

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C)(CAT) No.1 of 2023

The Comptroller and Auditor General of India and another

..... Petitioner(s)

V E R S U S

Sri Hare Krishna Roy and others

..... Respondent(s)

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

For Respondent(s) : Mr. P. Roy, Barman, Sr. Advocate,
Mr. Samarjit Bhattacharjee, Advocate,
Mr. Dipjyoti Paul, Advocate.

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

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22/01/2024

Heard Mr. Biswanath Majumder, learned Central Government Counsel for the petitioners. Also heard Mr. P. Roy, Barman, learned senior counsel assisted by Mr. Samarjit Bhattacharjee, learned counsel together with Mr. Dipjyoti Paul, learned counsel for the applicants/respondents herein.

[2] By the impugned order dated 28th March, 2023, the learned Central Administrative Tribunal (CAT in short), Guwahati Bench has quashed the circular dated 25.05.2021 which was on the subject of clearance of doubt on the promotion of Assistant Supervisors and Supervisors for the panel year of 2021. The office of Comptroller & Auditor General of India (C&AG in short) undertook a cadre restructuring of Group B & C - Main Cadres for filling up the newly created post of Assistant Supervisors (Accounts) and Assistant Supervisors (Audit) vide circular dated 15.10.2020. Certain senior accountants, including the applicants submitted their willingness to attend mandatory training for appearing

in the Centralized Examination for Promotion to the post of Assistant Supervisor. Upon completion of their training, they appeared in an evaluation examination held on 19.12.2020 and all of them were declared successful. Out of 22 Senior Accountants, 16 Senior Accountants from the panel list were promoted to the post of Assistant Supervisors (Accounts) as per seniority vide order dated 31.12.2020 (Annexure-5). Further, 4(four) Assistant Supervisors were promoted to the post of Supervisor as per availability of sanctioned post vide order dated 18.01.2021 on the condition that such promotion will be effective from 01.01.2021 notionally and actually from the date of their taking over of the charge. Later, vide circular dated 15.02.2021, the office of the C&AG decided to relax the norms prescribed for promotion as Assistant Supervisor on successful completion of training for being eligible to be considered for promotion as Assistant Supervisor for the panel year 2021 as one time relaxation. The concerned Senior Accounts Officers were offered promotion to officiate as Assistant Supervisors (Accounts) by relaxation of prescribed norms with a condition that they have to mandatorily complete the training successfully along with evaluation test during the panel year 2021 itself. Thereafter, 59 Senior Accountants were declared passed in the training evaluation examination which was held on 07.07.2021. Subsequently, 20 Assistant Supervisors (Accounts) were provisionally promoted to the post of Supervisor (Accounts) with effect from 01.01.2021 notionally vide order dated 03.08.2021. The applicants who are the respondents herein thereafter approached the learned CAT being aggrieved by the order dated 03.08.2021 alleging that 20 Supervisors had superseded the applicants, who had already passed the 1st batch of evaluation examination held on 19.12.2020. Out of that 1st batch the top 5 Assistant Supervisors were promoted to the post of Supervisors and rest of them were made to wait for their

provisional promotion to the post of Supervisor. But in terms of the relaxation vide Circular dated 15.02.2021, another 64 Senior Accountants were provisionally promoted to the post of Assistant Supervisor (Accounts) on 23.03.2021, out of whom 62 candidates appeared in the evaluation examination and 60 candidates passed the evaluation examination. Out of those provisionally promoted Assistant Supervisors, 20 Assistant Supervisors have been promoted to the post of Supervisor vide order dated 02.08.2021 whereas the Assistant Supervisors, who were promoted on the basis of successful completion of training and passing out 1st batch of evaluation examination, were not considered for promotion to the post of Supervisor. It was contended before the learned CAT that respondent C&AG had promoted the Assistant Supervisors from the 2nd batch superseding the 1st batch of Assistant Supervisors in violation of evaluation examination and seniority. The learned CAT upon consideration of the rival submissions of the applicants and official respondents who is the petitioner herein choose to quash the order dated 25.05.2021 which was on the subject of clearance of doubt on the promotion of Assistant Supervisors and Supervisors for the panel year of 2021. Respondent-C&AG was directed to take proper steps with regard to promotion of the applicants to the post of Supervisor (Accounts) vis-à-vis the 2nd batch candidates who had admittedly been promoted to the post of Supervisor and to fix their seniority from the date of their regular promotion to the post of Assistant Supervisor, with consequential benefits.

