

In the Central Administrative Tribunal,  
Patna Bench : Patna

Date of Order:- 14.3.97

Registration No. OA-239 of 1994

Ram Subhag Ram, Son of Late Khaderan Ram,  
resident of village and Post Office Sarathua,  
P.S. Udwant Nagar, District Bhojpur at Ara.

.... Applicant

Versus

1. The Union of India through the Comptroller &  
Auditor General of India, New Delhi, 10, Bahadur  
Shah Zafar Marg, New Delhi-110002
2. The Principal Accountant General (A and E),  
Bihar, P.O. Hinoo, District Ranchi-840002
3. The Deputy Accountant General (Works), Bihar,  
Hinoo, District Ranchi-840002

... Respondents

Counsel for the applicant .. Mr. S.K.Katriar

Counsel for the respondents .. Mr. J.N.Pandey,  
Senior Standing Counsel  
Counsel for the State of Bihar.. Mr. B.N.Yadav.

Coram:- Hon'ble Mr. Justice V.N.Mehrotra, V.C.

Hon'ble Mr. S.R.Adige, Member (A)

#### ORDER

Hon'ble Mr. S.R.Adige, Member (Administrative):-

Applicant seeks (i) quashing of the  
impugned Memo. dated 8.3.1991 and Memo. dated

17.11.93 ( Annexures 2 and 3 respectively) reverting him from the post of Emergency Divisional Accountant, and (ii) absorption in the cadre of Divisional Accountants, in view of his experience and length of service as Emergency Divisional Accountant.

2. It is common ground that the applicant, who was initially appointed as L.D.C./Auditor on 3.10.1963 in the office of the Accountant General, Ranchi, was promoted as Emergency Divisional Accountant along with others vide Order dated 7.4.79(Annexure-1) until further orders. The said order made it clear that the promotion was purely adhoc and temporary and would not confer any right of seniority in the cadre of Divisional Accountants and the applicant's continuance as EDA, apart from the conditions, would be subject to his continued efficiency and good conduct. Pursuant to that order the applicant joined as Emergency Divisional Accountant on 15.6.79, but he complains that suddenly the Respondent No.3 (Dy.Accountant General [Works] ) issued the impugned order dated 8.3.91 (Annexure-2) reverting him from the post of EDA, despite similarly situated employees having filed a case in CAT, Patna against their reversion, and that reversion order being stayed till the final decision of the case. Thereafter, by the impugned order dated 17.11.93 (Annexure-3), which stated that

the reversion order dated 8.3.91 came into operation  
 consequent to the C.A.T., Patna Bench's orders  
 dated 4.8.93 the applicant was reverted from the post  
 of EDA to his parent office, which he has assailed  
 on various grounds.

3. The respondents in their reply have  
 challenged the OA and stated that the applicant's  
 reversion has been strictly done in accordance with  
 Rules and previous judgments of the Tribunal and  
 the OA is, therefore, fit to be dismissed.

4. We have heard Shri S.K.Katriar for the  
 applicant; Shri J.N.Pandey for the Union of India and  
 Shri B.N.Yadav for the State of Bihar. We have  
 perused materials on record and given the matter  
 our careful consideration.

5. In this connection, we note that applicant  
 had sought an interim direction vide MA No.182 of  
 1996 for maintenance of the status-quo, which was  
 heard in presence of both parties on 16.8.96 and  
 was rejected, upon which he filed SLP No. 20164 of  
 1996 in the Hon'ble Supreme Court, who by order  
 dated 23.10.96 directed that status-quo as on that date  
 shall be maintained. Thereafter by subsequent order  
 dated 16.12.96 it was directed that this OA be  
 disposed by the Tribunal preferably within three

A

months from the date of communication of their order, and meanwhile the status-quo order passed on 23.10.1996 would continue.

