IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.08.2018

CORAM :

THE HON'BLE MRS.V.K.TAHILRAMANI, CHIEF JUSTICE

AND

The HON'BLE MR.JUSTICE M.DURAISWAMY

W.P. No.10104 of 2016

G.Mani .. Petitioner

Vs.

1.The Central Administrative Tribunal,
Madras Bench represented by its Registrar,
High Court Campus, Chennai - 600 104.

2.Union of India
rep by the Comptroller & Auditor General of India,
Pocket-9, Deen Dayal Upadhyaya Marg,
New Delhi - 110 124.

3.The Principal Accountant General
(General & Social Sector Audit),
Tamil Nadu & Puducherry,
Lekha Pariksha Bhavan,
361, Anna Salai, Teynampet,
Chennai - 600 018. .. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorarified mandamus, calling for the records relating to the impugned order of the 1st respondent in O.A.No.630 of 2012 dated 26.06.2015 and quash the said order and direct the respondents 2 & 3 to include the petitioner's name in the all India combined eligibility list of Audit Officer/Senior Audit Officer for the year 2011 at the appropriate place over and above his juniors more specifically below Serial No.58 and above Serial No.59 and consequently direct the respondents to consider his case for promotion to the Junior Time Scale Group A post on the basis of revised eligibility list and promote him if found fit from the date of promotion of his immediate juniors with all consequential benefits flowing therefrom including monetary benefits.

For Petitioner : Mr.P.Mohanraj
For Respondents : Mr.K.S.Saravanan
for Mr.V.Vijay Shankar (R2 & R3)

R1 - Tribunal

O R D E R

(Order of the Court made by M.DURAISWAMY,J.)

The petitioner has filed the above Writ Petition to issue Writ of Certiorarified mandamus to call for the records relating to the impugned order dated 26.06.2015 made in O.A.No.630 of 2012 on the file of the 1st respondent and to quash the same and consequently direct the respondents 2 & 3 to include the petitioner's name in the all India combined eligibility list of Audit Officer/Senior Audit Officer for the year 2011 at the appropriate place over and above his juniors more specifically below Serial No.58 and above Serial No.59 and consequently direct the respondents to consider his case for promotion to the post of Junior Time Scale Group A on the basis of revised eligibility list and promote him if found fit from the date of promotion of his immediate juniors with all consequential benefits flowing therefrom including monetary benefits.

2.It is the case of the petitioner that he joined the service as Lower Division Clerk on 19.09.1983 in the office of the 3rd respondent. For promotion to the post of Section Officer, one should have passed the Section Officer's Grade Examination (SOGE). The said examination is a Departmental Examination conducted by the Comptroller and Auditor General of India on all India basis. The Clerks/Auditors/Senior Auditors with 3 years of service are eligible to write the said Examination.

3.According to the petitioner, he appeared in the Section Officer's Grade Examination and got all India 4th rank in Part-I and got promotion as Auditor on 22.05.1987. On completion of Part-II Paper-I, he was promoted as Section Officer on 27.07.1988. The petitioner got promotion as Assistant Audit Officer on 01.01.1992. As per the recommendations of the 6th Central Pay Commission, the posts of Section Officers and Assistant Audit Officers were merged and placed in PB-2 (Rs.9300-34800) with Grade Pay of Rs.4,800/- with effect from 01.01.2006. The petitioner got promotion as Audit Officer on 01.03.2007 and further promoted as Senior Audit Officer on 01.01.2010. The posts of Audit Officer and Senior Audit Officer comes under Group “B”.

4.According to the petitioner, his next promotional avenue is to the post of Deputy Accountant General, which is classified as Group “A” Cadre coming under the Indian Audit and Accounts Service (Recruitment) Rules, 1983, which provides for promotion to Group “A” in Junior Time Scale included in the Indian Audit and Accounts Service. Schedule-III prescribes eligibility and manner of preparing the select list for appointment on promotion to posts in Group “A” Junior Time Scale included in the Indian Audit and Accounts Service.

5.For considering the candidates for promotion, as per Schedule-III, the candidates should have completed 5 years regular continuous service in the Grade on the first day of July of the year to which the promotions pertain. Further, the Officers, who have attained the age of 53 years on the above date, shall not be eligible. If an Officer is considered for promotion, all persons senior to him under Clause 3 to Schedule-III shall also be considered notwithstanding that they may not have rendered the requisite number of years of service in Group "B".

6.A common eligibility list among the Departmental Officers borne on the Group "B" Cadres of Audit Officers, Accounts Officers and Administrative Officers in the Indian Audit and Accounts Department as on 01.07.2011 was issued on 12.10.2011. According to the petitioner, he was less than 53 years as on 01.07.2011. However, the petitioner's name was not included in the said eligibility list solely on the ground that he has not completed 5 years of regular continuous service in the Grade and he was having only 4 years and 4 months of service in the Grade.

