

**ORISSA HIGH COURT: CUTTACK**

**W.P.(C) No.2943 of 2004**

In the matter of an application under Articles 226 and 227 of the Constitution of India.

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Dambarudhar Das ..... *Petitioner*

*-versus-*

State Bank of India and others ..... *Opposite Parties*

For petitioner : M/s. B.S.Tripathy-1, J.Mohanty &  
A.Mishra

For Opp.Parties : M/s. D.K.Mishra, G.K.Nayak, R.Mahalik  
& B.Behera  
(for Opp.Party no.3)

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**P R E S E N T :**

**THE HONOURABLE DR. JUSTICE B.R.SARANGI**

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Date of hearing: 19.03.2015 | Date of judgment : 31.03.2015

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**Dr. B.R.Sarangi, J.** The petitioner, who was an employee of the State Bank of India, has filed this petition for the following reliefs:

"On the facts and in the circumstances stated above, the petitioner, therefore, most humbly prays that this Hon'ble Court be graciously pleased to :

- (i) hold and declare that the impugned deemed cancellation of offer of appointment of the petitioner as Special Asst. as not only bad and illegal, and violative of Bank's own Policy but also violative of Articles 14, 19 & 300A of the Constitution of India and thereby, quash the same.
- (ii) direct/ order/ command the opposite parties to forthwith allow the petitioner to join as Special

- (iii) Assistant at Keonjhar Branch with grant of all consequential service and monetary benefits;  
Pass such other order (s) as deemed fit and proper in the facets and circumstances of the case and in the bonafide interest of justice and fair play."

2. The short fact of the case, in hand, is that on being duly selected, the petitioner was recruited in the Clerical cadre and was appointed as Cashier-cum-Clerk-Typists (CCT) and was posted to Bargarh Branch of the State Bank of India vide O.M.No.122 dated 17.4.1979 of Branch Manager, Bargarh. The service of the petitioner was confirmed in the said cadre with effect from 17.04.1979 pursuant to letter dated 16.12.1980 vide Annexure-2. Thereafter, he was transferred and posted in different places and discharged his duties assigned to him. While he was continuing in Bargarh branch, he was appointed as Teller on 8.1.1986 and thereafter appointed as Head Clerk on 30.7.1986 on six months probation basis and was posted at Rourkela Industrial Estate Branch. The petitioner submitted a representation on 1.8.1986 to the Branch Manager, Barbil Branch requesting him to allow extension of joining time for three months as Head Clerk on personal reason. Again he submitted another representation to the Regional Manager, Regional Office, Sambalpur seeking inter-region transfer to Karanjia Branch. The Branch Manager of Karanjia Branch also recommended the case of the petitioner for inter-region transfer to Karanjia Branch under the Bank's laid down norms vide Annexure-5 dated 1.8.1986. The

petitioner's appointment as Head Clerk was cancelled on 30.4.1987 vide Annexure-6 and thereafter, he was again appointed as Head Clerk on six months probation basis and was posted to Anandpur Branch vide letter dated 12.12.1988 in Annexure-7. While he was so continuing as per para 5.2 of Head Office Circular Special Letter No.CDO/PER & HRD/21 of 1999-2000, the post of Head Clerk was re-designated as Senior Assistant and accordingly, the petitioner's post was re-designated on 24.1.2001 vide Annexure-9. The petitioner thereafter was posted as Special Assistant and was posted to Barbil Branch on payment of special allowance of Rs.1213/- per month. Though such order was communicated to Anandpur Branch requiring the petitioner to accept the offer within three days, but the same was kept pending. Consequently, the petitioner was denied promotion and as such, the petitioner was victimized by opposite party no.4. Again on 27.1.2004 vide Annexure-10, the Zonal Office appointed the petitioner as Special Assistant under the career progression scheme within the same cadre and posted to Bhuban Branch with further stipulation that the petitioner will be relieved for Bhuban Branch on 31.1.2004 with instruction to report to Branch Manager, Bhuban Branch on the following day (in case of local branch/ after availing joining journey (in case of outstation branch). In the said letter, a further condition was imposed that in the event the authority did not receive his consent/ refusal within three days of

receipt of the said letter, the Bank would treat it as refusal to accept the appointment and the Bank would proceed accordingly without further notice. The petitioner was served with the said letter on 19.2.2004 at 4.10 P.M. by the Branch Manager, Anandpur Branch. On enquiry, the petitioner was informed by the Branch Manager that his appointment as Special Assistant has been treated as cancelled as the Bank has not received his consent/ refusal by 31.1.2004. Hence, this writ petition.