6. Divisional Accountants are appointed by the Accountant General to man posts designated as such in the Works Divisions of the P.W.D. and other Works Departments of the State Government. Prior to the enforcement of the Recruitment Rules in 1988, the Standing Orders passed by the CAG India prescribed the mode and method of recruitment of Divisional Accountants, according to which D.As. were recruited from three sources, namely, (i) PWD Accounts Clerk; (ii) UDCs of the Audit Offices and (iii) Direct recruits, on the basis of an initial Competitive Recruitment Examination, which all of them had to pass. On appointment direct recruits had to undergo initial training for two years while for others it was for only six months. On completion of training they were all required to pass the Divisional Accountants Examination for regular absorption. However, in absence of qualified candidates to carry on the work, unpassed hands were also allowed to be appointed on a temporary basis to discharge the duties and functions of D.As. and were designated as Emergency (unqualified) Divisional Accountants (E.D.As.). Para 316 of the

A

Manual of the Standing Orders (Administrative),  
Vol. I, issued under the authority of CAG India  
provides that:

"Conditions of Recruitment and Confirmation

316. All departmental candidates who have officiated as Emergency Divisional Accountants for a period of not less than 2 years (including spells totalling 2 years) may be absorbed in the cadre on their passing the Divisional Test alone. The age limit for such Emergency Divisional Accountants for appearing in the examination will be 48.

Those who have reverted at their own request or as a disciplinary measures cannot, however, be considered.

Note:- Such Emergency Divisional Accountants may not ordinarily be allowed more than 3 chances to sit for the Divisional Test but the Accountants General may allow, in special cases, upto two additional chances in deserving cases."

Furthermore, para 323 of the above Manual provided that passing of the Divisional Examination was one of the necessary qualifications for appointment as Divisional Accountant, while para 325 laid down the conditions for confirmation in the Divisional Accountants' cadre which, inter alia, prescribed that such persons should have passed the above-mentioned Divisional Examination.

7. In this connection, Note 2 of Para 4.2.1 of C.P.W.A. Code is also relevant which provides

"No person who is not eligible to be appointed to the cadre of Divisional

1

Manual of the Standing Orders (Administrative),  
Vol.I, issued under the authority of CAG India  
provides that:

"Conditions of Recruitment and Confirmation

316. All departmental candidates who have officiated as Emergency Divisional Accountants for a period of not less than 2 years (including spells totalling 2 years) may be absorbed in the cadre on their passing the Divisional Test alone. The age limit for such Emergency Divisional Accountants for appearing in the examination will be 48.

Those who have reverted at their own request or as a disciplinary measures cannot, however, be considered.

Note:- Such Emergency Divisional Accountants may not ordinarily be allowed more than 3 chances to sit for the Divisional Test but the Accountants General may allow, in special cases, upto two additional chances in deserving cases."

Furthermore, para 323 of the above Manual provided that passing of the Divisional Examination was one of the necessary qualifications for appointment as Divisional Accountant, while para 325 laid down the conditions for confirmation in the Divisional Accountants' cadre which, inter alia, prescribed that such persons should have passed the above-mentioned Divisional Examination.

7. In this connection, Note 2 of Para 4.2.1 of C.P.W.A. Code is also relevant which provides

"No person who is not eligible to be appointed to the cadre of Divisional

1

6.

Accountants may be posted to a Division. In any individual case where a qualified Divisional Accountant is not available, an exception may be permitted as a purely temporary arrangement by the Accounts Officer."

8. Subsequently, by order dated 23.12.86

the CAG India required all EDAs to pass the required Examination within 6 chances, failing which they would be liable for reversion.

9. It is in this background that the present case has to be adjudicated.

10. The first ground taken by the applicant is that the promotion order dated 7.4.1979 (Annexure-1) nowhere prescribed the condition that his absorption as Divisional Accountant was subject to his passing Divisional Accountants Examination within the maximum permissible number of six chances. However, in the light of the relevant provisions of the Standing Orders cited above, which were binding on all those promoted as EDAs this argument lacks merit. Furthermore, the order dated 7.4.1979 itself categorically states that the continuance of the applicant and others as EDA apart from the conditions (Emphasis supplied) would be subject to their continued efficiency and good conduct. Manifestly, the conditions referred to above relate to the passing of the aforementioned Divisional Examination which admittedly the applicant

✓

did not pass within the permissible no. of chances.

