

OA.No.170/00859/2015/CAT/BANGALORE

CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH

ORIGINAL APPLICATION NO.170/00859/2015

DATED THIS THE 28<sup>TH</sup> DAY OF FEBRUARY, 2018

**HON'BLE DR.K.B.SURESH, MEMBER (J)**

**HON'BLE SHRI PRASANNA KUMAR PRADHAN, MEMBER (A)**

Shri Rajesh Balajirao Nandagad

Aged about 45 years,

Working as Assistant Audit Officer

O/o, Principal Director of Audit

South Western Railway

Hubli

.....Applicant

(By Advocate Shri S. Sugumaran)

Vs.

1. The Comptroller and  
Auditor General of India  
Pocket 9  
Deendayal Upadhyay Marg  
New Delhi – 110 124.

2. The Principal Director of Audit  
South Western Railways,  
Old Godrej House  
(near Prakash Hotel)  
Station Road, Hubli – 580 020

....Respondents

(By Shri M.V. Rao, Senior Panel Counsel)

### O R D E R (ORAL)

(HON'BLE DR. K.B. SURESH, MEMBER (J))

The matter was taken up today for hearing. We had earlier passed an order which we quote below:

*“Heard. The matter relates to absorption of a deputationist. Apparently in Annexure-A5 the Principal Director of Audit, South Western Railway, had written to the Assistant Comptroller and Auditor General indicating that based on his request for his absorption, the Principal Accountant General, Bangalore has given consent to the same vide letter dated 29.07.2009 and had quoted the letter dated 19.01.2010. There was a condition that the switch over is final and cannot be reversed under any circumstance, but then later on vide Annexure-A6 dated 17.11.2014 the office of the Comptroller and Auditor General of India refused to grant permission for absorption.*

*2. But then it is found that the applicant had been continuing without any deputation allowance as he is a regular employee and has been promoted and is now continuing for more than 8 years by now. This appears to be covered by a decision of the Hon'ble Apex Court in*

*Rameshwar Prasad Vs. Managing Director, UP Rajakiya Nirman Nigam Limited reported in CDJ 1999 SC 547 wherein also exactly similar situation exist wherein the Hon'ble Apex Court held that in such cases the employee has a right of absorption and the order of repatriation was quashed. In compliance with it, I direct the applicant be absorbed in the South Western Railway in accordance with the earlier agreement between the parties. OA is allowed to this extent. No order as to costs."*

2. It was apparently taken up before the Hon'ble High Court in Writ Petition No. 107532/2016 and vide order dated 02.08.2017 it was remitted back. In view of its importance, we quote the same in full:

*"The petitioners are before this Court assailing the order dated 25.01.2016 passed in O.A. No. 170/00859/2015 by the Central Administrative Tribunal, Bangalore Bench ('CAT' for short).*

2. *The respondent, who is employed under the second petitioner was deputed to the first petitioner. In that regard the respondent herein was seeking absorption in the deputed post. Since, the petitioners herein had not considered the request of the respondent, the respondent herein was before the CAT seeking for a direction in that regard. The CAT while considering the aspect has relied on the decision of the Hon'ble Supreme Court in the case of Rameshwar Prasad Vs. Managing Director, U.P. Rajkiya Nigam Ltd., reported in CDJ 1999 SC 547. In that light, having arrived at the conclusion that the said decision applies to the present facts, the CAT has allowed the application filed by the respondent herein. The petitioners herein therefore claiming to be aggrieved by the same are before this Court.*

3. *Having heard the learned counsel for the parties, we have perused the petition papers including the order impugned dated 25.01.2016.*

4. *A perusal of the order would disclose that the CAT has merely referred to the documents where under the respondent herein was deputed to the first petitioner and in that light having noticed the length of the period of deputation has applied the decision referred to supra. In order to come to a conclusion as to whether the said decision alone would have been sufficient for the CAT to arrive at its conclusion, we have perused the said decision rendered by the Hon'ble Supreme*

*Court. The Hon'ble Supreme Court was considering the case of the appellant before it in the background of the rule, which provided that a deputationist is to be absorbed if the maximum period of 5 years is spent on deputation. While arriving at such a conclusion, the Hon'ble Supreme Court has kept in view the Rule governing the establishment therein where under such provision was contained in the Rule with regard to absorption of the deputationist if it is for more than 5 years. If that be the position, the said decision alone would not be sufficient for a consideration in the instant case. In that light a further perusal of the order impugned would disclose that the CAT has not referred to the Rule governing the establishment in the instant case and in that light has not arrived at its conclusion.*

