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BEFORE LD. THE CENTRAL ADMINISTRATIVE TRIBUNAL.

CALCUTTA BENCH, NIZAM PALACE, CALCUTTA

**An application under section 19 of Central Administrative
Tribunal Act 1985**

Original Application No. 0350/- of 2016 350/1027/2016

In the matter

Mr. K Ravi

Sr. Accounts Officer presently posted
in Pay & Accounts office, Ministry of
Consumer Affairs, Food & Public
Distribution, Kolkata residing at
B/3 DumDum House, 246/11 R B
C Road Kolkata 700028

... Applicant

-Versus-

1. Union of India, Service
through the Secretary, Department
of Expenditure, Ministry of Finance
Room No. 129A North Block, New
Delhi - 110 001.

2. The Ministry of Finance,
Department of Expenditure
Controller General of Accounts,
Room No. 714 'C' Wing, 7th Floor,

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Lok nayak Bhavan, Khan Market,
New Delhi - 110003.

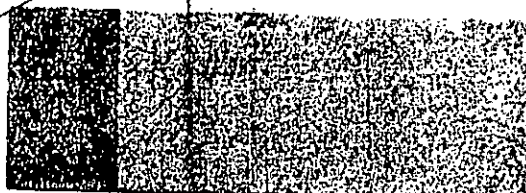
3. The Pr.Chief Controller of
Accounts, , Ministry of Home Affairs
Room No.217 North Block New Delhi
- 110 001.

4 The Pr.Chief Controller of
Accounts ,Ministry of Road
Transport & Highway 1 D A
Building, Jam Nagar House New
Delhi 110011.

5. The Chief Controller of Accounts ,
Ministry of Consumer Affairs ,Food
& Public Distribution , 4th floor ,
Jeevan Deep Building , Parliament
Street ,New Delhi 110001

6. Sr. Accounts Officer, Regional Pay
& Accounts Office Ministry of Road
Transport & Highway Room No.8
Porta Bhavan Salt Lake , Kolkata-
700091

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7. Mr A Hari Kumar Sr.Accounts
Officer , C B D T Ministry of
Finance, 7 th Floor C G O Complex '
A ' Wing , Saminary Hills Nagpur
440001

... Respondents

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O.A/350/1027/2016

Date of order: 15.1.2018

Coram: Hon'ble (Ms) Bidisha Banerjee, Judicial Member

Hon'ble (Ms) Jaya Das Gupta, Administrative Member

For the applicant : Mr. G.C Chakraborty, Counsel

For the respondents : Mr. S. Paul, Counsel

Per: Ms. Jaya Dasgupta, Administrative Member

Heard both sides.

2. The applicant Shri K. Ravi has approached CAT seeking the following reliefs:

8. a) Quash and set aside the perverse decision of the Respondent no. 2 as communicated to the applicant under letter dated 13.10.2015 (annexure A-9) by declaring the recruitment rules for the promotion of SR.AO. ultra vires.

b) A direction upon the respondents especially respondent no. 2 to give effect of promotion of the applicant to the post of Sr. Accounts Officer w.e.f. 1.1.2014 (at par the date of promotion of the immediate junior) instead of from 1.4.2015 and to effect the seniority from the same date on 1.1.2014 in the grade of Sr. AO above the position of immediate junior in the feeder post with all consequential benefits within a stipulated period.

c) A direction to the Respondent no. 2 to rectify the error in the gradation list of the Sr. Accounts Officer so that the applicant may get his promotion from Group-B to the Group A before his juniors in appropriate time in accordance with law.

d) A direction upon the respondent to make the payment of arrear of Pay and allowance arising from change of date of promotion.

d) A direction upon the respondent to pay interest @ 18 % per annum on arrear pay and allowances till date of payment with cost and

e) any other order or orders, direction or directions as this Hon'ble Tribunal may deem fit and proper. "

3. The Id. counsel for the applicant submitted that the prayer made in relief A should be deleted as he is not pressing such reliefs in this O.A. Hence, we are considering

relief 8 (b).

