

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

O.A.NO. 133 of 1987

Date of Order:

12-4-1990

A.Dhana Koteswara Rao

....Applicant

Versus

The Comptroller and Auditor
General of India, New Delhi.

2. Director of Audit, SCR,
Secunderabad

....Respondents

....

For Applicant: Mr.N.Raghavan

For Respondents: Mr.G.Parameshwar Rao, Standing Counsel
for the Department

... ...

C O R A M:

HON'BLE SHRI B.N.JAYASIMHA: VICE CHAIRMAN

HON'BLE SHRI J.N.MURTHY: MEMBER(JUDICIAL)

...

(Judgment delivered by Hon'ble Shri B.N.Jayasingha, Vice
Chairman)

1. This is an application from an Auditor,
working in the office of the Director of Audit, South
Central Railway, Secunderabad. He has filed this
application against the order No. Au/Admn/VII/2/Vol.IV
dated 8-6-1983 as confirmed by the 1st respondent on
28-1-1986 and by letter no. Au/Admn./Conf/42, dated
8-1-1987, passed by the Director of Audit, South Central

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Railwayk Secunderabad, informing him that in terms of CAG's letter no.1484-N2/85-86 dated 23-12-1987 the period of 3 years service for promotion as Sr. Auditor will count from the date of repromotion only.

2. The applicant/states that he was appointed as Clerk/Typist on 23-8-1972 in the office of the 2nd respondent. In terms of the provisions of Para 299 of the Comptroller and Auditor General's Manual of Standing Orders (Admn.)Vol.I, the applicant was promoted as Auditor on 31-7-1981. According to the said para, the applicant was required to pass the departmental confirmatory examination in 4 chances within two years after promotion as Auditor. The applicant states that he was to take the first examination held on 16th to 18th November, 1981. But, on 16-11-1981, his wife was admitted in the hospital for confinement and delivered a child on 16-11-1981 and his presence was very much required. The applicant was also informed by the hospital staff that the family planning operation would be conducted either on 16-11-1981 or on 17-11-1981 depending on the condition of the applicant's wife. In view of these circumstances, the applicant could not ~~take~~ attend the examination on 16-11-1981. Subsequently, the Director of Audit in his office Order No.576, dated 23-12-1981 granted Special casual leave to the applicant for the period from 17-11-1981 to 23-11-81 for attending on his wife in terms of extent order of the Government of India. However, the Department of treated as if the applicant availed of the chance of examination and after failure in the subsequent three

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examinations, he was reverted on 8-6-1983, deeming that the applicant has exhausted 4 chances. After reversion, the applicant passed the departmental confirmatory examination in the first opportunity in November, 1983 i.e. within 4 chances. The applicant was promoted as Auditor on 16-1-1985. The applicant contends that his reversion to the lower post from 8-6-1983 to 15-1-1985 is unjust and arbitrary. The applicant submitted a representation on 18-11-1981 to the Director of Audit requesting him not to treat the departmental confirmatory examination held from 16-11-81 to 18-11-81 as a chance availed of. The Director of Audit replied to the applicant stating that the examination has to be treated as a chance availed by him. Thereupon the applicant made a representation to the Comptroller and Auditor General of India on 13-6-1984, 26-3-1984, 14-6-1984, 11-9-1984, 9-11-1984, 13-11-1984, 21-12-1984, 16-2-1985, 28-5-1985, 16-8-1985, 23-8-1985, 1-10-1985 and 9-10-1985 requesting him to consider the case in its proper perspective and not to reckon the first examination as a chance availed of. The first respondent i.e. The Comptroller and Auditor General of India passed orders finally on 28-1-1986 and reiterated the same on 8-1-1987 to a repeated representation dated 18-11-1986. Hence, the applicant has filed this application.

3. The respondents in their counter state that the decision to count the first chance was taken in November, 1981 after considering the full circumstances of the case by the Director of Audit i.e. much later than 1-11-1982 and this was also accepted by the applicant

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~~It is, therefore, contended that the matter does not fall within the jurisdiction of Hon'ble Tribunal.~~

~~Even though~~ The rejection of the applicant's representation, ~~was~~ communicated to him in this office letter dated 28-1-1986, ~~This~~ was only a confirmation of the decision taken by the Director of Audit earlier in 1981 and no fresh decision or denial has been communicated to the applicant on ~~28th January, 1986~~. The applicant made various representations without bringing out any fresh facts and ~~so~~ there was no change in the decision taken earlier in November, 1981, ^{28.1.1986} ~~and therefore~~ ^{or is there} ~~the applicant be rejected as time-barred.~~ Contended that the application is to be rejected as time-barred.

