

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD.

Dated : This the 20th day of MAY 2002.

Original Application no. 135 of 2001.

Hon'ble Maj Gen K.K. Srivastava, Member (A)  
Hon'ble Mr. A.K. Bhatnagar, Member (J)

Bhim Sen, S/o Sri Brij Lal,  
R/o Vill Jagatpur, P.O. Muradganj,  
Distt. Etawah, at present posted as Divisional Accountant  
(Probationer) in the office of the Executive Engineer,  
Tube Well Division, Hardoi.

... Applicant

By Adv : Sri V. Nath

Versus

1. Union of India through the Secretary,  
Department of Finance, Govt. of India,  
New Delhi.
2. Comptroller and Auditor General India,  
New Delhi.
3. Accountant General (A&E) II Uttar Pradesh and Uttranchal,  
Allahabad.
4. The Executive Engineer, Tube Well Division,  
Hardoi.

... Respondents

By Adv : Sri Amit Sthalekar

ORDER

Hon'ble Maj Gen K.K. Srivastava, Member (A).

In this OA filed under section 19 of the A.T. Act, 1985, the applicant has challenged order dated 19.1.2001 passed by the Accountant General (A&E) II UP and Uttranchal, Allahabad, terminating the applicant from service and has prayed that the impugned order dated 19.1.2001 be quashed and respondents be

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directed to permit the applicant to avail one chance to appear in the Divisional Accountant Grade (in short DA Grade) examination in lieu of the one examination in which he could not appear due to his illness.

2. The facts, in short, giving rise to this OA are that the applicant was issued an offer of appointment on 11.4.1996 by respondent no. 3, Before the appointment letter dated 16.7.1996 (Ann A6), as Divisional Accountant<sup>in</sup>, was issued, As per applicant, he initially joined as Divisional Accountant<sup>in</sup>, in the office of respondents no. 3 on 30.4.1996 and was relieved to join at Lucknow in the after noon of 16.7.1996 as Divisional Accountant in I & P Division (W.B.) Lucknow. According to appointment letter dated 16.7.1996 the period of probation of the applicant was of 2 years and it was stated therein that he will have to pass DA Grade examination within the period of probation. In the appointment letter it is also mentioned that if a Divisional Accountant was found unsuitable due to non passing of the D.A. Grade examination or due to <sup>in</sup>indisciplined<sup>in</sup> behaviour during the period of probation he shall be liable to be terminated. In para 2 of the said letter dated 16.7.1996 it is provided that the candidates will be eligible to take D.A. Grade examination only after satisfactory training for a period of one year. Alongwith this there are many other conditions given therein. As per applicant, he appeared in the D.A. Grade examination for 5 times, he cleared all the papers except one. Though there are orders <sup>for</sup> of the relaxation of marks and the exemption in respect of SC/ST candidates<sup>in</sup> but<sup>in</sup> the respondents did not give this relaxation to the applicant and pass<sup>in</sup> the impugned order dated 19.1.2001 terminating the services of the applicant. Aggrieved by this, the applicant has filed this OA which has been contested by the respondents

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by filing counter affidavit and suppl. counter affidavit.

3. Heard Sri V. Nath learned counsel for the applicant and Sri A. Sthalekar learned counsel for the respondents and perused records.

4. Sri V. Nath, learned counsel for the applicant, submitted that since the applicant belongs to SC community, as per Govt. orders he is entitled for relaxation in two ways, either the qualifying marks should be relaxed as has been done in respect of 1992 examination where a grace of 20 marks has been given to SC candidates vide orders of Principal Accountant General, U.P. Allahabad, order dated 20.11.1992 (Ann RA-2) or he should be exempted from appearing in theory paper of Public Works. Sri V. Nath, submitted that in the theory paper of Public Works Accounts conducted in the month of May 2000, the applicant secured 41 marks. Had he been given a grace of 20 marks, as was given in the past in various examinations, the applicant could have cleared the examination. Another alternative with the respondents was to have exempted the applicant from appearing in the theory papers of Public Works Accounts in which he had already appeared during 5 chances he availed. The case of the applicant had to be considered with compassion as he belongs of SC community.

