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**(2019) 02 DEL CK 0082**

**In the Delhi High Court**

**Case No :** Letter Patent Appeal No. 245 Of 2018

J R William Singh

APPELLANT

Vs

Institute Of Chartered Accountants

RESPONDENT

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**Date of Decision :** 05-02-2019

**Acts Referred:**

Chartered Accountants Act, 1949 — Section 16(1)(d)

**Citation :** (2019) 174 DRJ 31

**Hon'ble Judges :** S.Muralidhar, J;Sanjeev Narula, J

**Bench :** Division Bench

**Advocate :** Tamali Wad, Saumya Jain, Rakesh Aggarwal

**Final Decision :** Allowed

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## Judgement

Dr. S. Muralidhar, J

1.This appeal is directed against the order dated 2nd April, 2018 passed by the learned Single Judge whereby the writ petition being W.P.(C) No. 8681/2005 filed by the Appellant was dismissed. By the impugned order, the learned Single Judge held that the prayer of the Appellant that he should be granted the pay scale in the designation of Section Officer ("SO") since 5th March, 1993 under the Time-Bound Promotion Scheme ("TBPS") and as Executive Officer ("EO") from 5th March, 2002 cannot be granted.

2. The background facts are that the Appellant joined the Central Office of the Institute of the Chartered Accountants of India ("ICAI") (the Respondent herein) on Delhi on 5th March, 1974 as an Electrician which is equivalent to a Lower Division Clerk ("LDC"). He was confirmed on the said post by an Office Memorandum ("OM") dated 1st May, 1976.

3. It is stated that although under Section 16 (1) (d) of the Chartered Accountants Act, 1949 ("CAA"), the Council of the ICAI was empowered to fix conditions of service of the officers and other employees, it did not do so. The terms and conditions of service of the employees of ICAI were governed by the

Settlements/Agreements arrived at from time to time between ICAI and its Employees" Association. The first of these Settlements/Agreements was arrived at on 10th January, 1984 which, inter alia, provided for time-bound promotions (TBPs)/change to the next grade for its Class-III and Class-IV employees. In terms thereof, if an LDC had already completed five years in the pay scale of Rs.260-400, he would be placed in the pay scale of UDC/Steno-Typist i.e. Rs.330-560 and so on. Under Clause 1 (v) of the said settlement, in respect of cases not falling in the two broad categories i.e. Class-III and Class-IV, a decision was to be taken by the President of the ICAI. This included the cases of Jamadar, Driver, Gestetner Operator, Electrician, Electrical Foreman and Library Attendant. Admittedly, since the Appellant was an Electrician, he was governed under Clause 1(v) of the aforesaid Settlement dated 10th January, 1984.

4. The Appellant states that he was never communicated any decision taken by the President in terms of Clause 1 (v) above. By an OM dated 13th March, 1984, the Appellant's basic pay was fixed at Rs.370 in the pay scale of Rs.330-560 with retrospective effect from 1st January, 1984. The said OM made an express reference to the Settlement dated 10th January, 1984. This led the Appellant to understand that he was governed by the main part of the Settlement dated 10th January, 1984.

5. By a further OM dated 8th July, 1986, the Appellant was granted the next higher pay scale in the grade of Assistant i.e. Rs.425-800 with effect from 5th March, 1986. By then, he had completed 12 years of service i.e. 5 years in the scale of an LDC and and 7 years in the scale of UDC. Here again, there was no reference made to any separate decision taken by the President in terms of Clause 1 (v) of the Settlement dated 10th January, 1984.

6. The case of the ICAI, on the other hand, in response to the writ petition filed by the Appellant, is that there was a separate decision taken by the President pursuant to Clause 1 (v) of the Settlement dated 10th January, 1984. Relevant to the case of the Appellant, who was an electrician, it was decided that the employees mentioned in Clause I (v) should be given time-bound promotions up to the level of Assistant. A comparative statement was drawn up between the Class-III employees in the non-clerical cadre and it was decided that after 5 years in the scale of Rs.260-400, they would be placed in the UDC scale of Rs.330-560, and after 7 years in that scale, in the scale of Assistant i.e. Rs.425-800. This decision apparently was taken by the President of the ICAI on 25th February, 1984. However, admittedly, this was never communicated to the Appellant. Even the OM dated 8th July, 1986, in terms of which he was given higher pay scale of Rs.425-800, made no reference to it.

