

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

OA 28/2000

&

OA 90/2000

MUMBAI, THIS THE 31ST DAY OF JULY, 2001

HON'BLE SHRI S.L.JAIN, MEMBER (J)

HON'BLE SHRI GOVINDAN S. TAMPI, MEMBER (A)

Shri K.C.Mhaskar,
Clerk/Typist O/O the Accountant
General (Commercial Audit)
Maharashtra, residing at Flat No.
452 Sector C, Central Government
Staff Colony, Bhandup (East)
Mumbai - 400 042.

...Applicant

(By Advocates Shri P.A.Prabhakaran
and Shri K.R.Yelwe)

V E R S U S

OA 28/2000

1. Union of India : Through

the Comptroller & Auditor
General of India, 10,
Bahadur Shah Zafar Marg
Indraprastha Head Post Office
Post Bag No.7
New Delhi - 110 002.

2. The Accountant General
(Commercial Audit)

Old C.G.O. Bldg. Ground Floor
101, Maharshi Karve Road
Mumbai - 400 020.

3. The Senior Audit Officer

(Admn) Office of the Accountant
(Commercial Audit) Maharashtra
101, Maharshi Karve Road, Mumbai -
400 020.

...Respondents

(By Advocate Shri G.K.Neelkanth)

OA 90/2000

1. Union of India : through

The Comptroller & Auditor
General of India, 10,
Bahadur Shah Zafar Marg
Indraprastha Head Post Office
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... Respondents

(By Advocate Shri G.K. Neelkanth)

O R D E R

This combined order seeks to dispose of two OAs - 28/2000 and 90/2000 - both filed by the same applicant in related matters. Common and related arguments were presented by the counsel during the combined hearing of these two OAs.

2. (i) OA No. 28/2000 is directed at Office Order No. 211 issued under Admn/CA/Rectt/Staff Car Driver/Despatch Rider/F.422/3592 dated 15-10-1999 directing unilateral reduction in pay of the applicant from Rs. 4350+Rs. 20/- per month from 6-1-1998 to Rs. 3800/- per month and recovery of the excess amount paid from 6-1-1998.

(ii) OA No. 90/2000 challenges order No. Admn/CA/Rectt/Staff Car Driver/Despatch Rider F.422/697 dated 28-8-1998 rejecting the applicant's request for appointment to the post of Auditor.

3. Heard S/Shri P.A. Prabhakaran and K.R. Yelwe, learned counsel for the applicant and Shri G.K. Neelkanth, learned counsel for the respondents.

4. The facts of the case as could be culled out from the pleadings in the OAs are, that the applicant who joined as Driver in Income Tax Appellate Tribunal in 1981 was transferred to Office of the Accountant General, Maharashtra, Mumbai on 20-8-1993

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in the same capacity and on the same scale of pay. He was promoted from the grade of Staff Car Driver (ordinary grade) to Staff Car Driver Grade II, in the pay scale of Rs.1200-1800/- w.e.f. 1-8-1993 vide order No.35 issued under Admn/CA/Promotion/Staff Car Driver/1687 dated 2-3-1995. His pay was accordingly fixed at Rs. 1230+Rs.20/- per month w.e.f. 20-3-1995. While he was holding the said post, he was hospitalised from 27-6-1996 to 26-2-1997, where he underwent kidney transplantation and was put on Dialysis. He resumed duties on 27-2-1997 with a certificate that he be given right duties. He requested that he be considered for being appointed as Auditor, a post equivalent to that of Staff Car Driver Grade II (Rs.1200-1800/-) but was only offered the post of LDC (Clerk/Typist). He was appointed as Clerk/Typist in the grade of Rs. 3050-4590/- on 23-1-1998. His pay was raised from Rs. 4300+personal pay of Rs. 20/- in the pay scale of of Rs. 4000-6000/- of staff car Driver II to Rs. 4350+Rs.20/- in the pay scale of Rs. 3050-4590/- of Clerk/Typist, but subsequently his pay was reduced from Rs. 4350 to 3800/- p.m. retrospectively w.e.f. 6-1-1998. This order is under challenge in OA 28/2000.

5. The applicant had requested on 17-6-1998 that he be considered for appointment as Auditor, a post equivalent to that of Staff Car Driver Gr.II. It was rejected on 28-8-1998. This order is impugned in OA No. 90/2000.

