was no question of offering her

an option to remain in the audit wing or to go to the Accounts Wing, At Page 46 is the order of transfer under which applicant is allocated to Accountant General (Audit) I Maharashtra, from the DAC. It is applicant's claim that she has a right to continue with DAC from 1.3.1984. Mrs.Mhatre taking the support of various charts prepared by her, further argued that DAC had recruited auditors directly since August, 1972. Therefore, that organisation had auditors who were either directly recruited or promoted from the cadre of LDCs directly recruited by the DAC. This was apart from the LDC's and auditors whose services were lent to the DAC. LDC's under Accountant General, Maharashtra, could be considered for promotion either in the organisation of the Accountant General, Maharashtra or in the DAC. Since on 2.8.1974 applicant got promoted in the DAC consequent upon her allocation to that organisation in 1971, there was no occasion to treat her differently. She was under the impression all along that she was an Auditor in the DAC. The letter dt.7.1.1984 which spoke of relative seniority was redundant. It was also not correct to expect applicant to exercise an option because she was an auditor in the DAC. It is her further contention that since direct recruit Auditors in the DAC as well as direct recruit LDC's in the DAC were not required to exercise option, they remained in the DAC i.e. Audit Office. It was, therefore, wrong to expect auditors promoted in the DAC to opt for Audit or Accounts wing. Further, even directly recruited and promoted auditors in A.G.Maharashtra i.e. both the wings were expected to exercise option. Failure to exercise option meant retention in Accountant General (Accounts and Entitlements) Maharashtra. Mrs.Mhatre further points out that in the auditors' cadre 20%

posts were to remain in the junior scale of Rs.330-560 and 80% (per cent) were to be in the senior scale of Rs.425-800. Since there was a higher proportion of options for the audit wing, the scheme also envisaged retention in Accountant General (Accounts and Entitlement) until the option could become effective by the occurrence of vacancies in the audit wing. Seniority was to govern the absorption in vacancies as and when they occurred. By transfer of applicant on 22.2.1984 to the Audit Wing of Accountant General Audit I Maharashtra in the junior scale of Rs.330-560 she has been denied promotion as against those who were recruited in 1981 in the DAC or those remaining in DAC who got the Rs.425-800 scale. Direct recruits who were junior to the applicant in the DAC are today getting higher pay than the applicant. Her representations have not been considered, favourably, so far. Therefore, she feels that the cadre of auditors in all the three offices namely the DAC, the Accountant General (Audit) I and the Accountant General (Accounts and Entitlements) should be considered as one common cadre; preferential treatment should not be given to the auditors from one wing over auditors in the other wings. She should be treated as an auditor in DAC and given pay scale of Rs.425-800. Alternatively, the auditors' cadre should be treated as one common cadre and she should be given her due seniority and senior pay scale. Mrs. Mhatre further argues that significantly, the name of the applicant did not appear at all in the Gradation List prepared by the Accountant General, Maharashtra, with the result that her junior Kum. L. H. More came to be confirmed and considered for promotion. Applicant came to be included at Sr. No. 136 in the revised list at page 60 onward issued on 26.7.1984 in modification of

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the earlier list dt.8.3.1984 wherein she should have been at Sr.No.117 above Kum.L.H.More. She also produces for inspection a Combined Gradation List of staff in the scale of Rs.330-560 which is under the Accountant General, Maharashtra, and the Accountant General Scientific and Commercial Departments. Even here her name does not figure. She now refers to page 110 of the compilation being a letter dt.20.7.1983 addressed to one Mr.P.V.Katti who wanted to go toPune on transfer under Accountant General, Maharashtra. The contents of the letter strongly suggest that Katti was treated as 'alien' i.e.being in the cadre of DAC. Otherwise terms and conditions of unilateral transfer could not have been imposed upon him if he was within the cadre of the Accountant General,Maharashtra. She urges further, that all auditors in the DAC who manned the positions from 1971 should be treated as senior to direct recruit auditors, else prejudice would be caused to her. Further, even though it is true that by coming over as auditors in the cadre of Accountant General Maharashtra she has not been placed at the bottom of the list as might happen in the case of unilateral transfer, she has still been adversely and prejudicially affected. When asked whether she had exercised option or shown her preference, the reply given by the Learned Advocate is that applicant had to do so under compulsion, as otherwise she would have been treated as in the Accounts Wing and not in the Audit Wing. Mrs.Mhatre then cites the Manual of Instructions, and drawing our attention to paragraph 1.2.4., and 3.3.4 of the Manual, she contends that the entire cadre strength of auditors under DAC and Accountant

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General (Audit) I Maharashtra had to be considered for the purposes of the senior scale. She, however, admitted that Mr.R.R.Desai who is one place above the applicant and Kum.L.H.More one place below the applicant are not yet in the senior scale of Rs.425-800.

