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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH : NEW DELHI

O.A. NO. 814/2002

NEW DELHI THIS THE 25TH OCTOBER 2002

HON'BLE SHRI GOVINDAN S. TAMPI, MEMBER (A)
HON'BLE SHRI SHANKER RAJU, MEMBER (J)

1. Sh. S K Jain
2. Sh. H A Kajmi,
3. Sh. N C Walia

All the applicants are working as Accounts Clerk in
CAO Office , Northern Railway, Baroda House, New Delhi.

.....Applicants

(By Shri Yogesh Sharma, Advocate)

VERSUS

1. Union of India through the General Manager,
Northern Railway, Baroda House,
New Delhi
2. The Chief Account Officer (Admn.),
Northern Railway, Head Quarter Office,
Baroda House, New Delhi

.....Respondents

(By Shri VSR Krishna, Advocate)

O R D E R (ORAL)

By Hon'ble Shri Govindan S. Tampi, Member (A)

Reliefs sought for by the applicants are as below:

- i) the Hon'ble Tribunal may graciously be pleased to pass an order of quashing the impugned order dated 7.3.2002 (Annex. A/1), and pass an order directing the respondents for re-fixation of pay of the applicants after counting the past service of the applicants rendered as junior Account Asstt. before their appointment as Accounts Clerk, with all the consequential benefits;

- ii) any other relief which the Hon'ble Tribunal deem fit and proper may also be granted to the

2. Heard S/Shri Yogesh Sharma and VSR Krishna, learned counsel for the applicants and respondents respectively.

3. MA No. 670/2002 for joining allowed.

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4. All the three applicants who were recruited by the Railway Recruitment Board as Junior Account Assistants/ Clerks in the scale of Rs. 330-550/1200-2040/- Grade-I, could not qualify in the Appendi - IIA examinations of IREM during the three chances given, whereupon they were terminated from service. The termination order were set aside by the Tribunal. The same was carried in appeal before the Hon'ble Supreme Court, when it was directed that one more chance be given to them for taking the examination. Still they could not pass and therefore their services were terminated, but as a matter of policy, they were re-appointed as Account Clerks as fresh entrants in the pay scale of Rs. 950-1500/- . However, they were not given any benefit of past 10 years service either in fixation of pay, protection of pay etc. though the service was shown as includible for computing pensionary benefits . The applicant's representation for considering the above were not responded. By order dated 4.12.2001 the Tribunal had disposed of the OA No.3182/2001 filed earlier by the applicant with direction to dispose of the applicant's representation which the respondents did on 07.3.2002 rejecting the above. Hence this OA.

6. The grounds raised in OA are that:-

- i) that similarly situated persons who were appointed as Junior Account Assistants on compassionate grounds against direct recruitment quota who were terminated for their failure to pass the Examination and re-appointed like the applicants were given the benefit which has been denied to the applicants;
- ii) as settled by the Tribunal in the case of Jayant Kumar Chaudhary Versus Union of India and others [1995 (1) ATJ 648] basic pay of the railway servant who had been previously in the employment with the Railways cannot be brought down on a fresh appointment;

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c) having agreed to count the previous service of applicants for the purposes of pensionary benefits there was no justification for denying the inclusion thereof for purposes of pay and allowances.

7. The impugned order which has been passed on the wrong facts that the applicants were re-appointed only after some time from termination of the services, while those who were adjusted on compassionate ground were appointed immediately after termination, there was no reason for denying the benefit as sought for.

8. Shri Yogesh Sharma who appeared for the respondents forcefully reiterated points raised in the pleadings.

9. Strongly denying the pleadings made by the applicant Shri VSR Krishna, learned counsel for the respondents states that the applicants were seeking wrong and improper reliefs as their services had been earlier terminated on account of their failure to pass the requisite test in the 3 chances given and even after the grant of additional chance. They had been absorbed as Accounts Clerk cum Typist only on the condition that the same was a fresh appointment against direct recruitment quota with no other benefits, excepting for pensionary benefits. The applicants having accepted the above condition at the time of their re-engagements cannot now turn around and make any submission that they should be given the benefit of fixation of pay and protection of pay. Keeping in mind the service rendered by them earlier. The applicants claim was therefore not at all tenable. The applicants have been engaged as only fresh entrants at their own request. That being the case the impugned order declining the benefit of inclusion of their past service for purposes of pay and allowances.

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10. The respondents point out that those individuals who were originally appointed as Junior Account Assistants on compassionate grounds and who were reverted as Accounts Clerk on their failure to pass Appendi-IIA Examination had been terminated and re-appointed but only reverted without any break. Therefore they are not similarly circumstanced, according to learned counsel Shri Krishna. He also points out that there was a gap between the dates of termination of service as Junior Account Clerk and appointment as Accounts Clerk which in the case of applicant No. 1 was ~~just~~ ^{more than} over one year and ^{in the case of} applicant No. 2 and 3 were for ~~about~~ ^{more} a few days. ^{a few}

days

In the above circumstances the applicants' case was not justified and the OA should be dismissed according to the respondents.

11. Having carefully deliberated upon the rival contentions and considered the facts brought on record we are convinced that the applicants do have a case. It is not disputed that all the three applicants could not pass the requisite Appendi -IIA Examination in the 3 chances given to them as well as in the 4th chance grant on the intervention of the Supreme Court. Their services been terminated. There after , however they have been re-appointed as fresh candidates as Accounts Clerks in the lower scale. Under normal circumstances it would appeal that the fixation of the pay in the scale corresponding to the junior post was justified. However, it is on record that persons similarly circumstanced, who were originally appointed Junior Account Assistants on compassionate grounds and who also did not pass the examination within the prescribed time were reverred to granted the benefit of pay which were drawn on the ground

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that there was no break in their service. This is clearly an artificial distinction. In both cases the concerned individuals could not pass the requisite departmental test in time and had to lose the jobs which they were originally appointed. Merely in the case of applicants there was a break ^{- but not a substantial one -} between date of termination and of fresh appointment they could not be denied the benefit which had been given those recruited on compassionate grounds who were rewarded on failure to pass departmental examination. It is also on record that the service rendered by the applicants also in the earlier grade had been included for commuting pensionary benefits. The grant of pay protection is only a natural corollary. The claim of the applicants also would have to be accepted in law for purposes of pay and other related benefits. They would not however be entitled for any benefit for the period between the dates of their termination and their fresh appointment.

12. OA in the above circumstances succeeds substantially and is accordingly allowed. The impugned order dated 07.3.2002 is quashed and set aside and the respondents are directed to extend the benefit of including the past service rendered by them in the grade of Jr. Account Assistants which service had already been included for commuting the pensionary benefits, for the purposes of pay and allowances. The applicants will not however be entitled for the benefit inclusion of their service for the purposes of pay and allowances, in the interregnum between the date of their termination as Jr. Accountants as well as fresh appointments as clerks cum typist. No costs.

S. Raju
(Shanker Raju)
Member (J)

(Govindan S. Tampi)
Member (A)

Patwal/