6. The applicant's plea are two fold. In OA No. 28/2000 he pleads that having fixed his pay at Rs. 4350/- at the time of his appointment as LDC, the Department could not have reduced his basic pay to Rs. 3800/- in the lower scale of LDC (Clerk/Typist). This was an improper and arbitrary step to have been taken and the same deserved to be set aside. As he was already holding the post of Staff Car Driver in the scale of Rs. 1200-1800/- (Rs. 4000-6000) fixation of ~~his pay in the grade of Rs. 950-1400 (Rs. 3050-4590/-)~~ was incorrect. Though he was holding the post of Staff Car Driver Gr. II, which is higher in rank than that of the LDC, the Department has chosen to deny him the benefit. On the other hand he also states that rejection of his request for the post of Auditor was improper as the respondents were duty bound to consider him for selection to a post identical and/or equivalent to that he was holding. The denial of the same was arbitrary and deserved to be set aside, pleads the applicant. All the above pleadings were strenuously reiterated by S/Shri P.A. Prabhakaran and Yelwe, for the applicant.

7. Rebutting the above Shri G.K. Neelkanth, learned counsel for the respondents pleads that both the applications are mis-conceived and should not be admitted. They are also contradictory in nature. While in one he seeks for the retention of the pay scale which is equivalent that of Auditor, which post he was unfit to hold, in the other he is seeking the post of Auditor which he could not have been given on account of his academic qualifications. The respondents have, as a concession had decided to

permit him to continue in the Department in a available vacancy. He cannot have any right for any specific post of his choice or any scale and should be satisfied with what has been offered to him, according to Shri Neelkanth.

8. We have carefully gone through the rival contentions raised by the learned counsel for both the sides. The points for determination in these OAs are the entitlement of the applicant for the higher post of the Auditor and the pay of the same post. It is not disputed that the applicant who joined as Driver (Ordinary grade) and promoted to the post of Staff Car Driver Gr.II in the pre-revised scale of Rs. 1200-1800/- was medically re-categorised because of his illness. As he had become incapacitated to perform the strenuous duties of the Staff Car Driver, the respondents had compensated him by giving him the post of LDC (Clerk/Typist). The applicant's plea is that on account of his having drawn the pay of Rs. 1200-1800 as Staff Car Driver Grade II. He could not have been given any job not equivalent to the same and that he should have been appointed as Auditor. The same cannot be endorsed and the job of an Auditor is a specialised job for which a minimum academic qualification is prescribed. As the applicant is not possessing the same, the Deptt. could not have appointed him as a Auditor in the interest of Administration and, therefore, their decision in that context cannot be questioned. While concession to incapacitated employee is a matter for consideration for administration, it cannot be at the risk of administrative requirements and, therefore, the

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applicant cannot have any genuine grievance in that regard. His plea, therefore, for being appointed as a Auditor has rightly been rejected by the respondents and in no way can it be called in question. The applicant failed to make out any acceptable case.

9. The position, however, is different in respect of his plea for pay fixation. Even though it is true that on his re-categorisation and re-employment the applicant who was drawing pay at the pre-revised scale of Rs. 1200-1800/- has been brought down to scale of Rs. 950-1500/- (revised Rs. 3050-4590/-) reduction in his pay was not permissible. The respondents could not have reduced the emoluments what he has been drawing even if the pay scale has been reduced. The reduction of his basic pay from Rs. 4350 to 3800/- was incorrect as the same was well within the grade of Rs. 3050-4590/- which is the LDC's pay. Even without appointing him as Auditor it was possible to have retained the pay which he was drawing subject to its not exceeding the maximum of the pay scale ~~scale~~ of the post of LDC to which the applicant has been appointed. This would not have caused any inconvenience or administrative difficulty and denial of the same was arbitrary, improper and deserves to be set aside.

10. In view of the above, OA No. 28/2000 succeeds and the order No. 211 issued under Admn/CA/Rectt./Staff Car Driver/Despatch Rider/F.422 dated 15-10-1999 directing the unilateral reduction of the basic pay of the officer from Rs. 4350/-+Rs. 20/- pm to Rs. 3800/- pm is quashed and set aside

along with the directions for recovery of the amount described as paid in excess. The respondents are directed to retain the applicant's basic pay at Rs. 4350/- + Rs. 20/- pm, but in the pay scale of Rs. 3050 - 4590/-.

11. OA No. 90/2000 challenging the order No. Admn/CA/Rectt/Staff Car Driver/Despatch Rider/F.422/697 dated 28-8-1998, rejecting the applicant's request for appointment as Auditor, fails and is dismissed.

No costs.

(GOVINDAN S. TAMPI)
MEMBER (A)

(S.L.JAIN)
MEMBER (J)

/vikas/