[3] Let it be indicated herein that the beneficiaries of the relaxation of norms for promotion i.e. the concerned Supervisors in the 2nd batch were not impleaded in the original application before learned CAT though the clarification dated 25.05.2021 by virtue of which they were promoted by relaxation of the norms, was under challenge and has been quashed by the learned CAT. Being

aggrieved the respondent-C&AG, has approached this Court under Article 226 of the Constitution of India.

[4] It is the case of the writ petitioner that though the learned tribunal has set aside the clarification letter dated 25.05.2021 but it has left the promotion granted to the 2nd batch of Assistant Supervisors w.e.f. 01.01.2021 untouched. Applicants were primarily aggrieved by the promotion of the 2nd batch of Assistant Supervisors to the post of Supervisors by relaxation of the criteria. Since the promotion granted to the 2nd batch of Assistant Supervisor to the Supervisor w.e.f. 01.01.2021 was not challenged and they were not impleaded as parties before the learned CAT, the quashing of the clarification letter dated 25.05.2021 would make it impractical for the writ petitioner to implement the order of the learned CAT without touching the promotion granted already in favour of the 2nd batch of Assistant Supervisors vide letter dated 02.08.2021. The Assistant Supervisors who were promoted to the post of Supervisors (Accounts) by virtue of circular dated 15.02.2021 and clarification dated 25.05.2021 were accommodated on supernumerary posts. The cadre restructuring being undertaken by the department in terms of the circular dated 15.10.2020 cannot be implemented if this issue remains unresolved. Therefore, the petitioner, C&AG has approached this Court.

[5] The applicants/respondents herein have appeared and filed their counter affidavit. Mr. P. Roy, Barman, learned senior counsel for the applicants/respondents herein has made the following submissions in support of the impugned order of the learned CAT to oppose the prayer of the writ petitioner. According to them, the applicants are the beneficiary of the 1st batch of Senior Accountants who willingly had undergone 2(two) weeks of mandatory

training and successfully passed the training evaluation examination held on 19.12.2020, as a result of which they were granted promotion as Assistant Supervisor w.e.f. 01.01.2021. The respondents contended that 66 Senior Accountants were later offered provisional promotion to the post of Assistant Supervisor by relaxation of norms for successful completion of training as per memorandum dated 22.03.2021. Later, 59 out of those 66 Senior Accountants were declared passed in the Training Evaluation Examination on 07.07.2021. Among these 59 Assistant Supervisors, 20 incumbents were granted promotion to the post of Supervisor on 02.08.2021 which has given rise to the grievances of the applicants/14 respondents herein, since they were promoted as Assistant Supervisor much before these 20 incumbents, who are now superseding them for further promotion to the post of Supervisor.

[6] Mr. P. Roy, Barman, learned senior counsel for the applicants/respondents further submits that the concerned supervisors who were beneficiaries of the promotion granted vide order dated 02.08.2021 have not approached the High Court and, as such, appear to be contented with the order of the learned CAT. The counter affidavit of the respondent further details the method of recruitment to the post of Assistant Supervisor (Accounts) by promotion to be followed in terms of the Circular No.43, dated 15.10.2020 which *inter alia* requires completion of mandatory training followed by a centralized examination.

[7] Respondents have categorically stated in the following terms at paragraph-11 of the counter affidavit:

“That, Respondent Nos. 1 to 14 had expressed their willingness to undergo Training and only after undergoing such training, the Respondents were allowed to sit for the Centralized Examination, which they successfully passed. It is only after clearing of these 2(two) stages, that,

the Respondent Nos. 1 to 14 were promoted to the post of Assistant Supervisor, vide E.O. No.556, dated 31.12.2020. **But surprisingly**, the 20 incumbents whose promotion to the post of Supervisor has been challenged in O.A. 041/260/2021, were granted provisional promotion to the post of Assistant Supervisor *without even submitting their willingness to undergo training or successfully passing Centralized Examination, clearly in violation of the prescribed norms.* Thus, the subsequent promotion of those 20 incumbents to the post of Supervisor, vide E.O. No.89, dated 02.08.2021, w.e.f. 01.01.2021 *notionally*, is *ipso facto* **illegal** and **arbitrary**, as at the relevant time, those incumbents did not even submit their willingness to undergo mandatory training, **and even then**, they have been preferred with promotion to the post of Supervisor superseding the Respondents who had already undergone mandatory training & successfully passed Centralized Examination at the relevant time”.