7.The learned counsel appearing for the petitioner contended that as per Clause-4 of Schedule-III, if an Officer is considered for promotion, all persons senior to him under Clause 3 shall also be considered notwithstanding that they may not have rendered the requisite number of years of service in Group "B" and therefore, the petitioner's name should have been included in the common eligibility list.

8.Further, the learned counsel submitted that the petitioner's name should be included in the common eligibility list ahead of one N.S.Iyer placed at Sl.No.71, who was then working in the Office of Accountant General, Rajkot, Gujarat. According to the petitioner, the said N.S.Iyer was promoted as Section Officer after him on 28.07.1988. Further, according to the petitioner, similarly, one of his junior at Sl.No.61 of the revised eligibility list was promoted to Junior Time Scale. In these circumstances, the petitioner filed O.A.No.630 of 2012 on the file of the 1st respondent to direct the respondents to include his name in the All India combined eligibility list of Audit Officer/Senior Audit Officer at appropriate place over and above his juniors, more specifically below Serial No.58 and above Serial No.59 and consequently direct the respondents to consider his case for promotion to the Junior Time Scale Group "A" post on the basis of the revised eligibility list and promote him, if found fit, from the date of promotion of his immediate juniors with all consequential benefits flowing there from including monetary benefits.

9.The Tribunal taking into consideration the case of both sides dismissed the O.A. Aggrieved over the same, the petitioner has filed the above Writ Petition.

10.Heard Mr.P.Mohanraj, learned counsel appearing for the petitioner and Mr.K.S.Saravanan on behalf of Mr.V.Vijay Shankar, learned counsel appearing for the respondents 2 & 3.

11.It is pertinent to note that the Officer, who was in Sl.No.59 viz., N.S.Iyer belongs to Gujarat Cadre and the Officer in Sl.No.61 belongs to Andhra Pradesh. When both the Officers are from different Cadre, the petitioner cannot claim any right on par with them.

12.On a reading of Clauses 3 & 4 of Schedule-III, it is clear that the eligible Accounts Officers/Audit Officers have to be arranged in the order of date of their appointment as Section Officers without affecting the inter-se seniority in a particular Cadre. The combined list of eligible Audit Officers is not a separate centralized Cadre and hence, the petitioner's claim, placing reliance on Clause 4 of Schedule-III, cannot be accepted. The claim made by the petitioner making an inter-cadre comparison of seniority at the Section Officer level cannot be sustained and no one junior to him in his parent Cadre has superseded him.

13.That apart, a clear mechanism was evolved after due consideration by the Executive so as to arrive at a list of eligible Officers having qualifying years of service in the Feeder category giving due weightage to the long service that they had put in the respective Cadres.

14.So far as the age limit is concerned, in Clause 2 of Schedule-III, the Authority had fixed the age limit at 53 years for considering the names to arrive at a list of eligibility Officers and it is a policy decision taken by the Authority.

15.It is also pertinent to note that the petitioner had not completed 5 years of regular continuous service as on 01.07.2011 in the combined Grade of Senior Audit Officer/Audit Officer. Since the petitioner has not completed 5 years of regular continuous service, his name was rightly not considered for promotion. The petitioner had completed only 4 years and 4 months of service and hence, he was not eligible for inclusion in the eligibility list as on 01.07.2011. The Group "B" Cadre of Senior Audit Officer/Audit Officer, which is a Feeder Cadre, is not a centralized Cadre, but a separate Cadre in each Office. A Senior Audit Officer of Principal Accountant General's Office in Andhra Pradesh or Gujarat belongs to a separate Cadre under a different Cadre Controlling Authority with different local conditions relating to vacancy positions in various cadres. Therefore, the waiting period varies from one State (Cadre) to another. Therefore, the petitioner cannot equate his case with the case of another Officer, junior to him from different Cadre. When no Officer from his Cadre junior to him was promoted ahead of him, the claim made by the petitioner was rightly rejected by the Tribunal.

16.For the reasons stated above, we do not find any ground to interfere with the order passed by the Tribunal. The Writ Petition is liable to be dismissed. Accordingly, the same is dismissed. No costs.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

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To

1.The Registrar,
Central Administrative Tribunal,
Madras Bench,
High Court Campus, Chennai - 600 104.

2.The Comptroller & Auditor General of India,
Union of India,
Pocket-9, Deen Dayal Upadhyaya Marg,
New Delhi - 110 124.

3.The Principal Accountant General
(General & Social Sector Audit),
Tamil Nadu & Puducherry,
Lekha Pariksha Bhavan,
361, Anna Salai, Teynampet,
Chennai - 600 018.

+1cc to Mr.J.Lakshmi Narayanan, Advocate, S.R.No.57750
+1cc to Mr.V.Vijaya Shankar, Advocate, S.R.No. 57382

W.P. No.10104 of 2016

SJ(CO)
GN(11/09/2018)