

PETITIONER:
J.G. PRASADA RAO ETC. ETC.

Vs.

RESPONDENT:
THE SECRETARY TO GOVERNMENT AND ORS. ETC. ETC.

DATE OF JUDGMENT 07/09/1995

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
HANSARIA B.L. (J)

CITATION:
1996 SCC (7) 51 JT 1995 (7) 34
1995 SCALE (5) 459

ACT:

HEADNOTE:

JUDGMENT:

W I T H

CIVIL APPEAL NOS. 8417-18 & 8419 OF 1995
(Arising out of SLP (C) Nos. 7050-7051/95 and 9506/95)
O R D E R

C.A.4172/95

We have heard the appellant in person, who prepared the case thoroughly and argued very neatly and meticulously, point by point, making analytical presentation of the case with reference to various orders issued by the Government and cleared the clogs crept in the controversy.

The Government of Andhra Pradesh had obtained from Accountant General, A.P., the services of Divisional Accountants, SAS Accountants and SAS passed Auditors on deputation to the State Government as Divisional Accountants. A three member Committee appointed to advise the Government on the desirability and feasibility to absorb them in the State service, had recommended for absorption. On consideration thereof, in G.O. Ms. 304 Finance and Planning, dated November 20, 1979, Government had decided to take them over from the administrative control of the Accountant General, A.P. subject to the terms and conditions stated therein.

The cadre of the Divisional Accountants was constituted with the Finance and Planning Department of the Government to exercise administrative control. It called for options from them which were subject to their accepting service conditions of the State Government and the State's scale of pay. Admittedly, all the deputationists had opted for and the service was constituted w.e.f. January 1, 1980. In paragraph 8 thereof it was stated that :

"The inter se seniority of Divisional Accountants, Selection Grade Divisional Accountants and Section Officers/S.A.S. Divisional Accountants borne on the Accountant General's cadre of Divisional

Test passed Divisional Accountants taken over to the State Service will be fixed in the State cadre based on their inter se seniority as Divisional Accountants in the Accountant-General's gradation list on the date of taking over. Appointment to the posts of Divisional Accountants, Grade-I shall be made based on seniority-cum-merit. The present pay and Dearness Allowance actually drawn by the S.A.S. Divisional Accountants/Section Officers under the Accountant-General on the date of take over will be protected in the case of those opting to State Service, when fixing their pay in the State D.A.'s scale of pay admissible to them according to their seniority in the gradation list of Divisional Accountants. Their fixation of pay in the State D.A.'s scale will be made on the basis of their notional pay in the Central D.A.'s scale which they would have drawn but for their promotion as Section Officer/S.A.S. Divisional Accountants under the Accountant-General. The difference between the pay and dearness allowance drawn by them under the Accountant-General and the pay and dearness allowance admissible to them in the State scale will be given as personal pay to be absorbed in future increments."

G.O. Ms. No. 290 dated 11.11.1982 was issued by the Government exercising the power under proviso to Article 309 of the Constitution, constituting the A.P. Divisional Accountants Service under the A.P. Divisional Accountants Officers Service Rules, 1980 which came into force w.e.f. January 1, 1980. In terms of G.O. Ms. No. 304, the gradation was as Divisional Accountants Grade-I and Divisional Accountants, Grade-II. The Divisional Accountant Grade-I is a promotional post from Divisional Accountant Grade-II, and Divisional Accountant Grade II are to be filled up by direct recruitment from open market. In Note (1) thereof, it was stated that "all the Divisional Accountants Officers borne on the Accountant General Office, who exercised their option to come over to the State service, shall be deemed to have been taken over on 1.1.80 to the State Divisional Accountants officers service against grade I or grade II, as the case may be." In Rule 6, the special qualifications, method of recruitment and qualifications have been mentioned as under :

"Category	Method of	Qualifications
Divisional Accounts officers Gr.I	By promotion	shall have put in service of not less than 3 years as Divisional Accountants Officer, Grade-II (Category -II) and must have passed the 'Divisional Test'.

We are not concerned with Category II. However, it is relevant to mention about that. With regard to existing S.A.S. passed Divisional Accounts Officers, Accountants or SAS passed Auditors under the administrative control of the Accountant General, A.P. prior to the take over of the cadre by the State Government, they were directed to reckon their total service under the category as Divisional Accounts Officers, Grade II.

In G.O. Ms. No. 314 Planning and Finance, dated 30.11.1982 statutory orders under proviso of Article 309 were issued accepting the options given by the deputationists and taken over as Divisional Accounts Officers Grade I and Grade II, as the case may be. The Notification reads thus :

"The Senior Grade and Junior Grade Divisional Accountants, who opted to the State Service consequent to the take-over of the cadre of Divisional Accountants by the State Government from the Accountant General, Andhra Pradesh as shown in the Annexure are deemed to have been absorbed into the State Service subject to the terms and conditions laid down in G.O.Ms. No. 304, Finance and Planning (Finance Wing. WA.1) Department, dated 20.11.1979."

Second paragraph thereof states that Senior Grade Divisional Accountants and the Junior Grade Divisional Accountants shown in the Annexure to the Order are deemed to have been absorbed into the State Government Service in the posts shown against their names w.e.f. 1.1.1980, subject to the terms laid down in G.O.Ms. No.304. In sequel thereof, statutory rules were issued in G.O.Ms. No.139, dated 30.4.1982, constituting AP Accounts Service, stating therein that Grade I Divisional Accountant is a feeder post for appointment by promotion to the post of Assistant Pay and Accounts Officer. For promotion as officers in Category 3, i.e., Assistant Pay and Accounts Officer, the proviso says that the service rendered as Senior Grade Divisional Accountant after promotion from Grade-II shall alone be taken into account by the State Government for reckoning the qualifying service for promotion as Assistant Pay and Accounts Officer.

