

UNNI MENON

v.

UNION OF INDIA & ORS.  
(Civil Appeal No. 7113 of 2005)

JANUARY 07, 2011

**[B. SUDERSHAN REDDY AND SURINDER SINGH  
NIJJAR, JJ.]**

*Service Law – Promotion – Audit/Accounts Officers – Appellant, Assistant Accounts Officer in the Office of Accountant General, deputed in Central Administrative Tribunal (CAT) – On the basis of his lien and seniority, promoted as Accounts Officer in his parent office i.e. in the office of Accountant General – Thereafter, he was absorbed as Accounts Officer in CAT – Pursuant to recommendations of IVth Pay Commission, Government of India issued Office Memorandum giving promotional grade for Audit/Accounts Officers of ‘Organized Accounts Cadres’ – Appellant filed application claiming entitlement to be considered for promotion as Sr. Accounts Officer in CAT based on the said Official Memorandum – Tribunal allowed the application – High Court set aside the order holding that the Accounts Department in CAT did not fall within the ambit of ‘Organized Accounts Cadres’ – Justification of – Held: Justified – CAT is a separate entity created under statute and is not a department of the Central Government – Cadre hierarchy in CAT is regulated by the 1990 Recruitment Rules, which are independent and self-contained – They could not be intermingled with the Rules of Central Government Departments – Appellant could not claim the benefit of the said Office Memorandum, as by the relevant time, he had lost his lien in the parent department and was borne on the cadre of Accounts Department of CAT – In the hierarchy of accounts cadre of the CAT, there was no cadre called the ‘Sr. Accounts*

A *Officer', to which the appellant wanted promotion – Administrative Tribunals Act, 1985 – s.13(2) – Central Administrative Tribunal (Accounts Personnel Posts) Recruitment Rules, 1990 – Rule 3 and Schedule 2.*

B While the appellant was working as Assistant  
 Accounts Officer in the Office of the Accountant General,  
 he went on deputation to work in the Central  
 Administrative Tribunal (CAT) w.e.f. 21st August, 1989. As  
 the appellant was on deputation, his lien was maintained  
 C in his parent department, i.e., Accountant General. On the  
 basis of his lien and seniority, he was promoted as  
 Accounts Officer in his parent office, i.e., in office of the  
 Accountant General, w.e.f. 1st April 1992. Thereafter, he  
 was absorbed as Accounts Officer in CAT w.e.f. 23rd  
 D March, 1994.

The IVth Pay Commission made certain recommen-  
 dations in the matter of pay scales between the Accounts  
 Officers in the Accounts Wing and the Accounts Officers  
 in the Audit Wing of the Indian Audit and Accounts  
 E Department. Pursuant to the recommendations of the IV  
 Pay Commission, Government of India issued a circular  
 vide No. F.6(82)/IC/91 dated 22nd September, 1992 giving  
 promotional grade for Audit/Accounts Officers of  
 'Organized Accounts Cadres'.

F It was the case of the appellant that he should have  
 been promoted to the cadre of Sr. Accounts Officer w.e.f.  
 1st April, 1995 on his completion of three years' of  
 service in the cadre of Accounts Officer pursuant to the  
 aforesaid circular dated 22nd September, 1992. He  
 G contended that the persons junior to him in his parent  
 department had been promoted on completion of three  
 years' service and that since the nature of duties  
 performed and responsibilities shouldered by him in CAT  
 are identical or very similar to the duties and  
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responsibilities in the parent cadre, he was entitled to parity in designation and pay with his counterparts in the Indian Audit & Accounts Department. The appellant's plea for promotion to the cadre of Sr. Accounts Officer was rejected on the ground that CAT did not have 'Organized Accounts Cadres' and, therefore, the benefit of O.M. dated 22nd September, 1992, could not be extended to him.

The appellant then filed an application before the Tribunal. The Tribunal allowed his application holding that even though there was no 'Organized Accounts Service' in CAT, the Accounts Department in CAT is also liable to be considered as an 'Organized Accounts Cadre' and that the Memorandum dated 22nd September, 1992 was applicable as it had a general application to all Organized Accounts Cadres.

Aggrieved, the respondents filed writ petition before the High Court. The High Court allowed the petition and set aside the order of CAT holding that the Accounts Department in CAT did not fall within the ambit of 'Organized Accounts Cadres'.

