

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

Date of order: 06.4.2000

OAs Nos. 584/99 & 88/2000

Pappu Ram Koli S/o Shri Nathiram Koli, Ex-Divisional Accountant
in P.W.D. Project, Division, Bharatpur.

.. Applicant

Versus

1. Union of India through the Accountant General (A&E),
Rajasthan, Jaipur.
2. The Deputy Accountant General (Adm), Rajasthan,
Jaipur.

.. Respondents

Mr. C.B.Sharma, counsel for the applicant

Mr. Sanjay Pareek, counsel for the respondents

CORAM:

Hon'ble Mr. S.K.Agarwal, Judicial Member

Hon'ble Mr. N.P.Nawani, Administrative Member

ORDER

Per Hon'ble Mr. N.P.Nawani, Administrative Member

It, is proposed to deal with OA No.584/99 and OA No.88/2000 by this common order in view of the fact that the applicant is same in both the OAs and relief sought is in the ultimate analysis more or less same. In the first OA, the applicant is challenging the order dated 21.12.1999 in which after having failed to pass the departmental examination for Divisional Accountant after six stipulated chances, he was asked to convey his acceptance upto 31.12.1999 of the proposal for appointment on the post of Accountant failing which it will be considered that the said proposal is not acceptable to him and he will be removed from service. In the second OA he has challenged the impugned order dated 14.2.2000 in which he was informed that having not passed the Divisional Accountant, grade examination within 6 chances allowed and thereby could not completing his probation period successfully and having not submitted the acceptance or non-acceptance for the post of Accountant within the stipulated time but having intimated, vide his letter dated 10.2.2000 in reply to telegram dated 8.2.2000 for extending time for acceptance upto 11.2.2000, that

his case was pending before the Tribunal and if the Tribunal did not give decision for his continuation in the post of Divisional Accountant then he would give his consent to the post of Accountant which reply was considered invalid and hence rejected, it was concluded that his further retention in service was not justifiable and his services were removed with immediate effect. Thus the impugned order dated 21.12.1999 in OA No.584/99 ultimately led to the impugned order dated 14.2.2000 in OA No.88/2000 and the end result in both the cases could have been/was his removal from service. The other part of the relief in both these OAs also meant the same thing, in the first one that he may be allowed to continue on the post of Divisional Accountant and in the second directing the respondents to reinstate the applicant on the post of Divisional Accountant or alternatively on the post of Accountant.

2. Facts, as stated by the applicant, are that he was selected by the Staff Selection Commission for the post of Divisional Accountant (for short DA) in the pay scale of Rs. 1400-2660 and was sponsored to respondent No.1 and consequently he came to be appointed as Divisional Accountant by order dated 10.7.1995 (Ann.A2). The appointment was made on a probation of two years which the applicant completed successfully. For the purpose of confirmation on the said post, departmental examination are conducted by the respondents. Since the applicant belongs to SC community, as such respondent No.2 is prejudicial to him and at every occasion whenever he appeared in the departmental examination he was declared unsuccessful though in his work no adverse remarks had been passed. The said respondent issued order dated 21.12.1999 (Ann.A3) whereby he was advised that he was given six chances for qualifying the prescribed departmental examination for the post of DA but he had not passed the same, hence it is proposed to revert him to the post of Accountant. No chargesheet was issued nor any departmental inquiry conducted and the applicant was sought to be reverted. The aforementioned order was challenged by the applicant in OA No.584/99 in which interim relief was given not to terminate services of the applicant till the next date. The interim direction was vacated on 3.2.2000 and thereupon immediately the applicant was sent a telegram on 8.2.2000

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seeking extension of time for acceptance of offer till 11.2.2000. The applicant submitted a representation on 10.2.2000 (Ann.A5) before respondent No.2 stating that if the applicant was not allowed to continue on the post of DA till final decision in the OA, then he tenders his offer of acceptance to work on the post of Accountant. However, without considering the said letter of the applicant in proper perspective, the respondent No.2 has passed the impugned order dated 14.2.2000 by which his further retention in government service was not found justifiable and his services were removed with immediate effect. The contention of the applicant is that he could not have been reverted to the lower post of Accountant without following the provisions of Article 311 of the Constitution and that the nature of work and duties of DA and that of Accountant are exactly same and if the applicant was considered suitable for the post of Accountant there is no valid reason or justification why he is not suitable for DA. It has also been contended that in his letter dated 10.2.2000 whereby he has stated that if he cannot be continued on the post of DA till final decision in the OA, he tenders his acceptance to work on the post of Accountant. He had fulfilled the requirements of the earlier order dated 21.12.99 and he had sent this letter within the requisite extension of time limit up to 11.2.2000. Inspite of this, the action to remove the applicant's service by the impugned order is illegal, arbitrary, unreasonable and unconstitutional and violative of provisions of Article 14 and 311(2) of the Constitution of India. Finally, it has also been contended that in para 2(c) of the appointment letter dated 10.7.1995 it was stipulated that if he is unsuccessful in passing the examination within the number of chances allowed or if he exhausts the prescribed chances by omission to avail himself of any of the available chances, he will entail his/her discharge from service as per rules. This condition is co-related to the condition No.1 a) of the said order in which the probation was fixed for 2 years and within the period of probation no such action could be taken to discharge the applicant and the applicant not only completed the requisite probation period but thereafter rendered satisfactory service for another two years and his case in this respect is covered by the judgment of the Apex Court in the case of State of Punjab v. Daram Singh, AIR 1968 SC 1210.

