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

O.A. NO. 144 of 1994  
T.A. NO.

DATE OF DECISION 10.4.1997

Shri Weikham Amerjao Singh

(PETITIONER(S))

Mr G.K. Bhattacharyya and Mr G.N. Das

ADVOCATE FOR THE  
PETITIONER (S)

VERSUS

Union of India and others

RESPONDENT (S)

Mr S. Ali, Sr. C.G.S.C.


ADVOCATE FOR THE  
RESPONDENT (S)

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

THE HON'BLE MR 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

  
2.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

Original Application No.144 of 1994

Date of decision: This the 10th day of April 1997

The Hon'ble Mr Justice D.N. Baruah, Vice-Chairman

The Hon'ble Mr G.L. Sanglyine, Administrative Member

Shri Weikham Amerjao Singh,  
Divisional Accountant,  
Minor Irrigation Division No.1,  
Minor Irrigation Department,  
Imphal.

.....Applicant

By Advocate Mr G.K. Bhattacharyya and Mr G.N. Das.

- versus -

1. The Comptroller and Auditor General of India,  
New Delhi.
2. The Accountant General (A&E),  
Meghalaya etc., Shillong.
3. The Additional Chief Engineer,  
Minor Irrigation, Manipur,  
Lamphelpat.
4. The Executive Engineer,  
Minor Irrigation Division No.I,  
Lamphelpat, Imphal.

.....Respondents

By Advocate Mr S. Ali, Sr. C.G.S.C.

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O R D E R

BARUAH.J. (V.C.)

This application has been filed challenging Annexure-4 order dated 16.5.1994 issued by the respondent No.2 - Accountant General (A&E), Assam, Meghalaya, etc. The applicant also prays for an order directing the respondents not to release the applicant from his post of Emergency Divisional Accountant. He also prays for further direction to the respondents to allow the applicant to appear in the two additional examinations pursuant to Annexure-7 Circular dated 2.12.1993 issued by the 1st respondent - the

Controller and Auditor General of India.

2. The facts of the case are:

The applicant was an employee under the Chief Engineer, P.W.D., Manipur, Imphal. On 21.2.1980, the applicant was appointed unqualified Divisional Accountant, also known as Emergency Divisional Accountant (EDA for short). As per the circular that existed at that time an EDA could appear in the departmental examination for six times and the respondent No.1 had the power to give additional chances. In spite of that the respondents were not interested in insisting the Accountants to appear in the examination. From 1990 the second respondent passed orders reverting some of the EDAs back to their parent department on the ground that they failed to pass in the departmental examination. Some of the EDAs approached this Tribunal by filing some original applications, viz. O.A.No.196 of 1990 and other original applications. This Tribunal by a common judgment and order dated 7.5.1991 held that the Accountants had to be given six physical chances to qualify in the test. Though those chances were available to the applicant he could avail of only one chance till 21.3.1991, and on that day the second respondent passed orders reverting the applicant to his parent department.

Being aggrieved by the order of reversion, the applicant and nine others filed original applications, O.A.No.72/91 and some other applications before this Tribunal challenging the order of reversion. Earlier to that this Tribunal had disposed of O.A. No.196/90 and other cases holding that the EDAs ought to be given six physical chances. Pursuant to the said order the applicant was entitled to get five more chances, but due to various difficulties the applicant could appear in only two examinations. However, he could not come out successfully. The applicant could not appear in the next four chances. On 16.5.1994, as the applicant

failed.....

failed to physically appear in the other four chances, by Annexure-4 order dated 16.5.1994 the applicant was reverted to his parent department. Situated thus, the applicant submitted Annexure-V representation on 31.5.1994. On 13.7.1994 by Annexure-Vi telegraphic message, the second respondent directed the authority to release the applicant. On enquiry, after the said order of reversion, the applicant came to know about the Annexure-7 circular dated 2.12.1993. We have perused Annexure-7 circular. According to the circular as a one time measure the EDAs who were still holding the post would get another two additional chances. We quote the relevant portion of paragraph 2 of the said circular.

"2. It has been decided that as a one-time measure the Emergency Divisional Accountants who have exhausted their normal chances and who are in position as E.D.A.s as on the date of receipt of this letter may be given a maximum of two special chances to pass the Divisional Accountants Grade Examination. This is subject to the conditions that those E.D.A.s who have filed applications or petitions before the CAT or High Court, the two special chances will be allowed only if they withdraw their cases and submit a copy of the order of the Court or Tribunal allowing them to withdraw their cases, alongwith the request for the special chances....."

According to the applicant over and above the six chances allowed by the earlier circular, as a one time measure the applicant who was still in position of EDA on the date of issue of Annexure-7 circular should get another two chances. However, the case of the applicant was not considered. Hence the present application.

3. In usual course written statement has been filed by the respondents disputing the claim of the applicant and also an additional written statement. In the additional written statement it has been stated that the applicant was not entitled to get additional two chances in view of the fact that he failed to physically appear in the remaining five tests, and therefore, the remaining chances as per the earlier circular remained

unexhausted.....

unexhausted, and therefore, the applicant was not allowed to avail of the two additional chances.

4. Heard Mr G.K. Bhattacharyya, learned counsel for the applicant assisted by Mr G.N. Das. Also heard Mr S. Ali, learned Sr. C.G.S.C. and Mr G. Sarma, learned Addl. C.G.S.C. Mr Bhattacharyya submits before us that the authority was wrong in holding that the applicant was not entitled to get the additional two chances in view of the fact that the applicant failed to appear in the remaining chances out of the six chances. On the other hand, Mr G. Sarma has also argued that in view of the fact that there was no physical appearance in the remaining chances the additional chances will not be available to the applicant. Mr Bhattacharyya submits that availing of chances does not mean that the applicant should appear in the examination and that even if the applicant fails to appear in some of the chances, it will be deemed to be an exhaustion of the chances. In this connection the learned counsel has drawn our attention to a decision of this Tribunal in O.A.No.72/91, Shri W.A. Singh -vs- Union of India, alongwith other cases. Mr Bhattacharyya has specifically pointed out to us to paragraph 9 of the said judgment. We have gone through the judgment and more specifically para 9 of the said judgment. Para 9(c) of the judgment is relevant in the present controversy. We quote para 9(c).

"Fourthly, 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 could not avail of any future chance they would be deemed to have appeared for the purpose of counting the total number of chances."

The direction given by the Tribunal in para 9(c) is very clear. According to the direction not only those who appeared and were unsuccessful, but also those who failed to appear would be deemed to have exhausted the chances. In our opinion, the

applicant.....

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applicant who failed to appear in the remaining chances had exhausted the chances given to him as per the earlier circular and when he had exhausted all the chances available to him, the condition given in the Annexure-7 circular would be attracted only if the applicant was still continuing as EDA. The said circular is also very clear that it was a one time measure and was applicable to those persons who exhausted the chances available to them and was still continuing as EDA on the date of receipt of the said circular by the Department. Admittedly, on the date of receipt of the said circular by the Department, the applicant was serving as EDA. This factual aspect of the matter has not been disputed by the other side.

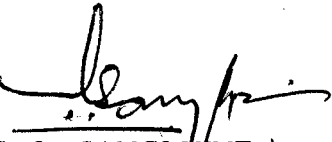
5. In view of the above we are of the opinion that the applicant is entitled to two additional chances pursuant to Annexure-7 circular dated 1.12.1993.

6. 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.

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7. 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.

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

  
( G. L. SANGLYINE )  
MEMBER (A)

  
( D. N. BARUAH )  
VICE-CHAIRMAN