

CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH

Second Floor,
Commercial Complex,
Indiranagar,
Bangalore-560 038.

Dated:- 27 JUN 1994

APPLICATION NUMBER: 562 of 1993

APPLICANTS:

Sri. B. G. Sadashiva and vs. The Accountant General (Audit-I)
to. another Bangalore and Seven Others.

RESPONDENTS:

1. Dr. M. S. Nagaraja, Advocate, no. 11, Second floor,
first cross, Sriyatha Complex, Gandhi Nagar,
BANGALORE-560009.

2. The Accountant General,
Audit-I, Bangalore-560001.

3. Sri. M. S. Padmarajiah,
Senior Central Govt Stg. Counsel,
High Court Bldg, Bangalore-1.

Subject:- Forwarding of copies of the Orders passed by the
Central administrative Tribunal, Bangalore.

Please find enclosed herewith a copy of the ORDER/
STAY ORDER/INTERIM ORDER/, passed by this Tribunal in the above
mentioned application(s) on 16-06-1994

Se Shaukar 28/6
DEPUTY REGISTRAR
for JUDICIAL BRANCHES.

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CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

O.A. No.562/93

THURSDAY THIS THE SIXTEENTH DAY OF JUNE 1994

Shri V. Ramakrishnan ... Member [A]

Shri A.N. Vujjanaradhya ... Member [J]

1. B.G. Sadashiva,
Aged 52 years,
S/o B.G. Gopal Rao,
No.45/2, 6th Main,
Tata Silk Farm,
Bangalore-560028.
2. Y.N. Ananda Rao,
Aged 55 years,
S/o Sri Y.R. Narayana Rao,
G-6, CPWD Quarters,
Vijayanagar,
Bangalore-560 040. Applicants

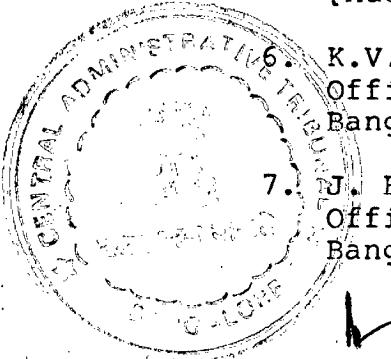
[By Advocate Dr. M.S. Nagaraja]

v.

1. The Accountant General [Audit-I],
Bangalore-560 001.
2. The Controller & Auditor General of India,
10, Bahadur Shah Zafar Marg,
New Delhi.
3. Union of India represented by
Secretary to Government of India,
Ministry of Finance,
Department of Expenditure,
New Delhi.
4. P.S. Anantharamu,
Supervisor,
Office of the Accountant General [Audit],
Bangalore.
5. K.V. Vasudeva Rao, Supervisor,
Office of the Accountant General
[Audit], Bangalore.

K.V. Ashwathanarayana, Supervisor,
Office of the Accountant General [Audit],
Bangalore.

7. J. Bhavanarayana, Supervisor,
Office of the Accountant General [Audit],
Bangalore.



8. K.S. Jayaprakash, Supervisor,
Office of the Accountant General [Audit],
Bangalore. ... Respondents

[By Advocate Shri M.S. Padmarajaiah,
Senior Standing Counsel for R-1 to 3]

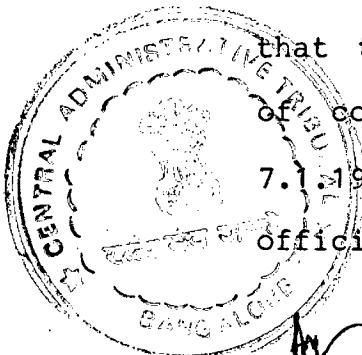
O R D E R

Shri A.N. Vujjanaradhya, Member [J]:

1. The applicants are aggrieved by the promotion of Respondents ['R' for short] No.4 to 8 who are juniors to them, to the cadre of Supervisors ignoring the principles laid down in the judgment of this Tribunal in O.A. No.806/90 dated 5.8.1992.
2. Briefly stated the case of the applicants is as below:

The applicants joined service of Indian Audit and Accounts Department on 14.6.1962 and 4.10.1960 respectively in the Office of the Accountant General ['AG' for short], Bangalore. Subsequently they were promoted as Selection Grade Auditors ['SGA' for short] with effect from 22.1.1977 and 1.6.1974 respectively. From 1.3.1984 there was restructuring of the Departments of Audit and Accounts in the office of the composite AG which was bifurcated into Audit Wing and Accounts Wing each having distinct and separate cadres. At that time both the applicants opted to in the Accounts Wing as SGA. Because of inadequate number of persons having opted to Audit Wing, Controller and Auditor General of India thought of giving a second option for changing earlier preferences. As per Circular dated 16.9.1984, conditions for such second option

for change over from one Wing to another was issued as in Annexure A-1. Therein it was clearly stated that after transfer the seniority of the employees would be integrated with the existing incumbents in the grade according to inter-se seniority in the erstwhile composite cadre of AG as if the employees had been transferred initially to Audit along with immediate juniors. The applicants exercised the option for the change over in December 1984. In the composite seniority list for Auditors as on 1.3.1988, the names of the applicants are shown at S.No.44 and 27 respectively whereas those of R-4 to 8 are shown at S.Nos.46, 49, 56, 54 and 59 respectively and thus R-4 to 8 are juniors to the applicants [Annexure A-3]. A scheme for promotion to the cadre of Supervisors from among Auditors and SGA was formulated laying down eligibility conditions in para 2.10 [Annexure A-4]. This scheme was statutorily notified in the gazette on 30.6.1990 as in Annexure A-5 under clause 5 of Article 148 of the Constitution of India. It is clearly laid down in the note to the recruitment rules ['RR' for short] that the services as Senior Auditors includes service in the non-functional selection grade prior to restructuring of the cadres. The applicants had thought that they would be considered for promotion in terms of composite seniority but by office order dated 7.1.1993, R-4 to 8 were promoted as Supervisors in officiating capacity with effect from that date as



in Annexure A-8. The applicants ascertained that R-1 to 3 did not reckon the services of the applicants in the composite cadre for the purpose of considering their cases for promotion but instead they have reckoned seniority in the new bifurcated office and therefore they were not considered eligible for promotion. This stand of R-1 to 3 is unreasonable and the same is contrary to the decision of the Tribunal rendered in application filed by Smt. A. BHAGYALEELA V. ACCOUNTANT GENERAL AND OTHERS on 16.4.1992 [Annexure A-9]. Urging that the denial of the promotion to the applicants is arbitrary and not in accordance with law, the applicants have sought the following reliefs:

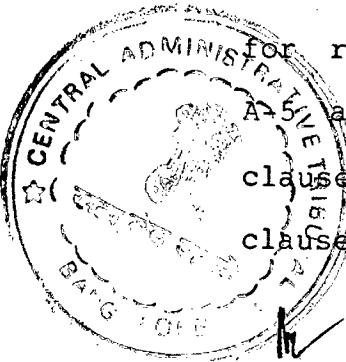
- "i. to quash Office Order No.AG[AU]I/Admn I/A1/92-93/-10-22/541 dated 7.1.93 [Annexure A-8] promoting Respondent 4 to 8, as illegal and unjust.
- ii. to direct Respondent 1 to 3 to consider the case of the applicant for promotion, seeking reckoning this service in the composite office as selection Grade Auditors;
- iii. to promote them from the date their juniors were promoted ie., from 7.1.1993.
- iv. to grant all consequential benefits."

