

RESERVED on 10.01.2018

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD

This the 19th day of January, 2018.

PRESENT:

HON'BLE DR MURTAZA ALI, MEMBER- J.  
HON'BLE MR. GOKUL CHANDRA PATI, MEMBER- A

ORIGINAL APPLICATION NO. 608 of 2010

Veda Nand Sharma, Account Clerk Army School, Meerut Cantt. Meerut S/o Sri Birbal Sharma, R/o House No. 239, Ghopa Road Rethan Meerut.

...Applicant

VERSUS

1. Chairman, Army School Meerut Cantt, Meerut Head Quarter Meerut, sub-area Meerut.
2. Principal, Army School Meerut Cantt, Meerut.

.... Respondents

Advocate for applicant : Shri K K Yadav

Advocate for the respondents : Shri A N Shukla

ORDER

DELIVERED BY HON'BLE MR. GOKUL CHANDRA PATI, MEMBER- A

This applicant has filed this OA seeking the following reliefs:-

"(i) To issue a writ, order or direction in the nature of Certiorari quashing the impugned order dated 18.12.2009 passed by the respondent no. 2 (contained as Annexure No. A1 to this 1st compilation)

(ii) To issue a writ, order or direction in the nature of mandamus directing the respondents to promote the petitioner to discharge his duty as Accountant.

(iii) To issue any other writ, order or direction in any nature at this Hon'ble Tribunal may deem fit and proper under the facts and circumstances of the case.

(iv) Award the cost in favour of the petitioner.

2. Facts of this case as per the OA are that the applicant was appointed as Accountant by the respondent No. 2 vide order dated 23.05.1995 (Annexure A-2 to the OA). His services were confirmed on 20.01.1997. It is stated that subsequently the post of accountant was re-designated as Accounts

Clerk. Before retirement on 31.01.2010, the applicant submitted a representation dated 18.12.2009 to consider his case for promotion to the post of Accountant against the retirement vacancy. But the respondents did not accept the same and informed the applicant vide the impugned letter dated 18.12.2009 (Annexure A-1 to the OA) that there is no provision for promotion to Accountant as the post is filled up by direct recruitment in which the applicant can apply, but if selected, it will be treated as fresh appointment. The applicant is aggrieved by this decision of the respondents.

3. The respondents in the Counter Affidavit (in short CA) have stated that the post of Accountant is being filled up by direct recruitment it is not a promotional post. The qualification for Accountant is graduate whereas the applicant is an intermediate. The respondents selected one Neeraj Jain for the post of Accountant through an open advertisement, who is not made a party in this case. There is no post of Accountant vacant in the school. It was also stated that the applicant was appointed as Accounts Clerk, but by inadvertent mistake, the word "Accountant" was mentioned in the appointment letter issued to the applicant. His services were confirmed as Accounts Clerk on 20.01.1997 and this has been accepted by the applicant, who is also working as Accounts Clerk and not as Accountant. Since the post of accounttant is not a promotional post, the letter dated 18.12.2009 of the applicant was not accepted.

4. The applicant has filed Rejoinder affidavit (in short RA) wherein it is stated that the facts in the CA are not correct. In reply to the para 15 of the CA that the applicant was appointed as Accounts Clerk, the post on which he was confirmed on 20.1.1997, it is mentioned in the RA that the contention is not correct.

5. Heard the counsels for the parties. Learned counsel for the applicant submitted that the applicant was appointed as Accountant, but the respondents utilized him as Accounts Clerk and also confirmed him on 20.1.1997. But his prayer for promotion to the vacant post of Accountant was not accepted by the respondents illegally.

6. Learned counsel for the respondents submitted that the applicant was appointed as Accounts Clerk and he was confirmed as such, which was accepted by the applicant. His representation for promotion to the post of Accountant was rejected as it is a direct recruitment post. To a query, it was clarified he mentioned that the pay scale mentioned in the appointment letter dated 23.05.1995 to the applicant is the pay scale for Accounts Clerk, not for Accountant.

7. We have considered the submissions and the pleadings by the parties in this case. The applicant has admitted that although he was appointed as Accountant, but he was assigned to work as Accounts Clerk from the date of his appointment and this was not objected by him. He did not represent to be given the pay scale applicable for Accountant in case the pay scale given to him as per the appointment letter was not applicable for an Accountant. There is no such plea taken by the applicant in the pleadings. When he was confirmed as Accounts Clerk vide order dated 20.01.1997, the applicant also kept quiet and accepted the same. He never put forth his claim to work as Accountant till 18.12.2009, i.e. till more than 14 years after his appointment. It is noted that the respondents in paragraph 15 of the CA have taken a stand is that the applicant was appointed as Accounts Clerk, but it was mentioned as

Accountant in the appointment letter by mistake and the applicant was confirmed in the said post (i.e. Accounts Clerk). In reply, the applicant has simply denied the contention, without furnishing any evidence to the contrary.

8. In reply to the contention in the CA that the post of Accountant is a direct recruitment post in support of which a copy of the advertisement for the post of Accountant was enclosed, the applicant in the RA has simply denied it and attached a copy of the promotion order of one LDC to UDC, which is not relevant for filling up of for the post of Accountant. In absence of any evidence other than what has been furnished in the CA, the contention of the respondents that the post of Accountant is a direct recruitment post is established.

9. In view of above, it is clear that the applicant has continued to work as Accounts Clerk for more than 14 years after his appointment and did not object when he was given pay scale of Accounts Clerk and confirmed as Accounts Clerk. Hence, the contention of the applicant that he was appointed as Accountant is not acceptable. The appointment letter mentioned "Accountant" by mistake as contended in the CA, but the applicant was actually appointed as Accounts Clerk and worked as such. He never raised the issue of the discrepancy between his designation as per the appointment letter and his actual duty before the respondents. It is noted that in the representation dated 18.12.2009 (Annexure A-2), the applicant has signed with designation as "Accounts Clerk". As discussed in paragraph 8 of this order, the contention of the respondents that the post of Accountant is a direct recruitment post is established. Hence, the claim of the applicant in letter dated 18.12.2009 to promote him to the post of Accountant as against retirement vacancy cannot be accepted and it has been correctly rejected by the respondents.

10. In the circumstances, we do not find any merit in the OA. The OA is accordingly dismissed. No costs.

(GOKUL CHANDRA PATI)  
MEMBER-A

(DR. MURTAZA ALI)  
MEMBER-J

Anand...