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CAT/J/12

# IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No.  
T.A. No.

T.A. 164 of 1986

198

DATE OF DECISION 15/10/91

Sundaram Sambamoorthy of Bombay Petitioner

Sri G.K. Masand

Advocate for the Petitioner(s)

Versus

Union of India and others

Respondent

Sri P.M. Pradhan

Advocate for the Respondent(s)

## CORAM

The Hon'ble Mr. Justice U.C. Srivastava ?V.C.

The Hon'ble Mr. M.Y. Priolkar ,A.M.

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 in needs to be circulated to other Benches of the Tribunal ? ☒



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, BOMBAY BENCH.

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Registration T.A. No. 164 of 1986

( Writ Petition No. 88 of 1985)

Sundaram Sambamoorthy of Bombay, Indian Inhabitant  
residing at D-67/643, M.I. G. Colony, Bandra (East) ... Petitioner.

Versus

Union of India and others ... Respondents.

Coram:-

Hon'ble Mr. Justice U.C. Srivastava, V.C.  
Hon'ble Mr. M.Y. Priolkar, Member (A)

Appearances:-

Counsel for the Applicant Sri G.K. Masand.  
Counsel for the Respondents Sri P.M. Pradhan.

Judgment:

( By Hon'ble Mr. Justice U.C. Srivastava, V.C.) Dated: 15/10/91

In this writ petition which has been transferred to this Tribunal from Bombay High Court, the applicant who is Accounts Officer in the Cadre of Indian Audit and Accounts Department and is working in the Office of Accountant General-I, Maharashtra, has prayed for declaration that the last sentence of para-2 of Schedule III framed under Rule 7(2) (ii) of the Indian Audit and Accounts Service (Recruitment) rules, 1983 which provides that an officer who have attained the age of 53 years on the above date shall not be eligible <sup>for promotion</sup> is violative of Articles 14 and 16 of the Constitution of India, and that the respondents be directed to consider the petitioner for the promotion to Indian Audit and Accounts Service (IAAS in short). A prayer for quashing the promotion order of respondent No.4 to IAAS has also been made with an additional prayer that the respondents may be directed to consider the promotion of the petitioner to the said cadre along with the respondent no. 4. The petitioner joined the Indian Audit and Accounts Department as an apprentice in the Subordinate Accounts Service in the year 1953 and after intervening promotions, the petitioner was posted as the Chief Accounts and Finance Officer in the Dhulia Zilla Praishad on deputation with the State of

Maharashtra outside his parent cadre, and to his parent cadre he was promoted as proforma to the post of Accounts Officer, and again in the year 1968 he was sent on deputation to the Cabinet Secretariate to the Government of India as the Store and Accounts Officer. While the applicant was on deputation, as per his allegation, juniors to the petitioner were promoted and according<sup>to</sup>/the petitioner who is in the Indian Audit and Accounts Department, he could only be promoted to the Indian Audit and Accounts Service. Vide Rule 7(2) of the Indian Audit and Accounts (Recruitments) Rules, 1983 framed under Art. 309 of the Constitution of India, in the rules of 1983 which amended the previous rules, the bar of 53 was put in. The said rules which were framed for the first time notwithstanding the said bar although the applicant was not promoted on the said ground but the two officers i.e. respondent nos. 4 & 5 who had crossed their age on 1.7.1984 were promoted. Prior to the framing of the rule, the rule of 26th March, 1983 was the criteria for promotion ~~from~~<sup>for</sup> IAAS, was the merit-cum-suitability and there was no such bar in which the person attaining the age of 53 years were put on. The applicant has thus challenged the validity of the said rules putting the bar for promotion of a person who has attained the age of 53 years. Now the validity of the rules on this very ground providing the validity of maximum age limit of 53 years for promotion to the Junior Time Scale Officer was challenged and the matter came up for consideration. In the case of K. Ranganathan and others Vs. The Accountant General Karnataka and others, the full Bench held that the the bar so imposed has a rational nexus to the object of creating the <sup>and elimination for induction into</sup> IA & AS of those attaining 53 years, satisfies the twin objectives of a valid classification under Articles 14 and 16 of the Constitution of India. The learned counsel contended that it will not be possible for him to assail the said Full Bench Judgment and as such he will now confined his claim to another application. The next

