

14

**CENTRAL ADMINISTRATIVE TRIBUNAL,
CHANDIGARH BENCH,
CHANDIGARH.**

O.A.No.060/00077/2014

Date of Decision : 15.12.2014
Reserved on: 08.12.2014

**CORAM: HON'BLE MRS. RAJWANT SANDHU, ADMINISTRATIVE MEMBER
HON'BLE DR. BRAHM A. AGRAWAL, JUDICIAL MEMBER**

1. Jasbir Kaur, aged about 56 years wife of Sh. Gurdeep Singh, R/o House No.1406, Sector 61-B, Chandigarh, presently working as Assistant Accounts Officer in the O/o the Principal Accountant General (A&E), Punjab and Chandigarh, Chandigarh.
2. Surinder Singh Sehra, aged about 57 years son of Sh. Ram Singh, presently working as Senior Accountant in the O/o the Principal Accountant General (A&E), Punjab and Chandigarh, Chandigarh, R/o House No.2229, Sector 71, Mohali.
3. Kamini Gupta, wife of Sh. C.P. Bansal, aged about 59 years presently working as Senior Accountant in the O/o the Principal Accountant General (A&E), Punjab and Chandigarh, Chandigarh, R/o House No.1025, Sector 19/B, Chandigarh.
4. Ram Pal Basral, son of Dheru Ram, aged about 56 years, presently working as Assistant Accounts Officer in the O/o the Principal Accountant General (A&E), Punjab and Chandigarh, Chandigarh, R/o House No.1343, Sector 41-B, Chandigarh.
5. Ram Chand Garg, son of Sh. Teju Mal, aged about 56 years, presently working as Senior Accountant in the O/o the Principal Accountant General, Punjab and Chandigarh, Chandigarh and R/o House No.1134, 1st Floor, Sector 42/B, Chandigarh.
6. Sudesh Kumari, wife of Sh. Basant Kumar, aged about 55 years, presently working as Senior Accountant in the O/o the Principal Accountant General (A&E), Punjab and Chandigarh, Chandigarh, R/o House No.12, 1st Floor, Sector 21/A, Chandigarh.
7. Fauja Singh, son of Sh. Sardar Singh, aged about 59 years presently working as Senior Accountant in the O/o the Principal Accountant General (A&E), Punjab and Chandigarh, Chandigarh, R/o House No.1336-A, Sector 41/B, Chandigarh. 14

8. Hari Krishan, son of late Sh. Garib Dass, aged about 58 years, presently working as Senior Accountant in the O/o the Principal Accountant General (A&E), Punjab and Chandigarh, Chandigarh R/o House No.1083-B, Sector 41/B, Chandigarh.
9. Kamlesh Rani, wife of Sh. Ram Pal, aged about 56 years, presently working as Assistant Accounts Officer in the O/o the Principal Accountant General (A&E), Punjab and Chandigarh, Chandigarh, R/o House No.2150, Sector 42/A, Chandigarh.
10. Satish Kumar Garg, son of Sh. Dev Raj, aged about 59 years, presently working as Senior Accountant in the O/o of the Principal Accountant General (A&E), Punjab and Chandigarh, Chandigarh, R/o House No.1529, Sector 22/B, Chandigarh.
11. Sushil Kumar, son of Sh. Daya Nand, aged about 56 years, presently working as Senior Accountant in the O/o the Principal Accountant General (A&E), Punjab and Chandigarh, Chandigarh, R/o House No.113M, Dashmesh Nagar, Patiala.

Applicants

Versus

1. Union of India through the Comptroller and Auditor General of India, 9, Deendayal Upadhyaya Marg, New Delhi-110124.
2. The Principal Accountant General (A&E), Punjab and Chandigarh, Sector 17, Chandigarh.

Respondents

Present: Mr. Gurdeep Singh, counsel for the applicants
Mr. Barjesh Mittal, counsel for the respondents

ORDER

HON'BLE MRS. RAJWANT SANDHU, MEMBER (A)

1. This Original Application has been filed under Section 19 of the Administrative Tribunals Act, 1985, seeking that respondent no.2's letter dated 08.10.2013 (Annexure A-7) and respondent no.1's letter no.1033/Staff (Entt-2)/52-2013 dated 08.10.2013, be quashed and

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applicants be granted benefit of ACP / MACP Scheme from time to time at par with those who were initially recruited as Auditor against direct quota vacancies by treating their elevation as Auditors as first appointment and not promotion for the purpose of granting financial upgradation under MACP Scheme.

