

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH**

O.A. No. 233 of 06

Date of order : 18.7.08

C O R A M

Hon'ble Shri Shankar Prasad, Member (A)

Hon'ble Ms. Sadhna Srivastava, Member (J)

Dilip Kumar Singh, S/o Late Ganga Mandal, R/o C-6, A.G. Colony, Sheikhpura, P.S. Shastrinagar, Patna.

....Applicant

By Advocate : Shri M.K. Singh

Vs.

1. The Union of India through the Comptroller and Auditor General of India, 10 Bahadur Shah Zafar Marg, New Delhi -2.
2. A.G [A&E] Jharkhand, P.O. Hinoo, Ranchi.
3. A.G. [A & E] Bihar, Birchand Patel Path, Patna,

....Respondents

By Advocate : Shri S.C. Jha

O R D E R

Shankar Prasad, M [A]:-

In this round of litigation, the applicant seeks the following reliefs:-

“ The impugned order dated 19.7.04 passed by Senior Account Officer [Administration] – I issued by the office of the Accountant General [A & E], Bihar & Jharkhand, Patna be quashed and the applicant's case of promotion for the post of Accountant and Senior Accountant may be considered and the respondents be directed to promote the petitioner on the post of Accountant from 1985 and on the post of Senior Accountant from 27th Jan, 1988.”

2 [a]

The facts lie in a narrow compass. The applicant was appointed as a *Sr.*

Group 'D' employee under the respondents on 30.7.1971. He passed the "Praveshika" Examination conducted by the Hindi Vidyapeeth, Deoghar in 1976. He had been permitted to participate in the said examination. The respondents issued an order dated 6.9.78 promoting him to officiate ~~until~~ ^{until &} further orders in the grade of Clerk [Typist] with effect from 2.9.1978 or the date of assuming duty which ever is later.

[b] The applicant was served with a show cause notice dated 2.5.1985 regarding reversion to Group 'D' ^{post} ~~as~~ as he had misrepresented about his educational qualification at the time of Limited Departmental Competitive Examination for matriculate Group 'D'. After examining his representation the respondents communicated an order after nine years treating his date of promotion as 27.12.1983, the date his junior was promoted. The applicant submitted a representation dated 9.6.95 in this regard. He stated as under in para 4 [page 47]:-

"I became eligible to sit in the limited Exam for promotion in the grade of Auditor/Accountant in the year 1983 i.e., after completion of five years in Clerk's grade in terms of para 3.8/1 of Restructuring Manual. But I was not allowed to sit in the said Limited Exam on the alleged ground that the "Praveshika Exam of Hindi Vidyapith, Deoghar" [which I had passed] was not equivalent to Matriculation."

He had made the following prayers:-

"[a] date of my promotion to Clerk's grade may kindly be restored to 2.9.1970. &

[b] *Promotion to Accountant's grade may kindly be awarded to me after completion of 5 years from 2.9.1970 i.e on or immediately after 2.9.1983.*

[c] *Promotion to Senior Accountant's grade may also kindly be awarded to me from a retrospective date [as deemed just and reasonable], on which it became due to me."*

[c] OA 687 of 95 filed regarding change in date of appointment was allowed on 4.10.01 by the following order:-

"In view of the aforesaid decision of the Hon'ble Supreme Court and in the facts and circumstances of the case, we are of the considered view that the impugned order as at Annexure A/7 is not sustainable, and it is, accordingly, quashed. The application is allowed. The applicant is directed to be treated as promoted w.e.f. 2.9.1978. No costs."

[d] We have gone through the records of OA 687 of 95. We find that apart from seeking a declaration that Praveshka with English is equivalent to Matriculate, quashing of orders[§] dated 28.12.94 he had also sought. " Any other relief or reliefs to which the applicant may be found entitled in the interest of justice and flowing from the pleadings of parties be granted. There is no averment regarding further promotion to Accountant / Senior Accountant.

[e] The applicant submitted representation dated 18.3.02. the relevant part of which reads as under:-

"That as I have been promoted with effect from 2.9.1978 on the post of Clerk, I am fully entitled for promotions on the post of Accountant [§]

from 1985 and from 27th January, 1988 on the post of Sr. Accountant. It is relevant to state here that in similarly situation circumstances juniors to me have been promoted on the post of Accountant and Sr. Accountant where as in the case of mine discriminatory attitude has been adopted."

That one Manmit Kumar who was appointed on 18.5.1982 on the post of Clerk has been promoted on the post of S.O on 30.4.90 and further on the post of Account Officer vide letter No. O.O. No. [Admn-1], Promotion S.O. G. 293 dated 10.1.02 and [1] Shri A.K. Ghatak [Retd. Accounts Officer p 2] Shri Sunil Chatterjee [Retd. Accounts Officer, [3] Shri Anil Chatterjee [Ret] Accounts Officer] , [4] Shri Trilochan Bhattacharya [Retd. Accounts Officer] were exempted from appearing in S.O.G Examination and were appointed directly from Clerks."