4. In terms of para 299 of the CAG Manual of Standing Orders, every promotion of a lower division clerk as UDC is on probation and a promoted LDC shall have to pass the Departmental Confirmatory Examination within 2 years of his probation. This period will ordinarily give him four chances of taking the examination. But, if an examination be held within 90 days of promotion, he may not take it, and he may instead take the four consecutive examinations held immediately thereafter and the period of probation shall be extended on this account. If he fails to pass the examination within the stipulated time, he shall be reverted at once. It is thus passing of the Departmental Confirmatory examination within two years of probation from the date of probation is an important condition. The applicant was required to take first examination held from 16-11-1981 to 18-11-1981. The respondents further state that the ~~xxx~~ applicant must have been aware of the probable date of delivery of his wife and he should have applied for leave well in

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advance and also for condoning the non-availing of the chance of examination in November, 1981. However, the applicant submitted an undated application which was received in Administration Section of the office of the Respondent no.2 on 4-12-1981 requesting for not counting the chance as he could not appear for the said examination because his wife was admitted for delivery in the hospital on 16-11-1981. The respondents contend that as the operation was done in the Railway Hospital which is only 2 kms away from the office it would have been normally possible for him to give an application on 16-11-1981 itself.

5. Under O.O. 576 of 23-12-1981 the applicant was sanctioned one special increment for promoting small family norm and not special casual leave as stated by the applicant. The applicant was granted special casual leave for 17-11-81 to 23-11-81. He was reverted on 8-6-1983 on the ground that he had not passed the examination conducted within the stipulated time of two years and even if the examination held from 16-11-1981 to 18-11-1981 was not counted as a chance and was to be given another chance, that examination which would be counted as 4th chance instead of 5th would be only in November, 1983 i.e. long after completion of probation of two years stipulated in para 299 of Manual. In these circumstances, reversion was inescapable. The applicant exhausted all 4 chances including the one in which he was absent without permission and hence he could not be given one additional chance to appear for the examination which was conducted in November, 1983 i.e. long after the two years period from the date of his promotion, on probation, as Auditor.

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6. The respondents further state that the reversion of the applicant to lower post as Clerk/typist from 8-6-1983 to 15-1-1985 was unavoidable as he had not passed the examination within the period of two years which is mandatory except where the first examination was held within 90 days of his promotion as Auditor, which was not the position in this case. Under the Comptroller and Auditor's General of India's order dated 22-8-1961 as amplified in their subsequent letter dated 14-4-1977, an extra chance is allowed only under exceptional circumstances where the auditor could not avail of any of the prescribed chances due to circumstances beyond his control, for example, when unable to take the examination due to protracted illness, tuberculosis, pleurisy, maternity leave (in case of female employees) etc. Thus, the applicant was not ~~evidently~~ affected by any of these causes, making him ineligible both to attend the examination or apply for condonation in time. For these reasons, the respondents oppose this application.

7. We have heard Shri N.Raghavan, learned counsel for the applicant and Shri G.Parameshwar Rao, Standing Counsel for the Department. Shri Parameshwar Rao urges that the application has to be dismissed on grounds of ~~time~~ limitation. The cause of action arose when the request of the applicant not to reckon the first examination was rejected on 19-12-1981. He was reverted on 8-6-1983. The applicant belatedly submitted a fresh representation on 13-6-1984, a year after his reversion. The representation was rejected by the CAG on 28-1-1986. The applicant ought to have approached a Court of competent jurisdiction thereafter. However, he submitted another repre-

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sentation on 18-11-1986 which was also rejected on 18-1-1987. The applicant filed this application on 27-1-1987. Shri Parameshwar Rao contends that the rejection letter of 27-1-1987 is only a reiteration of the earlier letter of 18-1-1987 and does not give a fresh cause of action. He relies upon the decision on O.A.No.272 of 1988 where the Madras Bench rejected an application where the applicant sought to bring within the limitation period by representing to the CAG several years after the cause of action had arisen and taking the plea that the rejection of the representation was done only about a few months back. The bench held the application is barred by limitation. Similarly, in O.A.No.1582 of 1988, the Delhi bench of the Tribunal observed that representations made subsequently not take case of limitation.

