IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4656 of 2020

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1. The Union of India through the Comptroller Auditor General of India, New Delhi.
2. That Pr. Accountant General (A and E), Secretariat, Bihar, Birchand Patel Path, Patna.
3. The Senior Deputy Accountant General (Administration), Secretariat, Bihar, Birchand Patel Path, Patna.
4. The Deputy Accountant General (Works), Secretariat, Bihar, Birchand Patel Path, Patna.
5. The Senior Accounts Officer, Office of Accountant General (A and E), Bihar, Birchand Patel path, Patna.

... ... Petitioner/s

Versus

1. Ramkesh Meena Son of Sri Bhamblal Ram Meena, Resident of Village and P.O.- Manderu, Tehsil- Tadabhim, District- Karauli, Rajasthan, Pin- 321611, at present residing at Police Station- Jakanpur in the Town and District- Patna, Bihar.
2. Sri Prabhat Ranjan Son of Late Ashok Kumar Resident of C/o Manoj Kumar, Medicine House, P.O. Khudagang, P.S.- Khudagang, District- Nalanda, Bihar, at present posted as DAO-II in the office of the Executive Engineer, P H Division, District- Madhepura, Bihar.
3. Sri Dharmendra Kumar Purshuttam Son of Shri Awadhesh Prasad Resident of Village and P.O. - Uttarthu, Police Station- Bind, District- Nalanda, Bihar, at present posted as DAO-II in the office of the Executive Engineer, N H Division, Bihar Sarif, District- Nalanda, Bihar.
4. Sri Pankaj Kumar Son of Shri Narayan Chaurasiya Resident of Banmankhi, Police Station Banmankhi (Station Road), District- Purnea, Bihar, at present posted as DAO-II in the office of the Executive Engineer, Road Division, Barsoi, District- Katihar, Bihar.
5. Sri Rakesh Chandra Srivastava Son of Sri Dinesh Kumar Shrivastava Resident of Raghunath Sadan, Pant Nagar Bansi, Police Station, Bansi, District- Siddhartha Nagar, U.P. at present posted as Divisional Accounts Officer Grade-II in the office of the A.G. (A and E), U.P. Allahabad.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Amar Nath Singh
For the Respondent/s	:	Mr.Mukesh Kumar

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 17-11-2022

The petitioner-Accountant General department

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filed the present petition assailing the order of the Tribunal dated 25.02.2019 passed in O.A. No. 338 of 2018 passed by Central Administrative Tribunal, Patna Bench, Patna (For short 'Tribunal'.

Ramkesh Meena, 1st respondent while holding the post of Divisional Accountant, his services were terminated by the petitioner no.4 vide order dated 20.03.2018. The Tribunal allowed the 1st respondent's Original Application, hence the present writ petition on behalf of the Accountant General Department.

Among others, 1st respondent was appointed to the post of Divisional Accountant on 15.09.2010 (Annexure-2). In terms of the conditions imposed in the order of appointment, he was on probation for a period of two years and he is required to pass Divisional Accountant Grade Examination before confirmation. Candidate who has been appointed to the post of Divisional Accountant has been provided three attempts in writing the aforesaid examination. Among others, 1st respondent has taken to pass the aforesaid examination on fifth chance i.e. in the year 2016. When things stood thus, the petitioner-Accountant General Department noticed that there were certain errors committed by the Department to the extent that 1st

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respondent was appointed on probation for a period of two years on 15.09.2010, probation period could be extended for a particular period as provided and further competent authority has permitted such a those candidates who have not passed timely departmental examination, they were permitted to avail three chances. There are lapses on the part of the department, firstly, in not extending probation as and when he completed two years and further extension for a particular period. Further petitioners have provided / permitted 1st respondent among others to write departmental examination for five times, even at this stage, the concerned authority has not taken note of permitting the 1st respondent and others writing the departmental examination for the fourth and fifth time which is beyond time limit stipulated in the Chapter-VII of CAG's Manual of Standing Orders (Administrative) Vol.I (Third Edition).

On the other hand, we have noticed that 1st respondent has been singled out in not extending the benefit of passing of a departmental examination on fifth time and confirmation. There is inaction on the part of the petitioner's department in not taking action against such a those persons who have written departmental examination on fifth occasion and whose services have been later confirmed. Thus, there is

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discrimination in extending benefit of confirmation. The same has been taken note of by the Tribunal and proceeded to allow the 1st respondent's Original Application.

Learned counsel for the petitioners vehemently contended that 1st respondent was required to pass departmental examination within three chances in terms of CAG's Manual of Standing Orders (Administrative) Vol.I (Third Edition). The same has been taken note of while passing the impugned order before the Tribunal dated 25.02.2019. The Tribunal should not have allowed his application on the score that there was discrimination among the Divisional Accountants read with their services particulars.

Perusal of the records and the fact that there are lapses on the part of the petitioner's department in not taking timely action and the fact that similarly situated persons who have availed the benefit of confirmation in the Divisional Accountant and singled out the first respondent in so far as the confirmation in the post of Divisional Accountant is a clear case of arbitrariness and discrimination. Therefore, we do not intend to interfere with the order of the Tribunal dated 25.02.2019 passed in OA No. 338 of 2018.

Accordingly, writ application stands dismissed.

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Learned counsel for the petitioners submitted that similarly situated persons have not been extended confirmation and other benefits in the cadre of Divisional Accountant and their services were terminated and they have the benefit of Tribunal's order and later on their services were confirmed.

(P. B. Bajanthri, J)

(Purnendu Singh, J)

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AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	30.11.2022
Transmission Date	N.A.

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