3. R-1 to 3 who do not dispute the facts except for the averment that second option was extended because of the requests of some of the employees, plead that in terms of the circular instructions dated 25.8.1984 [Annexure R-1], the applicants' transfer to Audit Wing was accepted and they were appointed as Auditors with effect from 30.11.1984 as per orders in Annexure R-2 dated 17.11.1984 and the permanent transfer as

per order in Annexure R-3 dated 29.12.1984. R-1 to 3 further plead that the order in O.A. No.806/90 filed by Smt. Bhagyaleela is erroneous as it relied upon condition No.6 of the guideline and ignored condition No.7[iii] which was more relevant in her case. The respondents contend that Note [i] below the Recruitment rules to the post of Supervisor [Audit] to the effect that "service as Senior Auditor includes the service in the non-functional selection grade Auditor prior to restructuring of cadres" refers to only to eligibility for promotion and condition 7[iii] regulates seniority. Besides the said decision is a decision applicable only to Smt. Bhagyaleela and it is of no general application and as such even though the said order came to be affirmed by the Hon'ble Supreme Court in SLP the principle of that decision cannot be made applicable to the present applicants. Because the SLP filed by the department was rejected, the directions of the Tribunal in respect of Smt. Bhagyaleela was complied with. Thus R-1 to 3 contend that the applicants are not entitled to the reliefs sought.

4. We have heard Dr. M.S. Nagaraja for the applicants and Shri M.S. Padmarajaiah, for R-1 to 3.

5. The applicants mainly rely on the statutory rules for recruitment issued on 22.5.1990 as in Annexure A-5 and particularly clause 12 and the note below clause 12[iii]. It is relevant to quote the said clause which reads thus:



"12. In case of recruitment by promotion/promotion/deputation/transfer grades from which promotion/deputation/transfer to be made.

[i] Senior Auditors in the scale of Rs.1400-2600 with five years' regular service in the grade who have passed departmental examination for Auditor or Part I of Section Officer's Grade Examination failing which-

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[ii] Senior Auditors in the scale of Rs.1400-2600 with a combined ten years' regular service in this grade and in the grade of Auditor in the scale of Rs.1200-2040 who have passed departmental examination for Auditors or Part-I of Section Officer's Grade examination.

Note:-

[1] Service as Senior Auditor includes the service in the non-functional selection grade Auditor prior to restructuring of cadres.

[2] If an officer is considered for promotion, all persons senior to him/her shall also be considered [if they have successfully completed the probation where applicable] notwithstanding that they may not have rendered the requisite number of years of service in the feeder cadres.

[3] The requisite years of service prescribed above should be in the relevant feeder cadres in the field offices concerned."

This clause came up for consideration in the case of Smt. A. Bhagyaleela referred to supra, a copy of which is found at Annexure A-9. After considering the rival contentions of the parties therein which are similar to those that are raised herein this Tribunal finally passed the order thus:

"... though the rules have prospective effect, the element of retrospectivity is given by the above Rules to service as Senior Auditor and hence no departmental instructions as referred to dated 14.3.1990 can override the statutory Rules. In this view of the matter, we allow the O.A. and direct respondents 1 and 2 to reconsider her case for her promotion with effect from the date her two juniors were promoted. This should be done within 2 months from the date of receipt of a copy of this order. No costs. She however will be entitled to notional promotion and no arrears of pay but will have the benefit of pay fixation from the date of the notional promotion and actual payment from the date she joins the post of Supervisor on promotion."

The contention of the learned Standing Counsel that this decision in Smt. A. Bhagyaleela had not considered the contention of the respondents that condition 7[iii] of the Circular at Annexure R-1 is untenable, inasmuch it was specifically observed in the said order that no departmental instructions as referred to in the circular dated 14.3.1989 can override the statutory rules. We are required to state a little more elaborately to follow the conclusion reached in the said application. The contention of R-1 to 3 that condition [iii] in the Annexure to Annexure R-1 dated 25.8.1984 is the relevant condition which was required to be taken into account while deciding the question involved in the case of Smt. Bhagyaleela and that the Tribunal