The respondents informed the applicant as under:-]

" With reference to your letter dated 18.3.02 on the subject mentioned above as per Pr. A.G's letter No. Admn. [A & E] I -Promo-Clerk-458 dated 7.8.02, I am to inform you that as per Indian Audit and Accounts Department [Acct.J's Recruitment Rules, 1988 Clerks who have passed the Departmental Examination for Clerks are entitled for promotion as Accountant under seniority quota where as those who have passed the Departmental Examination for Accountant, or Section Officers grade examination [part -I] are entitled for promotion under the Examination quota.

You have neither passed the Departmental examination for clerks nor departmental examination for Accountant nor Section Officer Grade Examination [Part -I] and as such you are not eligible for promotion as Accountant in either channel."

[f] It appears that a request had been made for reconsideration. There is a subsequent communication dated 19.7.04 , which reads as under:-

" As intimated by A.G [A&E] Jharkhand, Ranchi Office vide No. Admn [A&E] Promo-Clerk[DKS]-312 dated 7.7.2004 on the subject mentioned above, I am to state that as per directions contained in J.

Hqrs Office letter No. 505-NGE [APP] 78-02 dated 23.6.2004, you are eligible for promotion to the post of Accountant only after passing Departmental Examination for clerk. Further you will be eligible for promotion to the post of Sr. Accountant only after rendering three years of regular service as Accountant after having passed Departmental Examination for Accountant"

This order is challenged in the present OA.

3. The grievance of the applicant as made out in para 4.25 of the OA is that he had participated in the departmental examination in 1984, the result of which had been withheld. [This is referred to in his representation dated 9.6.95 and extracted above]. A grievance is raised regarding his subsequent promotion. The letter dated 18.3.02 refers. It is reiterated in para 5.4 of the grounds that result of his examination was withheld.

The applicant has filed a detailed rejoinder. He has brought on record relevant extracts of MSO [Administrative]. It shows that 5% of posts of Auditors have to be filled on the basis of LDCE and 20% by promotion. This is in addition to 20 % quota. The scheme of examination consists of two papers- Paper I General English/Hindi & Arithmetic , Paper II Accounts. It is reiterated that he participated in the examination but his result was withheld. The applicant has also brought on record the information regarding the examination conducted in 1984. The letter dated 27.8.07 [Annexure 21] shows that the applicant has not passed the departmental examination for clerks. Annexure 22 is the letter addressed to the applicant that answer scripts for all departmental examinations are kept for six

months only. The applicant seeks to have submitted an application for information under the R.T.I Act. The order communicated to the applicant reads as follows:-
“ The date of result and marks sheet of the confirmatory examination held in the year 1984 is not available in the records of this office.”

4. The respondents in their reply have stated as under :-

[a] “ That it is submitted that after due consideration of his representation the headquarters office categorically stated that the applicant will be eligible for promotion to the post of Accountant under seniority quota [not eligible for promotion under examination quota as his educational qualification has not been recognized as equivalent to matriculation in this Hon’ble Tribunal’s order dated 4.10.2001] after having passed DEC. He will be eligible for further promotion to the post of Senior Accountant after rendering three years regular service as Accountant and after having passed DEA and this fact was made known to the applicant by the office.”

[b] GOI M/o HRD [Department of Education] circulated by headquarter letter dated 27.11.97 that Praveshika examination is equivalent for employment purposes in Government Sectors only against the post which requires special qualification in Hindi. The orders of Tribunal have been accepted.

[c] However, this Tribunal has not issued any direction regarding his further promotion to the posts of Accountant and Sr. Accountant.

5. We have heard learned counsel.

6. We note at the outset that in his representation dated 9.5.95 the applicant states that he was not allowed to sit in the Limited Examination for promotion in the grade of Auditor / Accountant in the year 1983. He, however,



states in para 4.24 and 5.04 of the OA that he appeared in the Departmental examination i.e., Limited Competitive Examination but the result was withheld by letter dated 14.6.84, a copy not on record, on the ground that Praveshika is not equivalent to matriculation in which Annexure 21 refers to Departmental Examination for Clerks[DEC] and Annexure 23 refers to confirmatory examination [The letter with reference to which this information was supplied is not on record].

7. A perusal of the judgment in the previous round of litigation shows that the applicant had also sought for a declaration that Praveshika with English from Deoghar Vidyapith , Bihar is equivalent to Matriculation or SLC. The Tribunal had observed as under:-

"The learned counsel for the applicant referred to Annexure -10/2 and Annexure -10, and contend that the Praveshika Examination of Hindi Vidyapith , Deoghar is equivalent to Matriculation Examination, and, therefore, the reversion order is not proper. The learned ASC, Shri Agarwal, on the other hand, filed the order dated 23.6.1988, passed by this Bench of the Tribunal in T.A. No. 397/ 96 and T.A. No. 143 /87, and contended that the very point has already been decided by the aforesaid order, according to which, Praveshika examination from Hindi vidyapith, Deoghar is not equivalent to Matriculation Examination. The order does not appear to have been set aside by the Higher Court, and therefore, it is binding on this Division bench. We refrain from going into the merit on this aspect of the matter."