3. Reply has been filed on behalf of the respondents. It has been stated in the reply that the applicant had failed in passing the DA grade examination within 3 stipulated chances and three additional chances and due to non-passing of the said examination within six chances, the applicant was offered the post of Accountant vide order dated 21.12.1999. It was also advised therein to submit his consent by 31.12.1999, failing which it would be presumed that the proposal for the post of Accountant is not acceptable to the applicant and accordingly you will be removed from service. The applicant instead of submitting his acceptance approached the Tribunal without exhausting the departmental channel available to him. The Hon'ble Tribunal granted the stay order on 31.12.99 and after considering the facts and the rule position vacated the same on 3.2.2000. Thereafter a telegram dated 8.2.2000 was sent to the applicant extending the time of acceptance of offer till 11.2.2000 beyond which the action contemplated in the letter dated 21.12.99 will be taken. In reply to the said telegraphic message, the applicant submitted his conditional acceptance in the letter dated 10.2.2000 as described earlier. This letter dated 10.2.2000 was considered carefully and rejected. After considering the facts and circumstances of the case, the competent authority removed the services of the applicant in the light of the codal provisions incorporated in Manual of Standing Order (Admn. Vol.I) and mentioned in order No. WM/A/cs/OA-584/99/333 dated 14.2.2000 (Ann.R2 in OA No.88/2000) and hence the action of respondent No.2 is fully justifiable as per rules. It has also been stated that DA grade examination is mandatory for completion of period of probation and the same has been referred to in clear terms in the body of the offer of appointment and in the subsequent appointment letter. They stem out of para from 7.5 and 7.2 in the CAG's MSO (ADM) Vol.I and the Gazetted Indian Audit and Accounts Department (Divisional Accountant) Recruitment Rules, 1988. The extracts of these rules has already been brought to the notice of the Tribunal in the reply to OA No.584/99 filed by the same applicant. The applicant has not completed the probation period in view of the said terms and conditions and the question of his completing the period of probation successfully does not arise. The applicant was liable to be removed from service on failing in

the DA grade examination, but after careful consideration of the case, the applicant was offered a fresh appointment as Accountant in the lower grade. There was no question of issuing any chargesheet or initiating departmental action. Removal from service for non-passing of departmental examination is mandatory and a condition of appointment and it can, therefore, in no way be related the provisions in Article 311(2) of the Constitution. It has been denied that the post of DA and Accountant are similar as they are governed by their respective recruitment rules and carry different pay scales. The applicant was given another opportunity to submit his acceptance for the post of Accountant by Telegraphic message dated 8.2.2000 but he tendered a conditional acceptance which was duly considered and rejected by the competent authority in the light of the position as stated thereinbefore. In view of this, there is no violation of Article 14 and 311 (2) of the Constitution of India as the applicant has not completed the probation period, the question of confirmation does not arise and the judgment of the Apex Court referred to by the applicant is not relevant in his case. Further, when the stay order dated 31.12.1999 was vacated by the Hon'ble Tribunal, the applicant should have joined the post of Accountant immediately but he continuously avoided his joining the said post inspite of telegram dated 8.2.2000, the OA is, therefore, liable to be dismissed.

4. We have heard the learned counsel for the parties and have perused the material on record.

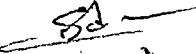
5. It is quite clear that passing of the departmental examination within the stipulated chances was a pre-condition of successful completion of the probation period and confirmation. The condition was well within the knowledge of the applicant through the offer of appointment as also the appointment letter. It is also mentioned in the offer of appointment that in case one is unsuccessful in passing the examination within the number of chances allowed or if exhausted the prescribed chances of omission to avail himself of the available chances, he will entail his/her discharge from service as per rules. Instead of removing the applicant from service, the department sought his acceptance for being

appointed on the post of Accountant within the given stipulated period but the applicant first files an OA in this Tribunal and after the ex-parte stay order was vacated, he instead of accepting the offer, gave a conditional reply which was rejected by the competent authority. It is also clear that there is no violation of Article 311(2) or Article 14 of the Constitution of India in the instant case.

6. The applicant belongs to the SC community and has not probably been able to properly appreciate the fact that he having not been able to pass the departmental examination for Divisional Accountant within the maximum stipulated six chances, it was in his interest to make up his mind and decide once for all whether he will accept the offer of appointment to the lower post of Accountant or not. This being the case, we would like the respondents to be magnanimous and give one more opportunity to the applicant to exercise his option to either accept or not accept the offer of appointment to the post of Accountant.

7. We accordingly dispose of these OAs with a direction to the respondents to give the applicant a fresh opportunity within one week of receipt of a copy of this order and ask the applicant to send/deliver personally within 15 days of the date of issue of the said letter by the respondents, his acceptance to the post of Accountant, failing which the respondents will be free to take the action on the lines of the order dated 14.2.2000.

Parties to bear their own costs.


(N.P. NAWANI)
Adm. Member

TRUE COPY ATTESTED


(S.K. AGARWAL)
JUDL. MEMBER

Section Officer (Judicial) 04/04/2000
Central Administrative Tribunal
Jaipur Bench, JAIPUR

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