

(24)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, HYDERABAD BENCH.
AT HYDERABAD.

..

O.A.No. 678/96.

Date of decision: April 11, 1997.

Between:

A.A.Narasimha Murthy. .. Applicant.

And

1. The Comptroller and Auditor
General of India, No.10, Bahadurshah
Zafar Marg, New Delhi.
2. Accountant General, Audit II,
Saifabad, Hyderabad.
3. Principal Accountant General,
Audit I, Saifabad, Hyderabad. Respondent.

Counsel for the Applicant: Sri P.B.Vijaya Kumar.

Counsel for the respondents: Sri G.Parameswara Rao.

JUDGMENT.

(by Hon'ble Sri R. Ranga Rajan, Member (A)).

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Heard Sri P.B.Vijaya Kumar, learned counsel for the
applicant and Sri G.Parameswara Rao, learned counsel for the
respondents.


The applicant is an Assistant Audit Officer (Commercial).
He had passed the ICWAI Final Examination held in December, 1995
and he was declared to have passed in that Examination in
December, 1995 as per the Certificate issued by the Institute
of Cost and Works Accounts of India. The applicant by his

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representation dated 30--4--1996 (Annexure A-II to the O.A.) requested the Authorities for releasing the advance increments for passing ICWAI Final Examination instead of lumpsum amount. That representation was rejected by the impugned Memo No. AG (AU) -II/Admn./U.III/96-97 dated 20--5--1996 (Annexure A-3 to the O.A.) In the impugned Memo, the applicant was advised to submit the Photo copies of pass certificate of ICWAI final examination and Marks Sheet in duplicate along with the original documents to Administrative Section for verification and for taking necessary action. It is stated that the certificates asked for were not sent by the applicant. He was also informed by that impugned Memo that he is entitled for lumpsum grant only for acquiring the ICWAI qualification as provided for in the impugned Circular No. NCE-03/96 dated 24--1--1996 (Annexure to the O.A.)

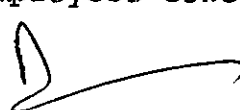
This O.A., is filed for setting aside the impugned Order dated 24--1--1996 (Annexure A-1) to the O.A.) so far it relates back to the earlier date of 31-1-1995 and also for setting aside the rejection of his request for releasing advance increments by Memo dated 20-5-1996 (Annexure A-II) for a consequential direction to release the advance in terms of the earlier order dated 7--9--1987 (Annexure to the O.A.)



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A reply has been filed by the respondents in this connection. The respondents submit that the lumpsum incentive Scheme for acquiring higher qualification was issued with the sanction of the President by Office Memorandum No.1/2/89-Estt.(Pay-I) dated 31-1-1995. Even though that Memorandum was received by the 1st Respondent, the internal Circular was issued on 24-1-1996 after obtaining some clarifications. The internal circular dated 24-1-1996 was issued with retrospective effect from 31-1-1995 as the Presidential Order was issued already on 31-1-1995. The respondents state that the applicant having passed the ICWAI final examination later than 31-1-1995, he cannot claim the incentive as per the earlier order dated 7-9-1987. They state that the earlier Order No.178-PC(COORD)1-87 dated 7th Sept., 1987 (Annexure A-IV to the O.A.,) is only an executive order which has been replaced by the Presidential Order dated 31-1-1995 and that the applicant is entitled to the incentive only in accordance with the Presidential Order.

The learned counsel for the respondents also submits that Administrative instructions can be issued retrospectively. I have no doubt in my mind that Administrative Instructions can be issued retrospectively provided they do not take away the accrued rights of the employees concerned.



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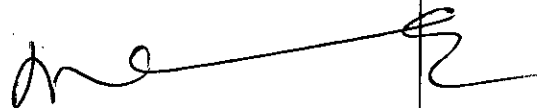
It is a settled law that accrued rights cannot be withdrawn by issuing Administrative orders with retrospective effect. In the present case, the payment of lumpsum amount was issued by the Order dated 24-1-1996 with retrospective effect from 31-1-1995. When the Presidential Order was issued on 31--1--1995, it is not clear why an interim order could not have been issued immediately after 31-1-1995 pending certain clarification in this connection. The clarification received later could have been issued in continuation of the interim order issued immediately after the introduction of the Scheme as per Presidential Order dated 31--1--1995.

The learned counsel for the Respondents submits that it was not considered very essential to issue any interim order after receipt of the Presidential Order dated 31-1-1995 as the Presidential Order was also Gazetted. It is not possible for everybody to know what is Gazetted in the Gazette. It is for the Departmental Authorities to inform all concerned the extant instructions by a Departmental Circular. That Departmental Circular can be amplified later if required. The Respondents cannot wait to clear all the doubts and issue a Circular later with retrospective effect if that latter/^{Circular}with retrospective effect is going to ~~deprive~~^{deprive} some of the accrued rights of the employees. It has, therefore, to be held that

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the Order issued on 24--1--1996 can have only prospective effect and will come into force only from that day onwards. As the applicant has passed ICWAI Examination ~~in~~ in December, 1995 earlier to the issue of the Order dated 24-1-1996, he is eligible to get the incentive as provided for in the Circular dated 7--9--1987. However, the respondents are free to obtain the necessary options from the applicant and others with regard to the Scheme to be followed in their cases if ~~gh~~ those employees had passed the ICWAI Examination between 31--1--1995 and 24--1--1996. Before granting the relief to the applicant herein as directed above, he should be asked to submit the certificates as called for in the letter dated 20--5--1996.

With the above directions, the O.A., is disposed of. No costs.



(R. RANGARAJAN)
MEMBER (A)

Date: 11th April, 1996.

Dictated in open Court.

sss.

Ambar
22-4-96
D.R.(J)

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Copy to:

1. The Comptroller and Auditor General,
General of India, No.10, Bahadurshah
Zafar Marg, New Delhi.
2. Accountant General, Audit II,
Saifabad, Hyderabad.
3. Principal Accountant General, Audit-I,
Saifabad, Hyderabad.
4. One copy to Mr.P.B.Wijaya Kumar, Advocate, CAT, Hyderabad.
5. One copy to Mr.G.Parameswara Rao, Addl.CGSC, CAT, Hyderabad.
6. One copy to D.R(A), CAT, Hyderabad.
7. One duplicate copy.

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28/4/97

C.C. Today

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TYPED BY
COMPILED BY

CHECKED BY
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

THE HON'BLE SHRI R.R. AGARWAL : M(A)

AND

THE HON'BLE SHRI B.S. JAI PARAMESHWAR:
M(J)

DATED: 11/4/97

ORDER/JUDGEMENT

R.A/C.P/M.A.No.

in

G.A.No. 678/96

ADMITTED INTERIM DIRECTIONS ISSUED
ALLOWED
DISPOSED OF WITH DIRECTIONS
DISMISSED
DISMISSED AS WITHDRAWN
ORDERED/REJECTED
NO ORDER AS TO COSTS

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II COURT

