

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C)(CAT) No.02 of 2024

1. The Union of India, through the Comptroller and Auditor General of India,
Deen Dayal Upadhyay Marg, New Delhi-110124.

2. The Pr. Accountant General (Audit), Tripura, P.O.- Kunjaban, Agartala,
Tripura-7990006 Petitioner(s);

Versus

1. Sri Biltu Saha, Assistant Audit Officer, S/O.- Sri Kalidas Saha, O/o the Pr.
Accountant General (Audit), Tripura, Agartala, P.O Kunjaban, Agartala,
Tripura, Pin-799006

2. Sri Niranjana Nayak, Assistant Audit Officer, S/O.- Sri Prafulla Kumar
Nayak, O/o the Pr. Accountant General (Audit), Tripura, Agartala, P.O
Kunjaban, Agartala, Tripura, Pin-799006

3. Sri Seiminlal Singsit, Assistant Audit Officer, S/O.- Sri Haopao Singsit, O/o
the Pr. Accountant General (Audit), Tripura, Agartala, P.O Kunjaban, Agartala,
Tripura, Pin-799006

4. Sri Helun Kipgen, Assistant Audit Officer, S/O Sri Paokhosei Kipgen, O/o
the Pr. Accountant General (Audit), Tripura, Agartala, P.O Kunjaban, Agartala,
Tripura, Pin-799006

5. Sri Peeyoosh Kumar, Assistant Audit Officer, S/O.- Ram Sukh Bhartiya, O/o
the Pr. Accountant General (Audit), Tripura, Agartala P.O Kunjaban, Agartala,
Tripura, Pin-799006

6. Shri Nripendra Chandra Biswas (Audit Officer now Retired Senior Audit
Officer) O/o the Pr. Accountant General (Audit), Tripura, P.O Kunjaban,
Agartala, Tripura, Pin-799006

7. Shri Rupak Debbarma (Assistant Audit Officer) O/o the Pr. Accountant
General (Audit), Tripura PO Kunjaban, Agartala, Tripura, Pin-799006.

8. Sri Rohan Das, (Assistant Audit Officer) O/o the Pr. Accountant General
(Audit), Tripura, P.O Kunjaban, Agartala, Tripura, Pin-799006
.....Respondent(s)

For Petitioner(s) : Mr. Biswanath Majumder, CGC.

For Respondent(s) : None.

**HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH
HON'BLE MR. JUSTICE S.D. PURKAYASTHA**

Order

05/08/2024

Heard Mr. Biswanath Majumder, learned Central Government
Counsel for the petitioners.

2. Writ petitioners-Union of India being aggrieved by the impugned order dated 14th December, 2023 passed by learned Central Administrative Tribunal, Guwahati Bench in Original Application No.041/00161/2018 has preferred the writ petition. The applicants/private respondents had approached the learned Tribunal with the following prayer:

8.1 to declare that vires of para 5.6.2 and 5.6.6 along with note of the rules/instructions called the Comptroller and Auditor General's Manual of Standing orders (Administrative) Volume-I (Third Edition) (A-4), to the extent it does not include the period of 2 years probation of the applicants while computing the length of their regular service for the purpose of Seniority and for all other intents and purpose being ultra-vires to the constitutional right of the applicants to be quashed/set aside.

8.2 to set aside and quash the impugned promotion order dated 05.04.2017 (**Annexure-3**) whereby Respondent No. 3 has been promoted to the post of Audit Officer on the basis of impugned seniority list published as on 31.03.2016 in supersession of the claim of the present applicants who are senior to the Respondent No. 3.

8.3 to set aside and quash the impugned seniority list published as on 31.03.2016 (corrected up to 31.05.2016) (**Annexure-A1**) as well as the impugned seniority list published as on 31.03.2017 (corrected up to 31.05.2017) (**Annexure-A2**), as well as impugned letter dated 14/16.03.2017 (**Annexure-A5**) with a further direction upon the respondents to modify both the impugned seniority list as on 31.03.2016 as well as 31.03.2017 placing the applicants above the respondent No. 3. 4 and 5 with immediate effect with a further direction to grant all consequential benefit including seniority & promotion from the date of promotion of the junior.

8.4 That directions be issued to Respondents No. 1 and 2 to consider the case of the applicants for promotion to the post of Audit Officer from the date of promotion of their junior viz Respondent No. 3, with all consequential benefit with a further direction that, the service of the present applicants from the dates of their initial appointments shall be considered as regular service for all intents and purposes and further direct that their seniority shall be fixed from the date of their initial appointment to the post of AAO and not according to the date of their confirmation in view of the mandate laid down by the Hon'ble Supreme Court of India in the **Constitution Bench Judgment, rendered in the case of Direct Recruit Class-II Engineering Officer's Association -VS- State of Maharashtra as well as law laid down by the Hon'ble Supreme Court in the case of Union of India & Ors. -VS- N.R. Parmar & Ors.**, and also in the light of instructions contained in the DOPT OM dated 04.11.1992 with all consequential benefits in the interest of Justice.

