IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:-
The Hon'ble Justice Madhuresh Prasad
And
The Hon'ble Justice Supratim Bhattacharya

W.P.C.T. 63 of 2025

The Comptroller and Auditor General of India & Ors.
Vs.
Niraj Kumar Singh

For the Petitioner	:	Mr. Dr. Surender Singh Hooda, Mr. Suman Basu
For the Respondents	:	Mr. Chirandip Sinha, Mr. Siddhartha Sankar Mandal, Ms. Anurima Das Sharma
Judgment on	:	7th July, 2025.

Madhuresh Prasad, J.:

1. The petitioner was the respondent before the Tribunal. By the impugned order passed by the Central Administrative Tribunal (CAT), Kolkata Bench the Tribunal directed the present petitioners to take necessary steps to absorb the applicant/respondent on permanent basis as Assistant Audit Officer in the office of a Director General of Audit, South-Eastern Railway, Kolkata, if otherwise found fit.

2. The brief factual background of the case is required to be taken note of for proper appreciation. The applicant before the Tribunal was working in the grade of DEO in the office of the

Principal Director of Audit, Southern Railway, Chennai. He thereafter successfully cleared the Subordinate Audit Service (SAS) examination in August, 2016 as well as the supplementary SAS examination in March, 2017.

3. The office at Principle Director of Audit, South-Eastern railway at Kolkata invited applications through proper channel for filling up vacancy in the cadre of Assistant Audit Officer (AAO). The same was to be done on deputation basis from amongst suitable Assistant Audit Officers/SAS passed officials awaiting promotion from the (Indian Audit and Accounts Department (IA and AD) offices. The deputation initially was to be for a period of one year but extendable on yearly basis subject to administrative convenience. There were other terms and conditions contained in the letter dated 8.8.2017 inviting the applications.

4. The applicant participated in the process and by an office order dated 20.10.2017 was declared selected for the post of Assistant Audit Officer in the office of the Principal Director of Audit on deputation basis for a period of one year. He was assigned duty at the office of the Senior Divisional Audit Officer, South-Eastern Railway at Ranchi. The applicant claimed absorption in the office of the Principal Director of Audit, South-Eastern Railway by an application dated 29.1.2018. The authority, however, did not accede to his request for permanent absorption. The applicant continued to earn his promotion in his parent office in Southern Railway

(Chennai). He thereafter requested the authorities for extending his deputation , which was accepted by the authorities. He thus got three extensions for one year each, up to 19.10.2021.

5. After completing 4 years he again requested for extension of his deputation by an application dated 19.7.2021. Upon obtaining approval for the same by the applicant's parent office at Chennai, the deputation was extended for one more year upto 19.10.2022. Such extension was granted by an office order dated 20th December, 2021.

6. The applicant again requested for extension of his deputation from 07.07.2022, by another one year (6^{th} year) which was rejected by the applicant's parent office by a letter dated 26.8.2022. The Director General of Audit, Southern Railway did not agree to extension of the applicant's deputation for any further period and requested the Director General of Audit, South-Eastern Railway (Borrowing Office) to relieve the applicant after completion of his deputation during the 5th year i.e. on 19.10.2022.

7. On 6.9.2022, the Director General of Audit, Southern Railway revised their earlier decision dated 26.8.2022 and allowed extension of the applicant's term of deputation for the 6th year upto 19.10.2023. In this Communication, the parent office intimated the borrowing office (in South-Eastern Railway) that it may retain the applicant permanently after obtaining consultation with Headquarter office, if such consent was communicated. The applicant on

29.12.2022 again applied for permanent absorption in the Borrowing Office.

8. The Applicant's deputation in the borrowing office and every annual extension of his period of deputation for a period of 6 years was based on repeated applications made for the same. While making such applications, the applicant was raising the issue of inconvenience on the grounds of his aged parents, education of his children, and some issues regarding his ancestral property etc. The authorities had been acceding to his request and thereby extending his deputation all along this period, in the manner noted above.

9. This time when the applicant requested for absorption, he cited the provisions contained in the Assistant Account Officer and Assistant Audit Officer Recruitment Rules, 2016 (2016 Rules) notified by the President after consultation with the Comptroller and Auditor General of India in exercise of powers under Clause 5 of Article 148 of the Constitution. The Authority however, rejected the applicant's claim on a ground that the Original Circular dated 28.8.2017, inviting application for deputation did not contain any explicit Clause regarding their being any possibility of permanent absorption. Thus, in view of Para 10.2 (iv) of the DOPT office memorandum dated 3.10.1989 since there was no mention of such possibility of permanent absorption in the original circular inviting application for deputation, there was no scope to consider his permanent absorption.

