

CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH

Second Floor,  
Commercial Complex,  
Indiranagar,  
Bangalore-38.

Dated: 21 JAN 1994

APPLICATION NO(s) 500 of 1993.

APPLICANTS: R.Krishna Rao  
TO.

RESPONDENTS: Accountant General,  
Audit-I, Bangalore and Others.

1. Sri.V.Narasimha Holla,  
Advocate, No.317,  
12th-A-Main, 75th Cross,  
Sixth Blcok, Rajajinagar,  
Bangalore-560 010.
2. Sri.M.S.Padmarajaiah,  
Sr.Central Govt.Stng.Counsel,  
High Court Bldg, Bangalore-1-

SUBJECT:- Forwarding of copies of the Orders passed by  
the Central Administrative Tribunal, Bangalore.

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Please find enclosed herewith a copy of the  
ORDER/STAY ORDER/INTERIM ORDER/, Passed by this Tribunal  
in the above mentioned application(s) on 21-12-1993.

RECORDED 21/1/94  
BY DEPUTY REGISTRAR  
JUDICIAL BRANCHES.

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CENTRAL ADMINISTRATIVE TRIBUNAL: BANGALORE BENCH

ORIGINAL APPLICATION NUMBER 500 OF 1993

TUESDAY DATED THIS THE 21ST DAY OF DECEMBER, 1993.

Mr. Justice P.K.Shyamsundar, ... Vice-Chairman.

Mr.V.Ramakrishnan, ... Member(A)

R.Krishna Rao,  
(Retd. Assistant Accounts Officer),  
S/o late R.Madhava Rao,  
No.3, Block-L, CPWD Quarters,  
Vijayanagar,  
Bangalore-560 040.

.. Applicant.

(By Advocate Shri V.N.Holla)

v.

1. The Accountant General (Audit-I),  
Karnataka, Bangalore-560 001.

2. The Comptroller and Auditor General  
of India, New Delhi-110 002.

3. Accountant General,  
A & E Karnataka, Residency  
Park Road, Bangalore-560 001.

.. Respondents.

(By Standing Counsel Shri M.S.Padmarajaiah)

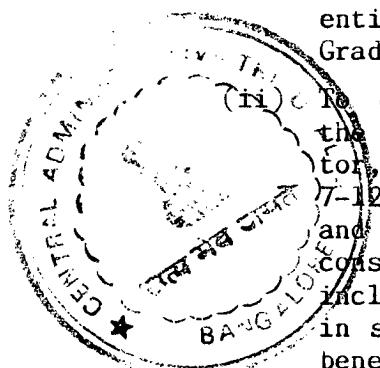
O R D E R

Mr.Justice P.K.Shyamsundar, Vice-Chairman:-

Heard Mr. V.N.Holla, learned counsel for the applicant and Shri M.S.Padmarajaiah, learned Standing Counsel in this application in which the following reliefs are sought for:-

(i) Call for the records relevant to the case, including Departmental Promotion Committee's proceedings of third respondent office regarding selection to the post of Selection Grade Auditor during 1975, 1976, 1977 and 1978 and to declare that the applicant was entitled to be considered for promotion as Selection Grade Auditor from 1975 onwards.

(ii) To direct the respondents to consider the case of the applicant for promotion as Selection Grade Auditor, in terms of the second respondent's letter dated 7-12-1979 (Annexure-A9) and 20-3-1980 (Annexure-A4) and to further direct the respondents to grant all consequential benefits arising from such promotion including fixation of pay in promoted post and also in subsequent posts, as also to revise the pensionary benefits based on such fixation.



(iii) To quash the first respondent's letter dated 21-1-1991 (Annexure-A2), 23-3-1992 (Annexure-A6) and 26-5-1992 (Annexure-A8) to the extent it acted as a fetter for promotion to the post of Selection Grade Auditor.

Since we have heard this case for admission and also on merits, we direct its admission and proceed to dispose off the same finally.

2. The applicant is now in peaceful retirement, but feels wronged by the refusal to consider his claim for promotion as Selection Grade Auditor which opportunity arose after 1975. The Non-Functional Selection Grade to which he seeks entry appears to have been commissioned only on 1-8-1976 as could be noticed from Annexure-A9 which is a communication from the Comptroller and Auditor General of India dated 20th September, 1979. The communication mentions -

"Copy of the letter No.1067-NCE IV/54-77 dated 20th September, 1979 from the office of the Comptroller and Auditor General of India, New Delhi, addressed to all Heads of Offices (as per mailing list)

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Subject: Revision of pay of Selection Grade Auditors in the IA & AD.

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The matter regarding revision of the pay scale of Selection Grade Auditors in our Department has been under consideration in consultation with the Government of India for some time past and Ministry of Finance have now conveyed the sanction of the President of the revision of the existing scale of Rs.425-15-560-EB-640 for the selection grade auditors to Rs.425-15-500-EB-15-560-20-700 and to the conversion of the functional Selection Grade posts of Auditors into non-functional Selection Grade Auditors with effect from 1-8-1976.

