

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

JAIPUR

Date of order: 21.02.2003

OA No.193/2002

Chiranjit Lal s/o Shri Chandra Ram r/o Plot No.II/290, A.G.Colony, Bajaj Nagar, Jaipur (at present working as L.D.C. in the Office of Posts and Telecommunication Audit Office, Shahkar Marg, Jaipur)

.. Applicant

VERSUS

1. Union of India through the Secretary to the Government of India, Ministry of Finance, New Delhi.
2. The Comptroller and Auditor General of India, 10, Bahadur Shah Jaffar Marg, Inderprastha Road, Head Post Office, New Delhi.
3. The Director, Posts and Telecommunication Audit Office, Shahkar Marg, Jaipur

.. Respondents.

Mr. Vijay Singh, counsel for the applicant

Mr. Gaurav Jain, counsel for respondents.

CORAM:

HON'BLE MR. JUSTICE G.L.GUPTA, VICE CHAIRMAN

HON'BLE MR. H.O.GUPTA, MEMBER (ADMINISTRATIVE)

O R D E R

Per Hon'ble Mr. H.O.GUPTA.

The applicant is aggrieved of the orders dated 3.4.02 (Ann.A1) and 26.7.99 (Ann.A2) whereby he has been denied benefit of promotion and reverted to the post of LDC. In relief, he has prayed for quashing the said orders and for appropriate directions to the respondents to restore his promotion with all consequential benefits. Alternative prayer of the applicant is that the respondents may be directed to extend the benefit of higher grade



of Auditor/Senior Auditor from the date on which he has become so entitled, with all consequential benefits.

2. The case of the applicant as made out, in brief, is that:-

2.1 Having sustained injuries in Indo-Pak War of 1971, he was discharged from the Army service. He was appointed in the service of the respondents in the year 1976 as Group-D employee. He belongs to a Scheduled Caste category, as would be evident from his Discharge Certificate (Ann.A3). The respondents have not treated him as such and he was appointed as handicapped discharged personnel.

2.2 He was promoted to the post of LDC in the year 1991. He was further promoted to the post of Auditor in the year 1996 and his pay was fixed accordingly, as may be seen from office order at Ann.A4 and A5. For promotion to the post of Senior Auditor, it has been laid down that an incumbent has to clear a departmental examination consisting of 6 papers which are to be cleared in 6 attempts. The authorities have discretion to extend 3 more chances in case an incumbent fails to clear these papers in 6 attempts. He availed all the 6 attempts to clear 6 papers during the year 1996-1999. However, he could clear only 4 papers, as may be seen from Ann.A6.

2.3 He was reverted to the post of LDC vide the impugned order dated 26.7.99 (Ann.A2) with further stipulation that 3 more additional chances for clearing the departmental examination would be given to him which he was required to avail within a period of 2 years. The respondents did not refix the pay of the applicant and he continued to draw the pay scale of Auditor for about 5 months. It was refixed vide order dated 25.8.2000 (Ann.A7).

2.4 He availed the additional 3 chances and cleared the

departmental examination in the year 2000, as may be seen from the result declared vide letter dated 16.5.01 (Ann.A8). The applicant being a disabled person, the reservation is required to be given for promotion. The circular dated 14.9.01 (Ann.A9) has been issued by the respondents identifying the posts of Accountant and Auditor in the department to be reserved for handicapped persons. In the last so many years, no person has been either appointed or working on the post of Accountant or Auditor from amongst handicapped persons.

2.5 After he qualified the departmental examination in February, 2000, he became eligible for restoration of promotion to the post of Auditor and also became eligible and entitled for further promotion to the post of Senior Auditor. Similarly placed persons have already been granted promotion. All these persons remained junior to the applicant in Group 'C' and 'D' services.

2.6 Despite the fact that he has cleared the departmental examination, he has not been re-appointed to the post of Auditor and also have not been included in the eligibility list for further promotion to the post of Senior Auditor. He submitted several representations to the respondents, but with no avail.

3. The main grounds taken by the applicant are that:-

3.1 He is entitled for benefit of reservation provided for disabled persons as is applicable to his case, as per the orders of the respondents.

3.2 He cleared the departmental examination in February, 2000. Therefore, he has become entitled for promotion to the post of Auditor/Senior Auditor. The respondents have already conferred benefit to other similarly situated persons. Therefore, the action of the respondents by not giving him similar benefit is discriminatory.

3.3 The additional chances given to the applicant ought to have been treated as continuous of the earlier chances provided by the department. More than 2 years has expired after the applicant has cleared the departmental examination in additional chances. Several other similarly situated persons have been granted promotion to the post of Auditor/Senior Auditor. All these persons are junior to the applicant.

