

CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

O.A.No.2307/98New Delhi: this the ²⁰ day of September, 1999.

HON'BLE MR.S.R.ADIGE, VICE CHAIRMAN (A).

HON'BLE MR.KULDIP SINGH, MEMBER (J)

T.R.Samal,

S/o Shri Jatadhar Samal,
R/o 50, Katwaria Sarai,

New Delhi -0016.

....Applicant.

(By Advocate: Shri A.K.Behra)

Versus

UDI

through

Comptroller & Auditor General of India,
10, Bahadur Shah Zafar Marg,
New Delhi-0002.2. Director General of Audit Central Revenue,
AGCR Building,
Indraprastha Estate,
New Delhi -0002.3. Principal Director of Audit-I,
(Redesignated as Accountant General)
Central Revenues, Indraprastha Estates,
AGCR Building,
New Delhi-0002 .

.... Respondents.

(By Advocate: Shri M.K.Gupta).

ORDERHON'BLE MR.S.R.ADIGE, VICE CHAIRMAN (A).

Applicant impugns respondents' orders dated 13.11.98 (Annexure-A1) and dated 9.11.98 (Annexure-A2). He seeks continuation as S.O (Audit) and prays for quashing of impugned portion of Clause 3 of the offer of appointment. He also prays for consequential benefits.

2. Admittedly applicant was offered the post of S.O. (Audit) on probation vide letter dated 5.8.92 (Annexure-A3) which he accepted and joined duty on

12.10.92. The offer made it clear that the appointment was temporary and applicant would be on probation for 2 years which could be increased or decreased at the discretion of the appointing authority. During the period of probation, applicant would have to undergo a regular training course, and he was also required to qualify Section Officer's Grade Exam. Pt. I & II within the period of probation. The appointment offer made it clear that those who failed to qualify in the above exam. were liable to be discharged from service.

3. Departmental S.O.G.E. I and II are held by respondents annually. It is not denied that these exams. were held in 1992, 1993, 1994, 1995, 1996, 1997 and 1998, but applicant failed to clear both parts of SOGE till the date of the impugned orders. Even if applicant did not avail of some of the chances offered to pass the aforesaid exam., no advantage accrues to him, because as has been held in D.V.Bakshish's case (1993)25 ATC 206 chances availed of and failed and chances not availed amount to the same thing. Under the circumstances respondents cannot be faulted, if in terms of applicant's appointment, they have issued the impugned order.

4. Shri Behra has contended that as per para 9.210 of the Manual containing the rules of the Exam. there is no limit to the number of chances for passing Part II of the Exam. Respondents' counsel Shri M.K.Gupta points out that this provision is applicable only to departmental promotees and not direct recruits such as applicant, and if Shri Behra's contentions are to be accepted, applicant would continue on probation till his superannuation if he

failed to clear Part II. of the Exam. till then, which would under the 2 years probationary period meaningless. We are inclined to agree with Shri Gupta.

5. Shri Behra has also relied on para 1(ii) at page 205 in Chapter 13 of Swamy's Establishment and Administration, 6th Edition 1997 on Probation and Appointment, to argue that other factors besides passing of the probationary exam. need to be taken into by the appointing authority before terminating the probation, but even that paragraph makes passing of the probationary exam a necessary if not a sufficient condition for continuation on probation.

6. Shri Behra has also contended that one of the reasons why applicant could not pass the exam. within the stipulated period, or even within the extended period was because training was not imparted for the required duration. It is not denied that some direct recruits like applicant who underwent the training for the same period as him were able to clear the exam. The appointment offer also does not specifically lay down that the training will continue for the entire length of the probation period because para 2 of the appointment offer specifically provides that the training course will be for such period, as may be prescribed. Hence this argument also does not avail applicant.

7. In the light of the foregoing the impugned orders which are fully consistent with the rules as recently amended, warrant no judicial interference.

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8. Before concluding, we cannot fail to notice that by the impugned order dated 13.11.98, while terminating applicant's probation as S.O. (Audit) he has been offered the post of Auditor, which applicant has accepted vide his reply dated 26.11.98 (Annexure-V) if he failed to get favourable orders from the Tribunal on this OA.

9. The OA is dismissed. Interim orders are vacated. No costs.

Kuldeep
(KULDIP SINGH)

MEMBER(J)

try/Chq.
(S. R. ADIGE)
VICE CHAIRMAN (A).

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