

CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH
NEW DELHI.

O.A.No. 656/96

Dated: this the 24th day of APRIL, 1997.

HON'BLE MR. S. R. ADIGE, MEMBER (A).

HON'BLE DR. A. VEDAVALLI, MEMBER (J).

Rajeev Kumar Shama,
at present working as Accounts Clerk,
Book Section, Baroda House,
New Delhi, Applicant.

(By Advocate: Shri Romesh Gautam)

Versus

Union of India
through
Secretary,
Railway Board,
Rafi Ahmed Kidwai Marg,
New Delhi.

2. General Manager,
Northern Railway, Baroda House,
New Delhi.

3. The Financial Advisor & Chief,
Accounts Officer,
Northern Railway,
Baroda House,
New Delhi.

..... Respondents.

(By Advocate: Shri R.L. Chauhan).

JUDGMENT

BY HON'BLE MR. S. R. ADIGE MEMBER (A).

Applicant impugns respondents' order dated 7.12.93 (Annexure-I) reverting him from the post of Jr. Accounts Clerk, C.G.I to Accounts Clerk C.G.II w.e.f. 6.12.93 for not passing Appendix II A Exam., and their order dated 12.1.96 (Annexure-II) rejecting his representation. He prays for counting the chance of July, 1994 as his 4th addl. chance, treating that there has been no reversion, with all consequential

benefits.

2. Admittedly applicant was appointed as Clerk Gr. I w.e.f. 29.6.90 on compassionate grounds (Annexure-3), and as per terms and conditions of appointment, he was required to qualify in Appendix II A Exam. in 2 chances, within 3 years failing which he would be reverted as Clerk Grade II (Accounts Clerk). He appeared in Appendix II A Exam. for the first time in July, 1991 and admittedly failed to qualify that year. He again appeared in July, 1992 and admittedly failed, but as he had secured more than 50% marks in one paper (General Rules & Procedure) he got exemption for that paper in his third attempt in 1993 in which he got more than the qualifying 50% in one paper (Book Keeping) but less than that in the optional paper. Respondents state that as per conditions of appointment which applicant accepted, he was entitled to only two chances, but he was allowed a third chance based on his past performance. As he failed to clear Appendix II A Exam. even in 1993, he was reverted by impugned order dated 7.12.93. Admittedly applicant joined the post of Accounts Clerk C.G.II to which he had been reverted, and while working there was allowed to appear in the remaining paper in which he had secured less than 50% marks which he cleared on 1.12.94. Eventually he was promoted as CGI in promotee quota on 19.12.95. Applicant contends that this should be treated as his fourth chance and he should be given benefit of continuous seniority as Jr. Accounts Clerk/C.G.I from 7.12.93.

3. We have heard applicant's counsel Shri Gautam

and respondents' counsel Shri Chauhan. 9

4. The grounds taken by Shri Gautam that the applicant being a compassionate appointee was not required to qualify in Appendix IIA Exam., and that the reversion order is infirm because of lack of opportunity of being heard is rejected in view of the terms and conditions of the appointment order, accepted by applicant which made it clear that he would be required to pass the Appendix II Exam. in two chances within 3 years, failing which he would be reverted.

5. Shri Gautam has placed reliance on the CAT PB judgment dated 21.2.92 in O.A.No.1530/89 Nimal Singh Vs. UOI & Ors and connected cases but those applicants who were directly recruited JAA's/CGI had approached the Tribunal against their termination from service without notice for failure to qualify in Appendix IIA Exam. within the prescribed period and within the prescribed number of chances. Interim orders had been issued against termination in respect of all those applicants, except one and they were therefore continuing in service as JAAs/C.G.I. By that judgment the termination orders were quashed for failure to give one month's prior notice as per rules; respondents were directed to consider giving those applicants more chances for passing Appendix II A Exam. on merits of each case and if after giving addl. chances those applicants still failed to clear the same, respondents were directed to consider granting those applicants change of category from accounts side to executive side as Senior Clerks. That judgment is clearly distinguishable on facts from the case presently

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before us where applicant having reverted pursuant to respondents' order dated 7.12.93 and having worked on the reverted post till 19.12.95 and thereafter being promoted as C.G.I in promotee quota, now prays that his chance of the Appendix II A Exam. on 1.12.94 should be treated as his fourth chance and he should get the benefit of continuous seniority w.e.f. 7.12.93. Furthermore in that judgment no blanket direction was given to respondents to give more chances to those applicants. The direction was to consider each case on merits to determine whether more chances should be given to pass the Appendix IIA Exam. which does not give the present applicant a legally enforceable right to claim that the chance he took in July, 1994 (the result of which was declared on 1.12.94) must be treated as his 4th chance.

6. Shri Gautam has also placed reliance on the Hon'ble Supreme Court's judgment dated 23.3.95 in Civil Appeal No.4480-83/95 UOI & ors. Vs. R.K.Gupta & Ors, but that judgment is also similarly distinguishable on facts from the present case and does not cover a situation where a person after failing in 3 attempts to clear the Appendix II A Exam. and consequently being reverted, and while working on the reverted post, clears the Exam. in the 4th attempt and after 2 years of reversion is subsequently promoted to C.G.I in promotee quota, can be permitted to count the period in question towards seniority in the higher grade.

7. Cases of Alka Sahni and Attar Singh have been cited. Alka Sahni's case is manifestly different because she appealed to the respondents for change of

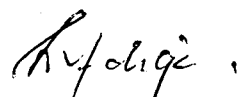
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category to senior clerk, as being as having been recruited on sports quota and being engaged in strenuous sports events she did not find time to adequately prepare herself for the Appendix IIA Exam. Similarly Attar Singh, who was a direct recruit(as opposed to applicant who is a compassionate appointee) appears to have been given one additional chance before the issue of Railway Board's letter dated 24.6.86 restricting the number of changes for passing the Appendix IIA Exam. to 3. It is important to note that the validity of that letter has been upheld by the Hon'ble Supreme Court in its judgment in R.K.Gupta's case(Supra).

8. In this connection, respondents have filed addl.materials stating that allowing the OA would imply granting applicant seniority as C.G.I right from 29.6.90 and he would jump over 140 employees in the seniority list. Some of them have been impleaded in the OA.

9. In the background of what has been stated above, we are unable to grant the relief praying for the applicant. The O.A. fails, and is dismissed. No costs.


(DR.A.VEDAVALLI)
MEMBER(J)


(S.R.ADIGE)
MEMBER(A)

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