

7

(8) (14)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK

Original Application No.303 of 1992

Bama Charan Sethi	...	Applicant
	Versus	
Union of India & Others	...	Respondents

Original Application No.304 of 1992

Benuhar Tripathy	...	Applicant <i>yes</i>
	Versus	
Union of India and others	...	Respondents

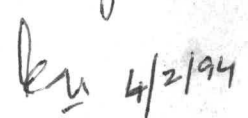
DATE OF DECISION: 4th February, 1994.

(FOR INSTRUCTIONS)

1. Whether it be referred to the reporters or not? *yes*
2. Whether it be circulated to all the Benches of the Central Administrative Tribunals or not? *yes*

  
(H. RAJENDRA PRASAD)  
MEMBER ( ADMINISTRATIVE )

04 FEB 94

  
(K.P. ACHARYA)  
VICE CHAIRMAN

8

8  
15

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK

Original Application No. 303 of 1992

Baman Charan Sethi	...	Applicant
	Vs.	
Union of India & Others	...	Respondents

Original Application No. 304 of 1992

Benudhar Tripathy	...	Applicant
	Vs.	
Union of India & Others	...	Respondents

DATE OF DECISION: 4th February, 1994.

For the applicant (in both the cases) : M/s. Bijan Ray,  
C. Choudhury,  
Advocates.

For the Respondents (in both the cases) : Mr. Uma Ballav  
Mohapatra, Additional  
Standing Counsel  
(Central).

-----

CORAM:-

THE HONOURABLE MR. K. P. ACHARYA, VICE - CHAIRMAN  
&  
THE HONOURABLE MR. H. RAJENDRA PRASAD, MEMBER (ADMN.)

-----

ORDER

K.P. ACHARYA, V.C.

Since both the cases involve similar facts and common questions of law, both the cases were heard one after the other and it is directed that this common judgment will govern both the cases mentioned above.

2. In original Application No. 303 of 1992, the petitioner Shri Baman Charan Sethi has a grievance relating to the illegal and arbitrary order passed by

9

(9) (16)

2

the competent authority terminating the services as an auditor. The petitioner joined as Surveyor, Soil Conservation under the Survey Department of Dandakaranya Development Authority on 21st February, 1961 and continued as such till 15th February, 1973 and was then promoted as Senior Surveyor on 4th March, 1978. Since the Dandakaranya Development Project was wound up, the Petitioner was deployed to the Surplus Cell in the year 1987. On 21st July, 1988 by an order of the Central Government, the Petitioner was redeployed as an Auditor and was attached to the office of the Deputy Accountant General (Administration). On 27th April, 1988, the Petitioner joined as an Auditor in the Office of the Resident Auditor Officer, Upper Indrabati Project, Khatiguda. The Opposite Parties on 27th November, 1991 asked this Petitioner to appear in a Departmental Confirmatory Examination which was <sup>in</sup> gross violation of the stipulations <sup>in</sup> laid down in Annexure-2. Representations were filed by the petitioner requesting the concerned authorities not to insist upon the petitioner to appear at a Departmental Confirmatory Examination and without disposing of the representation of the Petitioner on merits, insistence continued over the Petitioner to appear in the Departmental Confirmatory Examination and ultimately on 18th June, 1992, vide Annexure-4, services of the petitioner was terminated from the Post of Auditor and he has been offered the post of a Clerk. Hence this application has been

filed with a prayer to quash Annexure-4 and to direct the Opposite Parties to allow the petitioner to continue as an Auditor.

