

**Central Administrative Tribunal  
Madras Bench**

**OA/310/01931/2017 a/w OA/310/01862/2017**

**Dated 9<sup>th</sup> January Two Thousand Nineteen**

**P R E S E N T**

**Hon'ble Mr. P.Madhavan, Member(J)  
&  
Hon'ble Mr.T.Jacob, Member(A)**

1. Jayanthi Siva
2. K.Amirthalakshmi
3. R.Ramyaa Perundevi
4. Vrinda Sundar .. Applicants in OA 1931/2017
5. P.Premkumar .. Applicant in OA 1862/2017

By Advocate **M/s.L.Maithili Associates, M/s.S.Sadashram**

**Vs.**

1. Union of India, rep by  
The Comptroller & Auditor General of India,  
10, Bahadur Shah Zafar Marg,  
New Delhi 110 002.
2. The Senior Deputy Accountant General (A&E) (Admin).,  
O/o The Accountant General(A&E),  
Chennai 600 018. .. Respondents in OAs 1931/2017 & 1862/2017
3. Principal Accountatn General (A&E),  
Tamilnadu,  
Chennai 600 018. .. Respondent in OA 1862/2017

By Adovacte **Mr.V.Vijay Shankar**

**ORDER**

[Pronounced by Hon'ble Mr.P.Madhavan, Member(J)]

The above two OAs were filed seeking the following relief:-

OA 1931/2017:

“to set aside the impugned Office Order No.177, 178, 180 and 181 dated 20.11.2017 issued by the 2<sup>nd</sup> respondent withdrawing the promotion granted to the applicant as AAO (Adhoc) with retrospective effect from 07.9.2009 and recover the consequential alleged overpayment of pay and allowances for the period from 07.9.2009 to 25.4.2017 from the applicants and pass such further or other orders that this Tribunal may deem fit and proper in the facts and circumstances of the case and thus render justice.”

OA 1862/2017:

“to set aside the impugned order dated 20.11.2017 passed in Estt.1/G1.11/2017-18/74 on the file of the 2<sup>nd</sup> respondent herein and pass such further or other orders as this Tribunal may deem fit and proper in the circumstances of the case and thus render justice.”

2. Since the relief sought and the issues raised therein are of a similar nature, these OAs are taken up together and disposed of by this common order.

3. The admitted facts in this case in brief is as follows:-

The applicants were working as Senior Accountants in the Accounts Stream of the respondents. They were promoted as Assistant Accounts Officer (adhoc) with retrospective effect from 07.9.2009 as per Annexure A15/A10 Office Orders dated 01.2.2013. The 1<sup>st</sup> respondent had issued an order dated 16.7.14 (Annexures A 17/A11) to treat the promotion granted as null and void with immediate effect. The

above order was challenged in OA 1495/14 before this Tribunal and this Tribunal had set aside the above order on the ground that, it was passed without giving notice to the affected applicants. Though the applicants challenged the order of Tribunal in the Hon'ble Madras High Court, it was not successful and High Court upheld the order of Tribunal. Thereafter, respondents issued notice to all the affected parties. Eventhough an OA 1141/17 was filed to set aside the show cause notice by applicants, Tribunal did not allow it as the said notice was initiated as per order of the Tribunal. The respondents after personal hearing, cancelled the order passed on 01.2.2013 and applicants were reverted to the post of Senior Accountants.

4. The applicants are now challenging this order of reversion passed against them.

5. Before adverting to the legality of the order it will be better to understand the circumstances in which the applicants were promoted.

6. There are two streams in the Office of Comptroller and Auditor General. They are officers coming under (1) Accounts Stream and (2) officers coming under Audit Stream. As per rules, the post of Assistant Accounts Officer (AAO) is filled up by promotion. For promotion, the officer has to pass Section Officers Grade Examination (Civil Accounts) which comprises Part I and Part II examination in the accounts stream. Similarly for those in the audit stream, they have to pass Section Officers Grade Examination (SOGE) (Civil Audit) exam consisting Part I & II examinations.