5. *The learned counsel for the respondent herein would contend that the respondent herein had filed rejoinder to the reply that had been filed by the petitioners herein and in that light had sought right to be continued after the period of deputation was kept in force for a long period. Though, such contention is put forth, since we have already notice that the CAT has not referred to the Rule governing establishment and has thereafter not arrived at its conclusion and further when we notice that the decision as relied on by the CAT would not be applicable without such reference, the order without assigning the reasons by the CAT ultimately to grant the relief cannot be sustained.*

6. *In a matter of the present nature, we are of the opinion that the CAT would have to refer to these aspects of the matter take into consideration the right as claimed by the applicant before it and thereafter arrive at its conclusion as to whether under the Rules governing establishment, such right could be granted to the applicant before it. Therefore, in that circumstance a reconsideration in the matter is required by the CAT.*

7. *Accordingly, the order dated 25.01.2016 is set aside. The Original Application No. 170/00859/2015 is restored to the file of the Central Administrative Tribunal, Bangalore Bench for reconsideration of the matter. In that light, all contentions are left open to the parties before CAT.*

*Petition is disposed of accordingly.”*

3. But apparently the matter seems to be covered by Annexure-A7 wherein the applicant had already produced the rule in question. We find after discussing it with Shri M.V. Rao, learned counsel for the respondents, that in all probability the learned counsel who appeared at that point of time for the respondents herein may not have noticed the rule which is already produced as Annexure-A7 and the learned counsel who had appeared for the applicant at that point of time may not have noted it and caused all this imbroglio. We quote the relevant portion of Annexure-A7 Recruitment Rules, 2013 below:

<p><b>Method of recruitment :</b> Whether by direct recruitment or by promotion or by deputation/<b>absorption</b> and percentage of the vacancies to be filled by various methods.</p>	<p>In case of recruitment by promotion/deputation/<b>absorption</b> to be made.</p>
<p>By promotion failing which by deputation or <b>absorption</b> failing both by direct recruitment.</p> <p><b>Note 1.-</b> The direct recruits shall be selected on the basis of an entrance examination conducted by the Union Public Service Commission.</p> <p><b>Note 2.-</b> Direct recruits will be appointed as Assistant Accounts Officer on probation for a period of two years. During the period of probation he or she shall have to qualify the “Subordinate Accounts Service Examination” for confirmation and regular appointment as Assistant Accounts Officer</p>	<p><b>Deputation or absorption:</b></p> <p>The departmental officers in the feeder category who are in the direct line of promotion will not be eligible for consideration for appointment on deputation or <b>absorption</b>. Similarly, deputationists shall not be eligible for consideration for appointment by promotion.</p> <p>(The period of deputation including period of deputation in another ex-cadre post held immediately preceding this appointment in the same or some other Organisation or department of the Central Government shall ordinarily not exceed three years. The maximum age limit for appointment by deputation or <b>absorption</b> shall not be exceeding 56 years as on the closing date of receipt of applications).</p>

	<p><b>Note :</b> For the purpose of appointment on deputation or absorption basis, the service rendered on a regular basis by an officer prior to the 1<sup>st</sup> January, 2006 (the date from which the revised pay structure based on the Sixth Central Pay Commission recommendation has been extended) shall be deemed to be service rendered in the corresponding grade pay or pay scale extended based on the recommendations of the Pay Commission, except where there has been merger of more than one pre-revised scale of pay into one grade with a common Grade Pay or Pay Scale, and where this benefit will extend only for the post(s) for which that Grade Pay or Pay Scale is the normal replacement grade without any upgradation.</p>
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We find from the Ministry of Finance Notification No. G.S.R. 482 (E)

Recruitment Rules, 2016 as under:

<b>Method of recruitment. Whether by direct recruitment or by promotion or by deputation or absorption and percentage of the vacancies to be filled by various methods.</b>	<b>In case of recruitment by promotion or deputation or absorption grades, from which promotion or deputation or absorption to be made.</b>	<b>If a Departmental Promotion Committee exists what is its composition</b>	<b>Circumstances in which Union Public Service Commission is to be consulted in making recruitment</b>
By promotion failing which by deputation or <b>absorption</b> failing both by direct	<b>Deputation or absorption:</b>  Officers under the Cadre Controlling Authority in the Indian Audit and Accounts Department or in any Organised Accounts Cadre under the Government		

