IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.22446 of 2018

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Sanjeev Kumar, son of Sri Birendra Prasad Chaudhary, Resident of Flat No.14, Vishal Kung Apartment, Near Arbind Mahila College, Kajipur Road No.4, Rajendra Nagar, Patna- 4.

... ... Petitioner/s

Versus

1. The Union of India through Chief Accountant, Lok Nayak Bhawan, New Delhi-110001
2. The Under Secretary to Government of India and Auditor General, Ministry of Personnel Public Grievances, Lok Nayak Bhawan, New Delhi-110001
3. The Principal Accountant General, office of the Accountant General, Biar Chand Patel Path, Patna-800001.
4. The Accountant General (A & E) cum Appellate Authority, Bihar, Bir Chand Patel Path, Patna- 800001.
5. The Senior Deputy Accountant, General (Works) Office of the Accountant General (A & E), Bir Chand Patel Path, Patna- 800001.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Yugal Kishore, Senior Advocate
		Mr.Virendra Prasad, Advocate
		Ms. Nutan Sahay, Advocate
For the A. General	:	Mr. Prabhat Ranjan, Advocate
		Mr. Chandan Kumar, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE JUSTICE SMT. ANJANA MISHRA
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 14-05-2019

Heard learned counsel for the petitioner.

The defects as pointed out stands ignored.

We have considered the submissions raised. The petitioner after having been appointed was required to undergo a departmental examination, namely, the Divisional Accountant Grade Examination as is evident from the Circular of the

Accountant General, Bihar, dated 3rd of February, 2011. The relevant provision is extracted hereinunder:-

> "They will be allowed to appear in the Divisional Accountant Grade Examination only after a training of at least one year.
>
> > (v) Three normal chances are allowed to pass the examination during the period of probation. However, if the Accountant General (A&E), Bihar, Patna, is satisfied that there are special circumstances justifying the concession may allow at his discretion three additional chances.
>
> If he/she is unsuccessful in passing the Divisional Accountant Grade Examination within the prescribed number of consecutive chances (including additional chances, if allowed) allowed or exhaust the chances by not availing himself/herself of any of the available chances, he/she is liable to be removed from service."

It is undisputed that the petitioner had been offered these chances and having not cleared the examination, his services were dispensed with vide order dated 10th of November, 2015.

Learned counsel for the petitioner has made a two-fold submission. Firstly that an appeal had been filed against the order dated 10.11.2015 which is pending and, therefore, the Tribunal could not have proceeded to decide the claim on merits. Secondly, it is urged that some other person namely

Amalam Kusum Das is being continued in service in similar circumstances and, therefore, the action of the respondents is discriminatory and violative of Article 14 of the Constitution of India.

The Tribunal proceeded to pass the order rejecting the original application on 29th of May, 2017, impugned herein, and is extracted hereinunder:

> "The applicant has filed this O.A. challenging the order dated 10.11.2015 (Annexure-A/4) whereunder, he was removed from the post of Accountant (Probationer) from Government service. In the speaking order, it has been clearly mentioned that Shri Sanjeev Kumar No. II, Divisional Accountant (Probationer) was allowed three normal chances and three additional chances as per provision contained in Para (6) of Annexure-II of CAG's MSO (Admn.) Vol. I to pass the required examination but he failed to pass the said examination.
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> 2. Since the applicant failed in the departmental examination, his period of probation was not extended and was removed from service. There is nothing wrong in the order which is in accordance with the departmental norms. Hence, the O.A. is not admitted and accordingly dismissed as no infirmity noticed for adjudication. No costs."

A perusal thereof indicates that the Tribunal took into consideration the submissions raised before it on merits and, therefore, the contention that statutory appeal had been filed and, thus, the Tribunal could not have exercised its authority does not stand to reason inasmuch as it was the petitioner himself who had opted to approach the higher forum of the Central Administrative Tribunal and, therefore, the Tribunal cannot be said to have acted without jurisdiction in proceeding to decide the case on merits when there was no relief prayed for any direction to decide the departmental appeal. The only relief prayed was for quashing of the order dated 10th of November, 2015.

In such circumstances, once the petitioner had elected and opted to press his petition on merits, he cannot be heard to say that his substantive right of appeal has been defeated which is still pending.

The second ground taken is with regard to the continuance of one Mr. Das. We may point out that there cannot be an equality in illegality. The rule cannot be bent in order to interpret it otherwise when an indulgence of six attempts is already provided for as quoted hereinabove and has been actually availed of by the petitioner.

In the given circumstances, therefore, even if the office of the Accountant General has allowed somebody to continue, the same cannot be a ground to claim any equality inasmuch as unequals cannot be treated equally or otherwise Articles 14 and 16 of the Constitution cannot be pressed into service for the purpose of claiming equality in illegality. We, therefore, do not find any force in the submissions raised and, consequently, no case is made out for interference. The writ petition lacks merit and is, accordingly, rejected.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

Saif/-

AFR/NAFR	
CAV DATE	N.A.
Uploading Date	
Transmission Date	N.A.