7. The applicants are from the Accounts stream and owing to stagnation due to

lack of promotion, the SOGE (Civil Accounts) examination was suspended with effect from March 2006. On 12.8.2003, the respondents by Circular No.31/NGE/2003(Annexure A1) granted permission to officers of the accounts stream to appear for the SOGE (Civil Audit) examination for their absorption in the civil audit stream. It was permitted that those who have not cleared some of papers in Part I/Part II of SOGE (Civil Accounts) will have to clear the remaining papers of SOGE (Civil Audit). The candidates of A&E officers passing SOGE (Civil Audit) will be absorbed in Civil Audit offices. The circular dated 16.12.2008 had clarified that passing of Part II SOGE (Civil Audit) by A&E candidates will make them eligible for absorption in audit offices and does not debar them for promotion as S.O. in A&E Offices.

8. In this respect, it has to be noted that 4 papers in Part I in Civil Account and 4 papers in Part I Civil Audit stream are same. As regards Part II examinations, out of 6 papers 4 papers are common. The applicants had cleared all papers in Civil Accounts stream Part I but could not pass Part II. But they had passed 4 papers which are common. The applicant Jayanthi Siva had given a representation for considering the results of SOGE (Civil Accounts) and SOGE (Civil Audit) and requested the respondents to consider her as passed in the Section Officers grade examination (Civil Accounts) and this request was disallowed by respondent on 2.11.2007. The said order dated 2.11.2007 was challenged before the Tribunal in

OAs 906 to 914/07 and the Tribunal allowed the OA and set aside the Memo dated 2.11.2007 and the applicants were declared passed Civil (Accounts) by passing remaining papers in Audit stream. Owing to the persistent demand for promotion from the Accounts stream, the office of the Comptroller and Auditor General had published a scheme (Annexure A6/A2) as Circular No.6 dated 25.3.09. The said scheme was made for regularizing the existing adhoc Section Officers and giving promotion to wait-listed candidates of SOGE passed officials as Section Officers (AAO). The Scheme provided for existing post of adhoc Section Officers to regular temporary posts of Section Officers (now AAO) and the posts held by them before their promotion as adhoc Section Officers to continue to be held in abeyance. It also proposed to create new posts of adhoc Section Officers to promote all wait-listed SOGE (Accounts) passed officials (vide clause (ii) in Annexure A6). On 13.7.09 the respondents issued a circular clarifying the scheme dated 25.3.09 (vide clause 5) stating that the SOGE (Civil Audit) officers and those who passed SOGE (Accounts) as well as SOGE (Civil Audit) will have to go on deputation to the Civil Audit officers for their eventual absorption. Those who are unwilling to go to the audit offices on deputation now will not be eligible to get any kind of benefit under existing scheme. The applicants in this case were not willing to go to the audit stream and they filed OA 830/09 and 1495/2014 respectively seeking to set aside the condition for deputation and also for a direction to promote them as AAO's. The

Tribunal thereupon set aside the condition imposed in clause 5 of the circular dated 13.7.09 but directed the respondents to consider the case of the applicants who are otherwise fit for regularization under the scheme formulated without insisting on them to go on deputation. The respondents filed WPs 8269 and 8270 of 2010 and WP 32371/2015 respectively, against the order and the Hon'ble High Court has dismissed the WPs and confirmed the Tribunal's order. It is submitted by the counsel that, the respondents had also approached the Hon'ble Supreme Court, but the SLP was also dismissed on 13.4.2012. On 01.2.13 the respondents issued Office Orders 249 and 251 dated 01.2.13 respectively, granting promotion to 1<sup>st</sup> applicant to the post Assistant Accounts Officer (adhoc) as per the scheme dated 25.3.09 (Annexure A15/A10). On 16.7.14 the C&AG had cancelled the retrospective promotion of deemed pass officers stating that they are not eligible for promotion under the scheme dated 25.3.09 (vide Annexure A17/A12). Thereafter, the respondents issued circular No.22 dated 03.8.15 stating that the Civil Accounts examinations are again opened for the year 2016 and 2017. It was also stated that the officials who were declared deemed pass in SAS (Civil Accounts) examination by virtue of passing the common papers while attempting (Civil Audit) examination will be considered for appointment in AAO (adhoc) on declaration of result of 2016 SAS (Civil Account) examination.