<p><i>recruitment.</i></p> <p><b>Note 1.-</b> The direct recruits shall be selected on the basis of an entrance examination conducted by the Staff Selection Commission.</p> <p><b>Note 2.-</b> During the period of probation direct recruits shall have to qualify the "Subordinate Accounts Service Examination" for confirmation and regular appointment as Assistant Accounts Officer</p>	<p><i>of India:</i></p> <p>(i) Holding analogous posts of Assistant Accounts Officer or Assistant Audit Officer in Pay Band-2, Pay Scale of Rs. 9300-34800 with Grade Pay of RS. 4800/-; or,</p> <p>(ii) Who has passed the Subordinate Accounts Service or Subordinate Audit Service Examination under other Cadre Controlling Authority in the Indian Audit and Accounts Department or an equivalent examination in any Organised Accounts Cadre under the Government of India.</p> <p><b>Note 1.-</b> The departmental officers in the feeder category who are in the direct line of promotion shall not be eligible for consideration for appointment on deputation or <b>absorption</b>. Similarly, deputationists shall not be eligible for consideration for appointment by promotion.</p> <p><b>Note 2.-</b> Period of deputation including period of deputation in another ex-cadre post held immediately preceding this appointment in the same or some other Organisation or Department of the Central Government shall ordinarily not to exceed three years. The maximum age limit for appointment by deputation shall not be exceeding fifty-six years as on the closing date of receipt of applications.</p> <p><b>Note 3.-</b> For the purpose of appointment on deputation or <b>absorption</b> basis, the service rendered on a regular basis by an officer prior to the 1<sup>st</sup> January, 2006, the date from which the revised pay structure based on the Sixth Central Pay Commission recommendations has</p>		
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	<i>been extended, shall be deemed to be service rendered in the corresponding Grade Pay or Pay Scale extended based on the recommendations of the Pay Commission, except where there has been merger of more than one pre-revised scale of pay into one grade with a common Grade Pay or Pay Scale, and where this benefit will extend only for the post for which that Grade Pay or Pay Scale is the normal replacement grade without any upgradation.</i>		
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4. Therefore after hearing both sides we note that this is a rule which is already produced. We therefore find that from the rules itself this is permissible **and the Railways had rightly acceded to the principle but the C&AG had wrongly refuted it. There was no need for such a matter to be challenged in WP for the very simple reason that rules do not exist as the rules were already there in Annexure-A7 in the original OA.** Therefore we allow this OA and the same benefits which we granted earlier will remain with the applicant. No order as to costs.

(PRASANNA KUMAR PRADHAN)

MEMBER (A)

(DR.K.B.SURESH)

MEMBER (J)

/ksk/

Annexures referred to by the applicant in OA No. 170/00859/2015



Annexure A1 Copy of office order No. ES I/A 6/2007-08/240 dated 03.10.2007

Annexure A2 Copy of Office Order No. ES I/A 6/2008-2009/244 dated 18.09.2008

Annexure A3 Copy of promotion and placement order G.O.O. No. 35 dated 27.01.2010

Annexure A4 Copy of letter No. ESI/A6/2009-10/108 dated 29.07.2009

Annexure A5 Copy of letter No. PDA/SWR/UBL/DEP/3130 dated 11.09.2014

Annexure A6 Copy of letter regarding absorption of the applicant dated 17.11.2014

Annexure A7 Copy of Recruitment Rules, 2013 G.S.R. 18

**Annexures with Reply Statement**

Annexure R1 Copy of representation of the applicant dated 03.07.2007

Annexure R2 Copy of representation of the applicant dated 09.09.2008

Annexure R3 Copy of Office Order No. ES I/A 6/2008-2009/244 dated 18.09.2008

**Annexures with Rejoinder**

Annexure A8 Series : Copy of Gradation lists of SWR, Hubli

Annexure A9 Series: Copy of communications dated 01.12.2009, 14.11.2011, 15.04.2014 and 11.09.2014

Annexure A10: Copy of Result Sheet of Subordinate Audit/Accounts Service Examination dated 02.11.2015

**Annexures with Additional Reply Statement**

Annexure R4 Copy of representation of the applicant dated 03.07.2007

Annexure R5 Copy of office order No. ESI/A 6/2007-08/240 dated 03.10.2007

Annexure R6 Copy of C&AG, New Delhi circular dated 07.08.2007

Annexure R7 Copy of CAG's Manual of Standing Orders (Administrative) Vol.I  
(Third Edition)

Annexure R8 Copy of Organizational Structure of IA & AD.

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