2. It has been stated in the OA that as per para 3 of the CAG's circular letter dated 13.08.1982 (Annexure A-1), as one time measure those Clerks / Typists who passed in the Departmental Confirmatory Examination to be held in November, December, 1982 and in May, 1983 were to be ranked by performance and promoted as Auditors against the vacancies under direct recruitment quota. Out of 11 officials presenting this OA, 09 officials passed the examination held in December, 1982 and were promoted as Auditor with effect from their taking over charge vide office order no. Admn.I/A/703, dated 11.03.1983 (Annexure A-2). The remaining two officials namely Sh. Ram Chand Garg and Sh. Sushil Kumar, passed the examination in June, 1983. The educational qualification for direct recruitment as Auditor is Graduation and the Clerks / Typists who were given one time opportunity to appear in the Departmental Confirmatory Test held in December, 1982 and June, 1983 were also Graduates, that is why they were treated at par with direct recruits for appointment as Auditors.

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3. Averment has been made in the OA that as the MACP Scheme was not in vogue at the time when the selection / appointment of the applicants as Auditors took place, it did not make any difference as to whether their elevation was treated as promotion or fresh appointment in the Auditors cadre. However, with the introduction of MACPS, the entire scenario changed. The CAG's Circular Letter dated 13.08.1982 has the effect of creating a Recruitment Rule for appointment under Direct Quota vacancies for those Clerks / Typists who passed in the examination held in December, 1982 and May / June, 1983, as such their appointment as Auditors has to be considered as first appointment in Govt. service making them eligible for financial upgradation under MACP Scheme on completion of 30 years service from the date of appointment.

4. The Department of Personnel and Training, Govt. of India, which is the nodal agency for implementation of MACP Scheme concurred in case of Railway Employees who are selected under LDCE / GDCE to be treated as direct recruits for the purpose of grant of financial upgradation under MACP Scheme (Annexure A-5). It is further stated that if quota is stipulated according to rules between direct recruitment and promotion, the appointing authority, cannot appoint persons from one source of recruitment as against the vacancies reserved for another source. Therefore, it implies that Graduate Clerks / Typists who were promoted against Direct Recruitment Quota vacancies were in fact inducted as fresh

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recruitees under the direct quota and as such are eligible for financial upgradation under MACP Scheme on completion of 30 years of service from the date of their induction as Auditor. Hence this OA.

5. In the written statement filed on behalf of the respondents, the facts of the matter have not been disputed. It has been stated that para 3 of the circular on the subject of Review of cadres – Improvement in promotion prospects of Clerks, Typists and Group 'D' staff reads as follows:-

"3. At present there are three channels for promotion of clerks / typists to the grade of auditors. Twenty per cent of the vacancies in the auditors cadre are available on seniority-cum-fitness basis to those who have completed 5 years service. An additional 5 per cent of the vacancies are available to Clerks / Typists with three years service on the basis of departmental competitive examination (also now a qualifying examination). Further, Clerks / typists who pass the SAS Part-I examination are promoted as auditors in the next available vacancy.

While it is not proposed to disturb these existing channels in any way, it has been decided, as a one time measure, to permit graduate Clerks who have completed 3 years service on 1st July, 1982 to appear for the departmental confirmatory examination for auditors to be held in November / December, 1982 and the one in May, 1983. Those clerks / typists who pass in the departmental confirmatory examination for auditors will be ranked by performance and promoted as auditors against the direct recruitment quota subject to availability of vacancies. For the purpose of inter ranking they will rank junior to those clerks / typists who pass the SAS Part-I examination to be held in November / December, 1982. Those Clerks / Typists who are promoted as auditors after passing the DTC (departmental confirmatory examination) will not be required to take this examination again. After promotion as auditors they will also be entitled to qualification pay of Rs.15 per month from the date of promotion as auditor as sanctioned in this office circular letter no.2115-N.4/62-78 dated 28th September, 1981."

