

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30-06-2006

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA
AND
THE HONOURABLE MRS. JUSTICE CHITRA VENKATARAMAN

W.P.NOs.40424 to 40426 OF 2002

1. Union of India,
Rep. by Comptroller and Auditor
General of India,
10, Bahadur Shah Zafar Marg,
New Delhi 110 002.
2. The Principal Accountant General (A&E),
Tamil Nadu,
Chennai 600 018.
3. The Accountant General (Audit) I
Tamil Nadu & Pondicherry,
EVR Buildings, Nandanam,
Chennai 600 035. ... Petitioners in all WPs

Vs.

1. The Central Administrative Tribunal,
Chennai Bench represented by its
Registrar, Chennai 104. ... Respondent-1 in all WPs
2. Smt. Shanthi Pughazhenth
W/o.K. Pughazhenth ... Respondent-2 in WP.40424/02
3. R. Srinivasan Rengasamy
S/o.late I. Rengasamy Iyer ... Respondent-2 in WP.40425/02
4. Smt. Vidya Janardhan
W/o.P.B. Janardhan ... Respondent-2 in WP.40426/02

Writ Petitions filed under Article 226 of the Constitution of India for the issuance of writ of Certiorari to call for the records of the Tribunal in O.A.Nos.380 to 382 of 2001 and quash the common order dated 12.2.2002.

For Petitioners : Mr.V. Vijay Shankar
in all WPs

For Respondent No.2 : Mr. Karthik Rajan
in all WPs

Respondent-1 : Tribunal
in all WPs

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COMMON JUDGMENT

P.K. MISRA, J

These three writ petitions are filed by the Union of India and subordinate officials against the common order dated 12.2.2002 passed by the Central Administrative Tribunal in O.A.Nos.380 to 382 of 2001.

2. Present Respondent No.2 in each of the writ petition was the applicant in the connected Original Application before the Tribunal. W.P.No.40424 of 2002 relates to O.A.No.380 of 2001, W.P.No.40425 of 2002 relates to O.A.No.381 of 2001 and W.P.No.40426 of 2002 relates to O.A.No.382 of 2001. Three applicants had been originally appointed under University Grants Commission. Subsequently, on their request, they were transferred to the Office of the Accountant General, Madras. At the time of joining in the new post, it was specifically indicated :-

"1. (a) He/She will rank below the last officiating clerk of this office on the date of his/her joining this office on Unilateral transfer from the University Grants Commission, New Delhi/Delhi Development Authority, New Delhi.

(b) He/She will be taken as a new recruit from the date of joining the IAAD and service conditions applicable to staff of IAAD will be applicable to him/her.

2. His/her seniority for promotion will be regulated only with reference to the position assigned as at (1) above.

3. As the transfer is at his/her request, he/she will not be entitled to any TA/joining time pay for the transfer.

4. If he/she is temporary, his/her name will be struck off from the Gradation list of his/her parent office.

5. He/She is liable for transfer to any of the outside units under the control of this office.

6. He/She should not seek retransfer to University Grants Commission, New Delhi or transfer to any other office.

7. He/She is liable to be transferred to Central Government / State Government in the event of transfer of Accounts to State Government."

Subsequently, since the applicants were paid salary at the minimum time-scale applicable to the post without taking into account the increments already earned by them in their previous posting, representations were made by them claiming that the period of service rendered by them under UGC should be counted for the purpose of increment and for the purpose of pensionary benefits. Such representations filed by the applicants were rejected by the authorities. Thereafter, the Original Applications were filed claiming that pay protection should be given to them and the period of service under the University Grants Commission should be counted. A common reply was filed before the Tribunal by the Union of India and other subordinate officials. The main stand taken in the counter affidavit was to the effect that the applicants were transferred on their own request and it was specifically made clear that the applicants shall be taken as new recruits from the date of joining. The Tribunal under the impugned common order repelled the contention raised by the Union of India and held that even though the applicants were transferred on their own request, they were entitled to pay protection and to count their past service for the purpose of pension. Such conclusion of the Tribunal is being challenged by the Union of India in these writ petitions.

