

Open Court.

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

Original Application No. 65 of 2000.

Allahabad this the 4th day of October, 2004.

Hon'ble Mr. A.K. Bhatnagar, Member-J.
Hon'ble Mr. S.C. Chaube, Member-A.

Dhani Lal
son of late Sri Shri Ram,
aged about 53 years,
Resident of 31-C/3, Krishna Nagar,
Kydganj, Allahabad working as
Senior Accountant in the office of
A.G.U.P. (A & E) II, Allahabad.

.....Applicant.

(By Advocate : Sri O.P. Khare)

Versus.

1. Union of India through
Comptroller and Auditor General of India,
10, Bahadur Shah Zafar Marg,
New Delhi.
2. Principal Accountant General,
Office of the A.G. U.P. (A & E) I,
Allahabad.
3. Accountant General U.P. (A & E), II,
Office of the A.G.U.P. (A & E) II,
Allahabad.

.....Respondents.

(By Advocate : Sri S Chaturvedi)

O R D E R

(By Hon'ble Mr. S.C. Chaube, A.M.)

The applicant has sought direction to the Comptroller and Auditor General of India, to allow two more advance increments modifying their order dated 24.11.1984 w.e.f. 29.03.1983, in appeal dated 05.10.1998 illegally withheld by respondent No.3 vide his order dated 07.01.1999.

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2. Brief facts are that the applicant was appointed as Lower Division Clerk on 15.03.1973 in the Office of A.G.U.P. (I), Allahabad, in the pay scale of Rs.110-180. One Sayyad Abrar Hussain junior to the applicant was appointed as Lower Division Clerk in the same office on 25.02.1976 in the revised pay scale of Rs.260-400.

3. According to the applicant, he as well as his junior Sayyed Abrar Hussain both were eligible to appear in the limited departmental examination against 5% vacancies for promotion to the Auditor's cadre accordingly applied to the respondent No.2 to allow their candidature for the said examination. On his representation dated 05.12.1980, the applicant was called for to appear in the examination vide letter dated 26.12.1980 to appear in the examination on the same date which was not possible for the applicant. However, his junior was allowed to appear in the said examination in December 1979 and passed the examination accordingly, he was granted the benefit of promotion to the higher post of Auditor in the pay scale of Rs.330-560 w.e.f. 07.10.1980.

4. Vide his letter dated 21.03.1980, the applicant called for the reasons for disallowing the candidature. He was informed by Examination section that since the applicant's promotion was due against seniority quota his name was not included in the list of candidates appearing against 5% quota for limited departmental examination (Annexure A-3). Vide letter dated 10.04.1980 respondent No.2 informed the applicant that the candidates, whose name was not included in the office order dated 22.12.1979 were not allowed to appear in the said examination. On persistent enquiry by the respondent No.3 vide his letter dated 10.09.1980 clarified that due to non-availability of Character Roll, he was not allowed to

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appear in the said examination. Sri Sayyed Abrar Hussain who passed the Limited Departmental Examination was promoted as Auditor in the pay scale of Rs.330-560 w.e.f. 07.10.1980 on other hand the applicant was continued to work on the post of Lower Division Clerk drawing the pay as on 07.10.1980 Rs.302/- in the pay scale of Rs.260-480 due to the fault of the department.

5. According to the applicant he appeared in another departmental examination for serving Graduate Clerks and he passed the examination and was promoted as Auditor w.e.f. 28.03.1983 accordingly his pay was fixed at Rs.330/- per month. The applicant stated that had he been allowed to appear in the earlier Limited Departmental Examination for Clerks against 5% quota for promotion to Auditor's Cadre in the case of passing the examination he would have drawn three more increments in 1983. However, respondent No.3 vide his order dated 24.11.1984 under F.R. 27 allowed one increment only to compensate the loss of three increments in 1983 (Annexure A-7)

6. Inspite of various representations of the applicant for granting promotion to Auditor's Cadre w.e.f. 07.10.1980 and to grant two more advance increments from 29.03.1983 in Auditor's Cadre. The matter was not settled after his representation dated 04.06.1997 even though respondent No.2 directed to take appropriate action in the matter vide letter dated 10.02.1994 but the respondent No.3 did not do so. As such, the applicant preferred a Departmental Appeal to the respondent No.1 to allow the applicant two more increments apart from one increment allowed to compensate the financial loss due to deprivation of chance to appear in the Limited Departmental Examination in December 1979.