5. Sri. V. Nath, also invited our attention to the OM no. 36012/23/96-Estt. (Res) Vol II of Ministry of Personnel, Public Grievances and Pension (Department of Personnel and Training) dated 3.10.2000 by which the relaxation and concession available through OM dated 23.12.1970 filed as Ann RA-1 has been restored. Sri Nath contended that since the result of the examination held in May 2000 has been declared only on 15.1.2001 the advantage of OM dated 3.1.2000 should have been given to the applicant.

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6. Sri V. Nath learned counsel for the applicant finally submitted that the applicant has availed only 5 chances and not 6 chances as is being mentioned by the respondents. Though the applicant had applied for the examination to be held in March 1998, he could not avail the chance as he was sick and was on medical leave from 30.3.1998 to 4.4.1998. The leave application was sent attaching the medical certificate and the leave applied for was sanctioned by the competent authority. The applicant was not in a position to appear in the said examination because of his illness. Hence, the respondents should not count the chance for March 1998. Since the applicant could avail only 5 chances, he should be given one more chance to appear in the PA grade examination.

7. Contesting the claim of the applicant, Sri A. Sthalekar learned counsel for the respondents submitted that the applicant has availed all the 6 chances starting from September 1997 to May 2000. In para 4 (b) of the counter affidavit filed by Sri P.N. Seshadri which was filed for interim relief, the details of the examination, the chance number, Roll no. and remarks have been given. According to averments in para 4 b 7 chances have been shown, out of which in remarks column the applicant has been shown as absent in examinations held in March 1997 and March 1998. Sri A Sthalekar contended that if chance no. 1, in which the applicant was absent, is not taken into account, chance no. 3 which was held in March 1998 has to be counted. Sri Sthalekar submitted that the benefit of relaxation of the rules has already been allowed to the applicant. As per rule 6 of the Divisional Accountants Grade examination rule (Ann 2 para 4.9 of MSO), the candidate is not ordinarily allowed more than three chances for appearing in DA grade examination. However, since

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the applicant belongs to SC community, the Accountant General allowed three additional chances as per his discretion for appearing in Divisional Accountant Examination. Thus the applicant was given three normal and three additional chances to appear in DA grade examination. The confirmation of the applicant could not be ordered as he failed to pass DA grade examination within 2 years and consequently the period of probation of the applicant, even after completion of 2 years did not expire.

8. Learned counsel for the respondents, further submitted that the chance of March 1998, in which the applicant failed to appear is to be counted. The dates of examination were 30.3.1998 to 3.4.1998. The applicant moved an application for leave on the ground of illness only on 6.4.1998 when the examination was over. This goes to prove that the applicant was not interested in appearing in the said examination. The applicant was asked to explain the reasons for his absence in the examination held in March 1998 vide letter dated 14.5.1998. He was also intimated that in case he failed to explain reasons, his chance will be treated as availed. The applicant failed to respond to the said letter and, therefore, the missed chance was treated as availed. Sri A Sthalekar, in this connection further submitted that the applicant had to move from Lucknow to Allahabad to appear in March 1998 examination and, in case the applicant had any intention to appear in the examination of March 1998 the applicant would have proceeded to Allahabad from Lucknow on 29.3.1998 whereas as per Medical Certificate the applicant fell ill on 30.3.1998. The above fact shows that the applicant was not interested in appearing in the examination scheduled to be held w.e.f. 30.3.1998. Learned counsel for the respondents has placed reliance on the

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judgment of Hon'ble Supreme Court in case of D.V. Bakshi Vs. Union of India, (1993) 3 SCC 663 in which the Hon'ble Supreme Court has held that chance availed and chance missed have to be counted towards the maximum which is permissible.

9. Learned counsel for the respondents finally submitted that the respondents have been quite considerate towards the applicant as they allowed the applicant 6 chances ignoring the one held in March 1997 in which the applicant was absent. In real sense the respondents have given the applicant seven chances.

10. We have carefully considered the submissions of learned counsel for the parties and have closely examined the records.