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6. The applicants who were working as clerks at the relevant time with 3 years service appeared in the Departmental Confirmatory Examination and on being declared successful in the exam "were promoted" against the direct recruitment quota vacancies. The applicants consequent to their having qualified the Departmental Confirmatory Examination were promoted as Accountant w.e.f. 11.03.1983 (A-2), further promoted as Senior Accountant on 01.01.1990 and thereafter as Section Officer (A) on 20.03.1998. Consequently, since the applicants were granted 3 promotions from the date of their initial appointments, therefore, they were not considered for the grant of benefits under the MACP Scheme. Since in the communication dated 13.08.1982, it was categorically mentioned that the benefit was as a One time Measure and the successful Clerks / Typists shall be promoted as Auditors against direct recruitment quota subject to availability of vacancies, therefore, the prayer of the applicants for considering their promotion as Auditor as First Appointment in service and not promotion for the purpose of granting benefits under MACP Scheme by relying upon Railway Board letter dated 12.09.2012 (Annexure A-5), which is not applicable in the Department of answering respondents and on entirely different situation, is totally devoid of merits and thus the same deserves to be dismissed in the interest of justice.

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7. Arguments advanced by the learned counsel for the parties were heard. Learned counsel for the applicants pressed that the applicants be treated as direct recruits and to buttress his contention in this regard, learned counsel cited Nirmaljeet Kaur & Ors. Vs. Union of India through the Secretary, Integration, India, New Delhi & Ors. 1973 () LIC 1569 S.G. Jaisinghani Vs. UOI & Ors., 1967(2) SCR 703, to press that the Department having fixed the quota could not deviate from the same under the Rules. Since it was clearly stated in the circular dated 13.08.1982 that the successful Clerks / Typists would be promoted as Auditors against direct recruitment quota subject to availability of vacancies, their selection and appointment as such had to be treated as direct recruitment. Hence, the appointment as Auditor was "first appointment" in service and not a promotion and hence they were entitled to the benefit of MACPS on completion of 30 years of service from the date of their appointment as Auditors. Learned counsel also relied upon the Railway Board's letter dated 12.09.2012 (Annexure A-5) in this regard.

8. Learned counsel for the respondents stated that the applicants had been appointed as Auditors in December, 1982 and had subsequently earned further promotions of Accountant, Senior Accountant and Section Officer (A) and hence the financial upgradation under ACP had not been allowed to them. Under the MACP Scheme the financial upgradation was

16 —

allowed after 10, 20 and 30 years of service, the applicants were not eligible for the 3rd MACP having already got three promotions.

9. We have carefully considered the submissions made on behalf of the applicants in the OA and rejoinder, and by the respondents in the written statement. We have also perused the material on record. Although the word 'promotion' has been used in the circular dated 13.08.1982, it is clear that the applicants who were Graduates were as a one time measure allowed to appear in the Departmental Confirmatory Examination for Auditors and those who qualified in the same were promoted as Auditors against the direct recruitment quota subject to the availability of vacancies. Hence, this would appear to be a special recruitment against the direct recruitment quota and those who succeeded in the same must perforce to be treated as direct recruits. Clarification issued by the Ministry of Railways in a similar matter through RBE No.100/2012, dated 12.09.2012 (Annexure A-5), in consultation with the DOPT, would also appear to support this view. Hence, the applicants are entitled to be considered as direct recruit Auditors.

10. However, it is seen from the written statement filed on behalf of the respondents that the applicants have after their appointment as Auditors been promoted as Accountants, Senior Accountants and Section Officer (A). In the rejoinder filed on behalf of the applicants, this contention made in the written statement has not been rebutted. Hence the claim of

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the applicants for MACPS may be re-examined by the respondent Department while treating them as direct recruit Auditors but also taking into account, the number of promotions and the dates on which the applicants were promoted in the context of entitlement under the financial upgradation under the ACP / MACPS. Such consideration may be completed within a period of three months from the date of receipt of a certified copy of this order. No costs.

(RAJWANT SANDHU)
ADMINISTRATIVE MEMBER.

(DR. BRAHM A. AGRAWAL)
JUDICIAL MEMBER

Place: Chandigarh
Dated: 15.12.2014

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