3. Mr.B.S.Tripathy-1, learned counsel for the petitioner strenuously urged that the appointment of the petitioner by way of promotion in the cadre of Special Assistant posting him at Bhuban Branch dated 27.1.2004 is a conditional one inasmuch as it is urged that he was to be relieved from his duties for Bhuban Branch on 31.1.2004 with instruction to report to Branch Manager, Bhuban Branch on the following day ( in case of local branch/ after availing joining journey period ( in case of outstation branch). It is further indicated that if the petitioner was unwilling to accept the appointment to the allowance carrying post, he had to convey his refusal/ willingness on the lines of the proforma enclosed thereto and refusal to accept the appointment would debar him to further appointment to in-cadre allowance carrying position for a period of three years from the date he is eligible for appointment on Special Pay carrying position and after completion of three years, he may

request for consideration of appointment to a Special Pay carrying post to the controlling authority. It is further urged that if the authority could not receive the consent/ refusal within three days of receipt of the aforesaid letter of appointment, the Bank would proceed accordingly without further notice. It is urged that since the petitioner had been directed to be relieved from his duties for Bhuban Branch on 31.1.2004, therefore, consent/ refusal makes no difference as the said order was issued on 27.1.2004. But the letter dated 27.1.2004 in Annexure-10 was received by the petitioner on 19.2.2004, by which time the three days period had already expired and thus, it has been treated that he had refused to receive the appointment. Consequently, he has been denied the benefit of such appointment, which is arbitrary, unreasonable and contrary to the provisions of law.

4. Mr.D.K.Mishra, learned counsel appearing for the Bank strenuously refuted the contentions raised by the learned counsel for the petitioner and urged that all along the petitioner has been posted in and around Keonjhar district. The impugned letter in Annexure-10 contains a specific condition that the petitioner has to give his consent/ refusal within three days of receipt of the letter, otherwise, it will be treated as refusal to accept the aforesaid appointment, meaning thereby the petitioner should have returned the letter of appointment duly acknowledged by him in token of his acceptance of

the offer of appointment within three days of receipt of the letter, failing which it will be deemed that he has declined the said offer. That not having been done, the offer was treated as cancelled and as such, no illegalities or irregularities have been committed by the authorities in refusing the appointment of the petitioner to the post of Special Assistant as offered in Annexure-10. It is further urged that the petitioner was never asked to submit his request/ willingness by 31.1.2004, rather three days time was given from the date of receipt of the letter to submit his consent/ refusal. Admitting the factum that the petitioner had received the letter on 19.2.2004, it was for him to submit his consent/ refusal within three days of receipt of the letter and but the petitioner has not complied with the conditions as required in Annexure-10 within time.

5. Considering the contentions raised by the learned counsel for the parties and after going through the records, it appears that admittedly the petitioner was given offer of appointment as Special Assistant posting him to Bhuban Branch and it is also indicated that such appointment shall come into effect from the date he joins in his duty in the said Branch. Though the letter contains that he would be relieved from his duties for Bhuban Branch on 31.1.2004 with instruction to report to the Branch Manager, Bhuban Branch on the following day (in case of local branch/ after availing joining journey period (in case of outstation branch), but

effectively the petitioner was not relieved on 31.1.2004. The letter contains a condition that on receipt of the letter, he has to give his consent/ refusal to accept the said appointment. As has been admitted by the petitioner, the letter in Annexure-10 dated 27.1.2004 was received by him on 19.2.2004, but no material has been put-forth before this Court to show that he had received the impugned letter on 19.2.2004. Therefore, in absence of any material before this Court, when query was made it is admitted that nothing has been produced before this Court to come to a conclusion that the petitioner submitted his consent/ refusal within three days of receipt of the letter on 19.2.2004. Non-production of any material before this Court indicating that the petitioner has complied with the conditions stipulated in the order of appointment for promotion to the cadre of Special Assistant in Annexure-10 by expressing his consent within three days from the date of receipt of the offer, amounts to refusal to accept the aforesaid appointment and therefore, the Bank proceeded accordingly without any notice. Once the petitioner has not submitted any consent within the time specified and time being the essence of condition of appointment, after expiry of the said time, it would be deemed that the petitioner has refused to accept such appointment. Having not consented to the offer of appointment within the stipulated time, subsequently, he cannot turn around and take a different plea before this Court by

filing the present writ petition, which cannot sustain in the eye of law.

6. For the foregoing reasons, this Court finds no merit in the writ petition. Accordingly, the same is dismissed. No order as to cost.

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***Dr.B.R.Sarangi, J.***

Orissa High Court, Cuttack  
The 31<sup>st</sup> March, 2014/**PKSahoo**