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4. The applicant Shri K. Ravi, Assistant Accounts Officer had been approved for promotion as Pay and Accounts Officer in Ministry of Home Affairs, Shillong against the vacancies caused due to NIFM Training of Shri Ravinder Kumar, vide office memorandum 136/2011, dated 8th June, 2011.

5. So it is apparent that he was approved for promotion from the post of AAO to PAO causing his transfer from Kolkata to Shillong. Vide office order dated 19.06.2011 (Annexure A-2), Shri K. Ravi, Assistant Accounts Officer was appointed to officiate as Pay and Accounts Officer, vide order dated 29.06.2011. Such order is set out below:

PRINCIPAL ACCOUNTS OFFICE (ADMIN.)

MINISTRY OF HOME AFFAIRS
NORTH BLOCK, NEW DELHI

No. 200/52/Pr.AO/Admn/MHA/11-12/875

Dated 29.06.2011

OFFICE ORDER NO. 161/2011

Shri K. Ravi Assistant Accounts Officer of the Ministry of Shipping, Road Transport & Highways, Kolkata who has been allocated by the Controller General of Accounts out of the centralized panel of 2011-12 is hereby appointed to officiate as Pay and Accounts Officer in the pay-scale of Rs. 7500-250-12000 (pre-revised scale) (New Pay Band-2 of Rs. 9300-34800 with the Grade Pay Rs. 5400) from the date he assumes charge of the post in RPAO (ITBP), Ministry of Home Affairs, Shillong. The appointment shall be governed by the Central Civil Accounts Service (Pay and Accounts Officer and Senior Accounts Officer) Recruitment Rules, 2000, and other rules and orders issued from time to time by the Government of India and the Controller General of Accounts, as are applicable to the post of Pay & Accounts Officer.

Posting of Shri K. Ravi at Ministry of Home Affairs, Shillong station has been decided by the Ministry of Finance, Department of Expenditure, Controller General of Accounts after taking into account his inter-se seniority, subject to the overriding consideration of administrative convenience as laid down in OM Nos. A-32014/1/2002/MF.CGA(A) / Gr.B/Vol.III/224 dated 14.5.2008. The posting is liable to change as and when warranted due to administrative reasons.

Shri K. Ravi shall have the option, to be exercised within one month from the date of appointment, to have the pay fixed under rule 22 (I) (a) 1 from the date of such appointment or to have the pay fixed initially at the stage of the time-scale of the new post above the pay in the lower grade or post from which he is

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promoted on regular basis, which may be re-fixed in accordance with this rule on the date of accrual of next increment in the scale of pay of the lower grade or post.

(Sanjeev Mishra)
Chief Controller of Accounts

Shri K. Ravi
Assistant Accounts Officer,
Ministry of Shipping, Road Transport and Highways
Kolkata (through Sl. No.III) "

6. He was relieved to join his promotional post on 30.04.2013 (Annexure A-3) and joined on 06.05.2013 at Shillong. Such order is set out below:

" No: PAO/NH/KOL/ /Staff Matter/12-13/25-31 DTD 30.04.2013

OFFICE ORDER

In pursuance of the Office of the CGA, M/o. Finance, New Delhi OM No.: 136/2011 dated 08.06.2011 communicated vide Pr. Chief Controller of Accounts, M/o Road Transport & Highways, New Delhi: Officer Order No.: PCCA/SRTH/Admn/AAO/12-13/106-113 DTD 30.04.2013, Shri Revi-K, AAO, of RPAO (NH), Kolkata stands relieved of his duties on the afternoon of 30.04.2013 with the instruction to report for duty as PAO, M/o Home Affairs, Shillong, Meghalaya.