Dismissing the appeal, the Court

HELD:1. On the question whether the appellant was entitled to be considered for promotion as Sr. Accounts Officer in CAT with effect from 1-4-1995 base on the Official Memorandum of 1992, the High Court rightly held that (i) the Central Administrative Tribunal is a separate entity created under statute, is not a department of the Central Government; ii) the Official Memorandum in question was issued for the purpose of re-designating the promotional grade of Audit/Accounts Officers in 'Organized Accounts Cadres' as Sr. Audit Officer, Sr. Accounts Officer and consequent upon the creation of promotional grade for 80 per cent of the Audit/Accounts

A Officer in a different scale; iii) the Memorandum specifically stated that it is applicable to Indian Audits and Accounts Department and other 'Organized Accounts Cadres', except Railway Accounts Cadres; iv) at best, it could apply to all Central Government departments and every establishment under the Central Services, where there is an organized cadre; v) there is no possibility of re-designation of posts in CAT as there is no post of Sr. Accounts Officer in the hierarchy of the accounts cadre of the CAT; and vi) the cadre hierarchy in CAT is regulated by the Central Administrative Tribunal (Accounts Personnel Posts) Recruitment Rules, 1990. Also, the appellant having lost his lien in the parent department w.e.f. 26th March, 1994, he cannot claim the benefit of the O.M. dated 22nd September, 1992, as by the relevant time, he was borne on the cadre of Accounts Department of CAT. The promotions, if any of junior in the parent department would be of no relevance for consideration of the case of the appellant. The service conditions of the officers of CAT are admittedly governed by the Recruitment Rules, 1990. Schedule 2 of the aforesaid Rules does not include any cadre called the 'Sr. Accounts Officer', to which the appellant wanted promotion. In fact, the cadre of accounts personnel in CAT consists of five categories of posts, namely, 'Deputy Controller of Accounts, Accounts Officer, Junior Accounts Officer, Senior Accountant and Junior Accountant'. The appellant was designated as the Accounts Officer at the relevant time. Therefore, his promotion could only have been to the next post of Deputy Controller of Accounts. In view of the above, O.M. dated 22nd September, 1992 clearly had no application in the case of the appellant. [Paras 13, 14] [42-F-H; 43-A-H; 44-A-C]

H 2. The appellant submitted that the definition of the term 'Organized Accounts Cadre' would include the

accounts service in CAT cannot be accepted. The Central Administrative Tribunal (CAT) is an independent entity created under the Administrative Tribunals Act, 1985. Section 13(2) of the aforesaid Act provides that the salaries and allowances and conditions of the service of the officers and other employees of a Tribunal shall be such, as may be specified by rules made by the appropriate governments. Undoubtedly, the Accounts and Personnel Department is governed by the Recruitment Rules, 1990 framed under the Administrative Tribunals Act, 1985, which are independent and self-contained. They could not be intermingled with the Rules of Central Government Departments. [Paras 15, 16] [44-D-H; 45-A-B]

*Union of India & Ors. v. J.R. Chobedar*, W.P.(C) No. 20065-67 of 2004 decided on 25th January, 2005; *State of Mizoram & Anr. v. Mizoram Engineering Service Association & Anr.* (2004) 6 SCC 218 – held inapplicable.

#### Case Law Reference:

(2004) 6 SCC 218 held inapplicable Para 16

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7113 of 2005.

From the Judgment and Order dated 12.04.2004 of the High Court of Karnataka at Bangalore in W.P. No. 33496 of 2000(S-CAT).

S.R. Singh, Shakil Ahmed Syed, Daanish Syed, Ram Shivomani Yadav and Pradeep Kumar Dwivedi for the Appellant.

S. Wasim A. Qadri, Kunal Bahri, Saima Bakshi and P. Parmeswaran for the Respondents.

The Judgment of the Court was delivered by

A           **SURINDER SINGH NIJJAR, J.** 1. This appeal has been  
filed against the final judgment and order dated 12th April, 2004  
passed by the High Court of Karnataka at Bangalore rendered  
in Civil Writ Petition No. 33496 of 2000(S-CAT) whereby the  
B           Central Administrative Tribunal, Bangalore, ('CAT' for short)  
dated 1st March, 2000 and held that the Accounts Department  
in the CAT does not fall within the ambit of 'Organized Accounts  
Cadres'.