3.4 The applicant is due for superannuation in July, 02. In case he is not granted his due promotion, his post retiral benefits would be adversely affected.

3.5 The impugned communication dated 3.4.02 (Ann.A1) is wholly arbitrary, illegal inasmuch as the post of Auditor and Senior Auditor are lying vacant in the department.

3.6 Without prejudice to above, the applicant is also entitled for further promotion to the post of Auditor/Senior Auditor on completion of 26 years of service.

4. The respondents have contested this application and have submitted that:-

4.1 The applicant was promoted from Clerk grade to Auditor Grade against the posts under seniority quota. As per rules, such promoted Auditors are required to pass departmental confirmation examination for the post of Auditor within 6 chances in 6 consecutive examinations held after they become eligible. Failure to pass the departmental examination within stipulated time/number of chances entails reversion to Clerk grade. The Clerk so reverted become eligible after availing 3 more chances to clear the examination within 2 years from their reversion. It clearly shows that 3 more chances are given to those Clerks who are reverted from Auditor grade due to non-passing of the examination within the stipulated time/number of chances.



4.2 The applicant was appointed against ex-serviceman quota and not against physically handicapped quota. Therefore, the question of his promotion by extending the benefit of a physically handicapped person does not arise. The respondents are following the order/instructions issued by the Government from time to time regarding reservation and concession to physically handicapped persons without any deviation.

4.3 No person junior to the applicant has been promoted as Auditor prior to the applicant. The candidates as referred to in para 4 (vi) of the OA, passed the departmental test of Auditor prior to the applicant and, therefore, are ranked senior to the applicant in eligibility for promotion to the post of Auditor and hence they have been rightly promoted as Auditor prior to the applicant.

4.4 The applicant could not be promoted as yet as no post of Auditor in promotion quota is vacant in the office of respondent No.3. However, the applicant's case will be considered for promotion alongwith other eligible officials as and when vacancy in seniority quota arises. It is submitted that by virtue of passing the departmental examination, the applicant has become eligible for promotion as an Auditor afresh and is not entitled for restoration of his promotion to the post of Auditor, as alleged.

4.5 Against promotion quota, only 3 posts available whereas 4 Auditors are already working, which is due to following of 20 point reservation roster for promotion as Auditor. Point No. 1 and 2 are always reserved for seniority and examination quota and due to truncation of 20 point roster this situation arises in the office of respondent No.3. In the year 2000, the Govt. of India has issued new rules for recruitment of Auditor and these rules are called post based recruitment rules for Auditor. As such new

rules do not allow the respondents to promote any Clerk against seniority and examination quota in which they are already over-represented. The applicant can not be promoted against the rules. The applicant should have compared his case with similarly placed employees and not of those who have passed the examination prior to him and got promoted.

4.6 The impugned order dated 3.4.02 is just and in order. No post of Auditor in promotion quota is lying vacant in the office of respondent No.3. The extra chances given as fresh to the applicant cannot be treated as continuation to the earlier chances. These are separate chances given to him as per departmental rules. No person who passed the departmental examination later than the applicant has been promoted prior to the applicant.

5. In the additional affidavit filed by the applicant, he has submitted that:-

5.1 The impugned order dated 3.4.02 is erroneous and has been passed to defeat the just cause of the applicant. From the photocopies of the gradation list for the post of LDC and Auditor/Senior Auditor as on 1.3.01 (Ann.A13 and A14) the persons placed above his name have already been promoted to the post of Auditor/Senior Auditor. He is the only person left, who fulfils the criteria for promotion but has not been granted promotion to the post of Auditor/Senior Auditor.

5.2 In the gradation list for Auditors as on 1.3.01, Shri Mahendra Singh appearing at Sl.No.1 has already been promoted to the post of Senior Auditor in May 2001 and therefore, a vacancy of Auditor is lying vacant since then.

5.3 Without prejudice to the above, it is further submitted that the DOPT vide Office Memorandum dated 9.8.99 (Ann.A15) introduced Assured Career progression (ACP) scheme for the Central

Govt. employees. The said scheme is applicable to him, as would be evident from Clause 8 and 9 of the said Memorandum. Further, clause-1 of the Memorandum clearly provides that the ACP scheme envisages merely placement in the higher pay scale and shall therefore, neither amount to functional or regular promotion nor would require creation of new posts for the purpose. He has completed 24 years of service in January, 2000 and cleared the departmental examination in May, 2000. Therefore, he is entitled for consideration of the benefit of higher grade of Auditor under the ACP scheme, as admissible, since he has completed 24 years of service and cleared the departmental examination in May, 2000.

