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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH
AT HYDERABAD

O.A.S. No.868/94 and 989/94

Date: 8.1.97

1. O.A. 868/94

Between:

1. B. Ch. Gopala Krishna
2. S. Dattatreya Sarma
3. P. Pandu Ranga Rao
4. V. V. Subrahmanyam .. Applicants

and

1. Comptroller & Auditor
General of India,
New Delhi.
2. Principal Accountant General,
Audit-I, Andhra Pradesh,
Hyderabad. .. Respondents
Applicants in person
Narayana Venkateswaran .. Counsel for applicants
Mr. G. Parameshwara Rao .. Counsel for respondents

2. O.A. 989/94

Between:

S. V. Ranga Reddy .. Applicant

and

1. Comptroller & Auditor General
of India, New Delhi.
2. Accountant General (A&V),
Andhra Pradesh, Hyderabad. .. Respondents.

(Mr. S. V. Ranga Reddy, applicant, in person)

Mr. G. Parameshwara Rao .. Counsel for respondents

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HON'BLE MR. JUSTICE M.G. CHAUDHARI, VICE CHAIRMAN

HON'BLE MR. H. RAJENDRA PRASAD, MEMBER (ADMINISTRATIVE) *SD*

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JUDGEMENT

(Per Hon'ble Shri H. Rajendra Prasad, Member (Administrative)

The facts and circumstances, the reliefs claimed, and the grounds thereof in both cases being identical, the two OAs were heard together. At the final hearing of the case the parties appeared in person with the consent of the counsel who had earlier appeared for them.

2. The applicants in OA 868/94 are working as Assistant Audit Officers in the office of the Principal Accountant General (Audit I), Andhra Pradesh, while the applicant in OA 989/94 is working as Assistant Accounts Officer in the office of the Accountant General (Accounts & ~~Entitlements~~), Andhra Pradesh. The 1st and 4th applicants in OA 868/94 passed the Subordinate Accounts Service (SAS) Examination in February, 1977; the second and the third applicants, passed the Section Officers Grade Examination (Parts I and II) in December 1977, while the applicant in OA 989/94 passed the SAS Examination in November 1975.

2.1 All these applicants thereupon volunteered to officiate as Section Officers in the office of the Accountant General, Maharashtra, and were accordingly deputed as under:

OA 868/94: 1st applicant	- June, 1978 to May, 1981
2nd applicant	- July, 1978 to June, 1983
3rd applicant	- June, 1978 to April, 1986
4th applicant	- August, 1977 to April, 1978

(deputed again in February, 1979
till February, 1988 to the
office of the Deputy Director
(Food), Bombay.)

The applicant in OA 989/94 was deputed to the same office, viz., Accountant General, Maharashtra, from May, 1978 to May, 1981.

2.2 These five applicants were promoted in their turn as Section Officers in their parent unit in August 1981, May 1982, September 1981, September 1981 and July 1981, respectively.

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3. The deputation of the applicants to office(s) in Maharashtra was due to the fact that adequate number of qualified officials were not available there to fill the existing vacancies of Section Officers whereas there were more qualified candidates awaiting promotion in the office(s) in Andhra Pradesh, than the number of vacancies available to absorb them. The former are called 'Deficit Officers'.

3.1 At the point of their initial deputation, the applicants had the choice of opting for (a) grade pay plus 30% of their basic pay as deputation allowance, or (b) the minimum of the pay scale of a Section Officer. All applicants herein opted for (a) above.

4. It would appear that upto 1978, the Deputationists were allowed the concession of counting the officiating service rendered by them in the capacity of Section Officers in clearly identified deficit offices, for drawing increments at the time of pay-fixation on their subsequent regular promotion in their parent offices. However, after the amendment to FR 22 sometime in 1965, it was not found possible to continue the concession. With this development, a situation was created in which deficit offices were severely handicapped for want of suitable qualified officials who did not find it attractive any longer to volunteer for deputation to those offices. While this was the plight of the traditionally 'deficit' offices, there was discontent among the 'surplus' offices with too many qualified officials and, correspondingly, few or no vacancies available to absorb them. To remedy this unsatisfactory situation, the sanction of the Government of India in the Ministry of Finance was obtained for the relaxation of conditions under proviso (iii) of F.R.22 for the period upto 31st March, 1988, or the date of announcement of the results of SAS Examination, 1979, whichever was earlier. This enabled the SAS passed officials who were already on deputation to deficit offices to count the

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services rendered by them in ex-cadre posts upto that date, i.e., 31st March, 1988, for the purpose of pay-fixation on their promotion as S.Os. in parent offices. This concession was conveyed in Circular No. NCE/21/1980 vide C.A.G. No. 1002-NCE.I/15-79 dated 2nd April, 1980.