C           2. We may notice here the essential facts necessary for  
the adjudication of the present appeal. Unni Menon, appellant  
herein, joined the Indian Audit and Accounts Department as  
Upper Division Clerk w.e.f. 10th October, 1967. He thereafter  
cleared the SAS examination and was promoted as Section  
D           Officer, w.e.f. 24th October, 1973, in the office of Accountant  
General, Bangalore, Karnataka. The appellant was further  
promoted as Assistant Accounts Officer w.e.f. 1st April, 1987  
by virtue of his seniority and merit.

E           3. While he was working as Assistant Accounts Officer in  
the office of the Accountant General, he went on deputation to  
work in the CAT, Bangalore Bench w.e.f. 21st August, 1989.  
As the appellant was on deputation, his lien was maintained  
in his parent department, i.e., Accountant General, Karnataka  
Circle, Bangalore. On the basis of his lien and seniority, he was  
F           promoted as Accounts Officer in his parent office, i.e., in office  
of the Accountant General, Bangalore, w.e.f. 1st April 1992.  
Thereafter, he was absorbed as Accounts Officer in the Central  
Administrative Tribunal w.e.f. 23rd March, 1994.

G           4. The IV Pay Commission made certain  
recommendations in the matter of pay scales between the  
Accounts Officers in the Accounts Wing and the Accounts  
Officers in the Audit Wing of the Indian Audit and Accounts  
Department. The relevant extract of the recommendations is as  
under :-

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"There has all along been parity between the staff in the IA & AD and Accounts staff and other Departments which has been disturbed by restructuring of IA & AD into two separate cadres viz, Audit Cadre and Accounts and Establishment Cadre and giving higher pay scales to a major portion of staffs on the audit side. The audit and accounts functions are complementary to each other and are generally performed in many government offices in an integrated manner which is necessary for their effective functioning. The Staff in these offices perform functions of internal check and audit suited to the requirements of each organization which are equally important. There is direct recruitment in the scale of Rs. 330-560 in all the audit and accounts cadres through Staff Selection Commission, Railway Recruitment Boards from amongst University graduates. Therefore, in view of this, there should be board parity in the pay scales of the staff of IA & AD and other accounts organizations. Accordingly, it is recommended that the posts in the pay scale of Rs. 475-700 in the organized accounts cadres may be given the scale of Rs. 1400-2600."

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5. Pursuant to the recommendations of the IV Pay Commission, Government of India issued a circular vide No. F.6(82)/IC/91 dated 22nd September, 1992 giving promotional grade for Audit/Accounts Officers of 'Organized Accounts Cadres'.

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6. It is the case of the appellant that he should have been promoted to the cadre of Sr. Accounts Officer w.e.f. 1st April, 1995 on his completion of three years' of service in the cadre of Accounts Officer in the scale of Rs. 2375 - 3500 pursuant to the aforesaid circular dated 22nd September, 1992. He further pointed out that the persons junior to him in his parent department had been promoted on completion of three years' service. Since the nature of duties performed and responsibilities shouldered by him in CAT are identical or very

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A similar to the duties and responsibilities in the parent cadre, he was entitled to parity in designation and pay with his counterparts in the Indian Audit & Accounts Department.

B 7. Being aggrieved, the appellant made a representation to the Chairman, CAT, New Delhi. The Chairman, CAT, New Delhi wrote to the Department of Personnel and Training, Bangalore. The matter was taken up by Department of Personnel and Training in a detailed manner for conversion of 80% posts of Accounts Officer/ Junior Accounts Officer to the post of Senior AIO, AAO and Senior Accountant vide letter dated 16th September, 1997.

D 8. Thereafter, CAT, Principal Bench, New Delhi informed the Registrar, CAT, Bangalore, that as the CAT did not have 'Organized Accounts Cadres', therefore, the benefit of C.M. dated 22nd September, 1992, could not be extended to the appellant and, therefore, he is not entitled to get the promotion as mentioned under the Memorandum dated 22nd September, 1992. Subsequently, the CAT rejected appellant's plea for promotion to the cadre of Sr. Accounts Officer.

E 9. The appellant then filed an application being OA No. 15 of 1999 before the CAT, Bangalore. The CAT vide its final order dated 1st March, 2000 allowed his application and held that CAT is also to be considered as an 'Organized Accounts Cadre'. The CAT actually noticed that the appellant having been absorbed in CAT, Bangalore, w.e.f. 23rd March, 1994, about one year prior to his completion of three years, had lost his lien in the parent department. It had been duly terminated on 26th March, 1994.