11. The applicant has sought for two reliefs. Firstly that the impugned order dated 19.1.2001 terminating the services of the applicant should be quashed and secondly the applicant should be permitted to avail one more chance to appear in the DA grade examination. From perusal of records it appears that the applicant failed in the DA grade examination for 5 times. The main contention between the respondents and the applicant is about chance of March 1998 examination in which the applicant was absent. As per respondents they allowed three additional chances to the applicant to appear in the said examination. We find force in the submission of learned counsel for the respondents that in absence of any reply from the applicant to the letter dated 14.5.1998, in which he was asked to explain the reasons for his absence in the examination, the respondents are correct to count the chance of March 1998 as availed. From records we find that the leave on medical ground for the period from 30.3.1998 to 4.4.1998 has been

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applied only on 6.4.1998 and the same has been sanctioned by the competent authority on the same day. The applicant knew that the examination was scheduled to be held at Allahabad from 30.3.1998 to 3.4.1998 and, therefore, it was incumbent upon the applicant to have intimated to the respondents about the circumstances under which he was unable to take up the examination. The applicant, <sup>has failed to do so,</sup> therefore, in our opinion the respondents are correct in treating the chance of March 1998 as availed because the applicant had already decided not to appear in the examination. In any case, <sup>he</sup> he had an intention to appear in the examination, he would have moved from Lucknow to Allahabad at least one day in advance of the scheduled dates of examination ie 30.3.1998 to 3.4.1998. Besides there is nothing on record to show that the applicant had intimated his superior ie Executive Engineer concerned about his illness earlier than the conclusion of the examination. Even the request from applicant for ignoring the chance of March 1998 has not been received timely.

12. We would also like to point out that before commencement of the DA grade examination 1999, the applicant was intimated that he had availed three normal chances and one special chance vide letter dated 13.9.1999. If the applicant had any reservation about the same, he should have represented which he did not. This goes to prove that the applicant was in agreement with the number of chances intimated to him vide letter dated 13.9.1999. After April 1999 the applicant availed 2 more chances ie in October 1999 and May 2000. Therefore, we have no doubt in our minds that the applicant has availed <sup>maximum</sup> permissible chances ie three normal and three special. The Judgment of Hon'ble Supreme Court as cited by learned counsel for the respondents in D.V. Bakshi's case (supra) is squarely applicable in this case. For convenience sake we

would like to quote relevant para of the judgment which is as under :-

".....If a candidate has availed of two chances and has failed to clear the examination he may request the Collector to permit him to avail of a third chance by extending the duration of the temporary licence for a period not exceeding one year. If the period is extended by a year, as in the case of the petitioners herein, he would have further two opportunities to clear the examination. Thus he would have four opportunities to appear at the examination to be held over a period of two years. Even if we assume that the candidate must pass the written examination before he appears in the oral one, he would have in all four opportunities for clearing the written test and three opportunities for clearing the oral test. If he does not appear or does not pass the written test at the first available opportunity, the number of opportunities to pass the oral test would shrink depending on at which attempt he has cleared the written test. His inability to clear the written test at the earliest available opportunity cannot operate to his advantage by a corresponding increase in the number of opportunities to clear the oral test. Such a construction of the scheme of the Regulations would result in placing premium on incompetency and inefficiency. It is, therefore, clear on a plain reading of Regulations 8 & 9 that they offer more than three opportunities for passing the written test and at least three opportunities for passing the oral test even if we assume that the result of the first written test is announced after the first oral test. In any view of the matter, it is, therefore, difficult to agree with the learned counsel for the petitioners that the scheme of the Regulations do not in reality afford three chances for passing the examination to qualify for the grant of a regular licence."

13. In the light of above we do not find any ground to grant relief to the applicant as regards grant of one more chance. The second point raised by the learned counsel



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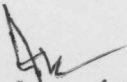
<sup>Applicant</sup>  
for the ~~respondents~~ that the applicant should have been given grace marks as was being done earlier as per instructions laid down in OM dated 3.10.2000, issued by Department of Personnel and Training has not much of substance. Para 4 of the said OM reads as under :-

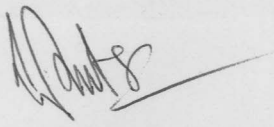
"These orders shall take effect in respect of selections to be made <sup>on</sup> or after the date of issue of this OM and selections finalized earlier shall not be disturbed."

The applicant cannot take advantage of OM dated 3.10.2000 as it has to be applicable prospectively in respect of examinations conducted after 3.10.2000 only. The examination was <sup>held</sup> in May 2000 and declaration of result on 15.1.2001 ie after issue of OM will not change the position.

14. In the facts and circumstances and our aforesaid discussions we find no merit in the OA. The action of the respondents does not suffer from any error of law. The OA is accordingly dismissed.

15. There shall be no order as to costs.

  
Member (J)

  
Member (A)

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