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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH ::: GUWAHATI-5.

O.A.No. 110 of 1994.

DATE OF DECISION.....22-5-1998.....

!! Sri L.Krishna Gopal Singh (PETITIONER(S))

Sri G.K.Bhattacharyya

ADVOCATE FOR THE
PETITIONER(S)

VERSUS

Comptroller and Auditor General of India RESPONDENT(S)
& Ors.

Sri G.Sarma, Addl.C.G.S.C


ADVOCATE FOR THE
RESPONDENTS.

THE HON'BLE JUSTICE SHRI D.N.BARUAH, VICE CHAIRMAN

THE HON'BLE SHRI G.L.SANGLYINE, ADMINISTRATIVE MEMBER.

1. Whether Reporters of local papers may be allowed to see the Judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the judgment ?
4. Whether the Judgment is to be circulated to the other Benches ?

Judgment delivered by Hon'ble Vice Chairman.



CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 110 of 1994.

Date of Order : This the 22nd Day of May, 1998.

Justice Shri D.N.Baruah, Vice-Chairman

Shri G.L.Sanglyine, Administrative Member.

Shri L.Krishna Gopal Singh,
Divisional Accountant,
Office of the Executive Engineer,
Electrical Division No.1, P.W.D.,
Manipur, Imphal.

... Applicant

By Advocate Shri G.K.Bhattacharyya.

- Versus -

1. Comptroller and Auditor General of India,
New Delhi.
2. Accountant General (A&E),
Meghalaya etc. Shillong.
3. Chief Engineer, (Electrical)
P.W.D., Manipur, Imphal.
4. Executive Engineer,
Electrical Division,
No.1, P.W.D. Manipur, Imphal.

... Respondent


By Advocate Shri G.Sarma, Addl.C.G.S.C.

O R D E R

BARUAH J.(V.C)

This application has been filed challenging the Annexure-IV order dated 16.5.1994 issued by the Senior Deputy Accountant General (A&E), Meghalaya etc. The applicant seeks for an order directing the respondents not to release him from his post of Emergency Divisional Accountant. He further prays that the Tribunal may give direction to the respondents to allow the applicant two additional chances to appear in the Divisional Accountant Grade Examination pursuant to the Annexure-V circular dated 2.12.1993 issued by the first respondent-the Comptroller and Auditor General of India.

2. The facts are :-

 The applicant was an employee under the Accountant

General, Manipur, Imphal. The applicant was appointed to officiate as Divisional Accountant and posted at Ukhrul Division, P.W.D., Manipur by the Accountant General (Accountant Meghalaya etc. Shillong vide his order dated 12.3.1987. In the said order it was stated that the applicant would be absorbed in the cadre of Divisional Accountant subject to the passing of the prescribed examination within the stipulated chances and availability of the vacancies. The applicant joined the service and since then he had been continuously serving under the Accountant General, Meghalaya. The applicant is at present posted as Divisional Accountant Electrical Division No.1, P.W.D. Manipur, Imphal. According to the applicant as per the existing circular an Emergency Divisional Accountant can appear in the Examination six times and the respondent No.1 has the power to give additional chances beyond the maximum of six. But the respondents were not seriously insisting on the applicant to appear in the test. However, suddenly from 1990 the second respondent passed orders reverting some of the EDA back to their parent department on the ground they did not qualify within the maximum number of chances. Some other Divisional Accountants approached the Tribunal against the said order of reversion in O.A.196/90 and other cases. This Tribunal decided the same by order dated 17.5.1991 with the direction that the Divisional Accountants should be given six chances physically to qualify in the test. But the applicant could not come out successful and thereafter he received letter dated 1.10.1992 from the second respondent whereby the applicant had been reverted to his parent department under the Accountant General, Manipur. The order also directed the fourth respondent to release the applicant immediately. The applicant has stated that till then he had put in about six years of continuous service under the Accountant General.

and his reversion would ~~amount~~ be to arbitrary and illegal. The applicant further stated that actually he had availed of only 5 chances and he was entitled to avail two more chances before he was finally released. In O.A.203/92 this Tribunal among others gave a direction as follows :

"After counting the number of chances in this manner those who have physically availed of all the six chances shall be given one additional special chance for appearing in the test to be held in 1993 with atleast one months prior notice for preparations, and if no examination is held in 1993 hereafter, then in 1994 in the first examination with one months notice."

Thereafter, the Tribunal further observed in the said case that those who have not availed of six physical chances shall be given the remaining chances so as to make a total of six chances for passing the departmental test. In their cases if they do not avail of any future chance they would be deemed to have appeared for the purpose of counting the total number of chances. Besides the Tribunal further directed that if any of these applicants succeed in the test to be held in future within the chances computed in the manner stated above, he shall be considered for absorption as Divisional Accountant. Those who fail will be liable to be repatriated to their parent department. After that order the applicant availed of five chances and now he is required to pass only Book Keeping and General Accounts. Thereafter Annexure-V order dated 2.12.1993 was issued by the Comptroller and Auditor General of India by which two special chances were allowed to those who could not come out successful within the six chances. However, this was not given to the applicant. Hence the present application.

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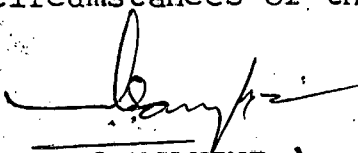
3. We have heard Mr G.K.Bhattacharyya, learned counsel appearing on behalf of the applicant and Mr G.Sarma, learned Addl.C.G.S.C for the respondents. Mr Bhattacharyya submits that exactly on the similar facts two cases were already allowed namely, O.A.No.144/94 and 165/94. By the said orders this Tribunal gave two more chances. In the order passed in O.A.144/94 dated 10.4.1997 this Tribunal observed as follows


"In paragraph 9 of the written statement the respondents have stated that the two special chances to the EDAs who have exhausted their normal chances as one time measure was applicable to those EDAs only who have filed applications before the Tribunal, provided they withdrew their cases and submit a copy of the order of the Tribunal allowing them to withdraw their cases alongwith the request for the special chances. In our view the circular does not speak of this. This provision, in our view, was for those EDAs who were then litigating either before the Hon'ble High Court or the Tribunal. That, however, does not mean that those who were not before the Hon'ble High Court or the Tribunal would be debarred from getting the chances. Accordingly we reject the submission.

"Considering all these we are of the opinion that the submission of the applicant has much force in it. We therefore, set aside Annexure-4 order dated 16.5.1994 and direct the respondents, more specifically the second respondent to give the next available two chances to the applicant and till then the applicant shall not be reverted to his parent department."

Mr G.Sarma, learned Addl.C.G.S.C does not dispute that this present case is squarely covered by the aforesaid judgment. Considering these we set aside the Annexure-IV order dated 16.5.1994 and direct the respondents, more particularly the second respondent, to give the next available two chances to the applicant and till then the applicant shall not be reverted to his parent department.

4. The application is allowed. However, in the facts and circumstances of the case we make no order as to costs.


(G.L.SANGLYINE)
ADMINISTRATIVE MEMBER


(D.N.BARUAH)
VICE CHAIRMAN