Q.1 In a separate and subsequent circular (No. 2349-NCE.I/15.79) dated 25th July, 1980, the C.A.G. prescribed a time-limit of three months for the purpose of extending the above-stated concession. In the circular it was explained that the condition(s) prescribed under proviso I(iii) of F.R.22 which had been earlier relaxed upto 31st March, 1973, only in respect of deficit offices of Accountants General Assam, Himachal Pradesh, and Chandigarh and Jammu & Kashmir, was to be now extended to other identified deficit offices from 1st April, 1973 to 31st March, 1980. This concession, it was further explained, was being given to the eligible officials because of the fact that the deputationists were not aware at the time of their deputation whether the relaxation ~~now~~ allowed by the Government would be available to them. The deputationists in the specified deficit offices were therefore given the choice to opt for the grade pay of SAS-qualified officials. Such option had to be exercised within three months from 25th July, 1980. An additional condition was that such officials had to refund the over-payments, if any, made to them. On the fulfilment of these twin conditions, the entire period of their deputation would be counted for the purpose of increment in the Section Officer's post in their parent units on their regular promotion. (It was clarified in the earlier circular that the concession so extended to them would not, however, confer any benefit of seniority over their seniors who may not have exercised similar option)

4.2 At one stage, it was contemplated to approach the Government for extending this concession beyond 31st March, 1980.

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indeed for as long as necessary beyond the said date. It would seem, however, that either the suggestion did not favour with the Government or was not pursued by the C.A.G. Whatever the reason, the scheme of exercising options/refunding the overpayments, is seen to have been renewed only on an annual basis on 19.8.1980, 6.5.1981, 22.6.1982, 26.11.1982 - and possibly subsequently.

5. None of the applicants exercised any option in response to the scheme. Resultantly, they denied themselves ~~of~~ the concession relating to the counting of service while on deputation to deficit offices in Maharashtra, rendered in officiating capacity of Section Officers in those offices, when their pay came to be fixed on regular promotion in their parent offices. And that is their sole grievance in these OAS.

6. The applicants assert that the reason for their having been unable to exercise timely option was that the circular dated 25th July, 1980, was not brought to their notice at all. Consequently, they were totally unaware of either the concession extended to the likes of them or the requirement of any option to be exercised by them in this regard. In support of this assertion they explain that neither the Deputation Unit of their parent office nor the office of their deputation took care to circulate the scheme to them individually or to apprise them of the details of the scheme in any ~~manner~~. They say that while on deputation in Maharashtra, and even after their return to the parent unit, their duties required them to be away on protracted ^{they} tours, and thereby [^] could not gain any awareness of the scheme at all. Applicant-1 says he learnt of the said circular in 1992. Applicant-2 says he learnt of it only in 1993. Applicant No.3 says that circulars dated 2nd April, 1980 and 25th July, 1980, were duly communicated to him, but the later circular of 6th May, 1981, and 22nd June, 1982, were not sent or shown to him; he

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states that he did not think of changing his option as, in 1980, Deputation Allowance which he was already receiving was more beneficial. He could lay his hands on the subsequent circulars only in 1993 with great difficulty. Applicant-4 duly saw the circular of 1980, but the later circulars were not communicated to him.

6.1 All the applicants submitted representations with a request that they be permitted to exercise option as originally envisaged in 1980. They state that this was done as soon as each of them became aware of the circulars on different dates. Their requests were not accepted. Hence these OAs.

7. The grievance of the applicants is based on the following grounds:

- (i) they were not made aware of the relevant circulars issued in 1980;
- (ii) due to the non-supply/circulation of these circulars, they were made to incur recurring financial loss;
- (iii) the restricted and selective extension, to few officials, of the concession of treating the period of deputation for the purpose of fixation of pay in Section Officers grade on promotion in their parent units, is discriminatory and arbitrary;
- (iv) that the response of the authorities rejecting their claim is non-speaking, and the result of non-application of mind;
- (v) the stand of the respondents that the applicants' claims are time-barred is illegal, arbitrary and discriminative, in view of (i) and (ii) above;
- (vi) when the said benefit was extended to even retired persons or the heirs of deceased officials in terms of the scheme, the same should not have been denied to the applicants who are still serving the department;

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(vii) the time-limit of three months prescribed by Respondent No.1 was set by him alone and cannot have any binding effect on the applicants, when the Government themselves did not lay down any limit of the kind.

7.1 Based on the above grounds and arguments, the applicants pray for setting aside the orders issued by the Principal Accountant General (Audit-I), Hyderabad, rejecting the individual claims of the applicants, on 25th April, 1994.

8. The Respondents have filed an elaborate reply rebutting the various claims and assertions of the applicants. The counter-affidavit is mostly factual, covering aspects of the case which are not in dispute. The following points, however, deserve mention:

(a) Copies of circular dated 25th July, 1980, containing the details of the concession was duly sent to all deputationists, including the applicants.