10. On 30.06.2023 the applicant again made an application for extension of his deputation under the South-Eastern Railway, as also for his permanent retention. The Director General of Audit, South-Eastern Railway (Borrowing Office) informed the applicant on 10.7.2023 that his application was considered by the competent authority but could not be acceded to due to administrative reasons. Intimation was sent to the parent office on 17.8.2023 that the applicant would be repatriated on expiry of his approved term of deputation on 19.10.2023.

11. The applicant challenged the decision by filing an Original Application. The same was numbered as OA 1319 of 2023 and was taken up for final consideration by the CAT on 16.10.2023, when the same was disposed of. The CAT granted liberty to the applicant to prefer a comprehensive representation, which the authorities were directed to re-examine in terms of the Recruitment Rules and service record of the applicant and to intimate a decision within 4 weeks of receipt of the representation. The CAT was pleased to direct for maintaining status-quo qua the applicant till the decision of the respondent is communicated to the applicant and for 2 weeks thereafter.

12. The representation was rejected by a letter dated 30.11.2023. The authorities again relied upon Para 10.2 (a) of the DOPTs office memorandum 3.10.1989 for rejection, as according to Para 10.2 (iv) of the OM, pre-condition to a favourable consideration

for absorption of a deputationist is that the original circular letter inviting nomination for deputation should have clearly mentioned the possibility of permanent absorption. Since the original circular dated 28.8.2017 did not contain any such possibility of permanent absorption, the authorities had no scope to consider the applicant's claim for absorption.

13. This decision of the authorities dated 30.11.2023 was challenged by the applicant by filing OA 1586 of 2023. Before the Tribunal the applicant again placed reliance upon Column 10 and 11 of the 2016 Rules. The applicant also relied upon one letter dated 29.12.2023 regarding promotion of SAS passed officials awaiting promotion and appointment of the nominated candidates to the post of Assistant Accounts/Audit Officer through Combined Graduate Level Examination (CGLE)-2022.

14. The authorities on the other hand justified rejection of the petitioners claim for absorption relying upon the DOPT memorandum dated 03.10.1989 to contend that absorption could not be considered since the original circular/letter did not contain any express provision regarding their being a possibility of permanent absorption. The authorities have also expressed that absorption was not possible due to administrative reasons.

15. The Tribunal after taking note of the stand of the rival parties has abruptly recorded an opinion that the applicant is

entitled to be absorbed as per the Recruitment Rules in vogue and the circular dated 29.12.2023. The Tribunal has recorded a finding that the DOPT office memorandum dated 3.10.1989 is not applicable to the case of the applicant. The consideration of the CAT is to be found in Para 10 and 11 of the order dated 14.1.2025 passed in OA 1586 of 2023, which reads as follows:

> *"10. From perusal of the above, it is noted that there is specific provision under the Rules for recruitment of Assistant Audit Officers on promotion, absorption or deputation. Therefore, we are of the considered opinion that the applicant is entitled to be absorbed as per the Recruitment Rules in vogue and the aforesaid Circular dated 29.12.2023. The DoPT's O.M. No. AB 14017/71/89-Estt. (RR) dated 03.10.1989 is not applicable to the case of the applicant.*
>
> *11. In such view of the matter, the O.A. is allowed. The impugned orders/communications dated 10.07.2023, 19.10.2023, 17.08.2023 and 30.11.2023 are set aside. The respondents are directed to take necessary steps to absorb the applicant on permanent basis as Assistant Audit Officer in the Office of the Director General of Audit, South Eastern Railway, Kolkata, if otherwise found fit, within a period of three months from the date of receipt of a copy of this order."*

16. Prior to recording such opinion and passing orders containing directions for the applicant's absorption on permanent basis, the order of the Tribunal does not manifest any consideration of the matter. Having noted the stand of the parties, the Tribunal has recorded its opinion and passed the directions. No reasons have been assigned in the order passed by the Tribunal for holding that DOPT office memorandum dated 3.10.1989 is not applicable to the case of the applicant. There is also absence of any reasons in support of the opinion/ conclusion. Such conclusion without assigning any reasons is liable to be set aside on this ground alone.