7. After the recommendations of the Fourth Central Pay Commission (CPC), by an OM dated 5th March, 1987, the Appellant was informed that his salary as per the revised pay scale i.e. Rs.1400-2600 had been fixed at Rs.1400/-.

8. The next settlement between the ICAI and its employees was arrived at on 2

nd August, 1988 partially amending the TBPS of 10th January, 1984. In effect it reduced the time span provided in the earlier scheme for being placed in the next higher grade. Relevant to the case of the Appellant, it was provided that for being placed in the next scale of SO, an Assistant had to complete 9 years in the scale of Assistant. This was followed by another Settlement on 15th June, 1991, further reducing the period of service in the TBPs in some of the scales. For being placed in the scale of an SO, an Assistant had now to complete only 7 years; and from the scale of Stenographer to P.S or Section Officer to Executive Officer (EO), 9 years of service. What is significant is that the settlements reached on 2nd August, 1988 and 15th June, 1991, did not have a separate clause like Clause 1 (v) of the Settlement of 10th January, 1984 which left it to the President to decide the cases of those categories, not covered under Class-III or Class-IV.

9. The case of the Appellant is that in terms of the TBPS and the Settlement/Agreement dated 15th June, 1991, on completion of 7 years of service in the pay scale of Assistant, as on 5th March, 1993, he became entitled to the pay scale of an SO i.e. Rs.6500-10500, as revised in terms of the Fifth CPC. However, this was not granted to the Appellant, even after he completed 9 years of service. By a letter dated 12th May, 1995, the Appellant requested the ICAI to grant him the above time-bound promotion/higher pay scale. This was followed up with another representation dated 28th September, 1995, which also went unanswered.

11. On 21st July, 2004, ICAI sent a short reply stating that he had wrongly referred to his designation as "Ex-Section Officer" and that as per their records, he continued as an "Electrician". As regards his claim of time-bound promotion, it was stated that his career had all along been governed by "the scheme applicable" to him and others similarly placed and as such he had been "awarded the same". It is stated that the ICAI had "nothing further to add in the matter".

12. In response to another detailed representation of the Appellant on 28th July, 2004 requesting the Respondent to furnish the scheme applicable to him, the ICAI on 8th September, 2004 sent the Appellant a letter reiterating its earlier letter dated 21st July, 2004, confirming that his career growth was governed by "the scheme applicable" to him and other similarly placed. It was not explained what this "separate scheme" applicable to the Appellant was.

13. In response to further representations dated 20th September 2004, 19th October 2004 and 29th November 2004, the ICAI sent another letter dated 7th December, 2004, reiterating its rejection to the Appellant's request. It was in those circumstances that the Appellant wrote letters on 5th January and 8th February, 2005, asking ICAI to inform him of the provision of the scheme that was applicable to him.

14. By an order dated 14th February, 2005, ICAI transferred the Appellant to its De-Centralized Office ("DCO") at Kanpur in the capacity of Electrician. This was 31 years after the Appellant had been first appointed by the ICAI. This led the Appellant to approach this Court with W.P.(C) No.8681/2005 in which an interim

order was passed on 20th May, 2005 staying the Appellant's transfer to Kanpur. The ICAI was permitted to ask him to perform duties at either Noida or in Delhi. That interim order subsisted during the pendency of the writ petition, till he retired on 30th October, 2012.

15. In the impugned order, the learned Single Judge held that since the Appellant's case was governed by a separate policy, as determined by the President on 25th February 1984 under Clause 1 (v) of the Settlement dated 10th January, 1984, no case was made out for time-bound promotion. It was held that the Appellant was only performing "ministerial work as Section Officer" and, therefore, "no case for claiming salary of a Section Officer is made out". The office order dated 28th April, 2004, showing the Appellant's designation as "Electrician" could not be construed to be a "demotion order". Consequently, no fault could be found with the office order of 14th February, 2005, transferring him to Kanpur. It was held that the Appellant could not have relied upon the settlements of 1988 and 1991 as the Appellant's case was not covered thereunder. Accordingly, the writ petition was dismissed.

16. This Court had heard the submissions of Ms Tamali Wad, learned counsel appearing for the Appellant and Mr Rakesh Aggarwal, learned counsel appearing for the ICAI.

