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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH
HYDERABAD

O.A.No. 1107 OF 1996

DATE OF DECISION: 19.11.98

1. D.Raghavendra Rao & others

PETITIONER(S)

Mr.V.Venkateshwar Rao

ADVOCATE FOR THE
PETITIONER(S)

VERSUS

1.The Department of Atomic Energy &
another.

RESPONDENT(S)

Mr.V.Rajeshwar Rao

ADVOCATE FOR THE
RESPONDENT(S)

THE HON'BLE SRI R.RANGARAJAN, MEMBER(ADMN)

THE HON'BLE SRI B.S.JAI PARAMESHWAR, MEMBER(JUDL)

1. Whether Reporters of local papers may be allowed to see the Judgement? 16
2. To be referred to the Reporter or not? 16
3. Whether their Lordships wish to see the fair copy of the Judgement? 16
4. Whether the Judgement is to be circulated to the other Benches? 16

JUDGEMENT DELIVERED BY HON'BLE SRI B.S.JAI PARAMESHWAR, MEMBER(J)

OR

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

O.A.No.1107 OF 1996.

DATE OF ORDER: 19.11.98.

Between:

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|-------------------------|------------------------------|
| 1. D.Raghavendra Rao. | 14. Y.V.L.Narasimha Rao. |
| 2. P.J.Joseph. | 15. Smt.Vijayalakshmi Rajan. |
| 3. G.Prabhakara Rao. | 16. Ch.R.K.Prasad. |
| 4. Ashfaq Ali. | 17. K.N.P.Pillai. |
| 5. Smt.T.Girija Manik. | 18. A.A.Khader. |
| 6. C.Unnikrishnan. | 19. G.Krishna. |
| 7. BH.Umamaheshwar Rao. | 20. M.A.H.Nayeem. |
| 8. G.Yadagiri. | 21. R.Narender. |
| 9. S.M.Narasimha. | 22. Sudha Alney. |
| 10. K.Veerawamy. | |
| 11. Smt.Kamalavathy. | |
| 12. Smt.Bala P.Nair. | |
| 13. K.Radhakrishna. | |

..... Applicants

a n d

1. The Department of Atomic Energy,
represented by Deputy Secretary
to Government of India, Anushakthi
Bhavan, Chatrapathi Sivaji Maharaj
Marg, Bombay-400 039.
2. The Nuclear Fuel Complex,
represented by Chief Executive,
Department of Atomic Energy,
Government of India, Hyderabad-500 762.

..... Respondents

COUNSEL FOR THE APPLICANTS :Mr.V.Venkateshwar Rao

COUNSEL FOR THE RESPONDENTS :Mr.V.Rajeshwar Rao

CORAM:

THE HON'BLE SRI R.RANGARAJAN, MEMBER (ADMN)

A N D

THE HON'BLE SRI B.S.JAI PARAMESHWAR, MEMBER (JUDL)



OA.No.1107 OF 1996.

: O R D E R :

(AS PER HON'BLE SRI B.S.JAI PARAMESHWAR, MEMBER(J))

Heard Sri V.Venkateshwar Rao, the learned Counsel for the Applicants and Sri V.Rajeshwar Rao, the learned Standing Counsel for the Respondents.

2. There are 22 applicants in this OA. They are all working as Senior Accounts Clerks or the Assistant Accountants respectively under the Respondent No.2 Organisation. The Respondent No.2 Organisation is a constituent unit of the Department of Atomic Energy.

3. Based on the recommendations of the IVth Pay Commission, Ministry of Finance, Department of Expenditure in its OM No.F5(32)-E.III/86-Pt-II, dated:12-6-1987, issued instructions regarding restructuring of Accounts staff in the Organised Accounts Department. On receipt of the said OM, the Department of Atomic Energy considered the applicability of the said restructuring of Accounts staff in the Atomic Energy and its constituent units with a view to have the re-organisation of the ministerial set up and also to provide promotional avenues to the UDCs working in the Department and its units.

4. During 1989 and 1991 functional posts were upgraded by way of partial implementation of the said OM. The said functional posts were designated as Assistant Accountant as per OM dated:21-11-1988. The appointment to the grade of Assistant Accountant^{-order} was made from among those UDCs who^{-red} qualify in the written examination for the post of Assistant Accountant conducted by the Department of Atomic Energy. The written examination consisted of four papers

of 100 marks each. The Department of Atomic Energy reviewed the situation and with a view to give the upgraded post a separate identity, it decided to have different designations for the said post from Assistant Accountant and accordingly, the upgraded posts on functional basis in the units were designated as Senior Accounts Clerk, vide its OM dated:3-5-1989.

