

Central Administrative Tribunal

Patna Bench, Patna

O.A.No.: 616 of 1996.

(Patna, this Tuesday, the 29th Day of June, 2004).

C O R A M

Hon'ble Smt. Shyama Dogra, Member (Judicial).

Hon'ble Shri Mantreshwar Jha, Member (Administrative).

Binoḍ Kumar Singh, son of Shri Ram Chandra Singh, resident of village & P.O. Biharibigha, P.S.: Pandarak, Barh, District Patna. APPLICANT.

By Advocate :- N o n e.

Vs.

1. The Union of India through the Deputy Comptroller & Auditor General, Office of the Comptroller & Auditor General of India, 10, Bahadurshah Zafar Marg, New Delhi.
2. The Accountant General, Audit, Bihar, Patna.
3. The Deputy Accountant General (Administration), O/o the Accountant General (Audit-II), Bihar, P.O. Hinoḍ, Ranchi.
4. The Regional Director, Staff Selection Commission, Block No.2, C.G.O. Complex, Lodi Road, New Delhi.
5. Shri Sidheshwar Mishra, A.A.O., O/o the Accountant General, (A.U.), Patna. RESPONDENTS.

By Advocate :- Shri V.M.K.Sinha,
Sr. Standing Counsel.

O R D E R
(ORAL)

Shyama Dogra, Member(J) :- None for the applicant. He is not even present in person. Shri V.M.K.Sinha, the learned Sr. Standing Counsel is present on behalf of the respondents. Since on earlier occasion nobody had put appearance on behalf of the applicant; therefore, the case was ordered to be listed under the heading "Warning/Hearing" today. Since the case is very old and pending for the last eight years; therefore, the same is hereby decided on the basis of material available on record as per Rule 15(1) of CAT (Procedure) Rules, 1987.

2. Initially, while preferring this OA, the applicant had prayed for quashing of the impugned order dated, the 19th/20th August, 1996 (Annexure-8), whereby, his representation was rejected by the respondents. He has also sought direction to fix seniority of the applicant in gradation list to the rank of Section Officer vis-a-vis his

juniors who were appointed as such on the basis of Assistant Grade Examination held in 1989, alongwith other pecunary benefits. Later on, by way of amendment the applicant has also sought quashing of order dated, the 16th June, 1997(Annexure 7).

3. The main plea of the applicant is that his representation has been rejected in a very arbitrary and slip-sloed manner without assigning any reasons vide Annexure-8. Second submission as made by the applicant in the OA is that though he had qualified the examination of Assistant Grade in the year 1989 alongwith his juniors, but due to non-supply of 'No Objection Certificate' by the authorities concerned he could not join the post of Section Officer till January, 1996, when he was offered ~~some~~ appointment order vide Annexure-3. The authorities concerned have furnished 'No Objection Certificate' vide Annexure-1, dated, the 30th September, 1994, and the said delay has caused grave mis-carriage of justice to the applicant for no fault of his. Therefore, he should not be suffered on account of mistake committed by his employer and he should be given due seniority vis-a-vis his juniors who had immediately joined after qualifying the said examination.

4. The respondents have filed written statement and contested the claim of the applicant on the ground that the reason for non-supply of 'NOC' was due to pendency of some departmental proceedings against the applicant till January, 1993, and after expiry of such penalty being imposed on the applicant he was issued the 'NOC'. So far as counting the earlier period of fixation of seniority of the applicant, vis-a-vis his juniors is concerned, the plea of the respondents is that the applicant had applied for appearing in the said examination in the year 1990 and sought permission from the department to appear only in the examination and not to forward his application to SSC as the said examination was not

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the departmental examination but were conducted by the Staff Selection Commission; therefore, he should have applied through proper channel and owing to the technical resignation tendered by the applicant he has also lost lien of the post held by him prior to appointment as Section Officer (Probation). Therefore, question of holding the substantive post does not arise and he was not even allowed T.A. etc. under Rule 144 of the Service Rules on his appointment on his new posting.

5. So far as fixation of his seniority vis-à-vis his juniors, ~~is~~ concerned, it is submitted by the respondents that in view of the terms and conditions as incorporated in the appointment order (Annexure-3), the applicant was to remain on probation for two years and he was appointed to a temporary post of Section Officer (Audit) from the date of his joining and it was mandatory to qualify the SOGE Part-I & II Examinations (Both) and in case an incumbent fails to qualify the above examination during the training, he was liable to be discharged from service.

6. Applicant has also filed rejoinder and reiterated his claim with further submission.

7. Heard L/c for the respondents ^{who} have also taken the plea with regard to maintainability of this OA. However, we are not delving into those points at this stage in view of subsequent development of the matter. as the applicant had once moved an application, bearing M.A.No. 474 of 2000, with prayer for amendment of prayer clause of the present OA for quashing of impugned order dated, the 25th September, 2000, whereby, the applicant has been terminated from the post of Section Officer (Probation) with immediate effect and he had been offered a temporary post of Auditor (Rs.4000-100-6000/-) with usual allowances. The said M.A. has been disposed of on 07.05.2004, whereby, the applicant was permitted to withdraw the said application with liberty to file fresh OA.

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8. Since the applicant or his counsel is not present to assist this Court, therefore, in view of this development in the matter we are of ^{the considered opinion} that no orders or directions can be passed in the present OA as the applicant stands terminated from the post of Section Officer with immediate effect i.e., 25th September, 2000 (Annexure-1 of M.A. 474 of 2000), and unless and until the said order is quashed or set-aside, no relief for fixation of his seniority as Section Officer whatsoever can be granted to the applicant at this stage. However, it is made clear that the order passed in the present OA will not come into the way of the applicant if he has already got some relief as prayed for in the present OA during the pendency thereof.

9. In terms of these observations, this OA stands disposed of accordingly with no order as to costs.

(Mantrishwar Jha)
Member (A)

(Shyama Dogra) 29.6.04
Member (J)