3. The main contention raised by the learned counsel appearing for the petitioner is to the effect that the three employees in question were transferred on the basis of their own request and at that time such employees had specifically agreed to the terms and conditions which have been already extracted. In such view of the matter, they were rightly taken as new recruits and pay scale had been fixed accordingly without giving them the benefit of the increments already earned by them during their employment under the University Grants Commission. Learned counsel for the petitioner has also placed reliance upon the decision of the Supreme Court reported in (2000) 4 SCC 13 (THE COMPTROLLER AND AUDITOR GENERAL OF INDIA & OTHERS v. FARID SATTAR). The aforesaid decision has been pressed into service before the Tribunal by the Union of India, but the Tribunal had distinguished such decision.

4. In the case before the Supreme Court, the employee had initially joined as an Auditor in the Office of the Accountant General, West Bengal. Subsequently, after bifurcation of Audit and Accounts, such employee was transferred to the Office of the Accountant General, West Bengal. Subsequently, he was promoted to the post of Senior Accountant. Thereafter, he had applied for mutual transfer with one Shri Paresh Ghosh, Senior Accountant, working in the Office of Senior Deputy Accountant General, Sikkim. However, since such mutual transfer was not permissible, the employee was "advised to apply for unilateral transfer after seeking reversion to the lower post of Accountant as a direct recruit". Accordingly, the employee applied for unilateral transfer in the cadre of Accountant, foregoing the status of a Senior Accountant and he was posted as Accountant in the office of the Deputy Accountant General, Sikkim. The pay scale of the Senior Accountant at the relevant time was Rs.1400 - 2600, whereas the pay scale of the Accountant was Rs.1200 - 2040. The employee having accepted the terms and conditions of the unilateral transfer was posted as Accountant in the pay scale of Rs.1200 - 2040. However, his pay was erroneously fixed at Rs.1560/- which he was drawing prior to his reversion to the lower post. When such mistake was discovered, the employee's pay scale was refixed at a lower scale and further direction to recover excess payment was issued. Such action was challenged by the employee before the Central Administrative Tribunal contending that even if he was posted as Accountant he was entitled to protection of pay which he was drawing as a Senior Accountant and there was no right to recover the alleged excess payment. The Government took the stand that the employee was bound by the terms and conditions of the unilateral transfer and he was required to tender technical resignation from the post which he was holding with a view to join the lower post. The Tribunal took the view that unilateral transfer was not contemplated in the Fundamental Rules and the employee should be treated having gone on transfer on request and his case was to be governed by FR 22(I)(a)(3). Accordingly the Tribunal quashed the order of the Government. Such decision of the Tribunal was challenged before the Supreme Court by the Comptroller & Auditor General of India. While allowing such appeal and quashing the order passed by the Tribunal, the Supreme Court observed as follows :-

"5. It is no doubt true that unilateral transfer which is said to be coined by the appellants is not contemplated under the Fundamental Rules. What is contemplated is the transfer on written request under Fundamental Rule 15. But if such a transfer is not contemplated under the Fundamental Rule, it is not necessarily to be governed by the Fundamental Rule, but by the terms and conditions of such

unilateral transfer. Fundamental Rule 22(I)(a)(2) provides that, when an employee is transferred to a new post, which does not involve assumption of duties and responsibilities of greater importance, he shall draw as initial pay, the stage of the time-scale which is equal to his pay in respect of the old post held by him on regular basis. Thus FR 22(I)(a)(2) would be applicable where there is an ordinary transfer which is not by way of reversion to the lower post and in such a case, the pay of an employee on transfer to a new post has to be protected. Fundamental Rule 22(I)(a)(3) is applicable where an employee is transferred to a new post on his own request under sub-rule (a) of Rule 15, and further in such a transfer no reversion is involved. In such a transfer to a new post if the maximum pay in the time-scale of the transferred post is lower than his pay in respect of the old post held regularly, he is required to draw that maximum as his initial pay. For illustration - an employee working in a pay scale of Rs.1400-2600 was drawing pay at the stage of Rs.2040 and he is transferred on his own request not involving reversion to a post which carries pay scale of Rs.1200-2040, in such a case, the maximum pay which he was drawing viz., Rs.2040 has to be protected on the transferred post which carries a pay scale of Rs.1200-2040. It is not the case here. Here, what we find is that the respondent on his own volition sought transfer on certain terms and conditions accepted by him. The terms and conditions of unilateral transfer are very clear and there is no ambiguity in it. The terms and conditions provided that the respondent on transfer would be appointed to a post which is lower to the post which he was occupying prior to his transfer and he was also required to tender technical resignation from the post which he was holding with a view to join the lower post as a direct recruit and was to rank junior to the juniormost employee in the cadre of Accountant. He was further required to forego any benefit of passing any departmental examination while working in the higher post. In such a situation, the pay of the respondent had to be fixed with reference to the lower pay scale and not with reference to the pay drawn by him in the higher post since he was to be considered as a direct recruit in the lower post."