[8] Mr. P. Roy, Barman, learned senior counsel for the applicants/respondents submits that an anomaly has been created by granting promotion on the basis of relaxation criteria devised by the department vide clarification dated 25.05.2021 which the learned CAT proceeded to quash. The department may be left to work out and resolve the anomaly which resulted out of the clarification letter dated 25.05.2021. As such, the order of the learned CAT may be left untouched.

[9] We have considered the submissions of the learned counsel for the parties and taken note of the pleadings placed from the record. The bare facts of the case of the applicants and the 20 incumbents who were promoted to the post of Supervisor vide order dated 02.08.2021 have been detailed in the foregoing paragraphs and need not be repeated again. The broad features of the case of the parties, if duly summarized, creates an impression that on account of restructuring exercise undertaken by the office of the C&AG of India vide its circular dated 15.10.2020, certain Senior Accountants, like the applicants/private respondents, got promotion after mandatory training of 2(two) weeks and successfully passing evaluation examination by order dated 31.12.2020 to the post of Assistant Supervisor (Accounts). Later on the criteria for mandatory

training was relaxed by the department vide circular dated 22.03.2021 which led to the promotion of 66 Senior Accountants to the post of Assistant Supervisor who later on participated in the training evaluation examination on 07.07.2021 and 20 out of 59 successful candidates of the post of Assistant Supervisor (2nd batch) have been promoted to the post of Supervisor vide E.O. No. 89 dated 02.08.2021. The grievance of the applicants is directed against this promotion granted to those 20 Assistant Supervisors who completed the evaluation examination after relaxation of the criteria of completion of training, but after the applicants were promoted by order dated 31.12.2020 w.e.f. 01.01.2021 and that too after the applicants had willingly participated in the mandatory 2(two) weeks training and successfully passed the evaluation examination. The applicants seem to be aggrieved as the promotion granted to those 20 incumbents to the post of Supervisor out of the 2nd batch of the Assistant Supervisor would relate back to 01.01.2021, thereby, superseding the applicants who claim to have attained seniority on being granted promotion prior in point of time to the 2nd batch candidates. In that case, those incumbents who were granted promotion to the post of Supervisor vide E.O. No.89, dated 02.08.2021, were required to be impleaded in the OA before the learned CAT, as apparently a right had been created in their favour upon grant of such promotion, which was likely to be affected upon adjudication of the grievances raised by the applicants. The learned CAT, however, has chosen to quash the clarification letter dated 25.05.2021 leaving the promotion of the 20 incumbents to the post of Supervisor vide order dated 02.08.2021 untouched. This of course would cause incomplete adjudication on the issue involved and adversely affect the incumbents who were promoted vide order dated 02.08.2021 to the post of Supervisor. The order of the learned CAT therefore, suffers from errors on law on this count.

[10] Learned counsel for the applicants has, however, submitted that such a plea was not raised by the C&AG in its counter affidavit before the learned CAT. Such a plea in the present writ petition should not be entertained.

[11] However, this court is of the opinion that if the necessary parties are not impleaded in such an adjudication concerning the rival claims of applicants with those persons relating to promotion to the post of Supervisor it would lead to miscarriage of justice. Therefore, the impugned order is set aside. The matter is remitted to the learned CAT to decide the original application afresh after allowing the applicants to implead the concerned incumbents who were promoted as supervisor vide order dated 02.08.2021 as respondents in the OA. Applicants are allowed to implead the concerned respondents in the original application through a proper amendment application.

[12] Accordingly, the instant petition is disposed of. Pending application(s), if any, also stands disposed of.

(S. D. PURKAYASTHA), J

(APARESH KUMAR SINGH), CJ