contention of the learned counsel for the applicant is that the vacancy occurred for which the applicant is claiming in the cadre of IAAS as the old rules were in existence and under the old rules, there is no such bar that the applicant is entitled for his promotion to the said post. The respondents oppose this prayer also and the learned counsel apart from drawing attention to the pleadings, also contended that in view of the fact, the promotion is going to be made and that the new rules have come into existence, the applicant can not claim any benefit of the old rules. It was further contended that in Writ Petition No.2504 of 1983 decided by the Punjab/Hariyana High Court, the department had to make promotion in accordance with the rules. A copy of the judgment has been placed on the record. The court after taking into consideration the case of V.V. Rangaiah and others Vs.V.J. Sreenivasa Rao and others (1983) 3 SCC, 285, held that the promotion in respect of the vacancy which existed prior to the amendment were to be made in accordance with the rules as existed and those who were qualified under the previous rules will be considered under those rules and accordingly the court passed the order, "I allow this petition and direct the respondents to fill up the vacancies available to them prior to the 1.7.1983 in accordance with rules applicable to the service prior to the enforcement of 1983 rules. The net result is that the petitioners' claim for promotion to the posts of Assistant Accountant Generals, Class-1, would be considered in the light of 1938 rules and the instructions referred to above. Since the matter i.e. filling in of those vacancies, I further direct the respondents to complete the process of selection and appointment to the said vacancies within a period of six months from today." The instructions which has found place in the said judgment and the instruction dated 24.12.1983 issued by the department of Personnel Government of India which gives the relevant guidance in accordance with the selection made by the D.P.C. which provides that the selection was yearwise panel by the D.P.C. where they have not made


number of years, and consider in respect of each of years.

On behalf of the respondents, it was contended that the promotions have been made in accordance with the directions given by the Punjab and Hariyana High Court but the contention raised on behalf of the respondents does not stand firmly as they are under consideration from the respondents' own pleadings. It is clear that the vacancies after 1.7.1980 were 12, 1.7.1981 were 7, 1.7.1982 were 7 and upto 30.6.1983 were 10. Total 36 vacancies. Now the Senior Most officers were promoted against the last vacancy of the year 1983 and was promoted as Accounts Officer and the last officer as the zone of consideration for the Vacancies of 1963 was promoted as Accounts Officer in the year 1983 and thus according to them the applicant was promoted as Accounts Officer on 19.11.1965 and he was, therefore, not in the zone of consideration for promotion under the vacancies during the year 1980 and 1983. According to the respondent, the rule 7 of the old rules, those who were completed 5 years regular and continuous service in the <sup>same</sup> grade ~~as at the time of promotion~~ were entitled for promotion. The reference to the new rules has been made.

2. The applicant was considered for promotion in the years 1974, 1975, 1978 and 1979 and thereafter he was not considered for promotion in the year 1984 when D.P.C. met thereafter. Obviously, the applicant was within the zone of consideration <sup>under the rules</sup> and there was no such bar that one has to complete a particular period on a particular date. Now in the year 1984, the candidature of the applicant was not considered on the ground that he is over-age. Thus it is clear that the applicant was not considered in respect of the vacancies of the year 1980. Now in view of the legal position which was made by the Hon'ble Supreme Court in the case of V.V. Rangaiah referred to above, the applicant's name ought to have been considered in the D.P.C. which met in the year 1984 in respect of the vacancies of the year 1980 when the old rules were enforced and the applicant had every right

to be considered for the same but it was not done and accordingly the applicant was wrongly deprived from being considered from the promotional post and even if the applicant has no right for promotion <sup>consideration for</sup> @@@ at least the right for promotion was there where he was fully eligible for the same.

3. Accordingly, this application is allowed in part and the respondents are directed to convene a review D.P.C. within a period of 3 months from the date of communication of this order and considered the applicant for promotion to IAAS cadre in respect of the vacancies <sup>as it</sup> of 1980 in accordance with the rules/ existed in that year. The application is disposed of finally with the above directions. Parties to bear their own costs.

  
Member (A)

Bombay Bench  
(n.u.)

  
Vice-Chairman

15-10-91