(Sekhar Guha Roy)

Sr. Accounts Officer (NH)

Kolkata

7. It appears as per the pleadings of the respondent authorities from the Reply that he was relieved late as the applicant himself pleaded not to be relieved on promotion immediately but after 'March 2012' i.e after the completion of final examination of his twin sons, in the month of March 2012. Such representations of the applicant dated 05.07.2011 is set out below:

"

From: Ravi K

Asstt. Accounts Officer

Regional Pay & Accounts Office (NH)

Ministry of Road Transport & Highways

Purta Bhava, Salt Lake

Kolkata- 700091

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To

The Controller General of Accounts

Department of Expenditure

Ministry of Finance

Loknaya Bhavan

New Delhi

(THROUGH PROPER CHANNEL)

Sub: Promotion to the post of PAO and transfer therefore.

Sir,

This has come to my knowledge from reliable sources that your good office has prompted me to the post of Pay & Accounts Officer in the office of PAO, Home, at Shillong, Meghalaya, for which I am grateful to you and gladly accept.

In this connection, I beg your attention to the fact that my twin sons are studying in Class X and will be giving their final examination in the month of March of 2012 and since I solely look after their studies, my presence at home is of utmost important to them and leaving Kolkata at this juncture will jeopardize their studies and future.

Therefore, you are kindly requested to either consider my promotional posting in any office at Kolkata as Pay & Accounts Officer or allow me to join the Office of PAO, Home at Shillong in the month of April, 2012, i.e after completion of my sons Class X examination.

Thanking you

Dated : Kolkata 5th July, 2011

Yours faithfully

(Ravi K)

Copy to : The Pr. Chief Controller of Accounts, MORTH, IDL Building, Jamnagar House, New Delhi : 110011 with a request to not to issue any relieve till March.2012

(Ravi K) "

8. It is the submission of the applicant in Court that he was waiting to be relieved after March 2012, but he was relieved only on 30.04.2013 and joined on 06.05.2013. He also submitted that he did not make any further communication while still posted at Kolkata in the feeder' post of AAO to expedite his release so that he can join Shillong as PAO on promotion as soon as his reliever was available.

9. In the meantime, his immediate junior in the Seniority list of AAO, Shri A. Hari Kumar joined the promotional post of PAO without any delay and accordingly become senior to the applicant. As per the Recruitment Rules of PAO and Sr. AO, Shri A Hari Kumar was promoted to the post of Sr. AO earlier to the applicant as he completed the required qualifying service for promotion to the post of Sr. AO as on 01.01.2014. The applicant did not complete one year as on 01.01.2014 for the vacancy year 2014-2015 as per the

Recruitment Rules and hence again become junior to Shri A Hari Kumar in the seniority list of Sr. AO, because of shortage of one year on qualifying service in the feeder post of PAO. Relevant parts of recruitment rules is set out below:

MINISTRY OF FINANCE
(Department of Expenditure)
CONTROLLER GENERAL OF ACCOUNTS)
NOTIFICATION

New Delhi, the 25th September, 2000

G.S.R. 750(E).- In exercise of the powers conferred by the provision to article 309 of the Constitution and in supersession of the Central Civil Accounts Service (Pay and Accounts Officer) Recruitment Rules, 1977 except as

Respect things done or omitted to be done before such supersession, the President hereby makes the following rules regulating the method of recruitment to the posts of Pay and Accounts Officer and Senior Accounts Officer of the Central Civil Accounts Service, namely :-

1. Short title and commencement - (1) These rules may be called the Central Civil Accounts Service (Pay and Accounts Officer and Senior Accounts Officer) Recruitment Rules, 2000.

2. Application- These rules shall apply to the posts specified in column 1 of the Schedule annexed to these rules.

3. Number of posts, classification and scales of pay - The number of the said posts, their classification and the scales of pay attached thereto shall be as specified in columns 2 to 4 of the said Schedule.

4. Method of recruitment, age limit, qualifications etc.- The method of recruitment, age limit, qualifications and other matters relating to the said posts shall be as specified in columns 5 to 14 of the said Schedule.

5. Controlling Authority of the posts.- The posts shall be controlled by Controller General of Accounts in Ministry of Finance.