G 10. Having noticed as above, the CAT also noticed that Central Administrative Tribunal (Accounts Personnel Posts) Recruitment Rules, 1990 (hereinafter referred to as 'Recruitment Rules, 1990'), were applicable to the officials of CAT. But on interpretation of the aforesaid rules, it observed that the H recruitment rules would indicate that there is an 'Organized

Accounts Cadre', even though there is no 'Organized Accounts Service' in CAT. Therefore, the respondents, according to CAT, were making an artificial distinction between 'Organized Accounts Cadres' and 'Organized Accounts Services', which very much existed in CAT. The conclusion was justified on the basis that the recruitment rules clearly provided a hierarchy of posts available in the accounts cadre. The highest post available is 'Deputy Controller of Accounts, next one Accounts Officer, the third one Junior Accounts Officer, the fourth one Senior Accountant and then the Junior Accountant'. It, therefore, held that CAT has an 'Organized Accounts Cadre' and the Memorandum dated 22nd September, 1992 would be applicable. It was further observed by CAT that the O.M. dated 22nd September, 1992, has a general application to all Organized Accounts Cadres. Its application cannot be restricted only to some specified cadres. The action of the respondents was held to be arbitrary and discriminatory. This would be evident from the following observations in the order of CAT:-

"Annexure A - 4 which is by Govt. of India, Ministry of Commerce dated 10.09.1995, this order deals with similar cases where two officers of Commerce Department by names, Smt. Dhakshayani Ramalingam and Shri. V. K. Gopalakrishnan who were Account Officers in the zones of Madras and Cochin were sent on deputation where they were observed in the regular service of those zones and those posts of account officers are also isolated posts. In such cases, the Government of India has created promotional posts as prayed by this applicant in this case and in pursuance of this O. M. at Annexure A1 those officers were directed to be appointed after following due process by following principles of fitness. This letter would clearly show that at that time the Government has not taken the objection that because those officers are from isolated posts and did not belong to the organized accounts cadres, they were not entitled. On the other hand, this

A benefit was given to those officers. In view of enclosure to Annexure A4 when the applicant is also similarly placed, we have to hold that he is also entitled for similar consideration by the Government.”

B With the aforesaid observations CAT held that the Accounts Department is also to be considered as an ‘Organized Accounts Cadre’. The respondents were directed to reconsider the representations of the appellant and to pass suitable orders in the light of the observations made in the order within a period of three months from the date of receipt of a copy of the order.

C 11. Aggrieved by the aforesaid order of the CAT, the respondents filed a writ petition before the High Court of Karnataka. The Division Bench of the High Court has allowed the writ petition and set aside the impugned order of CAT. The application filed by the appellant before the CAT has been dismissed.

D 12. Aggrieved by the judgment of the High Court, the appellant is before us in the present appeal. The short question which arises in these proceedings was formulated by the High Court as follows:-

E “Whether the respondent is entitled to be considered for promotion as Sr. Accounts Officer in CAT with effect from 1-4-1995 base on the Official Memorandum dated 23.3.1992 bearing No.2402-GE.II/116-92?”

F 13. Answering the aforesaid question, the High Court held:-

- G (i) The Central Administrative Tribunal is a separate entity created under statute, is not a department of the Central Government.
- H (ii) The Official Memorandum in question is issued for the purpose of re-designating the promotional

grade of Audit/Accounts Officers in 'Organized Accounts Cadres' as Sr. Audit Officer, Sr. Accounts Officer. Consequent upon the creation of promotional grade for 80 per cent of the Audit/Accounts Officer in a different scale.

(iii) The Memorandum specifically states that it is applicable to Indian Audits and Accounts Department and other 'Organized Accounts Cadres', except Railway Accounts Cadres.

(iv) Therefore, at best, it could apply to all Central Government departments and every establishment under the Central Services, where there is an organized cadre.

(v) There is no possibility of re-designation of posts in CAT as there is no post of Sr. Accounts Officer in the hierarchy of the accounts cadre of the CAT.

(vi) The cadre hierarchy in CAT is regulated by the Recruitment Rules, 1990. The Division Bench noticed the provision contained in Rule 3 which governs the number of posts, classification and their scales of pay which read as under:-

"The number of the said posts, their classification and the scale of pay attached thereto shall be as specified in column 2 to 4 of the said schedule".