17. It appears to the Court that while it is true that under Clause 1 (v) of the Settlement dated 10th January, 1984, the case of the Appellant was covered by a separate decision taken by the President, no such exception in similar terms was made when the subsequent settlements of 2nd August, 1988 and 15th June, 1991 were arrived at between the Employees' Association and the ICAI. While reducing the time period that had to be completed to become eligible for time-bound promotions under various categories, it was not clarified that such of those who had earlier been covered under Clause 1 (v) of the Settlement of 10th January, 1984 and who had been granted the scale of an Assistant, would not be entitled to any further time-bound promotion under the said settlement of 2nd August, 1988, or for that matter, of the further Settlement dated 15th June, 1991. In the absence of any exclusion of such of those who had been granted the pay scale of Assistant, which would include the present Appellant, the resultant position would be that all those who having got the pay scale of Assistant and having completed 9 years of service, would in terms of the Settlement dated 2nd August, 1988, be entitled to the next higher pay scale of an SO. By the same yardstick, in terms of the Settlement dated 15th June, 1991, on completion of 7 years in the pay scale of an Assistant, such person would be entitled to next higher pay scale of an SO.

18. This Court, is therefore, unable to agree with the contention of the ICAI that the decision dated 28th February, 1984 of the President in terms of Clause 1 (v) of the Settlement dated 10th January, 1984 put a cap on the time-bound promotion that could be granted to the Appellant. In other words, it is not possible to accept the contention of ICAI that the Appellant was not entitled to

any further time-bound promotion after he was granted the pay scale of an Assistant by the OM dated 8th July, 1986.

19. The TBPS was intended to remove stagnation at the workplace. For someone like the Appellant who spent his entire life working for the ICAI from 1974 onwards till he retired finally on 31st October, 2012, it would indeed be unfair and unreasonable to freeze his time-bound promotion at 1986, by which time he had already served 12 years in the organization. In fact he went on to serve another 26 years in the ICAI.

20. The attitude of ICAI in not even communicating to the Appellant, despite his repeated requests, the scheme which was applicable to him, also appears to the Court to be unfair and unreasonable. Surely, an employee of the organization was entitled to know as to what were the terms and conditions governing his service. Even though the Appellant repeatedly kept asserting that he was covered by the Settlements of 1988 and 1991, never once did the ICAI tell him that he was governed by a different scheme.

21. The ICAI has also not been able to dispute that for many years on end, the Appellant was asked to discharge the functions of an SO. Although it is sought to be contended that he was only doing "diary/despach" work, the fact of the matter was that he was asked to fill in for an SO without actually appointing him to that post. In any event, even if there was no formal appointment of the Appellant as an SO, in view of the interpretation placed by this Court on the Settlement/Agreements of 2nd August, 1988 and 15th June, 1991, the Appellant was entitled to the next higher pay scale of an SO on completion of 7 years in the pay scale of the Assistant.

22. The Appellant completed 7 years in the pay scale of Assistant on 5th March, 1993, and therefore became entitled to the next higher grade in the pay scale of an SO with effect from that date in terms of the Settlement Agreement dated 15th June, 1991. The learned Single Judge is in error in holding that the Appellant's case for time bound promotion was not covered under the Settlement Agreements of 2nd August, 1988 and 15th June, 1991.

23. The Appellant finally retired only on 31st October, 2012. Had he been granted the pay scale of an SO with effect from 5th March, 1993, he would have completed 9 years in the pay scale of SO on 5th March, 2002 and would have been entitled to be placed in the pay scale of Executive Officer from that date.

24. Consequently, the decision of the ICAI declining the above reliefs to the Appellant are hereby set aside. The remaining prayers in the Appellant's writ petition regarding his transfer orders have become infructuous and, therefore, need not be addressed.

25. For all of the aforementioned reasons, this Court sets aside the impugned order dated 2nd April, 2018 of the learned Single Judge and directs the ICAI to grant the Appellant the pay scale and designation of a Section Officer with effect

from 5th March, 1993 and the pay scale and designation of an Executive Officer with effect from 5th March, 2002 under the Time-Bound Promotion Scheme. This would obviously be on notional basis since the Appellant has already superannuated. The arrears of salary and emoluments, as revised for those scales from time to time would be paid to the Appellant within a period of eight (8) weeks from today, failing which, the ICAI will be liable to pay simple interest @ 6 % per annum up to the date of payment.

26. The appeal is allowed in the above terms with no orders as to costs.