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(Ho) Terminal (as)
(Ho) (Jud)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 124 OF 1988.
T.A. No. _____

DATE OF DECISION 22-7-1991.

Amarshi Shardul Abiani, Petitioner

Petitioner-in-person. _____ Advocate for the Petitioner(s)

Versus

Union of India & Ors. _____ Respondents

Mr. M.R. Raval for Mr. P.M. Raval, Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. M.M. Singh, Administrative Member.

The Hon'ble Mr. R.C. Bhatt, Judicial Member.

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? No
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. Whether it needs to be circulated to other Benches of the Tribunal. No

Amarshi Shardul Abiani,
Jawaharnagar,
Block No. 27,
Room No. 320,
Nr. Indiranagar,
Amaraiwadi,
Ahmedabad - 26.

..... Applicant.

(Petitioner-in-person)

Versus.

1. Union of India through
Comptroller and Auditor
General of India,
New Delhi.

2. The Senior Deputy Accountant General,
Office of the Accountant General (A & E)
Gujarat, M.S. Building,
Lal Darwaja, Ahmedabad.

3. The Accountant General (Audit),
M.S. Building, Lal Darwaja,
Ahmedabad - 1.

..... Respondents.

(Advocate: Mr. M.R. Raval for
Mr. P.M. Raval)

J U D G M E N T

O.A. NO. 124 OF 1988

Date: 22-7-1991.

Per: Hon'ble Mr. M.M. Singh, Administrative Member.

The applicant who argued his case himself is employed as a clerk in the office of the Accountant General (A & E) Ahmedabad. Promoted auditor in 1973, the applicant was reverted to the post of clerk/Typist in 1977 as he failed to pass the Confirmative examination for the post of auditor in the prescribed five chances and, on the respondents' showing, even in an additional discretionary chance given by the Controller and Auditor General in exercise of his discretion. The applicant having passed the initial recruitment examination for the post of divisional accountant in 1979, he was appointed to the post of divisional accountant on

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probation in November 1979. However, the applicant failed to clear in the prescribed chances which, seeing the respondents' reply are three, and two more discretionary chances were permitted to the applicant, the confirmative examination for the post of divisional accountant. This led to his reversion again to the rank of clerk/typist in 1982. As he had failed to clear the typing test, his service was terminated with effect from 25.4.1983. According to the respondents' reply, nine typing tests were held between 23.6.77 to 29.8.79 but the applicant sat in none of these tests. He challenged the order of termination of service by filing Special Civil Application No. 1930 of 1983 in Gujarat High Court which was rejected. The High Court's judgment shows that the applicant's grievance were two fold. The first was that he was not given a fresh chance to clear the qualifying examination for Divisional Accountant's post. The second was that he could not be asked to clear the typing test for remaining in the post of clerk/typist. By concession of the respondents, the applicant was given two years extra time to clear the typing test. The applicant's contention is that he should have been, on this last reversion, offered the rank of upperdivision clerk instead of reversion to the rank of clerk/typist. Regarding this contention the judgment of the High Court is clear that the post was required to be offered to him because of the provisions of rule 319 of the Manual of Standing Orders. His further contention is that he should have been but was not given three more chances to pass the confirmative test and his request for the same was refused, though such chances were given to four others whose names the applicant has furnished in the application. Two of them were not reverted also for their failure to pass the examination

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and one was reverted to the rank of auditor. The respondents have denied this allegation and explained how the allegation is baseless.

2. On such facts, the applicant, in this original application filed under section 19 of the Administrative Tribunals Act, 1985, alleges arbitrary and discriminatory approach violative of Articles 14 and 16. The applicant has sought, by way of relief, direction to appoint him as Upper Division Clerk with effect from 22.10.82 and appointment to the post of emergency divisional accountant and additional chances to pass the examination.

3. The burden of the respondents' reply to parts of which we have referred above is that the applicant was, for various departmental examinations, not only allowed the prescribed chances but allowed even the extra discretionary chances. The applicant filed a rejoinder in which he sticks to the line taken in the application.

4. We have heard the applicant and the learned counsel for the respondents.

5. The purpose of the applicant in filing this original application seems to be to get through litigation what he should have got as a result of his own endeavours but could not because of his failure to pass the examinations in prescribed and discretionary chances and even failure to sit for the typing test repeatedly held. We also notice that the applicant's grievances in the S.C.A. 1930 of 1983 had similar orientation and origin as the ones in the application before us. The S.C.A. was rejected by the High Court as stated above.

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6. The applicant's claim that he is to be taken as direct recruit for the divisional accountants posts has to be rejected for the obvious reason that he was already in service in audit office when he sat for the examination. The respondents asked for the applicant's resignation from the post of clerk/typist on his appointment as Divisional Accountant and the belief that therefore question of reversion to the post of clerk/typist does not arise arose before the High Court also. The High Court observed that with this belief, the applicant will be left jobless and a post, clerk/typist in the case of the applicant, has to be offered to the applicant under provisions of rule 319. Thus the pleas and arguments taken on the basis of his to be taken as a direct recruit candidate for the post of Divisional Accountant and he can therefore, on reversion not be posted as clerk/typist have to be rejected. The relief of appointment of the applicant as Upper Division Clerk with effect from 22.10.82 cannot be allowed. The relief of appointment of the applicant as emergency divisional accountant and additional chances to clear the examination has also to be rejected being untenable. His reversion from the post of divisional accountant for reasons of his failure to pass the prescribed examination in the prescribed number of chances and the discretionary chances allowed is an undisputed position.

7. A person who has not passed the prescribed examination for promotion or for continuing in a post to which he is promoted pending passing the examination in view of needs of administration cannot, when reverted for failing to pass the prescribed examination, validly question the reversion as denial of right to equality as such a person will fall in a class other

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than in which will fall those who have passed the examination. Presuming for the sake of argument that some persons who did not pass the examination or extra chances were given to them which were denied to the applicant as alleged, such arguments may point to need for corrective action to set wrong number of matters right rather than to increase the wrong cases by one more wrong case. Besides, the allegation has been denied by the respondents.

8. Thus in our above view not only the application has no merits, a grievance similar to grievances in the application was pursued by the applicant in the above referred S.C.A. before the High Court of Gujarat and the SCA was rejected. Nevertheless, the matter was virtually included again in the O.A. under consideration. Such an application should, in view of our above reasoning, be liable to be dismissed with costs. However, looking to the fact that such an applicant must have incurred considerable expenses in pursuing this OA, we dismiss the application without any orders as to cost.

Report-

(R.C.Bhatt)
Judicial Member

M. M. Singh
24/7/91
(M.M. Singh)
Admn. Member