8. It is thus clear that this relief was declined. This part of the order does not appear to have been challenged by the applicant.

9[a] The applicant has after hearing made available CAG's MSO *Sw*

[Administration] Vol.III. A perusal of 1988 Recruitment rules for the post shows that educational qualification is matriculate or equivalent. Group 'D' employees who are matriculate or hold equivalent qualification are eligible for promotion on the principle of seniority subject to unfit for 5% of posts. 10% post have to be filled up on the basis of limited departmental competitive examination from Group D employees who are matriculate. Note 3 against this Column 11 reads as under:-

“ Passing the prescribed departmental examination for clerks is a pre requisite for confirmation and further promotion on seniority basis.”

[b] The 1986 Recruitment Rules for the post of Accountants provide that though the educational qualification for direct recruitment is graduation, it is not applicable to persons who will be promoted. 33 1/3 % of the posts have to be filled by promotion of clerks with five years regular service on the principle of seniority subject to rejection of unfit. Another 33 1/3 % has to be filled up from [i] Graduate Gr. D and Matriculate clerks having three years service on passing the departmental examination for Accounts [ii] clerks on passing the Part I of Section Officers' Grade Examination.

[c] The 1986 Recruitment rules provide that the posts of senior accountant be filled up from amongst accountants who have three years regular service and have passed the departmental examination for accountants, on the principle of seniority subject to rejection of unfit. Ar

[d] The earlier recruitment rules are not brought on record.

[e] The Scheme of departmental examination for clerks and departmental examination for accountants is not on record.

10. It is contended by the learned counsel for the applicant ^{that} whether the applicant wanted to participate in the 1984 examination for clerks. The applicant in his representation of 9.5.95 does not refer to the fact of having participated in DCE. It is only subsequently and that too after the passing of the orders that he has obtained information regarding 1984 examination.

11. The learned counsel for the applicant has placed reliance on the decision of Apex Court in BHEL vs. State of UP, 2003 [6] SCC 528, that adverse inference is required to be drawn against the respondents. It was a case under U.P Industrial Disputes Act. The case of the appellants was that private respondents had been engaged as a Mali by contractor. The head Mali was an employee of BHEL. The Labour court had held as under:-

"Not filing the records concerning the attendances of workers by both employer 1 and 2 and destroying the same and filing of photocopies of the same by worker party prove that Employer 1 cannot escape from liability of illegal termination of these workers."

The High Court had observed that another employee of the BHEL was maintaining the records of attendance and had destroyed the same at the dispute of Manager working under respondents. It concurred with the findings. The Apex Court declined to interfere with these concurrent findings. ^{dt}

12. The Apex Court in Surendranagar District Panchayat vs. Dayabhow Amar Singh, 2006 SCC [L&S] 28 has held - “ The courts could have drawn adverse inference against the appellant only when seniority list was proved to be in existence and then not produced before the Court. In order to entitle the Court to draw inference unfavourable to the party, the Court must be satisfied that the evidence is in existence and could have been proved”

13. The Constitution Bench of the Apex Court in R.N. Bose vs. UOI AIR 1970 SC 470 has held - “ each person ought to be entitled to sit back and consider his appointment and promotion effected a long time ago would not be set aside after the lapse of a number of years”

The Apex Court in Dehri Rohtas Light Railway vs. District Board, AIR 1993 SC 802 has held that real test to determine delay is that petitioner should approach the Court before a parallel right is created and that lapse of time is not attributed to any latches or negligence of the petitioner. The illegality which is manifest cannot be sustained on the sole ground of delay and latches.

14. The cause of action certainly arose when the applicant was not allowed to participate in the examination. The explanation of the applicant regarding his educational qualification was called for in May, 1985 [Annexure -16]. If no decision had been taken and he was ^{not} being permitted , he ought to have approached the Tribunal at that point of time. He approached the Tribunal only in 1995 after the decision was finally taken. The Tribunal allowed the OA on the ¹

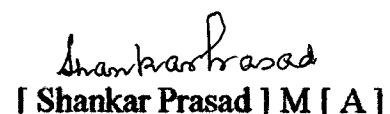
ground that his services could not have been terminated after such a long period. It did not answer the question about equivalence. Consequential benefits was also not granted. The applicant has only thereafter raised the plea of promotion. It is clear that passing the departmental examination for clerks is a pre-requisite for further promotion on the basis of seniority.

15. The decision in Dehri Rohtas [*supra*] would show that one has to approach the Tribunal before parallel rights have crystallized. It is held in R.N. Bose [*Supra*] that persons should be allowed to enjoy their promotion in peace after a lapse of number of years. It has been held in *SS. Rathore vs. State of M.P.*, AIR 1990 SC 10 that repeated representations do not extend the period of limitation. Adverse inference cannot be drawn if answer scripts of 1984 are not available now. Thus, the issue could also have been agitated earlier.

16. In view of the foregoing discussions, there is no merit in the OA. It is fit to be dismissed and is dismissed. No costs.



[Sadhna Srivastava] M [J]



Shankar Prasad
[Shankar Prasad] M [A]

/cbs/