5. In our opinion, the ratio of the decision of the Supreme Court is not applicable to the peculiar facts and circumstances of the present case as has been rightly observed by the Tribunal. In the case before the Supreme Court, the employee was holding a higher post,

but on his own request he was transferred and posted against a lower post. It was held that such transfer to a post on the own request of the employee was not contemplated under Fundamental Rule 15 or Fundamental Rule 22 and, therefore, the employee was bound by the terms and conditions accepted by him. It was categorically observed by the Supreme Court that Rule 15(a) was not applicable where the transfer itself involved the question of reversion. In the case before the Supreme Court, even though the Rules did not contemplate any such transfer, on the own request of the person he had been so transferred to a lower post, wherein it was made clear that he had to start from the beginning.

6. In the present case, it is no doubt true that it had been indicated that the employee would be considered as a new recruit, but that condition must be taken to mean that the concerned employee on transfer cannot carry his seniority along with him. In other words, he would be treated as juniormost. Such a condition was obviously included to protect the existing incumbents in the office of the Accountant General, Madras. As rightly pointed out by the Tribunal the case of the present transfer has to be considered as contemplated under Rule 15(a) and, therefore, Rule 22(I)(a)(2) or Rule 22(I)(a)(3) would be applicable. In this context, it has to be noticed that the pay scale in both the organisations, namely, the University Grants Commission as well as the Office of the Accountant General, Madras was same. Therefore, Rule 22(I)(a)(3) may not be strictly applicable and on the other hand Rule 22(I)(a)(2) can be applied as has been done by the Tribunal.

7. The Tribunal has also referred to Rule 26 of the CCS (Pension) Rules, applicable for the purpose of computing pension, and observed that past service should be counted. Since the method of recruitment was same and the application for transfer had been forwarded by the original employee, namely, the University Grants Commission, to the Office of the Accountant General and since both the organisations were admittedly governed by the same set of Rules, namely, Fundamental Rules, the logic adopted by the Tribunal appears to be acceptable.

8. For the aforesaid reasons, we are inclined to sustain the order passed by the Tribunal. It is however made clear that protection is given only with respect to pay and the period of service for the purpose of computation of pension. However, the contesting respondents here cannot claim any seniority over any incumbent and their seniority has to be counted from the date of joining in the Office of the Accountant General, Madras.

9. Subject to the aforesaid observation, the writ petitions are dismissed. No costs.

dpk

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. THE CONTROLLER AND AUDITOR GENERAL OF INDIA
UNION OF INDIA
10, BAHADUR SHAH ZAFAR MARG,
NEW DELHI-110 002.

2. THE PRINCIPAL ACCOUNTANT GENERAL (A & E)
TAMIL NADU, CHENNAI-600 018

3. THE ACCOUNTANT GENERAL (AUDIT) I,
TAMIL NADU AND PONDICHERRY
EVR BUILDINGS, NANDANAM
MADRAS-35.

4. THE REGISTRAR,
CENTRAL ADMINISTRATIVE TRIBUNAL
CHENNAI BENCH, CHENNAI.

1 cc to Mr.V.Vijay Shankar, Advocate, SR.28087

3 ccs to Mr.R.Parthiban, Advocate, SR.Nos.28097 to 28099

tm (co)

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COMMON JUDGMENT IN
W.P.NOs.40424 to 40426/02

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