

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
CIRCUIT SITTING : GWALIOR

Original Application No.202/00920/2016

Jabalpur, this Thursday, the 16th day of August, 2018

HON'BLE MR. NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE MR. RAMESH SINGH THAKUR, JUDICIAL MEMBER

Ashok Kumar Khandelwal, S/o Shri B.M. Khandelwal, Age 60 years, Occupation Retired as Director from O/o DGACR, New Delhi Branch – Gwalior, at present working as Financial Advisor in LNIPE, Gwalior – 474002, R/o Khandelwal Bhawan, Near Hotel Mayur, Station Road, Padav, Gwalior – 474002 (M.P.)

-Applicant

(By Advocate – Shri S.C. Sharma)

V e r s u s

1. Union of India through Comptroller & Auditor General of India, 9, Deen Dayal Upadhyaya Marg, New Delhi – 110124.

2. The Secretary, Ministry of Personnel and Public Grievances, Department of Personnel and Training, New Delhi – 110001.

3. Shri A. Paramasivan, IAAS 21, Housing Board Colony, Melepalayam, Tirunelveli, Tamil Nadu – 627005.

4. Shri Om Prakash (1), IAAS, H.No.ES/131, Sultan Puri, Near Laxmi Nagar, Ayan Temple, Delhi - 86

- Respondents

(By Advocate – Shri M.K. Sharma)

(Date of reserving of order : 11.05.2018)

ORDER

By Ramesh Singh Thakur, JM.

The applicant is aggrieved by the order dated 16.05.2016

(Annexure A-11), whereby his representation regarding re-fixation

of seniority and year of allotment in the IA&AS cadre has been rejected.

2. The applicant has sought for the following reliefs”

“8.1 The impugned letter No. 1268-PD (P)/Legal/2014 dated 12-5-2016 issued by Respondent No.1 and communicated by the Principal Director (Personnel) vide letter No. 1266-A.Ar.G. (P)/Legal/2014 dated 16-5-2016 contained in Annexure A/11 may kindly be set aside and quashed.

8.2 The Respondents may further be directed to re-fix the seniority of the Applicant in accordance with Rule 8(2) (c) and (d) of the relevant Recruitment Rules, 1983 granting the seniority to the Applicant just below the last direct recruitee of the year 2005 after giving benefit of weightage of two years, considering the year of allotment of the applicant as 2007 i.e. just below Respondent No.3 and above Respondent No.4 along with other consequential benefits.

8.3 In the facts and circumstances of the case, any other relief which this Hon’ble Tribunal deems fit, may also be awarded along with the cost Rs.20,000.”

3. Briefly stated facts of the case are that the applicant was initially appointed as Clerk on 3.1.1976. He was promoted on different dates, which are as under:

19.06.1979	Auditor
28.06.1980	Section Officer
02.06.1987	Assistant Audit Officer (Gazetted)
29.10.2001	Audit Officer
01.01.2004	Senior Audit Officer
20.08.2009	Assistant Accountant General (JTS) in the cadre of IAAS (Group A)

03.01.2011 Deputy Accountant General
01.07.2015 Director.

3.1 The applicant retired from service on 31.01.2016.

3.2 The applicant submits that after passing the examination of All India Section Officers Grade conducted by the Comptroller and Auditor General of India, he was promoted to the post of Section Officer on 28.06.1980. He further submits that for further promotion to Group A – Junior Time Scale of Indian Audit and Accounts Services (IAAS), the Section Officers Grade examination is the criteria for determining the seniority and preparing the combined eligibility list.

3.3 The case of the applicant is that the respondent No.1 prepared a combined eligibility list of Audit Officers/Senior Audit Officers, as on 01.07.2007 (Annexure A-1), in which name of the applicant was placed at Sr. No.2. It is the contention of the applicant that name of the applicant was considered by the UPSC for preparing a select list for promotion into the JTS cadre against the vacancies for the year 2007. In pursuance to which, the respondents prepared and issued a classified list of Group-A officers, as on 01.09.2011 (Annexure A-3), wherein they have assigned the year of allotment to the applicant as 2007. Pursuant to

the approval of UPSC in the year 2009, the applicant was promoted as Assistant Accountant General vide order dated 11.08.2009 (Annexure A-2).