2. The following terms and conditions govern the operation of Selection Grade in the scale of Rs.425-700:-

- i. The strength of Selection Grade will be 20 per cent of the posts in the ordinary grade which have been in existence for 3 years, irrespective of whether they were permanent or temporary.
- ii. For becoming eligible to be considered for appointment to the selection grade an employee should have either completed 14 years of service in the ordinary grade or crossed 3/4th span of

the revised scale of pay of the ordinary grade. In this process if a junior becomes eligible for consideration by virtue of his having crossed 3/4th of the span of the scale in the ordinary grade while a person senior to him is not so eligible, the junior will not get any over-riding in the matter of consideration for appointment to selection grade.

- iii. The pay on appointment at the selection grade shall be fixed at the same stage at which the pay is drawn in the ordinary grade if there is such a stage in the scale of pay of the selection grade or to the next higher stage if there is no such stage, the next increment should be granted from the same date on which it would have accrued in the ordinary grade. If, however, the pay is fixed at the next higher stage, the next increment should be granted after completion of normal incremental period of 12 months in the selection grade.
  - iv. In respect of persons who have been promoted to selection grade on or after 1-8-1976 and in whose cases pay fixation has been done with reference to FR 22-C, their pay will be refixed and regulated in the manner indicated earlier the difference in pay so fixed and the pay already drawn being treated as personal pay to be absorbed in future increments in pay. In other words no recoveries of over payments made, if any, in the earlier scale of Rs.425-640 will be effected as consequence to the revised mode of fixation with effect from 1-8-1976.
  - v. Promotion to Selection Grade will be on the principle of seniority subject to rejection of unfit as laid down in Department of Personnel and Administrative Reforms O.M.No.22011/5/77-Estt (D) dated 30-12-1977 circulated with our letter No.441-NGE-III/7-77 dated 14-3-1978.
  - vi. The scheme of reservations for candidates belonging to scheduled caste and scheduled tribes will apply in making appointments to the selection grade as enunciated above.
3. The receipt of this communication may please be acknowledged.

Sd/- (B.R.Lal)  
Asst.Comptr.Auditor General(N)".

Be that as it may, we see from the pleadings that the applicant has been agitating this matter from a long time claiming induction into Non-Functional Selection Grade Auditor's position. He was endorsed as per Annexure-A2 dated 21-1-1991 that his case for induction into Non-Functional Selection Grade Auditor was considered and he could not be given the benefit although

found eligible because he was far junior in the cadre during the period 1975 to 1978. The applicant not quite satisfied with the endorsement made a further representation which was once again turned down as per Annexure-A6 dated 23-3-1992 reiterating the earlier decision. He now wants the fruits of ~~his baby~~<sup>labor</sup> something which the department did not give after considering his case for promotion to Non-Functional Selection Grade between 1975 and 1978, we should do so by a mandamus directing the department to consider his case for promotion to the Non-Functional Selection Grade Auditor during those years.

3. In this connection ,we may refer to the circular at Annexure-A4 dated 20-3-1980 from which it becomes clear that the criteria for selection to the post of Non-Functional Selection Grade Auditors was not by mere seniority but based on fitness subject to completing 14 years or 3/4th of the service. Counsel says that his client has satisfied both the conditions and was therefore, eligible for appropriate consideration and that he could not be put down on the ground of being lower down in the seniority list. While we cannot say that there is no force in this contention, but unfortunately we are not in a position to assist him at all since in this case the applicant's cause of action arose long before the constitution of this Tribunal which was constituted in the year 1985. Under the Administrative Tribunal Act of 1985, the go back period for the purpose of limitation is fixed at three years prior to the advent of this Act and in this case it fell beyond the three years period since admittedly the case for considering the applicant's claim for fitment into non-functional Selection Grade Auditor arose between 1975 and 1978.

4. Mr. Holla urged with great vehemence that though the cause of action had arisen between 1975 and 1978 it continues

even now and subsists until it is remedied. We cannot subscribe to that view. The cause of action clearly arose when he was not considered for promotion during the period 1975 and 1978. But, at that stage itself he should have approached the regular Courts and merely because he managed to keep the issue alive by making series of representations to the departmental authorities which they rejected in 1992 he cannot now find a cause of action on the basis of the same and ask us to mandate the authorities to grant the relief sought for herein. This position is no longer res integra and is covered by the decision of the Principal Bench in the case of V.K.MEHRA v. SECRETARY, MINISTRY OF INFORMATION AND BROADCASTING, NEW DELHI (ATR 1986 CAT 203). In the circumstances, we must plead our inability to assist the applicant since his cause of action arose long before the constitution of the Tribunal and therefore his grievance cannot be remedied by taking recourse to a petition under Section 19 of the Administrative Tribunals Act.

5. For the reasons mentioned above, this application fails and is dismissed. No costs.

Mr. Holla lastly submits that the department should be asked to consider the applicant's grievance on its merits since the department had failed to take into consideration the circular passed in the year 1992 which we have adverted to. While we cannot give such a direction or a mandate sought for, if the department decides on its own to reconsider the applicant's claim, we make it clear that the dismissal of this application

**TRUE COPY**

*R. Shaukat* 21/1/94 will not be in its way. But if any decision is taken by the

**SECTION OFFICER** department on its own hereafter to his prejudice will not give **CENTRAL ADMINISTRATIVE TRIBUNAL**

**ADDITIONAL BENCH** any further cause of action to the applicant to come back to **VICE-CHAIRMAN** us for the same relief.

*Sd-*

MEMBER(A)

*Sd-*

VICE-CHAIRMAN.