3. In Original Application No.304 of 1992, the Petitioner Shri Benudhar Tripathy joined as a Laboratory Attendant under the Irrigation Circle of Dandakaranya Development Authority on 1st August, 1960 and continued as such till 19th November, 1961 and on 23rd November, 1961 he was relieved from the post of Assistant Health Inspector under the Directorate of Health. The post of Assistant Health Inspector was re-designated as Health Inspector and the Petitioner was made permanent. The Dandakaranya Development Project having been wound up, the Petitioner was surrendered to the Surplus Cell on 30th November, 1987. The Petitioner was redeployed as an Auditor Vide Annexure-2 dated 21st April, 1988. After the Petitioner joined as an Auditor, the Opposite Parties asked the petitioner to appear in the Departmental Confirmatory Examination in gross violation of the rules prescribed by the Central Government and the norms laid down in Annexure-2. Petitioner informed the competent authority on 31st January, 1990 that such

that such direction was violative of the order No.4(96)/88/CS/III/Dated 21st April,1988 and the Petitioners also submitted a representation to the above effect on 22nd February,1990 which was not been disposed of as yet.

4. In their counter,the Opposite Parties in both the cases,maintained that passing of Departmental Confirmatory Examination for Auditor is mandatory and such condition s having been accepted by the petitioners in both the cases,while offer of appointment was made to each of them,they are now estopped from saying that insistence on the part of the competent authority over the Petitioners to appear in the Departmental confirmatory Examination is illegal,unjust and arbitrary. Without turning out successful in the examination, in question,it was not possible on the part of the Opposite Parties to allow the petitioners in both the cases to continue as Auditors.Therefore,the case being devoid of merit is liable to be dismissed.

5. In both the cases,we have heard Mr.B.Ray learned counsel for the Petitioners and Mr.U.B.Mohapatra learned Additional Standing Counsel(Central).

6. Mr.B.Ray learned counsel for the petitioners invited out attention to the contents of Annexure-2 dated 21st April, 1988 which is a correspondence made by the Deputy Secretary to the Government of India

Vn

in the Ministry Of Personnel Public Grievances and Pensions with the Deputy Accountant General (Admn.) Orissa. Therein it is stated that the Government has decided to transfer the surplus Central Government officials earlier working under the Dandakaranya Project and presently deployed to the Central Surplus Cell in this Department against the post of 'AUDITOR' in the scale of Rs.1200-2040/- in the office of the Accountant General. This letter covers both the Petitioners in both the cases. Mr. Bijan Ray laid considerable emphasis in the contents of paragraph 3 of the letter mentioned above which runs thus:

"It may please be noted that the Surplus staff on redeployment are not subject to any test or interview in the recipient organisation as they are already in Govt. service. The provisions of all recruitment rules in regard to the educational qualifications, age limit and the mode of recruitment are to be treated to have been relaxed in respect of surplus staff under the redeployment of surplus staff against the vacancies in Central Civil Services and posts Class-III Rules, 1967. The surplus staff are also not required to undergo a fresh medical examination on redeployment except where necessary as per rules 6 of the said Rules".

It was contended by Mr. Ray that the Government having already ordered relaxation in regard to the educational qualifications age limit and the mode of recruitment and having restrained the concerned authority from holding ~~any test or interview~~ <sup>any test or interview</sup> ~~and having restrained the concerned authority from holding/~~

it is no longer open to the Accountant General to insist on the petitioners to appear in the Departmental Confirmatory Examination. On close scrutiny of facts stated against Sl.No.3 of the Annexure-3, quoted above, it is crystal clear that since both the officers had already been appointed as Government servant in the Dandakaranya Project, no further test or interview is required by recipient organisation and further more they having been already appointed in a Government office, educational qualification, age limit and the mode of recruitment had been relaxed by the Government. In our opinion, this does not at all envisages relaxation of rules regarding confirmation. Had the Government intended to give a benefit to the employees of the Surplus Cell in regard to their nonappearance in the Departmental Confirmatory Examination, the Government would have specifically stated so. But the appointing authority, namely the Deputy Accountant General, on receipt of the correspondence forming subject matter of Annexure-2 gave an offer of appointment to both these petitioners, vide Annexure A dated 27th April, 1988 to the counter. At paragraph (v) in the offer of appointment it is stated as follows:

He/She is required to pass the Departmental Confirmatory Examination for Auditors within six consecutive chances admissible to him/her commencing from the 1st examination held immediately after completion of one year service as Auditor. If he/she fails to negotiate the Departmental Confirmatory Exmn. within the prescribed six chances, his/her

services are liable to be terminated/  
reverted to the lower cadre."