5. The applicants herein then approached this Tribunal in OA.No.679 of 1991 for certain reliefs. This Tribunal decided the OA on 4/7-8-1995. The Paras 9, 13 and 14 are relevant in the said Order. We feel it proper to reproduce herein:-

"9. It is also urged for the applicant that as it is a case of upgradation of UDC posts in the Accounts wing, the promotions to the upgraded posts have to be limited to the UDCs in the Accounts wing only. But we cannot accede to the said condition. No UDC can claim as to whether he belongs to Accounts wing or administrative wing for there is only one seniority unit for UDCs in the NFC and it is also further open to the department to transfer a UDC working in the Accounts wing to the administrative wing and vice-versa. Thus it is not a mere case of request transfer of UDC from administrative wing to Accounts wing and vice-versa. In support of the plea of the Respondents that there is no cadre like UDC in Accounts wing or UDC in Administrative wing and there is only one cadre of UDC in NFC and they

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are being transferred from administrative and wing to Accounts wing/vice-versa office Order dated:10-9-1993 is relied upon(vide Annexure-8 to the additional reply statement). The further submissions for the Respondents is that the UDCs working in the administrative wing are also eligible for consideration for promotion to the post of Asst.Accountant even before O.M. dated: 21-11-1988 was issued and thereafter also no rejoinder is filed to challenge the said plea as per additional reply statement.

13. The learned Counsel for the applicants submitted that it will be discriminatory if the notional benefit is not given with effect from 1-4-1987 to the UDCs promoted to the upgraded posts of Asst. Accountants in DAE, when it was so given to the Accounts Officers in DAE promoted to the upgraded posts. It is not known as to whether the Ministry had not adverted to it in regard to the UDCs promoted to the posts of Assistant Accountants due to the pendency of this OA. Be that as it may, it is just and proper to require R-2 to consider as to whether denial of the notional benefit to the UDCs promoted to the upgraded posts of Assistant Accountants in DAE with effect from 1-4-1987 on 1st of the month on the expiry of three years in the post of UDC whichever is later, is improper when it is being done in case of Accounts Officers promoted to the upgraded posts in DAE.

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14. Hence, instead of deciding this point at this stage, R-2 is required to consider the point referred to in Para.13 above. It is needless to say that if ultimately the applicants are going to be aggrieved in regard to the ultimate decision that may be taken by the Ministry, they are free to move this Tribunal under Section.19 of the Administrative Tribunals Act and if such OA is going to be filed, it will be considered on merits. R-2 has to take decision expeditiously and preferably by the end of November,1995."

6. In compliance with that directions issued in the said OA, the respondents considered the greivance of the applicants and by their letter dated:12-3-1996 informed the applicants that the notional benefit of creation of posts of Senior Accounts Clerks with effect from 1-4-1987 or from first of the month on the expiry of three years in the post of UDC, whichever is later as in the case of the Accounts Officer in the Department and its constituent units in terms of DAE OM dated:18-10-1994. ^{was examined} The case was thoroughly examined and noted that the grade of Senior Accounts Clerks was introduced in the Department on a demand made from the staff side to reduce the stagnation among the senior UDCs and to provide some promotional oppurtunities to those UDCs who could not qualify in the Departmental Examination for higher post in Administrative/Accounts cadre as a special case. The method of selection, implementation were also based on the deliberations in the Departmental Council meeting. Therefore, the promotion of UDCs as Senior Accounts Clerks cannot be equated with the promotion of Accounts Officer_s to Senior Accounts Clerks. Further since introduction of

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the grade of Senior Accounts Clerks itself in the Department and its constituent units has not yet been ratified by the Member, ~~for~~ Finance, Atomic Energy Commission, hence revocation of Orders creating the post of Senior Accounts Clerk is also under consideration. Thus it was decided that it may not be possible to give effect to the introduction to the grade of Senior Accounts Clerks in the Department of Atomic Energy and its units with effect from 1-4-1987.

7. The applicants being aggrieved by the said reply dated:12-3-1996 have filed this OA for the following reliefs:-

"To call for the records pertaining to Letter No.6/15(14)/91-I&M(NFC)/95, dated: 12-3-1996 issued by the 1st respondent and set aside the ~~same~~ by holding that the applicants herein are entitled for notional fixation of pay with effect from 1-4-1987 on their promotion as Senior Accounts Clerks pursuant to restructuring orders issued on dated:21-11-1988 issued by the 1st respondent with all consequential benefits such as arrears of pay and allowances etc..."

