

**CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
OA/050/00085/16**

Reserved on: 29.07.2019
Date of Order: 31.07.2019

C O R A M

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

Anshuman Kumar, son of Mauleshwar Prasad, resident of Road No. 9B, Rajiv Nagar, P.O.- Kesri Nagar, P.S.- Rajiv Nagar, District- Patna.

.... **Applicant.**

By Advocate: - Mr. S.K. Bariar

-Versus-

1. The Union of India through the Comptroller & Auditor General of India, New Delhi.
2. The Accountant General, Bhubaneswar, Odisha.
3. The Accountant General, Allahabad, Uttar Pradesh.
4. The Dy. Accountant General, O/o the Principal Accountant General (A&E), Odisha, Puri Branch, Puri.
5. The Sr. Dy. Accountant General, O/o the Accountant General (A&E)-II, Allahabad (UP).

.... **Respondents.**

By Advocate: - Mr. Arun Kumar Arun.

O R D E R

Per Dinesh Sharma, A.M:- The facts of the case, in brief, are as follows:-

2. The applicant was appointed as Divisional Accountant in the office of Principal Accountant General (A&E), Odisha, Puri Branch, Puri vide offered letter dated 15.12.2011 after qualifying in the examination conducted by the Staff Selection Commission. He joined the post of Divisional Accountant (P) on 02.01.2012. As per the rules and regulations, there is two years' probation period which can be extended for another

maximum two years for confirmation to the post of Divisional Accountant and in the meantime, the probationer has to complete 8 months training and thereafter pass the Divisional Accountant Grade examination. He can appear in this examination only after completion of one-year probation period during which he has to successfully complete 8 months training. The applicant alleges that he became seriously ill and had to remain away from duty due to prolonged illness from 10.09.2012 till 19.01.2015 and joined back on 20.01.2015. This period was later ordered to be treated as "unauthorized absence resulting in break in service" and the break in service was condoned "for the purpose of pension only". The applicant approached his controlling authority at Puri for allowing him to appear in the Divisional Accountant Grade examination in March, 2015 and later in September, 2015, but the authorities at Puri did not allow him to appear. In the meanwhile, the applicant came on a mutual transfer to Accountant General's office in Allahabad in the month of September, 2015 where he was asked to appear in the exam scheduled in that month. Though the applicant was reluctant he alleges that he was compelled to appear in the exam and he failed to clear all the examination papers. Following this, the Dy. Accountant General (A&E)-II, U.P. Allahabad has terminated his services by order dated 31.12.2015 stating the reason of his not passing the Divisional Accountant Grade exam within the maximum limit of four years' probation period. The applicant has challenged this order mainly on the ground that he was not given sufficient opportunities to pass the exam. Since he had, in effect, less than one-year continuous service after his return

from medical absence, this examination could not be held for him under the rules. The applicant has prayed for quashing the aforesaid order dated 31.12.2015.

2. The respondents have denied the claim of the applicant. Besides stating that it is barred by period of limitation they have alleged that the termination of applicant, for failure to pass the required qualifying examination within the maximum extended prescribed period of probation, makes him liable for termination. Even during this period of probation, he had been away on unauthorized absence for a very long period (of about two and half years) for which a disciplinary action was taken against him and the unauthorized absence period was not regularized except for purposes of pension. Since the applicant had worked for about 8 months prior to his unauthorized absence and more than four months after his re-appearance (on 20.01.2015) the applicant did complete one-year service and was therefore eligible to take up the examination. Thus, there was no violation of rules in giving him an opportunity to appear in the examination conducted in September, 2015. His failure in this examination rendered him ineligible to continue in service and hence the termination.

3. The applicant has filed a rejoinder in which he reiterated his earlier claims and enclosed copies of the note sheets relating to the decision taken at the DAG's office at Puri where it was stated that he was non-eligible to appear in the DA Grade exam to be held in September, 2015.

4. We have gone through the pleadings and heard the arguments of the learned counsels of both the sides. There is, more or less, no dispute

regarding the facts. While the applicant claims that his probation should be extended and he should be given further opportunity to pass the required exam, the respondents have stuck to their stand that the applicant has become ineligible for getting any further extension or confirmation because of his inability to pass the exam within the maximum prescribed probation period of four years. There is no dispute about the fact that the applicant remained away from duty for a major part of his probation period which he could not explain properly and which was condoned only for the purpose of pension. The applicant obviously cannot take advantage of his own fault and ask for the period of probation to be extended on this ground. The only reason the applicant's case could be given some consideration is the contradictory findings of DAG, Puri and the DAG's office at Allahabad. It is true that the applicant's request for appearing in the exam was disallowed by the Puri office but the office at Allahabad, where the applicant came on his own will, found it correct to give him an opportunity to appear in the examination scheduled to be held in September, 2015. We find that the decision of the DAG, Allahabad, which is also in line with the applicant's own request made before the Puri DAG office, is a more correct interpretation of the rule regarding one-year service before becoming eligible to appear in the examination. It is nobody's case that the rule required one year's continuous service. Therefore, the interpretation taken by the Puri Office, about counting his service as starting only after his return from unauthorized absence, is obviously not correct. We feel that the DAG office at Allahabad actually did a favour to the applicant by giving him an

opportunity to appear in the examination despite his having remained unauthorisedly absent for a long period of time. By giving this opportunity, he was given a chance to satisfy the condition for confirmation, despite his bad record earlier. Since the termination is strictly as per the rules, and since the applicant has not passed the required examination within the maximum prescribed period of four years, we do not find any reason to interfere with that order. The OA is accordingly dismissed. No order as to costs.

[Dinesh Sharma]
Administrative Member
Srk.

[Jayesh V. Bhairavia]
Judicial Member