8.5 Cost of the Application.

8.6 Any other relief(s) to which the applicants are entitled as the Hon'ble Tribunal may deem fit and proper.”

3. The private respondents had not entered appearance despite service of notice before the learned CAT. The main issue before the learned CAT was whether the seniority of the applicants who were direct recruits to the post of Assistant Administrative Officer (AAO) were to be counted upon their

confirmation from the date of initial joining or from the date on which they passed the probation exam. The Union of India had revised the seniority list bringing the private respondents who were promotees above the applicants applying the principle that the seniority of the direct recruits would be counted not from the date of their initial joining upon their confirmation but from the date of passing of the probation. The learned Tribunal took into note the judgment dated 06.11.2023 rendered by the High Court of Himachal Pradesh at Shimla in the case of **CAG and another v. Deepak Sharma & others** wherein decision of the Apex Court in the case of **Direct Recruit Class II Engineering Officers' Association v. State of Maharashtra & others** reported in (1990) 2 SCC 715 were relied upon and held that the seniority of the applicants should be treated from their initial date of appointment but not from the date of completion of their probation period. The learned CAT also took into note that the Himachal Pradesh High Court in CWP No.49 of 2017 had also considered the ratio of **M. Srinivasa Prasad and Others v. Comptroller & Auditor General of India and Others** reported in (2007) 10 SCC 246 and held that paras 5.6.2 and 5.6.6 of the Standing Orders were not under challenge in the said case whereas in the present case, the applicants had specifically challenged the constitutional validity of paras 5.6.2 and 5.6.6. The learned Tribunal and the High Court held that the Union of India did not have the power to issue instructions as mentioned in paras 5.6.2 and 5.6.6 of the Standing Orders which are not in consonance with the Recruitment Rules of 1989.

4. In the case of **Direct Recruit Class II Engineering** (supra), the Apex Court has laid down that once an incumbent is appointed to a post

according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation. Reference was also made to the office memorandum dated 4th November, 1992 issued by the Ministry of Personnel (DoPT), Government of India in modification of OM dated 22nd December, 1959 and OM dated 3rd July, 1986 wherein it was decided that seniority of a person regularly appointed to a post, according to rule, would be determined by the order of merit indicated at the time of initial appointment and not according to the date of confirmation. The learned Tribunal, in the impugned order, followed the ratio rendered in similar circumstances by the learned CAT in other cases and also the High Court of Himachal Pradesh in CWP No.49 of 2017 and held as under:

“17. In view of the above, in our considered opinion, the seniority of the applicants should be treated from their initial date of appointment but not from the date of completion of their probation period. Accordingly, we quash and set aside the Seniority List dated 31.03.2016 (Annexure-A/1) and 31.03.2017 (Annexure-A/2) and direct the respondents to recast the said seniority lists and extend the consequential benefits of such recasting of the seniority by putting the applicants in their appropriate place treating their initial date of appointment for the purpose of counting of seniority and extend the consequential benefits of such recasting of the seniority list to them by holding Review DPC to grant them further promotions as per the recasted seniority list to the post of Audio Officer (AO) from the date of promotion of their juniors with all consequential benefits and also direct the respondents to rectify the Promotion Order dated 05.04.2017 (Annexure-A/3) by considering the applicants as per their seniority. We further quash and set aside the impugned letter dated 14/16.03.2017 (Annexure-A/5) and impugned Promotion Order dated 05.04.2017 (Annexure-A/3) to the extent of respondent No.3 who was promoted to the post of Audit Officer superseding the applicants on the basis of the seniority list published as on 31.03.2016 (Annexure-A/1).

18. The above exercise shall be completed within a period of three months from the date of receipt of a copy of this Order.

19. Accordingly, the instant O.A. stands allowed with the above observations and directions with no order as to costs.

20. Let a copy of the said judgment dated 06.11.2023 passed by the Hon'ble High Court of Himachal Pradesh at Shimla be kept on record.”

5. When the matter was taken up on the previous date a pointed query was made to the learned Counsel for the writ petitioners-Union of India to show any rule which prescribes that upon passing of the probation exam, the

date of confirmation of a direct recruit would count from the date of passing of the probation exam and not from the date of initial joining. Learned Central Government Counsel has placed the Indian Audit and Accounts Department Section Officer (Accounts) and Section Officer (Audit) Recruitment Rules, 1988 in particular the Schedule attached thereto, paras 10 and 11 thereof are extracted hereunder:

10.	Period of probation, if any	Two years
11.	Method of recruitment, whether by direct recruitment or by promotion or by deputation/transfer and percentage of the vacancies to be filled by various method	Promotion, failing which by transfer/transfer on deputation failing both by direct recruitment. Note : The direct recruits will be selected on the basis of entrance examination conducted by the Comptroller and Auditor General of India or any authority specified by him. During the period of probation they should qualify in the Section Officer's Grade Examination for appointment as regular Section Officers.

These paragraphs of the Schedule relating to recruitment to the post of Section Officer (Accounts) and Section Officer (Audit) only provides for the period of probation, if any as two years. The method of recruitment is promotion failing which by transfer/transfer on deputation failing both by direct recruitment. The “Note:” thereunder prescribes that the direct recruits will be selected on the basis of entrance examination conducted by the Comptroller and Auditor General of India or any authority specified by him. During the period of probation, they should qualify in the Section Officer's Grade Examination for appointment as regular Section Officers.

6. There is no quarrel on the aforesaid condition that the direct appointee would qualify to be treated as regular employee only upon passing of the prescribed exam upon completion of two years of probation. It nowhere prescribes that the date of confirmation would not relate back to the date of

joining rather to the date of passing of the probation exam. Otherwise also such a rule would be in teeth of the ratio rendered by the Apex Court in the case of *Direct Recruit Class II Engineering* (supra). There is no dispute that the applicants were appointed through a proper recruitment exercise on the post of AAO at the relevant point of time whereas the private respondent joined the said cadre later to the applicants upon being promoted. The learned CAT, therefore, directed the seniority list to be rectified and also for correction of the promotion order as regards their junior with consequential benefits i.e. respondent No.3 who was promoted to the post of Audit Officer superseding the applicants.

7. We, therefore, do not find any error in the impugned order. The instant petition is accordingly dismissed. Pending application(s), if any, shall stand disposed of.

(S.D. PURKAYASTHA), J

(APARESH KUMAR SINGH), CJ

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