6. Liability for transfer.- The PAO and Sr. AO shall be liable to transfer any where in India.

7. Disqualifications - No person

(a) who has entered into or contracted a marriage with a person having a spouse living or

(b) who, having a spouse living, has entered into or contracted a marriage, with any person, shall be eligible for appointment to any of the said post:

Provided that the Central Government may, if satisfied that such marriage is permissible under the personal law applicable to such person and the other party to the marriage and that there are other grounds for so doing, exempt any person from the operation of this rule.

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8. Power to relax.- Where the Central Government is of the opinion that it is necessary or expedient so to do, it may, by order, for reasons to be recorded in writing, relax any of the provisions of these rules with respect to any class or category of persons.

9. Saving:- Nothing in these rules shall affect reservation, relaxation of age limit and other concessions required to be provided for the Scheduled Castes, the Scheduled Tribe, Ex-serviceman and other special categories of persons in accordance with the orders issued by the Central Government from time to time in this regard.

SCHEDULE

Name of posts	No. Of posts	Classification	Scale of pay	whether selection by merit or selection-cum- seniority or non selection post
1	2	3	4	5
1. Pay and Accounts Officer	105* (2000)	General Central service, Gr. B Gazetted Ministerial	Rs. 7500-250-12000	Selection-cum-seniority
2. Senior Accounts Officer	422* (2000)	General Central Service, Gr. B Gazetted- Ministerial	Rs. 8000-275-13500	Non-Selection
*Subject to variation dependent on work load.				
Age limit for direct Recruits	Whether benefit of added years of Service admissible	Educational and other qualifications required for Direct recruits	Whether age and educational qualification prescribed for direct-recruits Will apply in the case of promotees	Period of probation if any
6	7	8	9	10
Not applicable	Not applicable	Not applicable	Not applicable	Not applicable
Not applicable	Not applicable	Not applicable	Not applicable	Not applicable
Method of recruitment, whether by direct recruitment or by promotion or by deputation or by absorption and percentage of the posts to be by various methods	In case of recruitment by promotion /deputation/ absorption, grades from which promotion/ deputation/ absorption to be made	If a Departmental Promotion Committee exists, what is its composition	Circumstances in which Union Public Service Commission is to be consulted in making recruitment	
11	12	13	14	
By promotion	(a) Promotion: Assistant Accounts Officers with three years regular service in the grade failing which Assistant Accounts Officers with six years of combined service in the grade of Assistant Accounts	Group 'B' Departmental Promotion Committee (for considering promotion) consisting of : 1. Joint Controller General of Accounts- Chairman 2. Chief Controller of Accounts or Controller of Accounts-	Consultation with Union Public Service Commission not necessary	

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Officer/Junior Accounts Members

Officer of which two years
Must be in the grade of

Assistant Accounts Officer.

Note 1. Where juniors who
Have completed their qual-
ifying/ eligibility service are
being considered for promotion
their seniors would also be
considered provided they are
not short of the requisite
qualifying/eligibility service by
more than half of such qualifying/
eligibility service or two years,
whichever is less, and have
successfully completed their
probation period for promotion
to the next higher grade along
with their juniors who have already
completed such qualifying/
eligibility service.

By Promotion	<p>Promotion : Pay and Accounts Officer with two years of regular service in the grade. Note 1. - Where juniors who have Completed their qualifying/ eligibility service are being con- sidered for promotion, promotion, their seniors would also be considered provided they are not short of the requisite qualifying/eligibility service by more than half of such qualifying/eligibility service.</p>	<p>Group 'B' Departmental Promotion Committee (for considering promotion) consisting of : 1. Joint Controller of General of Accounts-Chairman 2. Chief Controller of Accounts or Controller of Accounts Members</p>	<p>Consultation with Union Public Service Com- mission not necessary</p>
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[No: A-12018/91/ME/CCA(A)/GR"B"]
U.K MAITRA Jt. Controller General of Accounts

10. The applicant also forcefully submitted that as per the relaxation clause in para 8 of the Recruitment Rules his lesser period of qualifying service should be relaxed and he should be promoted before his junior Shri A. Hari Kumar. However, it is clear from para 8 to the Recruitment Rules that the relaxation applies to any class or category of persons and not to any individual. The applicant was accordingly informed. Therefore, the applicant could not be promoted to the post of Sr. AO for want of requisite length of service in the Grade of PAO i.e the feeder post for the promotion to the grade of Sr. AO as on 01.01.2014 for the vacancy year 2014-2015.