(b) Circulars issued from time to time after July, 1980, were not relevant to the claims of the applicants since these (subsequent) circulars merely extended the benefit to those officials who opted for deputations after 1980 and every successive extension was applicable only to such fresh deputationists and not to those, like the applicants, who had opted to go on deputation prior to 1980 and had failed to exercise the option in time, viz., within three months from 25th July, 1980, when called upon to do so.

(c) The applicants advisedly refrained from exercising revised option due to the simple fact that the original option exercised by them, viz., grade pay plus deputation allowance, was more beneficial to them.

(d) Applicant No.2 was deputed to Accountant General Maharashtra I who in turn placed his services at the disposal of Accountant General, Central Bombay, which was not a deficit office. Hence he was not entitled to the scheme of benefit applicable only to those officials who are deputed to deficit offices.

(e) Applicant No.4 opted to go on deputation to the office of the Director of Audit (Food) which was also not classified as Deficit Office.

(f) The applicants have themselves stated that they did not opt for Section Officers' scale as it was not of any benefit to them at the relevant time. (This is not found to be correct since only Applicant No. 1 and 3 stated so, and not the remaining two applicants).

(g) Even though no speaking order was required to be issued to the applicants in the matter, the impugned orders did nevertheless spell out, even if briefly, the reason for the rejection of their claim, viz., impermissible delay in preferring the claim.

It is finally asserted by the Respondents that the reliefs claimed by the applicants are inadmissible on merits as the grounds adduced are untenable, and the OAs deserve dismissal.

9. In an excessively lengthy rejoinder, the applicants reiterate all their earlier pleadings and refute some of the replies given by the respondents in their counter-affidavit. They maintain that the circular of 25th July, 1980, was not supplied to them at any time; that the subsequent circulars extending the benefits to deputationists after 1980 were equally applicable and relevant to their case in as much as each case of deputation is tenable only for an year and renewed annually; that the order rejecting their claim is non-speaking; that the

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rejection of their claims was impermissible specially when it had been duly extended to retirees and heirs of deceased deputationists; that the same negated the basic policy of the government which was to encourage volunteers to opt for a tenure on deputation in deficit offices; and that the government had not itself prescribed any time-limit for the exercise of options in the circular of 2nd April, 1980. Quite apart from these twice-stated arguments, the rejoinder goes to needless lengths to repeat all old pleas and raises no new point. For this reason alone, the rejoinder needs to be ignored : it contains no new fact or any fresh revelation.

10. We have considered the facts of the case carefully. non-exercise of options within the time-limit prescribed by the Respondents in their circular dated 25th July, 1980, is the central issue here. The respondents' stand is simply that the applicants are not entitled to any relief since they basically failed to exercise the option in time. The applicants, on the other hand, assert that they were neither aware of the relevant circular nor the stipulation (or the time-limit) about any option to be exercised. In support of this assertion the applicants cite their continuous and protracted tours-of-duty away from their temporary headquarters which they say rendered it difficult for them learn about the benefit sought to be extended to the like of them.

11. Before this basic issue is dealt, we consider it necessary to dispose of two ancillary questions arising in the case.

12. The first relates to the concept of 'deficit offices'. By this we understand to mean those major offices/units which do not receive an adequate number of qualified officials within their administrative jurisdiction to fill the available vacancies over a period of time through the normal channels of intake. This necessitates the resort deputation from offices elsewhere. The

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office of the Accountant General, Maharashtra, was one such deficit unit. Now, a particular smaller office within the territorial jurisdiction of A.G., may not have been specifically declared to be a deficit office. Nevertheless, it doubtless remains the responsibility of the Accountant General to initiate necessary steps to provide the needed manpower such office(s) to the extent possible by way of deployment of officials from among the available volunteer-deputationists. To state thereafter that a particular office has not been declared to be a deficit office is to deny logic. Such seems to be the position of the office of the Deputy Director (Food), Bombay. Even if it is argued that the said office was a unit of Director of Audit (Food), New Delhi, and not therefore a sub-unit of A.G., Maharashtra, we notice that the circular dated 2nd April, 1980, was specifically addressed to the former, calling for information regarding the prevailing shortages of SAS qualified officials to man the posts of Section Officers. This fact clearly suggests that the sub-units of Director of Audit (Food) were equally handicapped for want of suitable qualified officials like any other unit in the State. For this reason we are unable to accept the plea of the respondents that the office of the Deputy Director Audit (Food), Bombay was outside the scheme.