4. The Respondents' reply contains a reiteration of the history of how Accountant General, Central, was formed and initially manned by staff from the Accountant General Maharashtra placed at the disposal of DAC. As many as 348 auditors in the junior scale (Rs.330-560) and 54 in the then Selection Grade (Rs.425-700) as well as 62 LDC's were sent by the Accountant General to the then Accountant General, Central. Accountant General, Central started direct recruitment effective from July, 1972 and except for mutual transfer the Accountant General's staff continued with DAC. As the number of direct recruits in the DAC increased, gradually, the lent staff came back to the Accountant General, Maharashtra. Direct recruitment policy was adopted for the cadre of UDCs and the proportion of promotions from LDC's with 5 years service i.e. seniority cum fitness was kept at 20% of the cadre and 5% posts were reserved for LDC's with 3 years service who agreed to take a Limited Departmental Competitive Examination. 75% (per cent) posts were to be filled by direct recruits. A 20 point Roster was prescribed and followed strictly until 31.12.1980. On 1.1.1981 Roster point No.2 was assigned to candidates taking the Limited Departmental Competitive Examination. The overall percentages remained constant. On 31st of December each year the ~~balance~~ stand of unfilled vacancies lapsed. The DAC could

not fill promotion posts as he had no LDC's on his staff. He could operate the Roster only after 1977. In order that the staff should benefit, some of the personnel of Accountant General, Maharashtra, got promoted against the Roster points available to the DAC. Actually it is the A.G. ^{Applicant} Maharashtra who issued the promotion orders of ~~A.G.~~ ^{Applicant} along with those of others on 2.8.1974 clearly showing that she was working with A.G.(CENTRAL). It is in this way that the applicant got promoted in DAC where vacancies occurred though she was in the cadre of Accountant General, Maharashtra. Even if she had continued with Accountant General, Maharashtra or in the composite cadre, she would have got promoted as auditors in 1974 against any of the Roster points that were available either in Accountant General, Maharashtra or in the DAG. This position would have obtained until 1.3.1984 i.e. the date of restructuring. In the interim period there was a ban on recruitment and, therefore, the Roster could not be operated. The first direct recruit LDC in DAC got promoted in January, 1981. It is further pointed out that the Gradation Lists do include the name of the applicant. Only those promoted after 1.4.1972 were shown in a separate list in the Gradation List namely the "relative seniority list". It could not be possible for the learned advocate or for Mr.Iyer to state positively the importance or the necessity of the "relative seniority list". Admittedly, there were some omissions and mistakes which unfortunately occurred in the case of applicant, as well. Mr.Iyer tried to explain that the personnel of DAC did not initially figure in the Gradation

Lists of staff under Accountant General, Maharashtra and Accountant General Scientific and Commercial Departments. In the 'relative seniority list' the organisation to which they belonged was indicated against each name ('M' standing for Accountant General, Maharashtra; 'C' for Accountant General Central or DAC, and 'S.C.D.' for Scientific and Commercial Departments). The Gradation List of DAC includes only direct recruit auditors and LDC's. The gradation lists of Accountant General, Maharashtra from 1.3.1973 onwards were prepared without the DAC personnel, but including direct recruits under Accountant General, Maharashtra, and Accountant General Scientific and Commercial Departments. Applicant belonged to the combined cadre of auditors. It is conceded that the first notification at page 34 meant for the entire audit office need not have gone to her. The second circular offering choice to go to the audit wing was offered to people belonging to Accountant General, Maharashtra. If option was not exercised, Accountant General was to take a decision under para 3.2.2 of the Manual of Instructions. On 27.1.1984 applicant gave her preference for the audit wing and was therefore allotted to Accountant General (Audit) I, Maharashtra. As for the senior scale, it is argued that applicant's seniors in Accountant General, Maharashtra, who had opted for audit were transferred accordingly and by virtue of their seniority in Accountant General (Audit) got the senior scale. Those seniors of applicant who remained in the Accounts Wing of Accountant General Maharashtra had also to be given the senior scale. Shri R.R.Desai who was immediately above the applicant got the