9. The counsels for the applicants would content that since the clause 5 of circular

dated 08.7.09 was struck down the applicants who are deemed pass in SOGE Accounts exam became eligible for getting the benefits of the scheme and hence the impugned order dated 20.11.2017 is illegal and against the spirit of the order of the Tribunal and the Hon'le High Court which confirmed the order of the Tribunal. The respondents were in fact implementing the decision which the Tribunal and the Hon'ble High Court had passed in this matter. Now, after attaining finality, respondent is barred from taking a different stand which they ought to have taken. The counsel for the applicants had invited our attention to the decision in *M.Nagabhushana v. State of Karnataka reported in 2011 (271) ELT 481. The applicants who were declared passed in SOGE (Civil Accounts) cannot be denied their promotion.*

10. It is also contended by the counsels appearing for the applicants that the reversion of the applicants is itself illegal and hence recovery of the excess pay does not come into picture. There is no misrepresentation or fraud committed by applicants for obtaining promotion. They rely on the decision of the Apex Court in *Bihar State Electrical Board & Another v. Bijay Bahadur & Another (2000) 10 SCC 9* where it was held that the adoption of a higher scale, when not on account of any misrepresentation on the part of the employee, recovery of the excess payments made is impermissible. They had also cited the *Rafiq Masih case reported in (2014) 8 SCC 833* against effecting recovery of the excess payments if any made.

11. The counsel for the respondents on the other hand had invited our attention to

the scheme dated 25.3.09 (Annexure A6/A2).

12. According to him, the scheme was intended to reduce the stagnation in the accounts wing of the respondents. According to him, the very purpose of the scheme is set out in the beginning itself ie. regularization of existing adhoc Section Officers and promotion of wait-listed SOGE passed officials. Accordingly all adhoc Section Officers (now AAO) in A&E offices will be regularised by converting existing posts of adhoc Section Officers into regular temporary posts of Section Officers. The posts held by them before their promotion as adhoc Section Officers will continue. Clause (II) says new posts of adhoc Section Officers will be created to promote all wait-listed SOGE (Accounts) passed officials. Existing posts held by these officers will be kept in abeyance. Clause (III) clearly states that officials declared passed on their passing common papers taken as part of SOGE (Audit) belonging to officers or categories where SOGE (Accounts) examinations have been suspended, will not be promoted as adhoc Section Officers as indicated in clause (II) above. From clause (III) it can be seen that the scheme is not applicable to applicants who were deemed passed or declared passed by taking Part II of SOGE (Audit) exams. So, the promotions given to the applicants were illegal and hence they were reverted. The respondents had considered the case of applicants and had issued circular dated 13.7.09 to facilitate their absorption in the audit stream. But the applicants were against the condition and filed OA 830/09 to set aside the condition and the Tribunal by its order set aside condition, and observed that the respondents can give promotion



on basis of merit as per scheme. The Tribunal has also not passed any order against the other conditions of the scheme. The Hon'ble High Court also upheld the order Tribunal. So, accordingly the respondents had passed the impugned order of reversion to the applicants.

13. We had heard the counsels appearing on the side of applicants and respondents and perused the pleadings in both case. The applicants' case is mainly based on the scheme prepared by the respondents. But on a careful reading of the scheme, it can be seen that the scheme was mainly prepared for giving promotions to those who had passed SOGE (Accounts) Papers I & II and wait-listed for promotion. It is specifically made clear in clause (III) that the scheme has no application to the applicants who had passed Part II Audit instead of Part II of SOGE (Accounts). The provision for deputation to audit stream was set aside by the Tribunal in OA 830/09. As this clause was set aside, now there is no provision to promote those deemed pass candidates (Paper II Audit). Instead of giving promotion to Senior Accountants who had cleared SOGE (Accounts) examination alone, the respondents had included the applicants in the scheme and gave retrospective promotion from 2009 onwards. It is clear from the scheme Clause (III) that applicants have no right to be promoted as AAO as per the scheme. The applicants who were deemed pass were given chance to promotion by Circular dated 03.8.15 after declaration of SOGE (Accounts) examination 2016 and 2017.

14. The applicants in this case has never challenged the scheme as such or clause

(III) which specifically exclude them from scheme. In view of the above, it cannot be said that the respondents ought to have taken such a stand earlier. The option for going on deputation to audit wing was set aside by the Tribunal in OA 830/09 at the instance of the applicants and hence there is no provision to give promotion to the applicants in the scheme. The orders passed by the Tribunal and Hon'ble High Court was only with respect to the condition imposed for going to audit wing for absorption. So, it cannot be said that the order passed by respondents cancelling the order of promotion dated 16.4.09 and the consequent impugned order dated 20.11.17 cannot be considered as against the spirit of the Tribunal's order or that of Hon'ble High Court.