11. The next set of grounds taken by the applicant is that the Respondents had adopted a pick and choose policy while ordering reversions; that no examination was necessary for EDAs and it was a requirement only for direct recruits and names of some EDAs have been cited who were exempted from passing the above-mentioned examination and were absorbed in the cadre of Divisional Accountants, or were even allowed to retire without their having passed the said Examination. We have already noticed that the passing of the said examination within the permissible number of chances is a mandatory condition for EDAs for absorption as DA; and the applicant has not been able to indicate any instance where the respondents have adopted a pick and choose policy as alleged by him. No doubt he has cited some instances of persons who were exempted from passing the said Examination, but the Respondents have fairly stated that earlier there was a scheme for granting permanent exemption to EDAs from passing the said Examination, which was subsequently withdrawn by CAG India, and the cases referred to by the applicant relate to those last few cases, after which that scheme itself was discontinued. This

A



8.

averment has not been specifically denied by the applicant in his rejoinder, and in the face of the clear legal provisions mentioned above requiring EDAs to clear the Divisional Accountants Examination within the prescribed no. of chances or face reversion, the benefits of an earlier scheme, which was subsequently discontinued, cannot be extended to the applicant.

<sup>so far</sup>  
In ~~view~~ as those who were allowed to retire as EDAs without passing the aforesaid Examination are concerned, the respondents have clarified that CAG India by order dated 13.7.88 instructed that those EDAs having one year or less of service may not be reverted for failure to clear the Examination, and the names cited by applicant refer either to those who retired before 23.12.86 when passing of the aforesaid Examination by EDAs was made compulsory, or those who came within the one year exemption. ; This has also not been specifically denied by applicant in rejoinder.

12. In this connection, the fact that the EDAs are required to pass the Divisional Accountants Examination before absorption and were liable to be reverted if they did not pass it within the prescribed number of chances, has been conclusively settled in a catena of judgments including case No.B-72(T)

A

of 1986, Shri B.P.Sinha and others Versus A.G. Bihar & Others, decided by this Bench on 25.8.86, OA No. 906/90 - L.C. Sharma & Others Vs. Union of India and Others and connected cases decided by CAT, Allahabad Bench, on 12.2.91; and OA-167 of 1991 - Bihar Divisional Accountants Association Vs. Union of India & Others and connected cases decided by this Bench on 22.12.92. Those judgments have been followed in the judgment in OA-125 of 1994 - S.N.L.Das and connected cases decided by this Bench recently on 3.2.97 in which one of us (Hon'ble Mr. Justice V.N.Mehrotra, Vice-Chairman) was a party. The applicant has not furnished material to lead us to believe that any of those judgments have been stayed, set aside or modified, and we as a co-ordinate Bench, are bound by the same.

13. In fact, the applicant himself has placed reliance on the judgment in B.P.Sinha's case (Supra), wherein, while stating that the liability of those applicants to be reverted in the event of their not passing the Divisional Accountants Examination was very much there, the Bench had observed that it was to be expected that the reversion would take place only if qualified DAs were available to man consequential vacancies, and while doing so

A

the Respondents were called upon to give due consideration to the time-honoured principle of "first come, last go". Applicant's counsel ~~has~~ asserted that this portion of the judgment in B.P.Sinha's case (Supra) has been ignored by the respondents, inasmuch as they are not following the principle of "First come, last go", and secondly, despite the absence of qualified Divisional Accountants, the applicant is being reverted.

14. In this connection, this Bench in its judgment dated 3.2.97 in S.N.L.Das's case (Supra) has held that the above observation in B.P.Sinha's case (Supra) that reversion would take place only if, qualified DAs were available, was merely an obiter and it could not be said that this observation should be enforced, when in other OAs decided by this Bench as well as by CAT (Allahabad) Bench, it was specifically held that the persons, who failed to pass the Divisional Examination in the prescribed number of chances were liable to reversion. As stated earlier, we, as a co-ordinate Bench, are bound by that judgment in S.N.L.Das's case (Supra) and there is nothing to indicate that the said judgment has not become final. We are also unable to agree with applicant's counsel's contention that those

A

11.

observations do not amount to obiter, and should be enforced. Under the circumstances, those observations in B.P.Sinha's case (Supra) do not help the applicant.

15. The applicant has also contended that he was not given the maximum permissible number of six chances to clear the Divisional Accountants Examination, but this contention is controverted by his own representation dated 7.12.94 (Annexure-6), in which he does not deny that he was offered as many as 8 chances, but he failed to clear that Examination. In his rejoinder applicant has contended that in respect of 4, out of those 8 chances, he could not appear or was not given information of the Examination Schedule in time, but this cannot be accepted as a valid excuse for not appearing. Hence, this ground fails.