8. The respondents have filed reply disputing the averments of the applicants that the post of Assistant Accountant is a non-selection post and also 80% vacancies of Assistant Accountant are filled by selection method by conducting Limited Departmental Examination and 20% of the vacancies on seniority-cum-fitness basis, that the grade of Senior Accounts Clerks was introduced in the Department on demand from the staff side with a view to reduce the stagnation among the Sr.UDCs and to provide

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promotional opportunities to those UDCs who could not qualify in the Departmental Examination for the higher posts in Administrative/Accounts cadre, that the contention of the applicants that creation of post of Senior Accounts Clerk was only to throw the posts of Assistant Accountants to UDC working in the Administrative wing is not correct, that those issues have already been considered in OA.No.679 of 1991 by this Tribunal, that the ~~Member of Finance~~, Atomic Energy Commission, who is the Competent Authority for creation/sanction of the posts of Senior Accounts Clerks has raised an objection as the Order is applicable only to the organised Accounts services whereas Department of Atomic Energy cannot be said to come under the said purview, however, after much persuasion the Member, Finance agreed to the posts being operated by giving ex-post facto approval subject to the condition that the said post would be treated as a wasted out category and would be personal to the present holders. Hence, the claim of the applicants cannot be considered at this juncture. In view of the fact that the Member, Finance had not given approval for creation of posts a Senior Accounts Clerk, it is also under consideration to revoke the said posts.

9. Thus they submit that the OA is liable to be dismissed.

10. As already submitted the posts of Senior Accounts Clerk were created in the Department of Atomic Energy and its units only to reduce stagnation and to provide promotional avenues to the UDCs who could not qualify in the Departmental Examination. However, the said proposal

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has not been approved by the Member, Finance. The respondents further submit that they ^{are} also considering the proposal to revoke the post of Senior Accounts Clerk.

11. The Member, Finance appears to have raised an objection as to considering the Department of Atomic Energy and its constituent units as the organised Accounts service. It is a policy matter for the Department to take a decision. However, the Department must bear in mind to provide promotional avenues to its employees and to avoid stagnation in a particular post.

12. In case the Member, Finance of the Atomic Energy Commission fails to approve the creation of Senior Accounts Clerk then the respondents may consider the implementation of the terms and conditions contained in the OM dated: 21-11-1988. In such an event, the UOCs are to be upgraded to the restructured post of Assistant Accountant. In case the Member, Finance accords approval for the creation of Senior Accounts Clerk then the Department may consider filling up of the posts of Senior Accounts Clerk.

13. We do not find any illegality in the letter dated: 12-3-1996. The Department had explained to the applicants the actual position that has taken place after taking into consideration the various grounds and also the observations made by this Bench in OA No. 679 of 1991.

14. Hence, the only direction we can give to the respondents is to take a final decision in the matter as to the creation of the post of Senior Accounts Clerk

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or to provide promotional opportunities to the UDCs to the restructured cadre of Assistant Accountant.

15. Hence, we issue the following directions:-

i) The respondent-authorities shall take a decision as to the creation or otherwise of the post of Senior Accounts Clerk. In case the Member, Finance fails to approve the proposal for the creation of Senior Accounts Clerk then the UDCs of the Department and its units ^{the applicants} may be provided an opportunity to the restructured post viz., Assistant Accountant;

ii) Time for compliance is four months from the date of receipt of a copy of this Order;

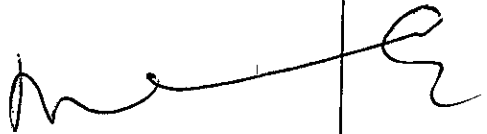
iii) We make it clear that the ^{accumulation of consequential} ~~applicants are not~~ ^{to the applicants} ~~entitled to claim any benefit retrospectively~~ from an earlier date, ^{is kept open.}

16. With the above directions, the OA is disposed of leaving the parties to bear their own costs.



(B.S. JAI PARAMESHWAR)
MEMBER (JUDL)

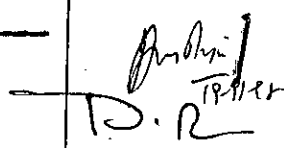
19.11.98



(R. RANGARAJAN)
MEMBER (ADMN)

Dated: this the 19 Nov 1998

DSN


D. R.