15. So, we are of the view that the impugned order passed by the respondents ordering reversion is legal and valid in the eyes of law.

16. Now the question to be considered is whether the respondents can be restrained from recovering the excess payment made by the respondents to applicants consequent to the retrospective promotion. It is submitted that the applicants were reverted and thereafter they were again promoted to the post of AAO's as they became eligible for promotion on declaration of result in SOGE (Accounts) Exam, 2016 and 2017. So, according to the respondents, there has occurred over payment in between 07.9.09 and 25.4.17. The counsel for the applicants would content that the

applicants had not done any misrepresentation and it is only because of the mistake committed by the respondents that applicants were granted promotion and consequent salary in the new post. In this case, the applicants were promoted as adhoc AAO's only on 01.2.13. The promotion was granted from the date of scheme ie., 25.3.09. It was also submitted that the pay and allowances shall be admissible from the date of deemed assumption of charge of the higher post (vide Annexure A15). From this it can be seen that the retrospective effect was granted even to the pay and allowances from the date of deemed promotion. The ordinary rule is that “when there is no work there is no pay”. In this case the promotions were granted with effect from 25.3.09 on a notional basis since the scheme was implemented from that date. There is no explanation offered as to how the financial benefits were extended to the deemed date of promotion. This is clearly a mistake or illegality committed by the persons in authority who are expected to look into these aspects. Now it is almost 5 years and recovering the entire amount will be harsh as applicants were only Class B officers. It can be seen that applicants had worked as AAO on adhoc basis w.e.f. the date of promotion till the date of their reversion to the post of Senior Accountants. In *Sahibram v. State of Haryana (1995 Supp(1) SCC 18)* the Hon'ble Apex Court held as follows:-

*“the applicants therein did not possess the required educational qualification. Under the circumstances, the appellant would not be entitled to the relaxation. The principal erred in granting him the relaxation. Since the date of relaxation, the appellant had been paid his salary in*

*revised scale. However, it is not on account of any misrepresentation made by the applicant that the benefit of higher pay scale was given to him but by wrong construction made by the principal for which the applicant cannot be held to be at fault. Under the circumstances, the amount paid till date may not be recovered from applicant.”*

17. In this case also, the applicants were promoted to AAO adhoc interpreting that the scheme is applicable to the deemed pass SOGE (Accounts) passed applicants also. This was done not due to any misrepresentation or fraud committed by the applicants. They were working as AAO (adhoc) from 01.2.2013 till 25.4.2017 and they were discharging their duties. They were paid the higher salary as they were functioning as such as AAO (adhoc). The mistake was committed by the respondents and it will not be proper to recover the amounts paid as salary and allowances during this period when they had actually worked as AAO (adhoc). But as regards the payment received for the period from 25.3.09 to 01.2.13 there is no justification as the applicants had not worked in that post of AAO (adhoc) and it was only a notional or deemed promotion. So, if we apply the principle “no work no pay” the applicants are liable to return the pay and allowances drawn by them.

18. In this case, the applicants had invited our attention to *Rafiq Masih case (2014) 8 SCC 833* wherein the Apex Court held that recovery of excess payment made beyond 5 years should not be recovered. Clause V of the judgment permit the court to extent the principle when recovery becomes iniquitous, or harsh or arbitrary.

19. The counsel for the applicants had cited the decisions in *Kusheshwar Pandey v. Union of India (2013) 9 SCR 593*, *Shiva v. Union of India (ILR 2003 AR 3806)* etc. to

content that the department is not justified in cancelling the promotions. On a perusal of the above judgments, it can be seen that those judgments are not directly applicable to the facts and circumstances of this case.

20. In this case 5 years had already passed. Directing the respondents to pay back the excess amount drawn in a lump sum will not be justified. The respondents will work out the actual amounts which the applicants had drawn in excess in between 25.3.09 and 1.2.13 and can recover the same in convenient monthly instalments without causing much financial difficulties to the applicants.

21. In the result we find that there is no reason to interfere with the impugned orders No.177, 178, 180 and 181 and Estt.1/G1.11/2017-18/74 dated 20.11.2017. The respondents are at liberty to recover the excess pay and allowances paid to the applicants for the period 25.3.09 till 13.2.13 in convenient instalments. The OAs are disposed of accordingly. No costs.

(T.Jacob)  
Member(A)

09.01.2019

(P.Madhavan)  
Member(J)

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