11. However, as soon as he attained the qualifying service as per Recruitment Rules, he was promoted w.e.f 01.04.2015 vide order dated 15.06.2015 which is set out below:

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" A.32014/1/2013/MF CGA(Gr.B)/208

GOVERNMENT OF INDIA
MINISTRY OF FINANCE, DEPTT. OF EXPENDITURE
(CONTROLLER GENERAL OF ACCOUNTS)
LOK NAYAK BHAVAN
NEW DELHI

Dated, the 15th June 2015

OFFICE MEMORANDUM

Sub: Promotion of Pay & Accounts Officers in the scale of pay of Rs. 7500-250-12000 to the post of Senior Accounts Officer in the scale of pay of Rs. 8000-275-13500 (Pre-revised).

The undersigned is directed to convey that in terms of CCAS (PAO & Sr. AO) Recruitment Rules, 2000, the following Pay & Accounts in the pay scale of Rs. 7500-250-12000 are approved for promotion to the grade of Senior Accounts Officer in the pay scale of Rs. 8000-275-13500 (pre-revised) with effect from the dates mentioned against each

Sl. No	G.L. No. (as on 01.04.2015)	Name (S/Shri/Ms)	Date of Birth	Ministry/ Deptt.	Station	Date of Promotion as Sr. A.O w.e.f.
03	7	K. Rvi	30.05.1963	CA & PD	Kolkata	01.04.2015

12. The Id. counsel for the applicant had submitted certain citations in favour of his client which are discussed below :

1. 1991-Supp. (2) SCC 363 in NIRMAL CHANDRA BHATTACHARJEE AND OTHERS - VERSUS- UNION OF INDIA. We have gone through the citation, however the mistake of delay is not concerned in the current O.A as the applicant himself sought to be relieved from the feeder post of AAO to the promotional post of PAO later because of his personal difficulties and such representations was allowed by the respondent authorities.

2. (2004 vol. I SCC 245 in P.N. PREMACHANDRAN versus STATE OF KERALA AND OTHERS. In this case Hon'ble Apex Court had made general observations and not in any particular individual case.

3. 2008 vol. 14 SCC 29 in NIRMAL CHANDRA SINHA versus UNION OF INDIA AND OTHERS. here the Hon'ble Apex Court has directed that a retrospective promotion cannot be allowed i.e. the effective date of promotion cannot be retrospective. So, this order is also of no help to the applicant as he has been promoted after he attained the appropriate qualifying service as per the extant Recruitment Rules.

13. On the other hand, the Id. counsel for the respondents had cited the order of our co-ordinate Bench i.e. the Principal Bench, New Delhi in the matter of-

G.S. Sharma Vs. UOI & Ors (O.A. No. 543 of 2015):

It has been held by the Hon'ble CAT, New Delhi that "This is the most bizarre O.A. a government servant can file. In order to stay on in Delhi and retain the Government accommodation, the first request the respondents to allow him to stay on in New Delhi on promotion. The respondents considered his request and allowed him to get his promotion and continue at Delhi as well. Now, when his juniors joined their higher posts and started getting higher pay than him, he raises a claim that the government never forced him to go to Goa but considered his representation instead and allowed it. The O.A clearly has no merit and is completely misplaced. **Not only does he want the cake and eat it too, he wants crumbs from others shares as well!** The O.A deserves to be dismissed with heavy cost. However, considering the fact that the applicant is a senior citizen retired from Govt. service, we restrain ourselves from imposing any cost on the applicant. The O.A is dismissed."

14. Hence, considering the above facts, the applicant has been unable to make out a case in his favour and this application should be dismissed.

15. The O.A is accordingly dismissed. No costs.

(Jaya Das Gupta)
Member (A)

(Bidisha Banerjee)
Member (J)