8. Shri Raghavan, on the other hand, contends that the applicant's representation dt. 27-1-1987 was considered on merits by the respondents and therefore it gives the applicant a fresh cause of action. For this contention he relies upon the Central Administrative Tribunal, judgment rendered by the/Principal Bench, New Delhi wherein in B.Kumar Vs. Union of India (ART 1988(1) CAT 1) it was held as follows :-

"where a subsequent representation made by an aggrieved person has been entertained and considered on merits, this will afford a fresh cause of action to the aggrieved person and save as terminus-a-quo for filing an application under section 19 of the Act."

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9. In order to consider this contention, we may notice the request of the applicant in his representation dt. 18-11-1986 and also the chronology of the events.

1. Initial appointment as Clerk : 26-08-1972.
2. Promoted as Auditor : 31-07-1981.
3. In terms of para 299 of M.S.O. he was required to qualify in the Departmental Examination in 4 chances within a period of 2 years from the date of promotion : 31-07-1981 to 30-07-1983
4. First Examination held in which the applicant failed to avail on domestic reasons : 16-11-1981
5. Made a request not to reckon as having availed of the same : 18-11-1981
6. Rejection by the authorities : 19-12-1981
7. Examinations subsequently held on 3 occasions and in which the applicant failed to qualify : May, 1982
December, 1982
May, 1983
8. Reversion as a Clerk : 08-06-1983
9. Next examination in which the applicant qualified : November, 1983
10. Representation to the Comptroller and Auditor General of India : 13-06-1984.
11. Promotion as Auditor : 16-01-1985.
12. Actual period during which the applicant worked as a Clerk on his reversion : 03-06-1983 to 15-01-1985
(more than 18 months)
13. Rejection of representation dated 13-6-1984 : 28-01-1985
14. Rejection of next representation dt. 18-11-1986. : 18-01-1987

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The relevant part of the representation of the

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applicant dt. 18-11-1986 reads as follows :-

"Without prejudice to my claim to continue as Auditor without reversion, I submitted a representation on 5-10-85 requesting the Director of Audit to promote me after completion of 3 years of regular service taking the service rendered earlier to reversion. However, both the above requests were turned down by the CAG vide AV.O.(ADMN)/Con/42/Vol.II, dated 28-1-1986. Now I request you to kindly review my case and do justice to me so that it may not be necessary for me to approach Central Administrative Tribunal for redressal of long pending grievance."

This representation was disposed of by the Memo dated 8th January, 1987 which reads as follows :-

"with reference to the application dated 18-11-1986 regarding promotion as Sr.Auditor after completion of 3 years of service, it is hereby informed that in terms of CAG's letter No.1484-N2/85-86 dated 23-12-1987 the period of 3 years service for promotion as Sr.Auditor will count from the date of repromotion only."

10. It is thus seen that the ~~dispute~~ is not regarding ~~to~~ the ^{matter} ~~points~~ relating to the number of chances but in regard to his request for promotion, of the applicant taking into consideration the service rendered by the applicant prior to reversion. In the circumstances, it cannot be said that his representation has been considered afresh and what is now communicated in the memo dated 8-1-1987

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is only a re-iteration of the earlier order. The representation dated 13-6-1984 was rejected by the CAG on 28-1-1986 and in the meantime he was promoted as an Auditor on 16-1-1985. In these circumstances the contention of the learned counsel for the respondents has to be upheld and the application has to be rejected as barred by limitation.

11. Accordingly the application is dismissed.

No order as to costs.

B.N.Jayasimha
(B.N.JAYASIMHA)
Vice-Chairman

J.N.Murthy
(J.N.MURTHY)
Member (J)

Dated : 92 April 1990.

Deputy Registrar (A)

AVL/
To

1. The Comptroller and Auditor General of India, N.Delhi.
2. Director of Audit, SC.Railway, Secunderabad.
3. One copy to Mr.N.Raghavan, Advocate, 113, Jeera Secunderabad
4. One copy to Mr.G.Parameswara Rao, SC for the Department, CAT, Hyderabad.
5. One spare copy.