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(2004) 04 KAR CK 0006

In the Karnataka High Court

Case No : Writ Petition No. 33496 of 2000

Union of India (UOI) and Others APPELLANT

Vs

Unni Menon RESPONDENT

Date of Decision : 12-04-2004

Acts Referred:

Central Administrative Tribunal (Accounts Personnel Posts) Recruitment Rules, 1990 — Rule 3

Citation : (2004) 5 KarLJ 572 : (2004) 3 KCCR 224 SN

Hon'ble Judges : Ajit J. Gunjal, J;A.V. Srinivasa Reddy, J

Bench : Division Bench

Advocate : C. Shashikantha, for the Appellant; N.G. Padake and Meerabai, for the Respondent

Final Decision : Allowed

Judgement

A.V. Srinivasa Reddy, J.—The Union of India and the establishment of the Central Administrative Tribunal are aggrieved by the order dated 1st March, 2000 passed by the Central Administrative Tribunal, Bangalore Bench, Bangalore (''CAT'' for short) directing the principal office of the CAT to reconsider the representation of the applicant-respondent herein and pass suitable orders thereon.

2. The respondent filed application before the CAT for promotion to the cadre of Senior Accounts Officer pursuant to the implementation of the IV pay Commission with effect from 1-4-1995 on the ground that persons who are his juniors in his parent department viz., Accountant General''s office were promoted as Senior Accounts Officer on completion of three years service. He claimed that the nature of duties performed and the responsibilities shouldered by the respondent in the CAT are similar to that of the duties and responsibilities shouldered by the Senior Accounts Officers in the Indian Audit and Accounts Department and, therefore, no distinction could be made in his case and he also ought to be promoted as Senior Accounts Officer with effect from 1-4-1995. This application having been allowed and directions given by the CAT as stated herein

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above, the petitioners have come up in this writ petition.

3. We have heard Mr. C. Shashikantha, Additional Central Government Standing Counsel for the petitioners and Mr. N.G. Padake, learned Counsel for the respondent.

4. The only question that arises for our consideration in this petition is:

Whether the respondent is entitled to be considered for promotion as Senior Accounts Officer in CAT with effect from 1-4-1995 based on the Official memorandum dated 23-3-1992 bearing No. 2402-GE II/116-92?

5. Learned ACGSC very strongly submitted that the Tribunal has totally misconstrued the case in coming to the conclusion that CAT also has an organised Account Cadre and, therefore, the respondent is entitled to the relief sought by him. According to him, the question whether CAT has an organised Accounts Cadre or not are questions irrelevant because the respondent having opted for being absorbed as Accounts Officer in CAT with effect from 26-3-1994, the lien he had over the post of Accounts Officer in Accountant General''s Office is not available to the respondent to stake claim to any relief that may have been provided by the said O.M. to his juniors in the Accountant General''s Office.

6. The learned Counsel for the respondent, on the other hand, submitted that the O.M. applies to the respondent also and the reasoning adopted by CAT for applying the said O.M. to the respondent is well-founded and, therefore, needs no interference at all by this Court.

7. The Central Administrative Tribunal is a separate entity created under a statute and it is not a department of the Central Government. The Official memorandum in question is issued for purpose of redesignating the promotional grade of Audit/Accounts Officers in Organised Accounts Cadres as Senior Audit Officer/Senior Accounts Officers consequent upon the creation of promotional grade for 80% of the Audit/Accounts Officers in a different scale. Particular reference is made in the official memorandum itself that it is applicable to Indian Audit and Accounts Department and other organised Accounts Cadres, except Railway Accounts Cadre. At best it could apply to all Central Government Departments where there is an organised cadre and to every establishment under the Central Services. No such redesignation took place in CAT as an outcome of creation of any promotional cadre in the establishment of CAT. There is no possibility of such redesignation taking place in CAT as there is no post of Senior Accounts Officer in the hierarchy of the Accounts Cadre of the CAT. It has its own cadre and recruitment rules and the field as regards the pay and promotion are covered by a separate rules formulated for that purpose which are called the Central Administrative Tribunal (Accounts Personnel Posts) Recruitment Rules, 1990. Rule 3 of the said Rules governs the number of posts, classification and their scale of pay and it reads:

"The number of the said posts, their, classification and the scales of pay attached

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thereto shall be as specified in columns (2) to (4) of the said schedule".

The classification of posts as contained in columns (2) to (4) of the schedule does not contain any cadre called the "Senior Accounts Officer" to which the respondents wants to be promoted. There are only five cadres of Accounts Personnel in the CAT viz., Deputy Controller of Accounts, Accounts Officer, Junior Accounts Officer, Senior Accountant and Junior Accountant, The respondent is in the cadre of Accounts Officer. His promotion under the Rules of the CAT can be only to the next higher cadre of Deputy Controller of Accounts. In these circumstances the official memorandum can have no application to the establishment of CAT at all, nor would it affect the service conditions of the cadre of accountants employed in CAT. In view of the non-applicability of the official memorandum to the establishment of CAT, the respondent cannot seek any benefit under the said official memorandum. The Tribunal has totally misdirected itself in coming to the conclusion that the official memorandum is applicable to CAT also because it has an organised accounts cadre in its ranks.

8. Every Government establishment has to have an organised cadre of accountants without which no establishment can function. But, that does not mean that the respondent could be promoted to a non-existing cadre when there is no such cadre in its establishment. Nor could it be said that every official memorandum issued by the Central Government, would cover all establishments irrespective of the fact of its applicability to a given department. The contention of the respondent that if he had continued in his parent department he would have become a Senior Accounts Officer on the basis of his seniority and, therefore, is entitled to be promoted as such in the establishment of CAT is totally bereft of any merit. The rules governing his service conditions in the present establishment alone are relevant for the purpose of determining his right for promotion to an higher cadre. In the said view of the matter and in the light of our conclusion that the official memorandum has no applicability to the employees of the CAT, we find that the impugned order passed by the Court below cannot be sustained in law.

9. We allow the writ petition and set aside the impugned order of the CAT. The application filed by the respondent before the CAT is dismissed.

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