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senior scale Rs.425-800 on 29.9.1984 in Accountant General, Maharashtra though he had opted for audit and had actually gone to the Accountant General, Audit. No junior of applicant has been promoted to the senior scale earlier than the applicant. Sl.No.552 is the number at which applicant's name figures in the combined gradation list only in 1984. Now, Sl.534 onwards in that scale have come to get the senior scale. Since DAC's cadre is a separate cadre, direct recruits in that organisation and cadre got senior scale and it is possible that some, who according to applicant are junior to her, must have got promoted in their own cadre. This is inevitable when cadres are separate. It is also stated that the Accountant General (Accounts and Entitlements) Maharashtra does not have any senior scale posts. They have only the scale of Rs.330-560 plus some existing supervisors in the old scale of Rs.425-700. It was further argued that the audit wing holds a special attraction as auditors in DAC got the benefit of quicker promotions and there are other appurtenant benefits such as tours on audit jobs etc.

5. Having heard both the Learned Advocates and Mr. Iyer and gone through the records very carefully, we have come to the conclusion that the application cannot succeed. Our reasons briefly are that initially Accountant General, Maharashtra, was one organisation and all staff belonged to that organisation and cadre. Placing services at the disposal of Accountant General Central on loan does not necessarily mean that the staff has been permanently transferred to Accountant General, Central who later became DAC. It is clear that DAC started direct

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recruitment of LDC's and Auditors and in due course promoted eligible LDC's with 5 years service as auditors (UDC's) within the organisation. Those who were on loan necessarily had to figure in the combined seniority list of Accountant General, Maharashtra and even if there were any inadvertant omissions or mistakes, we feel that they have been subsequently rectified. Since staff not directly recruited by DAC belonged to Accountant General, Maharashtra, there was nothing wrong in asking that staff to exercise option or a preference as to whether they would remain with the Accountant General, Maharashtra, on the Accounts side or go over to the Accountant General, Audit. It is also clear that exercise of preference did not necessarily mean immediate allocation to the Audit wing, because ultimately it would depend upon the number of vacancies available in that cadre. It is further clear that applicant exercised her preference for audit wing and was accordingly transferred to Accountant General, Audit, and we cannot find any fault with the letter dt.7.1.1984 and its accompaniment dt.27.12.1983 which must have been studied by the applicant before exercising option or preference. It is difficult to accept her suggestion that she exercised preference under compulsion. As such, if she has been promoted as auditor actually in the cadre under Accountant General, Maharashtra, on 2.8.1974 she has to be at the appropriate place in the Gradation List of permanent LDC's and Auditors under the Accountant General, Maharashtra. It is the most salient feature of the episode that on 2.8.74 A.G.Maharashtra promoted her as auditor. He could not have been able to do so

if she was not borne on his cadre of LDCs. If, therefore, auditors in Accountant General, Maharashtra who are junior to the applicant had not been put into the senior scale at the date of restructuring of the cadres it would be too far fetched a contention of the applicant that she should be deemed to have been in the auditors' cadre under DAC and is therefore, entitled to promotion in the senior scale of Rs.425-800 on that basis, even before the direct recruits in the DAC would earn such promotion. It is clear that DAC has a separate cadre. We do not think it will be appropriate for us to examine why the Indian Audits and Accounts Department has been restructured nor why separate cadres are maintained under DAC, Accountant General (Audit) and Accountant General (Accounts and Entitlements). These are administrative necessities into which we would not like to interfere unless in any particular individual case there is a total miscarriage of justice or there are mala fides or there is such arbitrariness as cannot be allowed to continue. We therefore, come to the conclusion that the Original Petition, that is the present application, of the applicant is misconceived and filed with a view to get advantages to which prima facie she is not entitled. In the circumstances the application fails and we pass the following orders:

ORDER

1. The application is dismissed.
2. The parties should bear their own costs

B.C.Gadgil
19.2.1987
(B.C.GADGIL)
Vice-chairman

(J.G.RAJADHYAKSHA)
20.2.1987
Member (A)

*Judgment announced in open Court
on 20.2.1987.*

20.2.1987