

*Not  
Seniority*

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL**  
**AHMEDABAD BENCH**

M.A./457/92 in

O.A. No. /360/90  
I.A. No.

(11)

DATE OF DECISION 29-1-1993

Shri Jitendra Ramjibhai Patel Petitioner

Shri K.S.Javeri Advocate for the Petitioner(s)

Versus

Union of India & \* others Respondent

Shri Akil Kureshi Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. N.V.Krishnan

: Vice Chairman

The Hon'ble Mr. R.C.Bhatt

: Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement ? ✓
2. To be referred to the Reporter or not ? ✕
3. Whether their Lordships wish to see the fair copy of the Judgement ? ✕
4. Whether it needs to be circulated to other Benches of the Tribunal ? ✓

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Shri Jitendra Ramjibhai Patel  
D-2 Lalbhai Apartments,  
Near Kiran Park, Nawa Vadaaj  
Ahmedabad .

Applicant.

Advocate                      Shri K.S. Jhaveri

Versus

1. Govt. of India  
Summons to be served to  
Principal Chief Controller of Accounts  
C.B.D.T.  
Khan Market, 9th Floor  
Loknaya Bhuvan  
New Delhi
2. Controller General of Accounts  
Summons to be served to C.G.A.  
Khan Market, 8th Floor, Loknaya Bhuvan,  
New Delhi.
3. Zonal Accounts Officer,  
C.B.D.T. Vasupujya Chambers,  
IInd Floor B-Block, Ashram Road,  
Ahmedabad.

Advocate                      Shri Akil Kureshi

Respondents.

O R A L     J U D G E M E N T

In

M.A. 457/92 in O.A. 360/90

Date 29-1-1993.

Per Hon'ble Shri N.V.Krishnan

Vice Chairman.

The applicant is aggrieved by the fact that he has not been promoted as Junior Accounts Officer with effect from 30th December 1989, though he had been declared successful in the examination held for that purpose. He has, therefore,

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prayed for a direction to the respondents to promote him from that date, giving him seniority from that date and also the consequential benefits including the pay benefits and subsequent promotions to higher post.

2. The bare facts necessary for the disposal of this case are as follows:-

- (i) Admittedly, the applicant is working in the accounts organisation of the CBDT and at the relevant time he was working under the third respondent. The applicant appeared in the examination for the post of Junior Accounts Officer and admittedly, he passed that examination.
- (ii) It is also admitted by the respondents that the applicant was placed at the disposal of the Ministry of Urban Development for appointment as Jr. Administrative Officer in their Accounts organisation.
- (iii) However, such appointment could not be given because the Chief Controller of Accounts of the CBDT was not in a position to give the certificate regarding integrity/pendency or contemplation of departmental inquiry etc as required by the standing instructions. For, at that time, the wife of the applicant and her father had made certain complaints to the Chief Controller of Accounts CBDT, from which it appeared that civil and criminal proceedings had been instituted against the applicant in regard to the following:
  - " (a) Alleged illegal occupation of house (suit No. 3094/86) w.e.f. 3-5-1986
  - (b) Alleged misuse of blank affidavit

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(summary suit No. 5031/86 and civil suit on 11-8-1988 by father in law).

- (c) Alleged writing of Defamatory Articles. Mrs. J.R. Patel has stated in her letter of 6-6-1986 that she will be filing a criminal suit against her husband in this regard.
- (d) Alleged illtreatment and desertion of wife - maintenance application under section 125 of Criminal Procedure Code of Metropolitan Magistrate, Ahmedabad.
- (e) Alleged contracting of second marriage during the continuance of first marriage and a living spouse under section 494 I.P.C complaint filed in the court of Metropolitan Magistrate, Court No.7 Ahmedabad.
- (f) No departmental action of these complaints was taken in view of the Government of India instructions in the Ministry of Home Affairs O.M. No F-25/16/49-Estt (A) dated 1-9-1959 under Rule 11 of CCS (CCA Rules) (extracts enclosed) as the cases are subjudice.

(iv) The pendency of civil actions should not have ~~xxxx~~ any consequence for one's promotion. The promotion can be affected only by pendency of disciplinary proceedings. No proceedings are pending.

(v) It is stated in the application that all the persons excepting the applicant have already been appointed as Jr. Accounts Officer and he alone has been held up.

(vi) The applicant also states that the criminal complaint against him by his wife alleging that he has contracted a second marriage is baseless and that the

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that the complaint has been dismissed on 30th October 1991 by the order of Metropolitan Magistrate Court Room No. 17 Ahmedabad. A copy of the judgement in Gujarati has been filed.

3. The respondents have filed a reply resisting the prayer made. It is stated that the allegation of bigamy is a serious matter, because bigamy is a misconduct on account of which the disciplinary action can be taken and his services can be terminated. It is mainly because of this allegation that the respondents did not issue the clearance certificate to the ~~xxx~~ applicant.

4. We have perused and heard the learned Counsel for the parties.

5. The civil suits if any filed against the applicant cannot be an adequate ground to deny him the necessary ~~xxxxx~~ clearance certificate. The only question is whether the criminal complaint filed by the wife of the applicant in respect of bigamy under section 494 IPC in the Court of the ~~Mxxgxxxxxx~~ Metropolitan Magistrate Court No. 7 Ahmedabad gives the respondents a right to withhold the certificate of vigilance in respect of the applicant. In view of the fact that a regular proceeding was initiated in a proper Court, the respondents No. 3 might have been justified in withholding the certificate, though we do not decide this issue. In our view, that right will accrue only if either a disciplinary proceedings is initiated by the department or a prosecution is launched by Government. Be that as it may, now that the said criminal complaint has been dismissed, the respondents have no ground to withhold the vigilance certificate. In these circumstances, the applicant

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is entitled to be given a vigilance certificate in his favour and also to be promoted as Jr. Accounts officer from the date when his junior was so promoted.

6. We therefore dispose of this application with the following directions.

- (1) The respondents are directed to issue the vigilance clearance certificate and promote and post the applicant as Jr. Accounts Officer with effect from the date his immediate Junior was promoted within one month from the date of receipt of this order.
- (2) With regard to salary for the period prior to the date from which he will now actually assume charge as Junior Accounts Officer, the respondents shall pass suitable speaking orders according to law and liberty is given to the applicant to agitate the matter, if he is aggrieved by the orders of the respondents.
- (3) The applicant's case for further promotion shall be considered on the basis of his seniority and in accordance with law and with direction disposes of M.A. 457/92.

7. \*Application is disposed of with no order as to cost.

  
(R.C. Bhatt)  
Member (J)

  
15/7/83  
(N.V. Krishnan)  
Vice Chairman

Serial Number of the Application

OA/360/90

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