

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
OA/050/00339/18

Date of Order: 26.02.2019

CORAM

**HON'BLE MR. JAYESH V. BHARAVIA, JUDICIAL MEMBER
HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER**

Rajesh Kumar Mishra, Son of Sri Anil Kumar Mishra, resident of Anand Bigha, Bhikhanpur, PS - Kotwali, District- Bhagalpur (Bihar) and at present posted as Accountant in the office of the Accountant General (A&E), Bihar, Patna.

..... **Applicant.**

By Advocate: - Mr. G. Bose, Sr. counsel with Mr. Vikash Jha

-Versus-

1. The Union of India through the Comptroller Auditor General of India, New Delhi.
2. The Accountant General (A&E), Secretariat, Bihar, Patna- 800001.
3. The Senior Deputy Accountant General (Administration), Secretariat, Bihar, Patna- 800001.
4. The Deputy Accountant General (Works), Secretariat, Bihar, Patna- 800001.
5. The Senior Accounts Officer, Office of the Accountant General (A&E), Bihar, Patna.
6. Shri Prabhat Ranjan
7. Shri Dharmendra Kumar Purshuttam
8. Shri Pankaj Kumar
9. Shri Rakesh Chandra Srivastava.

10

Respondents.

By Advocate: - Mr. S.K. Tiwary

ORDER
[ORAL]

Per Dinesh Sharma, A.M:- The case of the applicant is that he had applied against notification issued by the Staff Selection Commission for appointment to the post of Divisional Accountant under Combined Graduate Level Examination, 2010. He joined as Divisional Accountant (Probationer) on 03.02.2012. The Accountant General, Bihar, Patna by his

order dated 10.03.2016 accorded permission to three candidates including the applicant to appear in the Divisional Accountant Grade examination to be held w.e.f. 14.03.2016 to 18.03.2016. He was issued an admit card and he along with 3 others passed this examination held on March, 2016. However, he was astonished to receive a letter dated 8.03.2018 by Sr. DAG, Bihar, Patna (Respondent No. 3) by which he has been asked to show cause why his service should not be terminated. Though he gave a reply to this show cause notice, without taking it into consideration, he was relieved from the Flood Control and Drainage Division, Kishanganj on 19.03.2018, with direction to report before the Dy. Accountant General (works) (Respondent No. 4). The respondent no. 4 issued an order, dated 20.03.2018, stating that since he had not passed the required examinations within the maximum extended probation period of 4 years, his services were terminated w.e.f. 20.03.2018. On the very next date (i.e. 21.03.2018) quoting his willingness, he was issued appointment order to a temporary post of Accountant in the office of AG(A&E), Bihar, Patna (Refer Annexure A/10). The applicant has requested for quashing these orders. since he has already passed the concerned Departmental Examination, though not within the maximum extended period of four years. Appointing him now to the post of Accountant amounts to a reversion which is a punishment given to him without any reasonable cause and without following any laid down procedure or norms of natural justice.

2. The respondents have denied the claim of the applicant in their written statement. They have alleged that the terms and conditions relating

to probation period and passing of departmental examination were mentioned in different paras of offer of appointment. Normally, only three chances are allowed to pass the examination. However, if the Accountant General (A&E), Bihar, Patna is satisfied that there are special justifying circumstances he may allow three additional chances. The applicant was allowed three normal chances along with additional chances to pass the examination. In terms of provision contained in HQ Office letter No. 1957-Staff (App-II)/64-2015/Vol. II dated 28.12.2015, "as per the existing instructions of GOI in matter of probation, the probation period may be extended upto a period equal to double the normal probation period, i.e. the probation should not be extended beyond 4 years". Since the applicant did not clear the examination within the extended period of probation which ended on 02.02.2016 he was directed to show cause why his service should not be terminated. In the light of the case record and representation of the applicant he was terminated from the post of Divisional Accountant (Prob.) w.e.f. 20.03.2018. However, the applicant was offered an appointment as an Accountant if he was willing to join as such vide office letter dated 20.03.2018. The petitioner has submitted his willingness and joined as an Accountant on 21.03.2018. The respondents also mentioned about two disciplinary actions taken against the applicant during the period of probation for which he was penalised with stoppage of increments.

3. The applicant has filed a rejoinder in which, besides repeating his earlier contentions, he has alleged that the disciplinary action mentioned in the written statement are not connected with his termination

and therefore are irrelevant. Since the Department had already allowed him an opportunity to sit in the examination even after the conclusion of four years period, they cannot deny him confirmation after he has passed this examination in which he was allowed to appear. He has cleared his examination in the 5th chance, i.e. three normal chances plus two extended chances which is quite within the rules. So far as 4 years are concerned, the applicant alleged that there are about 46 such persons who had been confirmed after working more than 4 years on probation and he could provide these details to this Tribunal. Thus, the period of four years cannot be considered as an inviolable deadline. He also annexed a copy of the letter dated 28.12.2015 (Anexure A/11) (which was quoted by the respondents to support the 4 years maximum probation rule). He alleges that it was issued in the context of another staff member (and therefore should not be applicable to him). He has also explained that he had no option but to accept the offer of appointment as Accountant when the order of termination from the Divisional Accountant was served on him.

4. After having gone through the pleadings and hearing learned counsels of both the parties, we find that the only issue which needs to be decided here is whether the respondents were right in terminating the applicant's appointment even though he had passed the departmental examination (for which they had themselves provided him an opportunity to appear) only because he had not done so within a period of four years. The applicant's challenge to this is mainly on ground that (i) the respondents have themselves allowed the applicant to appear again in the required

examination, and (ii) there are a number of cases in which probation has been extended beyond four years. At the time of arguments, the applicant produced a gradation list of Senior Divisional Accountant officers as on 01.03.2017. It clearly shows that there is a large number of cases in which the date of passing exam is beyond four years of the date of joining. The list also includes a person who entered the service in the same year as the applicant (26.11.2010), and passed the exam in September, 2015. In such a situation, singling out the applicant (and 3 other persons along with him) for termination only on ground that they had not passed the examination within four years is wrong. The respondents have not produced any clear Rule absolutely prohibiting confirmation after 4 years of probation. The letter of 28.12.2015 (quoted by them but produced by the applicant) mentions not extending the probation period beyond double the original. However, the respondents have, undisputedly, violated this rule in such a large number of cases, so as to make this rule appear to have been followed only in the breach. It is obvious that the applicant had no option but to agree to work as Accountant when the threat of termination was put against him and hence his consent is not a free consent. Considering that acceptance as an estoppel against the applicant to raise his rightful claim will be wrong. Under these circumstances, we allow the OA. The order dated 20.03.2018 (Annexure A/1) is hereby quashed. The respondents shall immediately reinstate the applicant as Divisional Accountant and also pass orders confirming the applicant to that post since he has already passed the relevant examination required for such confirmation. Necessary orders in

this regard should be passed within one month of the receipt of this order.

No order as to costs.

[Dinesh Sharma]
Administrative Member
Srk.

[Jayesh V. Bhairavia]
Judicial Member