A reading of these statutory orders vis-a-vis the administrative decisions taken by the Government in G.O.Ms. No.304 would clearly establish that the deputationists, who have been designated as Grade I and Grade II Officers and given their unconditional options for absorption into the State Service, were absorbed in the "Divisional Accountant Service" constituted by the Government as Gr. I and Gr. II officers. The previous service rendered as either Grade I or Grade II officers has been reckoned for the purpose of their respective eligibility to the promotion to the higher cadre. But for promotion as Assistant pay and Accounts Officer in category III of A.P. Accounts Service, the qualifying period of service is as Grade I Divisional Accountants in A.P. Accounts Division Service. They must have passed Divisional Accounts test and after promotion as Divisional Accounts Grade-I must have put in the minimum qualifying service.

The question is whether the appellant is senior to some of the contesting respondents. The contention of the appellant is that by virtue of his passing the Divisional Accountants test earlier, though the respondents were holding posts carrying higher pay, all of them cannot be reckoned as seniors to him as some of them had passed this

later. On the other hand, their seniority requires to be reckoned from the date of their passing Divisional Accountant test. Since some had passed the test later to him they are juniors to him.

It is contended on behalf of the respondents that in G.O.Ms. No.304, in particular para 8, it is clearly mentioned that the S.A.S. Accounts Officer/S.A.S. passed Auditors, who held the higher scale of pay since declared to be entitled to Grade-I, they are entitled, though some of them passed the Divisional Accountant test later to the appellant, to be promoted as Grade-I Divisional Accountants and some of them had been so promoted, and so, they cannot be made juniors to the appellant. At this juncture we may make it clear that respondent Nos. 3 to 6, 10 and 11 had passed Divisional Accounts test earlier to the appellant. Respondent Nos. 7, 9, 12 and 13 had admittedly passed Divisional Accountant test subsequent to the appellant. It is also not in dispute that the appellant was promoted as a Divisional Accountant Grade I on 6.7.1987 while respondent Nos. 7, 9, 12 and 13 were promoted on July 27, 1991.

The question, therefore, is who, among them, is senior to each another. Prior to taking over on January 1, 1980, admittedly, all of them were governed by the Manual of the Accountant General issued by the CAG of India. Chapter V deals with Subordinate Accounts Service which consists of the confirmed apprentices, SAS Accountants on probation, Accounts Clerks in their office and the Divisional Accountants under their control. Para 320 of the Manual prescribes the method of computation of seniority on passing the Divisional Accountants test which reads thus :

"320. Clerks recruited from sources (1) and (2) who pass the Divisional Test Examination (paragraph 322) are placed on a waiting list but allowed to retain their liens on their substantive appointments till they are confirmed in the Divisional Accountants' Cadre. Their relative seniority will be determined with reference to the date of their passing the Divisional Test Examination (the Viva-Voce part of it in the case of S.A.S. Examination passed clerks). The Divisional Accountants who pass the same Divisional Test will be senior to all the Divisional Accountants who pass in subsequent tests. The inter se seniority of Divisional Accountants who pass the same test will be decided on the basis of the marks obtained by them in the aggregate in the Divisional Test Examination."

The rest of the para being not material for the purpose of this case is omitted.

It would thus be clear that the S.A.S. Accountants on probation, Divisional Accountants and Clerks who passed the SAS examinations are the feeder posts for the Subordinate Accountants Service. Similarly, in the statutory rules issued, referred to earlier, for Grade I posts of the Divisional Accountants, Grade II is the feeder post. Passing of Divisional Accounts test is a pre-condition for promotion as Divisional Accounts Grade I. Paragraph 320 expressly prescribes that the date of passing Division Accounts test is the criteria for determination of inter se seniority. Though the SAS Accounts Officers or the clerks who passed the SAS examinations had held higher scale of pay or higher

responsibility, to determine their inter se seniority, date of passing Divisional Accounts test is the criterion. The inter se seniority shall be reckoned with reference to the date on which the respective candidate passed the Accounts test.

In view of the admitted position that the appellant had passed the Accounts test earlier to the aforesaid respondents, he is entitled to be treated as senior to these respondents in the Grade II post of Divisional Accountant, in the list sent by the Accountant General for absorption in the Divisional Accountants Service constituted by the State Government. The factum of drawing higher pay or holding higher responsibilities became irrelevant due to operation of the rules. The Government, therefore, is directed to reckon inter se seniority with reference to the date of his passing Accounts test and inter se seniority should be determined in the respective Annexures prepared by the State accordingly. The reliance on G.O.Ms. No.449 dated 16.9.1983 for upgradation into Divisional Accountants Grade I does not have any relevance as regards the service under the Divisional Accountants Service Rules of the P.W.D.

The appeal is accordingly allowed but in the circumstances without costs.

C.A. NOS.8417-18 & 8419/95

@ SLP (C) NOS.7050-51/95 AND 9506/95

Leave granted.

In view of the judgment rendered above in C.A. 4172 of 1995, the appeals are allowed. No costs.