17. We, however, ventured to examine the DOPT office memorandum dated 3.10.1989 relied upon by the authorities, Column 10 and 11 of the 2016 Rules; as well as the Circular dated 29.12.2023 relied upon by the applicant before the Tribunal to assail the impugned order rejecting his claim for absorption.

18. Insofar as the circular dated 29.12.2023 is concerned, the fact that the said circular is not relevant while considering the validity of the orders declining the applicant's prayer for absorption is evident from the fact that petitioner's claim for permanent absorption was rejected by the authorities finally on 30.11.2023, i.e. prior to coming into force of the circular dated 29.12.2023. Since the circular dated 29.12.23 was not in existence on the day the authorities rejected the petitioners claim for absorption, the validity of the rejection order cannot be tested with reference to the circular dated 29.12.2023.

19. Insofar as the Column 10 and 11 of the 2016 Rules, before we proceed to consider the same, we deem it useful to reproduce relevant extracts of Column 10 and 11 being relied upon by the petitioner's Counsel before us:

"Method of recruitment. Whether by direct recruitment or by promotion or by deputation or absorption and percentage of the vacancies to be filled by various methods.	***In case of recruitment by promotion or deputation or absorption grades, from which promotion or deputation or absorption to be made.***
(10)	*(11)*

By promotion failing which by deputation or absorption failing both by direct recruitment. *Note 1.- The direct recruits shall be selected on the basis of an entrance examination conducted by the Staff Selection Commission.* *Note 2 .- During the period of probation direct recruits shall have to qualify the "Subordinate Accounts Service Examination" for confirmation and regular appointment as Assistant Accounts Officer.*	*Promotion :* *Departmental candidates who have passed the Subordinate Accounts Service Examination conducted by the Comptroller and Auditor General of India or any authority specified by him.* *Note 1.- Where juniors who have completed their qualifying or eligibility service are being considered for promotion, their seniors shall also be considered provided they are not short of the requisite qualifying or eligibility service by more than half of such qualifying or eligibility service or two years, whichever is less, and have successfully completed their probation period for promotion to the next higher grade along with their juniors who have already completed such qualifying or eligibility service.* *Note 2.- For the purpose of computing minimum qualifying service for promotion, the service rendered on a regular basis by an officer prior to 1st January, 2006, the date from which the revised pay structure based on the Sixth Central Pay Commission recommendations has been extended, shall be deemed to be service rendered in the corresponding Grade Pay or Pay Scale extended based on the recommendations of the Pay Commission.* *Deputation or absorption:* *Officers under the Cadre Controlling Authority in the Indian Audit and Accounts Department or in any Organised Accounts Cadre under the Government of India:* *(i) holding analogous posts of Assistant Accounts Officer or*

	Assistant Audit Officer in Pay Band -2, Pay Scale of Rs. 9300-34800 with Grade Pay of Rs. 4800/-; or . *(ii) who, has passed the Subordinate Accounts Service or Subordinate Audit Service Examination under other Cadre Controlling Authority in the Indian Audit and Accounts Department or an equivalent examination in any Organised Accounts Cadre under the Government of India.* *Note 1.- The departmental officers in the feeder category who are in the direct line of promotion shall not be eligible for consideration for appointment on deputation or absorption. Similarly, deputationists shall not be eligible for consideration for appointment by promotion.* *Note 2.- Period of deputation including period of deputation in another ex-cadre post held immediately preceding this appointment in the same or some other Organisation or Department of the Central Government shall ordinarily not to exceed three years. The maximum age limit for appointment by deputation shall not be exceeding fifty-six years as on the closing date of receipt of applications.* *Note 3.- For the purpose of appointment on deputation or absorption basis, the service rendered on a regular basis by an officer prior to the 1st January, 2006, the date from which the revised pay structure based on the Sixth Central Pay Commission recommendations has been extended, shall be deemed to be service rendered in*

	the corresponding Grade Pay or Pay Scale extended based on the recommendations of the Pay Commission, except where there has been merger of more than one pre-revised scale of pay into one grade with a common Grade Pay or Pay Scale, and where this benefit will extend only for the post for which that Grade Pay or Pay Scale is the normal replacement grade without any upgradation."

