

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1773/2000

New Delhi, this 31st day of December, 2001

Hon'ble Shri Kuldip Singh, Member(J)
Hon'ble Shri M.P. Singh, Member(A)

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Abdul Sekh
8, Offices' Rest House
State Entry Road, New Delhi

.. Applicant

(By Shri B.S.Maine, Advocate)

versus

Union of India, through

1. Secretary
Railway Board
Ministry of Railways
Rail Bhavan, New Delhi
2. General Manager
North Eastern Railway, Gorakhpur
3. Principal
Sr. Secondary School
North Eastern Railway, Gorakhpur
4. Education Officer (Vocational)
CBSE, New Delhi

.. Respondents

(By Shri B.S. Jain, Advocate)

ORDER(oral)

Shri Kuldip Singh, Member(J)

Applicant has filed this OA under section 19 of the Administrative Tribunals Act, 1985 challenging the order dated 29.12.1999 vide which his representation for being considered for appointment to the post of Commercial Clerk/Ticket Collector has been rejected. The facts as alleged by the applicant in brief are that the Railway Recruitment Board has introduced a Scheme for conducting entrance examination for vocational course in Railway Commercial (two year job-linked course-full time). According to that scheme, a two-year job-linked vocational course (full time) in Railway Commercial at the plus two level was being introduced for the first time from the academic year 1991-92 as a pilot project. The said course is recognised by the Central Board of Secondary Education (CBSE, for short). On successful completion of the course, the students will normally be

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appointed directly as Commercial Clerks/Ticket Collectors in the Indian Railways after passing the medical examination etc. subject to their attaining the minimum standards in the +2 examination. Applicant was selected and admitted to the course in the year 1994-95.

2. Applicant further claims that as per letter dated 20.5.94 issued by the Ministry of Railways, it was clarified that appointment may be offered to the candidates who were either placed under compartment or who could not secure the prescribed percentage of marks on their clearing the compartment and securing the prescribed percentage in the subsequent chances given by CBSE for taking the examination. As per Railway Board's letter at Annexure A-8 applicant claims to have qualified the examination in subsequent chances given to him by CBSE for taking the examination in 1999. However, respondents have taken a decision on 17.10.95 that only one chance for improvement is to be given. The representation of the applicant has been rejected on the ground that applicant has not improved his percentage by taking only one chance and so he cannot be given the appointment.

3. Applicant has challenged the impugned order on the ground that the Railway Board's instructions have only prospective effect and not retrospective effect. Applicant further contended that as per Railway Board's letter dated 20.5.94 applicant can get several chances. He has improved his percentage of marks though in three attempts, he is still eligible as per the terms and conditions of letter dated 20.5.94 and so he should be given the offer of appointment.

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4. Respondent while contesting the case have taken the preliminary objection with regard to territorial jurisdiction of the Tribunal. It is submitted that the applicant is a resident of Uttar Pradesh and the impugned order dated 29.12.99 was received by him in Uttar Pradesh. He has given his address as 8, Officers' Rest House, New Delhi which shows that he is not ordinarily residing in Delhi and therefore the OA be dismissed or it should be filed before the appropriate court. It is also contended that the OA is time barred as the applicant has made his representation after expiry of several years of the policy decision. Therefore his representation does not entitle him to bring the OA within the limitation. Besides the respondents have taken a policy decision for only one chance for improvement of percentage vide order dated 27.10.95 (R-1) as against several chances provided in the letter dated 20.5.94. Also, the policy decision taken by the respondents is beyond the judicial purview of the Tribunal and on that score also the OA is not maintainable and is liable to be dismissed.

5. We have heard the learned counsel for the parties and gone through the records.

6. Learned counsel of the applicant contended that there are several candidates who have been given more than one chance and improve percentage. In this connection, he has referred to the document at Annexure A/17 which shows that four candidates were appointed after availing more than one chance; three candidates have availed 3 chances while one candidate has availed

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two chances. Since the applicant has also improved his percentage in third chance, he is also entitled to be given appointment in accordance with the instructions as contained in Railway Board's letter dated 20.5.94. However, the learned counsel for the respondents has submitted that these candidates have been given appointment prior to 27.10.95. A policy decision was taken in the Monitoring Committee meeting held on 17.10.95 and the same was communicated on 27.10.95. We also find that these candidates have been appointed prior to 27.10.95 and thus applicant cannot compare himself with these candidates. (14)

7. As far as availing of several chances is concerned, learned counsel for the applicant has submitted that when the applicant was admitted to the course, the instructions dated 20.5.94 were applicable which provide that the applicant can improve his percentage in "subsequent chances". These instructions could not be altered or amended to the disadvantage of the applicant, particularly when these instructions were amended only on 27.10.95. The counsel for the applicant submitted that vide letter dated 20.5.94, the applicant can avail as many chances as given by CBSE for taking examination and since the CBSE has given him chances for taking the examination, the letter dated 27.10.95 which provides for availing only one chance should not have been given retrospective effect nor it should be acted upon. After having qualified in 1994 and secured the required percentage as per the chances given to him, applicant has a right to be given the appointment. Letter dated 20.5.94 only says that the applicant can improve his

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percentage during subsequent chances given by CBSE for taking examination. Subsequent letter could not have restricted the right of applicant.

8. Letter dated 27.10.95, which has been issued after the meeting of Monitoring Committee on Vocational Course held on 17.10.95 and represented by the representatives of CBSE also, provides as under:

"2. No. of chances to be given to the failed candidates of Class XII for improving position to get appointment on Railways:

2.1 Vocational course in Railway Commercial is a job-linked course and its main objective is to have recruits with better academic standard, spirit of service, discipline and pride of profession in the public image categories of Commercial Clerks/Ticket Collectors. The aim is to catch them young. Railways being the employer have every right to fix the minimum standards required by the candidates.

2.2 CBSE representatives mentioned that CBSE provides only one chance for improving the position viz. in the main examination held in March/April next academic year.

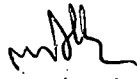
2.3 It was decided that a student who has failed or has been placed in compartment or who did not obtain the requisite marks in the first attempt may be offered appointment only if he obtains the required percentage of marks after clearing the compartment or improving the position in the main examination conducted in next academic year, and not later."

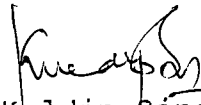
9. As far as retrospective application is concerned, learned counsel for the applicants has relied upon several judgements of the apex court but we find that these are not applicable to the present case. The mere selection of the applicant for admission to the course does not create any right to appointment to the post of Commercial Clerk or Ticket Collector. Right of appointment to these posts were subject to certain conditions. This right would have become available to applicant only on fulfilment of those conditions, e.g. securing of particular percentage of marks in the exam

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of 10+2. Vide decision taken in the Monitoring Committee on 17.10.95 only those conditions have been modified to the extent of restricting the chances for improvement only to one chance which to our mind does not take away any right which may have vested in the applicant. Therefore we find applicant has no case on merits. (9)

10. In view of this discussion above, we find OA merits dismissal. Accordingly we dismiss the OA. No costs.


(M.P. Singh)
Member(A)


(Kuldip Singh)
Member(J)

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