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7. According to the applicant, his appeal to respondent No.2 has been illegally withheld as stated in the order dated 07.01.1999. Having no other option, the applicant filed the present original application.

8. The respondents, on the other hand, stated that the applicant submitted a number of representations to the Higher Authorities including the politician. The office of respondent No.1 after considering the facts and circumstances of the matter allowed one time advance increment under Rule 27 of the Fundamental Rules with effect from 29.03.1983. But for want of his confidential reports, he was not allowed by the Screening Committee to appear in the said Departmental Examination. Further despite the fact that the Screening Committee recommended his name to appear in the Departmental Examination held in December 1980 and December 1981 respectively. The applicant did not take up the said examination. He infact, according to the respondents, appeared in the Departmental Examination held in December 1982 and was declared successful. Thereafter the applicant got his promotion as Auditor w.e.f. 28.03.1983 as the anomaly caused in the case of the applicant was due to administrative reasons. He was granted one advance increment under Rule 27 of the Fundamental Rules with effect from 29.03.1983. According to the respondents, office of respondent No.1 have clarified that whatever could have been done in the case of the applicant, has already been done. The respondents have further vehemently stated that the request of the applicant in the present O.A. is highly belated and as such is liable to be dismissed on the ground/alone. They have, thus stated that the claim of the applicant for his promotion as Auditor with effect from 1980 does not merit consideration as he willingly and deliberately

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did not appear in the subsequent departmental examination held in December 1980 and 1981.

9. We have perused the pleadings and heard learned counsel for the parties.

10. There is a lot of force in the contention of respondents that even though the applicant was allowed to participate in the Departmental Examination held in December 1980 and December 1981, he has himself ~~of his~~ ~~out for his~~ ~~own choice~~ ~~Volition~~ ~~his chance~~ ~~and valuation~~ not appeared in those examination.

The office of respondent No.1 has already allowed him one advance increment to compensate for financial loss incurred by him for inability of the respondent Nos. 2 and 3 to allow the applicant to take Departmental examination of 1979 due to administrative difficulties and reasons.

11. It has been forcefully pleaded by the respondents that the applicant is time and again raising issue which is highly belated and the same hit by the Rules of Limitation. We have not come across any irregularity or illegality or ~~Violation~~ ~~of natural justice.~~

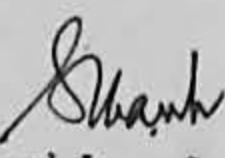
12. The law pertaining to judicial review of the decision of Administrative Authorities is very considerably limited in scope. As observed by the Hon'ble Supreme Court, the Court, while exercising the power of Judicial Review must remain conscious of the fact that if the decision has been arrived at by the Administrative Authority after following the principles established by law and the rules of natural justice and the individual has received a fair treatment to meet the case against him, the Court cannot substitute its judgement for that of the Administrative Authority on a matter which fell squarely within the sphere of jurisdiction of that authority.

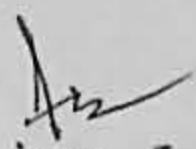
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(Apparel Export Promotion Council Vs. A.K. Chopra, JT 1999 (1) SC 61).

13. In the present case, the respondents have followed the principles established by law and Rules of natural justice and the individual has received a fair treatment by way of grant of one advance increment already. Under these circumstances, we are unable to lay our hand on any merits in the case of the applicant, accordingly the O.A. is liable to be dismissed.

14. For the reasons and case law cited above, the O.A. is dismissed with no ~~order~~ ^{order} as to costs.


Member-A


Member-J.

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