20. From a bare reading of the Column 10 and 11 of the 2016 Rules we do not find that the same contains any stipulation based on which a deputationist, can claim any vested right for permanent absorption upon the post to which he has been deputed.

21. The learned Counsel for the applicant has strenuously argued that from Clause 10 it is obvious that there are four methods of recruitment prevalent, i.e. by direct recruitment, thereafter by promotion, then by deputation and lastly by absorption. According to him, as per this Clause once the petitioner was deputed, the authorities were required to go to the next stage in the prescribed methods of recruitment, being absorption.

22. We find a fallacy in such submission based on a plain reading of Clause 10 and 11 of the Rules. The method of recruitment specified in Clause 10 vests a discretion, enabling the authority to resort to promotion in case they fail to make direct recruitment. It further enables the competent appointing authority to resort to deputation or

absorption in case of failure to make recruitment by way of promotion. The Rule is framed under Article 148(5) of the Constitution of India and therefore retains the autonomy and discretion of CAG to resort to either of these 4 modes of recruitment. Such discretion under the Rule, however, does not create any corresponding vested right in the person working on deputation in the cadre which can be enforced by issuance of a positive direction for absorption of a deputationist, as has been done by the Tribunal.

23. We find that no material has been placed before the Tribunal to suggest that there was a failure to make appointment by direct recruitment, or promotion, which necessitated an appointment by way of absorption. The mere fact that an officer is deputed from one department on deputation cannot ipso facto be a basis to assume that the same was preceded by a failed exercise of recruitment or promotion.

24. The nature of petitioner's deputation was a temporary deputation for one year. A one year deputation clearly cannot be a substitute for recruitment. It is obviously a matter of administrative exigency. The extension of his deputation for a further period of 5 years is by virtue of the applicant's repeated requests, though with some reluctance by the authorities as is evident from the facts noted above.

25. Be that as it may, a plain reading of Column 10 and 11 of the 2016 Rules in our opinion does not create any right in favour of the applicant before the Tribunal to seek issuance of a positive direction for his absorption on the post to which he was deputed. However, such relief was granted by the CAT by the impugned order.

26. We also must take note of the settled legal position in this regard that a deputationist has no right to claim for permanent absorption unless the claim is based upon a statutory provision in this regard, having the force of law. It is open to the borrowing department to repatriate the deputationist to the parent department. In this connection, we take into consideration the settled legal proposition that deputationist has no right to be absorbed as per decision of the Apex Court in the case of ***Rameshwar Prasad vs. Managing Director, U.P. Rajkiya Nirman Nigam Limited and Others*** reported in ***(1999) 8 SCC 381***, para 14 of the decision reads:

> *"**14**. We agree with the learned counsel for Respondent 1 and make it clear that an employee who is on deputation has no right to be absorbed in the service where he is working on deputation. However, in some cases it may depend upon statutory rules to the contrary. If the rules provide for absorption of employees on deputation then such employee has a right to be considered for absorption in accordance with the said rules. ...."*

27. In the present case we find that there is no stipulation in the letter dated 28.8.2017 inviting application for deputation regarding their being any possibility of absorption on the deputationist. On the contrary, we have recorded a finding based on

the letter dated 28.8.2017 that the deputation was limited for a period of one year and extendable only on a yearly basis. The very basis of deputation was a letter which contemplated deputation for a year and only extendable for one year thereafter on a yearly basis. However, five extensions of the deputation have been accorded by the borrowing department even though there was some reluctance in this regard as has been recorded above. Also no statutory rule has been relied upon by the applicant, or the Tribunal based on which the applicant's claim for absorption can be considered, much less allowed.

28. The facts emerging from the records therefore leaves no room for ambiguity that in the letter dated 28.08.2017 there was no policy, much less any statutory provision for giving absorption or any kind of preference to the deputationist being absorbed in the department. We find that the applicant did not make out any enforceable right for issuance of a direction favouring his absorption.

29. The decision of the CAT dated **16.10.2023** whereby the Tribunal has directed the authorities to take necessary steps to absorb the applicant, impugned in the present case therefor in our opinion is unsustainable. The order dated 14.1.2025 passed in O.A. 1586 of 2023 is therefore set aside.

30. The writ application is thus allowed.

31. No order as to costs.

32. Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties, expeditiously after complying with all necessary legal formalities.

(Madhuresh Prasad, J.)

I agree.

(Supratim Bhattacharya, J.)

A.D.