

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A.No.1091/92

Dt. of order: 30.1.1995

Lalit Kumar Kejriwal

: Applicant

Vs.

Union of India & Ors.

: Respondents

Mr.R.N.Mathur

: Counsel for applicant

Mr.U.D.Sharma

: Counsel for respondents

CORAM:

Hon'ble Mr.O.P.Sharma, Member(Adm.)

PER HON'BLE MR.O.P.SHARMA, MEMBER (ADM.).

In this application under Sec.19 of the Administrative Tribunals Act, 1985, Shri Lalit Kumar Kejriwal, has prayed that the respondents may be directed to grant the benefit of 8 advance increments to the applicant and pay the amount of such increments to him within a period of one month with interest at 18%. He has also prayed that order Annex.A1 dated 7.5.1991 by which the payment of arrears of advance increment for passing the Chartered Accountancy (Final Examination) during the probationary period was denied may be set aside.

2. The facts of the case as stated by the applicant are that in response to an advertisement for holding a competitive examination for selection of Section Officers (Commercial) in the office of the Comptroller & Auditor General of India/Accountant General (Audit), Rajasthan, Jaipur, the applicant applied for the post and after being declared successful in the selection was appointed on the said post vide order dated 14.9.87. As per the appointment order he was to be on probation for a period of 2 years and was to be confirmed after completing the period of probation. The applicant joined the post on 29.9.87 and qualified the departmental examination in September 1988. He completed the period of 2 years for the purpose of confirmation after probation on 29.9.89. Persons selected alongwith the applicant were confirmed in the said post vide order dated 2.5.1990 issued by respondent No.2 i.e. Accountant General(Audit) Rajasthan, Jaipur, but the name of the applicant was not included in the list of employees who were confirmed because the applicant resigned from

service in April 1990. However, since he completed the prescribed probationary period of 2 years, he should be deemed to have confirmed on the post of Section Officer(Commercial). During the probationary period, the applicant qualified the Final Examination of C.A, results of which were declared on 14.1.'88. As per his appointment order, the first increment in the scale of pay in which he was appointed was to be given after one year from the date of regular posting on the post of Section Officer(Commercial) after passing the prescribed examination. Thus, he was entitled to two grade increments in terms of the said appointment order. Further according to him, the Comptroller & Auditor General(CAG) issued a circular letter dated 7.9.87 (Annex.A3) pertaining to incentive for acquiring higher qualifications. In the said circular letter, it was stated that departmental officials who qualified the ICWA Final/CA Final shall be entitled to 6 advance increments on their passing the said examination. Before the issue of the circular only 2 advance increments were being granted. Thus, the applicant is entitled to 6 advance increments on account of his passing the final C.A. examination.

3. The respondents in their reply have stated that there is a misjoinder of causes in the application in as much as different types of increments have been asked for in the same application. They have added that when the applicant joined the service on 29.9.'87, he had already passed the intermediate examination of C.A. Two grade increments in terms of the appointment letter Annex.A2 dated 14.7.87 are not admissible to the applicant because he had been appointed on probation for a period of 2 years, which period could be increased or decreased at the discretion of the competent authority. The applicant could not therefore be deemed to be confirmed as stated by him because while others were deemed to have completed their probationary period satisfactorily and appointed as Section Officers(Commercial) with effect from certain dates in October and November, 1989, the applicant, vide order dated 2.5.1990, ~~the applicant~~ had before that date resigned from service in April 1990. Further, the increments for

passing the final examination of CA during the probationary period also would not be available to the applicant in view of provisions of para 271 of Manual of standing orders (Administrative, Vol.I) (MSO)(B-1) which are statutory in nature. The circular letter dated 7.9.1987 (Annx.A2) relied upon by the applicant is subject to the provisions of the aforesaid para 271. Some apprehension was expressed by the applicant in the application that increments already granted to the applicant may be withdrawn. The respondents have stated that since no benefit of 2 grade increments had been granted to the applicant the question of withdrawing the said benefit does not arise.

4. I have heard the learned counsel for the parties and have gone through the records. The learned counsel for the respondents produced during the hearing on 20.1.95 copies of 2 orders, one dated 2.5.90 showing satisfactory completion of probationary period by others recruited alongwith the applicant with effect from certain dates in October and November 1989 and their posting as Section Officers (Commercial) with effect from the said dates, and the other dated 2.7.93, confirming certain others recruited alongwith the applicant w.e.f. 1.4.1992. Copies of these orders were made available to the learned counsel for the applicant ^{on 20.1.95} and final arguments in this case were heard on 24.1.95.