The Government while issuing Annexure-2 not having said anything about this examination, the competent/ appointing authority was justified to call upon the petitioners to appear in the examination in question and this was in compliance with the rules. This was one of the conditions in the offer of appointment (Annexure-A) and such offer having been accepted, it is too late in the day for the petitioners to retreat. Apart from the above, Petitioner in Original Application No. 303 of 1992 was serving as a Surveyer and Petitioner Shri Benudhar Tripathy in Original Application No. 304 of 1992 was serving as Health Inspector. Discharge of duties of both the petitioners in their respective posts in the Dandakaranya Project has no connection with Audit. Therefore, in order to continue as an auditor some special knowledge is required. Unless the Petitioners in both the cases, acquire that special knowledge, it would be utterly difficult on their part to discharge the duties of an Auditor. Therefore, Departmental Confirmatory examination, in our opinion, is not only mandatory but it would help the efficiency and competency of an incumbent discharging the duties of an Auditor which is most important duty to be discharged in the Office of the Accountant General. Therefore, we do not feel inclined to allow the prayer of the petitioners in both the cases



to exonerate them from appearing in the said Examination. Had the Petitioner in O.A.No.304 of 1992 appeared at least in one examination and would have failed, we would have thought of giving him some advantage or benefit of appearing in the successive examinations but the petitioner Shri Benudhar Tripathy having admittedly retired on superannuation he cannot derive the same benefit which we propose to give to the Petitioner in O.A.No.303 of 1992 namely Shri Baman Charan Sethi. Vide order dated 9th July, 1992 operation of the impugned order of reversion terminating the services of the petitioner as an auditor was stayed. Though it stood vacated on 5th January, 1993 due to nonappearance of the counsel for the petitioner, it was again restored on 22nd January, 1993 in M.A.No.348 of 1993. It was agreed by counsel for both sides that the Petitioner Shri Benudhar Tripathy has since retired on superannuation with effect from 31st December, 1992 and therefore the stay order has become infructuous and accordingly the M.A. was disposed of. In case the Petitioner Shri Benudhar Tripathy continued as an Auditor in view of the stay order, his emoluments as an auditor for the entire period if not paid should be paid to him within **sixty** days from the date of receipt of a copy of the judgment.

✓

7. In Original Application No.303 of 1992 the age~~z~~ of the Petitioner is stated in the petition to be 51 years in the year 1992. The petitioner is now aged about 53 years. Vide order dated 9th July, 1992 operation of the impugned order was stayed. Vide order dated 5th January, 1993 the stay order was vacated, due to nonappearance of the parties and vide order dated 22nd January, 1993 passed in M.A.No.36 of 1993 the stay order was made effective. Therefore, it is presumed that the petitioner Shri Sethi is still continuing as an Auditor. Therefore, it is directed that the petitioner Shri Sethi in O.A.No.303 of 1992 be given an opportunity to appear in the said examination and if he turns out successful then he should not be made to appear in the subsequent examination but if he becomes unsuccessful five more chances should be given to him as stated in paragraph-V of Annexure ~~AA~~ to the counter and the Departmental authorities should hold the examination twice a year. First examination must be fixed to May, 1994 and Second examination in November, 1994. Result must be published within one month from the date on which the examination comes to an end. Similarly examinations must be held twice in the subsequent years in the months of May and November and in this process if the Petitioner turns out successful <sup>in any examination</sup> ~~the~~ petitioner shall not be subjected to any further examination. If the Petitioner fails to successfully clear the examinations within six chances his services as an Auditor may be

17

27

terminated.

8. Thus, both the Original Applications are accordingly disposed of leaving the Parties to bear their own costs.

  
MEMBER (ADMINISTRATIVE)  
04 FEB 94

  
VICE-CHAIRMAN

Central Administrative Tribunal,  
Cuttack Bench/K.Mohanty/4.2.94,