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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH  
AT HYDERABAD

O.A.No.957/89

Date of Order: 9.9.1993

BETWEEN;

Smt.P.Saroja Aravamadhu

.. Applicant.

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1. Comptroller & Audit General of  
India, Indrapratha Estate,  
New Delhi.

2. Director Audit, South Central  
Railway, Secunderabad.

.. Respondents.

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Counsel for the Applicant

.. Mr.N.Ramamohan Rao

Counsel for the Respondents

.. Mr.G.Parameswara Rao  
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CORAM:

HON'BLE SHRI A.B.GORTHY : MEMBER (ADMN.)

HON 'BLE SHRI T.CHANDRASEKHARA REDDY (JUDL.)  
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Order of the Division Bench delivered  
by Hon'ble Shri A.B.Gorthi, Member (Admn.).

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The applicant was directly recruited in 1964 as an Accountant in the Sub-ordinate (Railway) Accounts Service in the Indian Audit & Accounts Department. The respondents inspite of reckoning her seniority from 1964, directed vide impugned memo dated 12.12.1972 that she be assigned seniority below the last officiating senior Auditor who passed the SRAS examination held in November 1967 as she passed the SRAS examination held in November 1968. Aggrieved by the depression of her seniority she approached the Tribunal by means of this OA. Earlier the Tribunal dismissed the OA on the ground of delay and laches. The case went up to the Supreme Court in Civil Appeal No.2837/92 arising out of Special Leave Petition (Civil) No.10957/91. The Supreme Court observed that the matter deserved to be examined on merits and that it ought not to have been rejected on the ground that it was out of time. Consequently the case has now been heard on merits.

2. The applicant having been duly selected was appointed vide office Memo dated 24.9.1964 to the Sub-ordinate (Railway) Accounts Service (SRAS) of the Indian Audit and Accounts Department on probation. Amongst the terms and conditions specified in the appointment order, the following are relevant;

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- (i) The period of probation will be three years. It may ~~however~~ be increased or decreased by the competent authority.
  - (ii) The employee has to pass departmental examination known as SRAS examination Part-I and II within the period of probation. He/she will also have to pass tests in Hindi and the Regional language of the State.
  - (iii) On ~~a~~ satisfactory completion of the period of probation he/she will be eligible for confirmation subject to availability of permanent vacancies.
  - (iv) The seniority will be fixed in terms of para 142-A of the Comptroller & Auditor General's Manual of Standing orders. He /she will be treated to have taken charge as an Accountant only on his/her appointment as such after passing Part-II of the SRAS examination.
  - (v) The appointment was purely temporary on trial basis and liable to be terminated for unsatisfactory service.

3. The applicant joined duty on 2.11.1964. She could not pass ~~ed~~ Part-II of the SRAS examination during the period of her probation but qualified only in November 1968. She passed the Hindi test in 1972, the result of which was published on 25.8.1972. As the applicant passed all the required tests, the respondents vide the impugned order dt. 12.12.1972, declared that the period of probation of the applicant

ended on 25.8.1972, the date on which the result of the Hindi test was announced. As regards her seniority the respondents declared that she would be assigned seniority below the last officiating senior Auditor who passed the SRAS examination held in November 1967 as she passed the examination in November 1968. Based on the improper fixation of her seniority she was promoted to the post of Section Officer in a substantive capacity w.e.f. 1.1.1978. Aggrieved there-by, she made a representation on 23.6.1979 and thereafter on several occasions but without success.

4. The respondents in their counter affidavit have not disputed the truth of the basic facts averred in the application. The contention of the respondents is that in the appointment order of the applicant it was made more than clear that she would be appointed to the cadre only on her qualifying in the required examination and that her seniority would be fixed in terms of Para 142-A of the CAG' Manual of Standing Orders. Para 142-A of the MSO reads as under:-

"A directly recruited SAS person shall rank immediately below the last SAS passed clerk officiating in the subordinate Accounts service of date on which he takes over charge as an Accountant."

The same rule position, with minor verbal changes of no consequences, was reiterated in MSO 2nd Edition of 1969, para 184 (4).

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5. The respondents thus contended that the applicant having passed the examination in November 1968 her seniority was rightly fixed below the last officiating senior Auditor who passed the SRAS examination in 1967.

6. Mr. N. Ramamohan Rao, learned counsel for the applicant has contended that the applicant being a direct recruitee to the post of Accountant in SAS her seniority should reckon from the date of her initial appointment. The respondents had neither the authority nor the justification for totally disregarding her services between 1964 and 1968 for the purpose of counting her seniority. In support of his contention he <sup>has</sup> drawn our attention to the under mentioned cases:-

(1) Union of India Vs. Sri Pratap Narain  
AIR 1992 SC 1363.