In reply to the additional affidavit, the respondents have further submitted that:-

6.1 No LDC junior to the applicant has been promoted. Reasons for non-promotion of the applicant has already been given in the reply of the OA. Due to fulfilment of minimum requirement for promotion as Auditor, Shri Mahendra Singh was promoted as Auditor. Shri Mehendra Singh passed the departmental confirmatory examination for Auditor within the stipulated period, but the applicant could not pass the said examination hence he was reverted as Clerk as per rules. As such the applicant cannot compare his case with that of Shri Mahendra Singh. No vacancy is available against seniority/examination quota.

6.2 As per the clarification No.7 given vide letter dated 24.9.1999 (Ann.R3) issued by the Comptroller and Auditor General of India, the Clerks reverted from the cadre of Auditor due to non passing of the departmental examination of Auditor are eligible for financial upgradation to the pay of Auditor under ACP scheme only after putting 5 years regular service as Clerk from the date of reversion. As the applicant was reverted on 26.7.99 and has not

completed 5 years as regular service, therefore, he is neither eligible nor entitled for upgradation to the pay of Auditor under ACP scheme, as claimed by him.

7. Heard the learned counsel for the parties and perused the record.

7.1 During the course of arguments, the learned counsel for the applicant submitted that in view of the submissions of the respondents particularly with regard to non-availability of vacancy under seniority quota, he will not press for his claim of promotion as Auditor under seniority quota. However, there is no justification in not considering the case of the applicant for promotion as Auditor under ACP scheme issued by the Govt. of India based on 5th Central Pay Commission recommendations and are applicable in respondents department. He submitted that the Comptroller and Auditor General (CAG) letter dated 17.6.98 provides that an LDC reverted due to non-passing of departmental examination can be again promoted only after 5 years of his reversion. But this provision has been clarified by the CAG order dated 29.4.02 (Ann.R1) that the order dated 17.6.98 shall be applicable only to those reverted LDCs who did not pass the examination even after availing the additional chances. He further submitted that the S.No. 7 of the clarification contained in CAG letter dated 24.9.99 (Ann.R3) for ACP scheme is based on CAG letter of 17.6.98. The clarification No. 7, is applicable only to those reverted LDCs who do not qualify even in additional chances. There is no reason as to why the CAG letter of 29.4.02 clarifying that the 5 years stipulation is not applicable to those who qualify the examination in the additional chances, should not be applicable to those similarly placed persons for consideration of promotion under ACP scheme. Under no stretch of imagination it can be said that the CAG letter of 29.4.02, issued subsequent to the

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letter of 24.9.99, is applicable only for regular promotion and not for promotion under ACP scheme meant to remove stagnation and does not even require availability of vacancy. He also submitted that the applicant is fully covered under the scheme.

7.2 We find force in the contention of the learned counsel for the applicant. The purpose of ACP scheme is to grant promotion to the higher grade on completion of certain number of years of service to deal with the stagnation and hardship faced by the employee due to lack of adequate promotional avenues. It has no link with the availability of vacancies in the higher grade. The respondents have not granted the benefit of the ACP scheme based on classification at S.No.7 contained in CAG letter of 24.9.99.

The doubts raised and clarification given under this letter are as under:-

Sl.No.	Doubts raised	Clarification
7.	Whether the Clerks reverted from the cadre of Auditor/ Accountant due to non-passing of departmental examination for Auditor/ Accountant and having adequate length of service are eligible for benefits under ACP scheme ?	They are eligible for financial upgradation to the pay scale of Auditor/Accountant under ACP scheme only after putting in 5 years regular service as Clerk from the date of reversion.

The above clarification relates to those LDCs who are reverted due to non-passing of departmental examination. It does not cover those cases of reverted LDCs who qualify the departmental examination in additional chances. Further, the respondents themselves have clarified in their letter of 29.4.02 that in regular promotions, the reverted LDCs who qualify in the additional chances, the period of 5 years as contemplated in 1998 letter is not applicable. There can be no rational in not applying this clarification ~~xxxxxxxxxx~~ to those who are placed in higher grade under the ACP scheme. Accordingly, we hold that the applicant is eligible for promotion as Auditor under ACP scheme on

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completion of qualified period and on passing the departmental examination in additional chances given to him.

8. In view of above discussions, this OA is partly allowed. The respondents are directed to consider the case of the applicant for grant of benefit for placement in the higher grade of Auditor under the ACP scheme from the date he became so entitled, within 3 months from the date of receipt of this order and in case the applicant is found fit by the DPC, he shall be granted all benefits including arrears of pay, retirement benefits etc. within 3 months thereafter.

9. No order as to costs.

(H.O.GUPTA)

Member (Administrative)



(G.L.GUPTA)

Vice Chairman