14. We are entirely in agreement with the observations made by the High Court. We may, however, add that the respondent having lost his lien in the parent department w.e.f. 26th March, 1994, can not claim the benefit of the O.M. dated 22nd September, 1992, as by the relevant time, he was borne on the cadre of Accounts Department of CAT. The promotions, if any of junior in the parent department would be of no

A relevance for consideration of the case of the appellant. The service conditions of the officers of CAT are admittedly governed by the Recruitment Rules, 1990. Schedule 2 of the aforesaid Rules does not include any cadre called the 'Sr. Accounts Officer', to which the appellant wanted promotion. In fact, the cadre of accounts personnel in CAT consists of five categories of posts, namely, 'Deputy Controller of Accounts, Accounts Officer, Junior Accounts Officer, Senior Accountant and Junior Accountant'. The appellant was designated as the Accounts Officer at the relevant time. Therefore, his promotion could only have been to the next post of Deputy Controller of Accounts. In view of the above, the O.M. dated 22nd September, 1992 clearly would have no application in the case of the appellant.

D 15. Learned counsel for the appellant, however, submitted before us that the definition of the term 'Organized Accounts Cadre' would include the accounts service in CAT. The appellant cannot be denied the benefit merely because he is occupying an isolated post. Learned counsel further pointed out that in a number of cases, even in the case of isolated posts, the respondents have granted the benefit of O.M. dated 22nd September, 1992 to the officers working on such posts. Since the same benefit had been illegally denied to the appellant, the CAT had correctly applied the principle of 'equal pay for equal work' and non-discrimination amongst similarly situated employees of Union of India.

G 16. We are wholly unimpressed by both limbs of the submissions. It cannot be disputed that CAT is an independent entity created under the Administrative Tribunals Act, 1985. Section 13 sub-section 2 of the aforesaid Act provides that the salaries and allowances and conditions of the service of the officers and other employees of a Tribunal shall be such, as may be specified by rules made by the appropriate governments. Undoubtedly, the Accounts and Personnel Department is governed by the Recruitment Rules, 1990 framed under the

Administrative Tribunals Act, 1985, which are independent and self-contained. They could not be intermingled with the Rules of Central Government Departments. Therefore, the examples given by the learned counsel for the appellant relating to an isolated post in the BSF on the basis of the judgment of the Delhi High Court in the case of *Union of India & Ors. Vs. J.R. Chobedar*, W.P. (C) No. 20065-67 of 2004 decided on 25th January, 2005 would be of no assistance to the appellant. Similarly, the judgment of this Court in the case of *State of Mizoram & Anr. Vs. Mizoram Engineering Service Association & Anr.*<sup>1</sup> would have no application as it related to discrimination with regard to pay revision in the Engineering Department of Mizoram. It was in the context of the submission that the Engineering service in the State was not an organized service, this Court observed that there can be hardly any difference in organized and unorganized service so far as Government service is concerned. We may note here the observations made by this Court in Paragraph 6 of the judgment, which is as under:-

"6. Great stress was laid on the fact that Engineering Service in the State was not an organised service and therefore, it did not have categorisation by way of entrance-level and senior-level posts and for that reason the higher scale of Rs 5900-6700 which was admissible for senior-level posts could not be given in the Engineering Service. The main reason for dubbing Engineering Service as an unorganised service in the State is absence of recruitment rules for the service. Who is responsible for not framing the recruitment rules? Are the members of the Engineering Service responsible for it? The answer is clearly "No". For failure of the State Government to frame recruitment rules and bring Engineering Service within the framework of organised service, the engineers cannot be made to suffer. Apart from the reason of absence of recruitment rules for the Engineering Service, we see hardly any

1. [(2004) 6 SCC 218.

- A difference in organised and unorganised service so far as government service is concerned. In government service such a distinction does not appear to have any relevance. Civil service is not trade unionism. We fail to appreciate what is sought to be conveyed by use of the words
- B “organised service” and “unorganised service”. Nothing has been pointed out in this behalf. The argument is wholly misconceived.”

- C These observations clearly show that the Engineering Service had been dubbed as unorganized service as the State had failed to frame the necessary recruitment rules. This Court, therefore, observed that the State Government can not take advantage of its own failure to frame the recruitment rules and bring the Engineering Service within the framework of organized service. For such failure, the Engineers could not be made to suffer. The aforesaid observations have no application to the
- D facts and circumstances of this case.

- E 17. We, therefore, find no merit in the submissions made by the learned counsel for the appellant. In view of the above, the appeal is dismissed.

B.B.B.

Appeal dismissed.