had only relied upon condition No.6 of the said Annexure. This circular in Annexure R-1 cannot override the statutory rules in Annexure A-5 dated 22.5.1990 and the Tribunals decision has the effect that the Note is relevant not only for considering eligibility but also for regulating inter-se seniority. Therefore, the said condition was ignored and relying on the note under clause 12 relating to promotion, it was held that the applicant therein was entitled to the promotion considering her service in non-functional selection cadre of Aditor and, therefore, the said application was allowed. Though this decision rendered in the case of Smt. A. Bhagyaleela is a decision in personam, it has the effect of a decision rendered in rem and the same having been affirmed by the Supreme Court when the SLP came to be dismissed, the principle laid down in the said decision is required to be followed in this application also. We cannot agree with the contention of learned Standing Counsel that the principle of the decision in Smt. Bhagyaleela cannot be made applicable to the present case and that it is erroneous. One of the conditions of option was that the service rendered prior to transfer would be integrated with the existing incumbent in the grade according to the inter-se seniority in the erstwhile composite cadre of the AG as if the employee had been transferred initially to the Audit along with his immediate juniors. Accordingly the seniority list dated 1.3.1988 demonstrates the applicants whose names are found at S.No.44 and 27 respectively to be seniors

to R-4 to 8 whose S.No. are 46, 49, 56, 54 and 59 respectively. It is not explained how even during 1988, the applicants came to be shown as seniors to R-4 to 8 and in the absence of any proper explanation, we are unable to accept the contentions of the official respondents and hold that the applicants who are juniors to the private respondents are not entitled to the claim. In view of what is discussed above, the applicants are entitled to succeed.

6. In the result the application is allowed but with no order as to costs. The order dated 7.1.1993 as at Annexure A-8 promoting R-4 to 8 is quashed. We direct R-1 to 3 to consider the case of the applicants for promotion with effect from the date their juniors viz., R-4 to 8 were promoted and if they are found eligible they shall be notionally promoted with fixation of pay from the date of notional promotion and pay the actual benefit from the date the applicants join the post as Supervisors on promotion with all consequential benefits. The above direction should be complied with within three months from the date of receipt of this order.

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S. Shankar
SECTION OFFICER 28/6
CENTRAL ADMINISTRATIVE TRIBUNAL
ADMINISTRATIVE SECTION
BANGALORE

Sir
16/6/94
MEMBER [J]

Sd/-
16/6/94
MEMBER [A]

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Second Floor,
Commercial Complex,
Indiranagar,
BANGALORE- 560 038.

Dated: 19 OCT 1994

Miscellaneous APPLICATION NO: 460 of 94 in C.A.N. 562/93

APPLICANTS:- Sri. B.G. Sadashiva and another,

V/S.

RESPONDENTS:- The Accountant General (Audit-I),
Bangalore and Seven Others.

To

1. Dr. M.S. Nagaraja Advocate,
No.11, Second floor First Cross,
Sugath Complex, Gandhinagar,
BANGALORE-560009.

2. Sri. M.S. Padmarajiah,
Sr. Central Govt. Stg. Counsel,
High Court Bldg, BANGALORE-1

Subject:- Forwarding of copies of the Order 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 07-10-94

Issued on
19/10/94

copy
9% for DEPUTY REGISTRAR
JUDICIAL BRANCHES.

gm*

Shri B. G. Sadasivam & Anr 1/s 16 Accountant General (Audit - I)

MA No. 460/94 in ² OA NO. 562/93

Orders of Tribunal

VR (MA) / ANV (MJ)

7.10.94

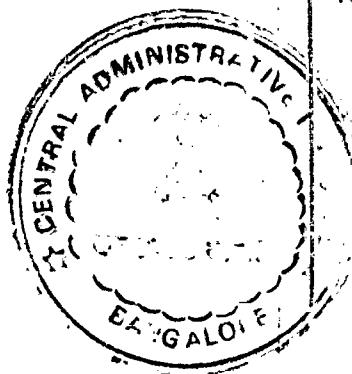
The respondents in OA 562/93 have filed this MA 460/94 seeking extension of time to consider the question whether to implement the directions in OA 562/93 or to prefer SLP before Supreme Court on the ground that there is an anomaly due to the earlier order in OA 860/90 in which the promotion of respondents were not quashed. Having regard to the difficulty faced by the department, we feel it appropriate to extend the time and the time is extended by a period of 3 months from 5.10.94 for appropriate action.

Sri -

MEMBER (J)

Sri -

MEMBER (A)



TRUE COPY

Shri 19/10/94
Section Officer

Central Administrative Tribunal
Bangalore Bench
Bangalore