5. The claim for 8 advance increments may be broken up into the following components:

- (i) 2 grade increments on confirmation
- (ii) 2 grade increments on passing the intermediate of the CA Examination
- (iii) 4 grade increments on passing the final of the CA examination.

6. As far as the claim for 2 grade increments is concerned, it is to be considered in the light of contents of para 5 of Annx.A2 dated 14.9.87 which is the offer of appointment to the applicant. This para states that the first increment in the scale of pay will accrue after one year from the date of the official's regular posting as Section Officer(Commercial) after his passing the prescribed examination. The order dated 2.5.90 was issued by the

respondents stating that certain others recruited alongwith the applicant were deemed to have completed their probationary period satisfactorily and appointed as Section Officers (Commercial) with effect from various dates in October and November 1989. If the applicant had continued in service, and had not resigned in April 1990, there is no dispute that his name would also have ^{been} included in the said order. So it may be assumed that the applicant was also appointed as Section Officer with effect from a date either in October or November 1989. But as per para 5 of Annx.A2, the first increment was to accrue to the applicant after one year from the date of such appointment, i.e. in October or November 1990. The applicant had however, resigned from service in April 1990. He was, therefore, not eligible for 2 grade increments on confirmation.

7. As regards 2 grade increments on passing the Intermediate of the C.A examination, the learned counsel for the respondents stated during the arguments that these have already been granted. This position has not been disputed by the learned counsel for the applicant.

8. Now remains the question of grant of 4 grade increments on passing of the final of the C.A. examination of which the result was declared on 14.1.1988. The learned counsel for the respondents argued that increments in this behalf were not admissible in view of the provisions of para 271 of the Manual of Standing Orders (Administrative) Vol.I, which are reproduced as under:

"271. The S.A.S. Accountants, both temporary and permanent, will be entitled to the following incentives on passing the examinations held by the Institute of Cost and Works Accountants (India) and the Institute of Cost and Works Accountants (London).

(i) For passing Part A/Intermediate Examination Rs.200 as Cash Award.

(ii) For passing Part B/Final Examination - Two advance increments.

These benefits will, however, not be admissible to such persons who were recruited as S.A.S. Apprentices/S.A.S. Accounts on probation, against S.A.S. posts on account of their having passed the above examination or to any such member of the staff who passed these examination before appointment in Indian Audit & Accounts Department."

According to him the Rule prohibits grant of such increment during

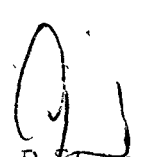
the period of probation. The learned counsel for the applicant however drew attention to Annex.A3 dated 7.9.87 of which part of para (iii) reproduced below:

"(iii) It has been decided to liberalise the existing scheme of granting incentives for passing ICWA Exam. to the following extent:

- (a) At present, departmental officials qualifying in ICWA-Final are entitled to two advance increments. It has been decided to put them on par with fresh recruits coming in with the same qualifications. In other words, departmental candidates will also now be entitled to six advance increments on their qualifying ICWA-Final Exam."

The above part of Annex.A3 appears to suggest that there was a liberalisation of the scheme for grant of advance increments. The original conditions imposed in para 271 of the Manual referred to above have not been mentioned therein, nor is there any reference to para 271 of the Manual ~~wherein~~ in the instructions contained in Annex.A3 dated 7.9.87. Maybe therefore, the liberalisation provided in Annex.A3 is in modification of the instructions in para 271 which are the original provision in this behalf. In the circumstances of the present case and having regard to the language of para (iii) of Annex.A3 reproduced above which has not been made subject to provisions of para 271 of the Manual, I am of the view that officials who pass the final of the CA examination while serving in the department whether in the capacity as Probationary Officer or otherwise, are entitled to these advance increments. Since the applicant has already got two ^{advance} increments on passing of the Intermediate examination which he had passed before joining the service, he shall now be entitled to 4 advance increments from the date of passing of the Final of the CA examination till the date of his demitting office on tendering resignation from the post of Section Officer (Commercial). The payment of the amount due to the applicant shall be made by the respondents within a period of 4 months from the date of the receipt of a copy of this order.

9. The O.A. is disposed of accordingly with no order as to costs.


(O.P. Sharma)
Member (A).