

(2018) 10 CAT CK 0096

In the Central Administrative Tribunal

Case No : Original Application No. 3657 Of 2016

Sanjay Singh And Ors

APPELLANT

Vs

Comptroller And Auditor General Of India And Ors

RESPONDENT

Date of Decision : 10-10-2018

Acts Referred:

Citation : (2018) 10 CAT CK 0096

Hon'ble Judges : L. Narasimha Reddy, J; Aradhana Johri, Member (A)

Bench : Division Bench

Advocate : Jaideep Singh, Aishwarya Bhati, Ishita, Gaurang Kanth

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J

The applicants joined the establishment of 1st respondent as Assistant Audit Officers in the year 2013. The promotion from that post is to the post of Audit Officer. The stipulation under the relevant recruitment rules is that an Assistant Audit Officer must have six years of regular service to become eligible to be promoted as Audit Officer.

2. The applicants were placed on probation on being initially appointed. Their probation was declared at a subsequent stage. However, their regular service is being reckoned only from the date of declaration of probation, i.e., confirmation, but not from the date of their initial appointment. This is on the basis of paragraphs 5.6.2 and 5.6.6 of the Manual of Standing Orders.

3. This OA is filed with a prayer to direct the respondents, to take into account, the service rendered during the probation also for reckoning the service and seniority. As a consequence, they want the respondents to set aside the Gradation list for the year 2012, and to prepare it afresh by counting the service from the date of joining. Further direction is sought to the respondents to grant promotion to them from the year 2013 with all consequential benefits.

4. The applicants contend that it is an established principle in the service law that though an employee cannot become full member of a service unless he successfully completes the probation, once the probation is declared, the service shall commence from the date of initial appointment, but not from the date of declaration of probation and the respondents are reckoning the service only from the date of regularization. It is also pleaded that within the organization of the 1st respondent, for every post except the one of AO, the service is reckoned from the date of appointment and not from the date of declaration of probation. They placed reliance upon the order dated 07.09.2016 passed by the CAT, Chandigarh Bench of this Tribunal in OA No.125/2015.

5. The respondents filed a counter affidavit opposing the OA. It is stated that the rules are very specific and even in the orders of appointment of the applicants, it was mentioned that their service would be treated as regular, only from the date on which the probation is declared, and the applicants cannot claim any benefit from any date, earlier to that. The relevant provisions are quoted extensively.

6. We heard Shri Jaideep Singh and Ms. Aishwarya Bhati, learned counsel for the applicants and Ms. Ishita for Shri Gaurang Kanth, learned counsel for the respondents.

7. The applicants are claiming relief of the reckoning of their service from the date of appointment. That indeed is normal practice in almost every service. The 1st respondent framed its own recruitment rules for various posts. However, they are silent as to the date from which the service of an employee is to be reckoned. It is only in the Manual of Standing Orders (MSO) that a provision is made in this regard. The relevant paragraphs of the MSO reads as under:-

"5.6.2 Any employee who passes in an earlier Section Officers' Grade Examination will have precedence in appointment as Section Officer over a person who passes in a later examination. As amongst persons who pass in the same examination, the one senior according to the provision of para 5.7 will have prior claim in such appointment. The seniority of a person appointed to officiate as Section Officer shall ordinarily be based on the date of his first appointment after passing the Section Officers' Grade Examination.

5.6.6.....

(iii) A direct recruit is appointed as a Section Officer on regular basis only on satisfactory completion of the period of probation prescribed in the Recruitment Rules even though he passes the examination before that period, his seniority is also effective on his actually taking over charge as a regular Section Officer." Thus, it is evident that the service of AO shall be reckoned only from the date of probation is declared.

8. It is pleaded on behalf of the respondents that this very issue was decided by the Hon'ble Supreme Court in *M. Srinivas Prasad & Others vs. Comptroller & Auditor General of India & Ors.* (2007) 10 SCC 246. A perusal of the said

judgment discloses that the plea of the appellant that seniority should relate back to their date of initial appointment once their probation is declared was rejected. The judgment proceeded on the basis of the application of the provision of the MSO. It was also observed that an MSO can supply the details or even fill the gaps left in the recruitment rules.

9. In OA No.125/2015, Deepak Sharma & Ors. vs. Comptroller and Auditor General of India & Ors., decided by Chandigarh Bench of this Tribunal on 17.08.2015, the vires of paragraphs 5.6.2 and 5.6.6 of the Manual Standing Orders were challenged specifically. After discussing the matter at length, the Tribunal held that paragraphs 5.6.2 and 5.6.6 of MSO are violative of principles enunciated by the Supreme Court in Direct Recruits Class-

II Engineer Officers Association vs. State of Maharashtra reported in JT 1990 (2) SC 264, and has set aside the said paragraphs. The order dated 23.4.2015 which was challenged therein was said aside and consequential relief was granted.

10. In M. Srinivasa's case (supra) decided by the Hon'ble Supreme Court, the provision was not in challenge and the adjudication proceeded by taking the provisions into account. However, at subsequent stage, the provision itself was set aside in OA No.125/2015 by the Chandigarh Bench of this Tribunal. With that, the very basis for the respondents to deny the applicants the benefit of seniority from the date of their initial appointment ceases to exist. It is brought to our notice that the respondents filed a W. P. (C) No.49/2017 before the Punjab & Haryana High Court challenging the order in Deepak Sharma's case (supra), and though the same is pending, the order of the Tribunal was not suspended or stayed.

11. We, therefore, allow the OA directing that the respondents shall reckon the seniority of the applicants from the date of their appointment, and to extend all the consequential benefits, within a period of three months from the date of receipt of copy of this order. However, the applicants shall not be entitled for arrears of the financial benefits up to the date of this order. The directions issued herein are subject to the outcome of the aforesaid writ petition pending before the Punjab & Haryana High Court. There shall be no order as to costs.