16. The next ground taken by the applicant is that the posts of Divisional Accountant were sanctioned by the State Government and their salaries were also borne by the State Government and hence, the respondents were under obligation to consult the State Government prior to passing the reversion order. No Rule has been cited in support of this contention, and in the light of catena of judgments referred to above it must be held that the impugned reversion orders cannot be assailed on this ground.

A

17. It has next been urged that by the impugned reversion order the applicant would suffer in status and emoluments, but it is clear that the reversion is not a penalty. The applicant was promoted as EDA strictly on adhoc and temporary basis subject to his fulfilling certain conditions, <sup>including passing of the Div. exams</sup> within permissible number of chances, <sup>and on his failure to do so</sup> his reversion has been ordered in accordance with the extant rules and instructions. <sup>and</sup> Hence, he cannot assail the reversion on that ground.

18. Next it has been contended that several EDAs availed of all the six chances admissible and were junior to the applicant, but have not been reverted. In this connection, reliance has been placed on the Respondents' Memo. dated 3.3.93 (Annexure-7), which relates to one Shri D.S.P. Srivastava, EDA, but this Memo. does not help the applicant either, as it nowhere states that those, who had availed the six admissible chances, were still being allowed to continue. In fact, this Memo. makes clear that having already exhausted six admissible chances, Shri Shrivastava could not be granted any further chance.

19. The next ground taken is that after exhausting the six admissible chances, two more special chances have been allowed by the Respondents'

order dated 2.12.93 (Annexure-8), which were not granted to the applicant, but we have already noticed from the applicant's representation dated 7.12.94 (Annexure-6), which states that in addition to the six admissible chances, he was also granted the two special chances, but he failed to clear the Examination.

20. The next ground taken by the applicant is that the Hon'ble Supreme Court vide its order dated 19.5.91 in S.L.P. (Civil) No.1011/91 (Annexure-9) had directed that if the applicant in that SLP applied for exemption from passing the Divisional Examination, the same may be considered in the light of the exemption granted by CAG India to S/Shri B. Prasad and L.S. Triar. The Respondents in their reply have stated that CAG India had withdrawn the scheme of granting permanent exemption to EDAs from passing the Divisional Examination. The cited cases of S/Shri B. Prasad and L.S. Triar were under his consideration for a long time and these were the last cases and thereafter this system was discontinued and hence, the question of granting exemption to the applicant did not arise. There is no specific denial to this averment in the applicant's rejoinder. Furthermore, we notice that the Hon'ble Supreme Court's order dated 19.5.91

^

relied upon by applicant was passed in the facts and circumstances of that particular case, in which applicant <sup>^</sup>has not shown he was a party and hence, the benefit of that order cannot be made available to him.

21. Another ground taken is that an interim order was passed in OA No.189/94 staying the reversion of one Rama Nand Singh, EDA, who challenged the impugned reversion order dated 17.3.93, but it is clear that OA No.189/94 was finally dismissed by judgment dated 3.2.97 along with OA No.125/94 and other connected cases and hence, those interim orders, which were passed in the particular facts and circumstances of OA No.189/94 before the matter was finally adjudicated, do not help the applicant.


22. Lastly, during the course of final hearing, applicant's counsel contended that applicant already stood regularised as Divisional Accountant by Respondents' order dated 27.1.88 (Annexure-1 to rejoinder) and subsequent orders and hence, the reversion order was bad in law. We notice that this particular ground, which in fact changes the entire complexion of the case, was not taken in the body of the present OA, nor included at any prior stage of the pleadings and has been taken only in rejoinder, and under the

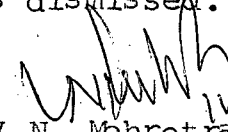


15.

circumstances, Respondents have not been given adequate opportunity to controvert this contention. As no new grounds can be taken in rejoinder, we do not propose to discuss this ground in any detail, but we cannot help noticing that if indeed the applicant already stood regularised as Divisional Accountant by the respondents' order dated 27.1.88, no satisfactory explanation is forthcoming as to why the applicant, who filed this OA on 26.5.94, is seeking absorption in the cadre of Divisional Accountants as relief No.(ii).

23. In the result, the impugned orders warrant no interference. The OA fails and is dismissed. No costs.

  
( S.R. Adige )  
Member (A)

  
( V.N. Mehrotra )  
Vice-Chairman

SKS