3.4 The applicant further submits that Rule 8(2)(c) of Indian Audit and Accounts Service (Recruitment) Rules, 1983 (hereinafter referred to as '**1983 Rules**') provides that, "the officers appointed to the Service in terms of provisions of sub-rule (2) (ii) of Rules 7 shall be given two years weightage in seniority vis-à-vis the officers appointed in the same year through competitive examination." Since he has been promoted against the vacancies of the year 2007 and he was placed in the select list of 2007, therefore, under the said rules, he should have been assigned seniority just below respondents Nos.3 and 4, by giving weightage of two years in seniority.

4. The applicant submitted a representation dated 18.12.2013 (Annexure A-7) to respondent No.1, requesting to fix appropriate seniority and year of allotment as 2005 instead of 2007 in the IA&AS cadre. However, the same was rejected on 20.01.2014 (Annexure A-8).

5. Aggrieved by the order dated 20.01.2014, the applicant has preferred OA No.202/00828/2014, which was allowed on 18.02.2016 with the following observations:

“9. It is clear from the material placed on record that the claim of the applicant in providing two years weightage in seniority vis-à-vis the officers appointed in the year 2007, appointed through competitive examination was not considered nor addressed in their communication to the applicant via Annexure A-7.

10. On going through the contention raised by the applicant in the Original Application and after hearing the learned counsel for the applicant we find some force in the arguments raised by the applicant which needs to be addressed by the respondents concerned. Since respondents did not apply their mind to this issue, we consider it proper to direct the respondents to pass a reasoned and speaking order. We have also decided to examine the issue if necessary, after proper and fair disposal of his representation namely Annexure A-6.

11. Original Application is allowed. Accordingly, we direct the respondent No.1 to examine the contentions raised on the strength of the Rules applicable to the promotees and pass a reasoned and speaking order within a period of three months from the date of receipt of copy of this order. The applicant shall produce the order within 15 days from today to the respondent No.1 with copy of the Original Application and the annexures produced before us.”

6. In compliance of the directions of this Tribunal, the respondents have passed the order dated 12.05.2016 (Annexure A-11), rejecting the claim of the applicant. Hence, the applicant has filed this Original Application.

7. The respondents, in their reply, have submitted that the applicant was appointed in the JTS under Rule 7(2)(II) 1983 Rules and became a member of the service from 11.08.2009, as per Rule 5(3). Since the applicant was appointed in the year 2009, therefore, as per Rule 8(2)(c) of 1983 Rules, he was given the weightage of two years from the year of appointment, i.e. 2009. The respondents have also cited certain judicial pronouncements on the subject and stated that a person cannot claim seniority before his date of appointment. Since the applicant was appointed in the year 2009, therefore, he was kept in the 2007 batch, taking into consideration the clause mentioned in Rule 8(2)(c) of 1983 Rules.

8. We have heard the learned counsel for the parties and perused the pleadings and documents available on record.

9. It is an admitted fact that the applicant was appointed in the JTS and he became a member of the service from 11.08.2009. He was given weightage of two years, as per Para 8(2)(c) of 1983 Rules from the year of appointment i.e. 2009 and kept in 2007 batch. In Annexure A-3, the applicant has filed the classified list of Group 'A' officers, as on 01.09.2011, wherein name of the applicant has been shown at SL. No.520 of the list, whereas the

name of private respondents Nos.5 & 6 are kept in Sl. No.402 & 403 respectively. On perusal of the same, it would be evident that date of appointment of the applicant in IA&AS has been mentioned as 20.08.2009, whereas date of appointment of private respondents No.3, who is a direct recruit is shown as 14.12.2005. Further, the date of appointment of private respondent No.4 in IA&AS is given as 03.05.2007 and he was allotted the 2005 year by giving weightage of two years in seniority. Thus, there is no doubt that the weightage of two years, as per Rule 8(2)(c) of 1983 Rules, was granted to the applicant as well as to the private respondent No.4 according to their date of appointment to the grade.

10. Rule 8(2)(c) of 1983 Rules, relates to seniority of the officers promoted in JTS cadre, which reads as under:

“Rule 8(2)(c) The Officers appointed to the service in terms of provisions of sub rule 2 (ii) of Rule 7 shall be given two years weightage in seniority vis a vis the officers appointed in the same year through competitive examination.”

The rule position itself makes it clear that the weightage of two years in seniority is being given to the officers from the date of their appointment in the JTS cadre. Since the applicant was appointed in JTS cadre in the year 2009, therefore, he was rightly given the weightage of two years in seniority from the date of his

appointment and there is no justification to claim seniority vis-à-vis the private respondents, who were appointed in 2007 and 2005 respectively.

11. In the result, we do not find any merit in this Original Application. Hence, the same is dismissed, without there being any order as to costs.

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

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