(2) V. Bhasker Rao Vs. State of A.P.  
1993 (2) Scale 175.

7. In the light of the judgements of the Supreme Court in the afore-stated cases, Mr. N. Ramamohan Rao contended firstly that confirmation has nothing to do with the reckoning seniority. Seniority of a regularly recruited employee must reckon from the date of initial appointment. The second contention is that whether an appointment is made in a permanent post or a temporary post, so long it is made in accordance with the rules, the service rendered in such post shall count for the purpose of seniority.

7. Mr.G.Parameswara Rao, Standing Counsel for the respondents has urged that the applicant was initially appointed temporarily and on a trial basis and was put on probation for a period of three years, and her services were liable to be terminated during the period of probation for unsatisfactory service. The question of appointing her to the cadre of Accountant would arise only in case she qualified in Part-I and II of the SRAS examination. As the applicant qualified in the examination only in November 1968 she would be deemed to be appointed to the cadre in 1968 and consequently the fixation of her seniority below those who were officiating as senior Auditors and who had qualified in the examination prior to the date when the applicant qualified cannot be said to be irregular. He has also clarified that a probationer is one who is appointed in or against a post substantively vacant with conditions of probation, where as a person "on probation" is one who is appointed to a post for determining his/her fitness for eventual substantive appointment to that post. Accordingly he contends that the applicant was appointed "on probation" and her appointment was subject to her fitness for eventual substantive appointment to that post.

8. The dispute in this case is limited to the question whether the applicant's seniority was correctly fixed or not by the respondents. It has been held in the case of A.K.Bhatnagar Vs. Union of India 1990 (2) Scale 949 that "Seniority is an incident of service and where the service rules



prescribed the method of its computation, it is squarely governed by such rules. The following passage from the judgement will be relevant:-

"Reliance on the ratio of cases where disputes of inter-se seniority between direct recruits and promotees on the basis of officers of one category manning the posts meant for the other category should not have been relied upon for determining a dispute of the nature that arose in these cases.----- Since the rules are clear and the Govt. action was within the perview of the rules, judicial interference was not called for."

9. In the instant case admittedly there were no statutory rules governing the seniority of the Accountants in the Sub-ordinate (Railway) Accounts Service. There are standing orders called Comptroller & Auditor General's Manual of Standing Orders (Administrative). Para 142-A of the Standing Orders is relevant to the case. In fact in the order appointing the applicant, it was stated as one of the conditions of appointment, that her seniority on appointment as Accountant would be governed by para 142-A of the Standing Orders. The Standing Order (reproduced above) would clearly indicate that a directly recruited Accountant shall have to rank immediately below the last SRAS passed clerk officiating on the date on which he/she takes over charge as an Accountant. In other words where a directly recruited Accountant qualifies in the SRAS examination at a subsequent date, he/she will have to reckon his/her

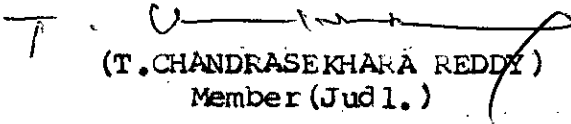





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seniority below that of the last officiating Auditor who passed the examination immediately prior to the date when the direct recruit passed the examination. There is neither any challenge to the validity of this para of the Standing Order nor do we <sup>perceive</sup> any infirmity in the said paragraph as would warrant our interference. The respondents having fixed the seniority of the applicant strictly in terms of para 142-A of the Manual of Standing Orders, we cannot say that the seniority of the applicant was fixed either arbitrarily or unfairly or in violation of the any of the extant rules or instructions.

10. In the result, the application is dismissed. There shall be no order as to costs.

  
(T. CHANDRASEKHARA REDDY)  
Member (Judl.)

  
(A.B. GORTHI)  
Member (Admn.)

Dated: 9th September, 1993

(Dictated in Open Court)

  
Deputy Registrar (J)

To

1. The Comptroller & Audit General of India,  
sd Indraprastha Estate, New Delhi.
2. The Director Audit, South Central Railway, Secunderabad.
3. One copy to Mr. N. Rammohan Rao, Advocate, CAT. Hyd.
4. One copy to Mr. G. Parameswar Rao, SC for AG. CAT. Hyd.
5. One copy to Library, CAT. Hyd.
6. One spare copy.

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