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**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH**

OA NO.1119/2005

Allahabad, this the 18th day of September, 2008

**HON'BLE SHRI JUSTICE M. VENKATESWARA REDDY, MEMBER (J)
HON'BLE SHRI SHAILENDRA PANDEY, MEMBER (A)**

1. Manoj Kumar Yadav
s/o Karedin Yadav
r/o 56 2/ 15 Uchiwa Garhi Rajapur, Allahabad.
Presently working as Clerk in the office of A.G.
Uttranchal Dehradun.
2. Parmeshwar Prasad
s/o Sharda Prasad
r/o Swaraj Nagar
Allahabad,
Presently working as Clerk in the office of A.G.
Uttranchal Dehradun.
3. Ravi Kumar Mishra
s/o Uma Shankar Mishra
r/o Village Navadih
Post - Mathilpur
Presently working as Clerk in the office of A.G.
Uttranchal Dehradun.
4. Prahlad Singh
s/o Dal Chandra
r/o Village Ahivapur
Kalan District Hathras
Presently working as Clerk in the office of A.G.
Uttranchal Dehradun. Applicants

(By Advocate: Shri Mohan Yadav)

Versus

1. Union of India
through Secretary
Ministry of Finance
Department of Expenditure
New Delhi
2. Accountant General (A&E)-I
U.P. Allahabad.
3. Deputy Account General (Admin)
A.G. U.P. Allahabad.
4. Senior Accounts Officer / Admin.
A.G. U.P. Allahabad. Respondents

(By Advocate: Shri S.Chaturwedi)



ORDER (Oral)

BY JUSTICE M. VENKATESWARA REDDY, MEMBER (J):

The applicant was recruited as Divisional Accountant on the basis of the competitive examination held by the Staff Selection Commission for the said post. As per rules, one has to pass the departmental examination during the period of probation. He can avail with reference to three chances. The applicant had availed all the three chances but failed in all the examinations.

2. In case of those who failed in the examinations, having availed three opportunities provided to them under the rules, during the probation period, appointment as Accountant in A&E Office against a vacancy if any as per Rule 75 of C.A.G. M.S.O. Vol.-I (Admin) which runs as under:

"If a direct recruit fails to pass the D.A. Grade Exam. within a period of probation he will be removed from service or if fully deserving of retention offered appointment as Accountant in the A&E Office against a vacancy if any."

3. As the applicants failed to pass the examination during the probation period, though three chances were provided to them, the services of the applicants were terminated as per the rules, and work was provided to them as Clerks instead of as Accountants in the A&E Office. An explanation in that regard is given in the counter reply of the respondents as under:

"15. that in Para 7.5 of the Comptroller & Auditor General's M.S.O. (Administrative) Vol. I it has been clearly mentioned that terminated Divisional Accountant may be offered appointment as Accountant in the A&E Office against a vacancy if any. Since there was no vacancy available in Accountant cadre as such the applicants were offered the post of Clerks, which they willingly accepted."

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“19. the termination of the applicants from service the Senior Deputy Accountant General (Works) office of the Accountant General (A&E)-II, U.P. Allahabad requested the office of the answering-respondent to consider the name of the applicants for appointment in Accounts Office under Para 7.5 of the Comptroller & Auditor General of India's M.S.O. (Administrative) Vol.1. According to para 7.5 of the Comptroller & Auditor General of India's M.S.O. (Administrative) Vol.1 (Third Edition), every person appointed to the cadre of Divisional Accountants will be on probation for period of two years. If a direct recruit fails to pass the Divisional Accountants Grade Examination within the period of probation, he will be removed from service or if fully deserving of retention, offered appointment as Accountant in the A&E office against a vacancy if any. Since vacancies in Accountant Cadre under direct recruitment quota were not available and there were sufficient number of vacancies available in Clerk cadre, as such the applicants were directed vide letter dated 21.10.2003 to furnish their willingness for the post of Clerk in the newly created office of the Accountant General, Uttaranchal, Dehradun. All the applicants submitted their willingness on 29.10.2003 to the respondent No.3 and ultimately there called for interview on 29.10.2003. On being selected in the interview they were appointed as Clerk on 12.11.2003 in the office of the answering-respondent. They took their charge in the office of the Accountant General, Uttaranchal, Dehradun on 17.11.2003.”

4. The applicants are not denying the fact that they willingly accepted the Clerks posts. All of them were appointed as Clerks on 12.11.2003 and they took charge in the office of Accountant General, Uttaranchal, Dehradun on 17.11.2003.

5. Now, the learned counsel for the applicants contends that though they had accepted the post of Clerks and joined, the applicants are entitled for consideration to the future vacancies of Accountants.

6. On the other hand, the learned counsel for the respondents contends that the right interpretation of the rule is that there should be vacancies as on the date when the services of the applicants were terminated.

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7. We may not go into the question of interpretation nor and its nuances inasmuch as all of them had expressed their willingness in writing to join the posts of Clerks. Even if interpretation is given to Rule 75 in favour of the applicants, had they joined under protest we would have appreciated but it is not so here. They had given willingness in writing and joined the posts. Therefore, they cannot be permitted to approbate and reprobate. They cannot have double benefit.

8. In view of the above facts, we are unable to appreciate the contention of the applicants.

9. Had they not joined willingly in the post of the Clerks, we would have read some meaning into the arguments. The rule of acquiescence comes into play, once they accepted and joined the posts of Clerks. Therefore, we do not see any valid reasons to interfere with the action taken by the respondents.

10. The Original Application is accordingly dismissed. No costs.

(Shailendra Pandey)
Member (A)

(Justice M. Venkateswara Reddy)
Member (J)

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