12. The second question relates to the so-called non-speaking rejection of the applicants' claims by the C.A.G. The applicants complain that the CAG had turned down their request through an order which does not spell out the reason for such rejection. The respondents say that no 'speaking' order is necessary since this is not a matter coming within CCS(CCA) Rules, 1965 (Para 4(viii) page 8 of the counter-affidavit). This is not quite correct since a detailed reasoned order would be in order even in matters outside those coming under the said rules, specially

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when a request comes to be rejected. However, it is seen that the reason - delayed claims - have been duly given by Respondent 1. Delay - in exercising options, in preferring claims - being the main issue in these cases, the indication thereof is considered adequate and sufficient. No other elaborate reasons are necessary to be indicated when none are needed. We reject the plea if the applicants on this score.

13. Now for the main question of delay. We notice that the relevant circular was duly communicated (Annexure A-3) to all 'SOS (on deputation) (through Deputation Unit, Adm'l Sn)' by the office of the Accountant General, A.P.-I, on 19th August, 1980. Further more, it is inconceivable that Accountant-General, Maharashtra (in whose office or in offices under him the applicants were functioning on deputation) would have failed to communicate to all concerned offices the details of the new benefit being extended to deputationists, for the simple reason that many such deputationists were even then working in his office or offices under his control or within his territorial jurisdiction. For this reason, we are inclined to believe and accept as true the statement of the Respondents that the said circular was communicated to the deputationists by both the Accountants General of Andhra Pradesh as well as of Maharashtra. Moreover, circulars of common interest affecting the staff are routinely displayed on the office notice-board as an ordinary practise. And even if the applicants happened to be on tour at the point of time when they were so displayed, one cannot imagine that they did not visit or return to the HQ office even once between inspections during the entire period available for exercising the required options; if they were so inclined to exercise it. Above everything, we cannot persuade o to believe that the applicants-all of them Audit/Accounts SOS, who are generally known to be alert and alive to any new

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concession or benefit that may come their way from time to time - could remain so ignorant in a matter which was of immediate advantage to them for as long as a decade, and that they could only obtain a copy several years later 'with greatest difficulty', as one of the applicants chose to put it. The circular was not a confidential document nor was it intended for restricted circulation, which is why we are unable to see why there should have been so much 'difficulty' in obtaining a copy. There were several normal ways in which the deputationists could have gained knowledge of the contents of the said circular - individual intimation, display on office notice-board, through the concerned group officers, from the journals periodically issued by the Association of Officers, if any, or by just word of ----- ~~the applicants could~~ remain in the dark about the scheme for as much as a decade and more. For these reasons, we totally reject the story set up by the applicants in this regard. The reasons for the applicants' failure to avail of the opportunity to exercise the option available to them cannot certainly be ascribed to non-communication of the relevant circular(s), or their lack of knowledge, as asserted by them. To our mind, the reason seems to be elsewhere. It would seem probable that the applicants were quite satisfied until several years later, with the deputation allowance granted ~~obviously~~ to them; choosing the minimum of the grade pay of S.Os was less beneficial - as has indeed been stated by one of them. It was perhaps owing to developments which occurred much later, and which could not evidently be foreseen in 1980, - like for example, a substantial improvement in the pay-structure from the beginning of 1986 - which awoke the applicants to the opportunity missed (apparently wantonly) by them earlier. But by then they were late for the benefit by a decade and more.

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14. The applicants contend that the extension of the benefits through circulars issued subsequent to the initiation of the scheme in 1980 had the effect of extending the date of exercising the options. We do not agree. It is clear that the later circulars pertained to only those officials who had volunteered for deputation to deficit offices after the results of SAS exam, 1980, ^{and in later years} were announced. Although this was not clearly spelt out in the relevant circulars, the import and intent are not in any doubt.

15. To sum up, the facts revealed in these cases do not persuade us that the applicants are entitled to the reliefs claimed by them. They have not succeeded in establishing any right and the grounds ascribed are far from convincing. We are also of the view that the time-limit of three months set by the authorities was not unreasonable or needlessly restrictive.

16. In the light of what has been discussed in the preceding paragraphs, we have no choice except to disallow the claims of the applicants. The OAs are accordingly dismissed as lacking in merit.

17. No costs.

H. Rajendra Prasad
(H. RAJENDRA PRASAD)
Member (Admn.)

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M.G. Chaudhary
(M.G. CHAUDHARI)
Vice-Chairman

Dated: 8th January, 1997

vm/sd

Prabhakar
Deputy Registrar (D) ce.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR.JUSTICE M.G.CHAUDHARI
VICE-CHAIRMAN

AND

THE HON'BLE MR.H.RAJENDRA PRASAD

Dated: 8 -1 -1997

ORDER / JUDGMENT

M.A./R.A/C.A. NO.

in

O.A.NO.

868/96 & 989/96

T.A.No.

(W.P.)

Admitted and Interim Directions
Issued.

Allowed.

Disposed of with directions

Dismissed.

Dismissed as withdrawn.

Dismissed for default.

Ordered/Rejected.

To order as to costs.

p.m.

