

Central Administrative Tribunal
Principal Bench

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O.A. No. 2223 of 1997

New Delhi, dated this the 11 JULY, 2001

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)
HON'BLE DR. A. VEDAVALI, MEMBER (J)

Shri S.K. Gupta,
S/o Shri M.L. Gupta,
R/o 171, Vivekanand Puri,
Delhi.

.. Applicant

(By Advocate: Shri Romesh Gautam)

Versus

Union of India through

1. The General Manager,
Northern Railway,
Baroda House,
New Delhi.

2. Financial Adviser &
Chief Accounts Officer,
Northern Railway,
Baroda House,
New Delhi.

.. Respondents

(By Advocate: Shri R.L. Dhawan)

ORDER

S.R. ADIGE, VC (A)

Applicant impugns respondents' order dated 2.12.94 (Annexure A-3) and seeks a direction to treat his service as Clerk Grade I from the date of his initial appointment with consequential benefits.

2. Applicant was initially appointed as Clerk Grade I (Rs.1200-2040) in terms of appointment letter dated December, 1990 (Annexure A-1). As per the terms and conditions of appointment, he was requested to qualify Appendix II Examination within three years in two chances failing which his services could be terminated. Applicant failed to qualify the

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said examination in two chances, within the prescribed period and his services were terminated vide order dated 2.12.94 (Annexure A-3).

3. Applicant has not denied in rejoinder the specific averment made by respondents in their reply that he made a request for appointment as Clerk Grade II (Rs.950-1500) as a fresh contract, and upon his request being accepted by the competent authority he was given appointment as Clerk Grade II vide order dated 28.3.95 (Annexure A-5). The aforesaid order dated 28.3.95 contained the conditions that applicant's appointment would be treated as a fresh appointment against direct recruitment quota and he would not be given benefit of past service; his appointment as Clerk Grade II would be governed by normal rules applicable to fresh entrants; and he would be on probation for two years from the date of appointment.

4. Applicant having accepted the aforesaid terms and conditions contained in order dated 28.3.95 cannot now claim that he be treated as Clerk Grade I from the date of his initial appointment, even if he appeared in the Appendix II Examination again in July, 1996 for promotion to Clerk Grade I and was successful on the same.

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5. Under somewhat similar circumstances O.A. No. 656/96 filed by Shri Rajvir Kumar Sharma was dismissed by this very Bench by order dated 24.4.97 (Annexure A-1).

6. In the present case also as in Sharma's case (supra) applicant's counsel Shri Ramesh Gautam who incidentally argued Sharma's case also, placed reliance on the Hon'ble Supreme Court's judgment dated 23.3.95 Union of India & Ors. Vs. R.K. Gupta 1996 (1) SLJ 43, but for the reasons contained in Para 6 of the order dated 24.4.97 that judgment is distinguishable on facts from the present case and does not cover the present situation.

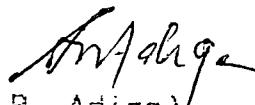
7. Nothing has been shown to us, staying, modifying or setting aside the aforesaid order dated 24.4.97 in Sharma's case (supra) the ratio of which is squarely applicable to the present case.

8. The O.A. is, therefore, dismissed. No costs.


(Dr. A. Vedavalli)

Member (J)

karthik


(S.R. Adige)
Vice Chairman (A)