

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1742/89 198
T.A. No.

DATE OF DECISION 11.1.1990.

Shri Raj Bir Singh Applicant (s)

Shri Kulshreshtha Advocate for the Applicant (s)

General Manager, Northern Respondent (s)
Rly. & Ors.

Shri S.N. Sikka Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. P. K. Kartha, Vice-Chairman (Judl.)

The Hon'ble Mr. D. K. Chakravorty, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. To be circulated to all Benches of the Tribunal ?

JUDGEMENT

(delivered by Hon'ble Shri D.K. Chakravorty, Member)

The applicant, who is working as Clerk Grade I in the Northern Railways, filed this application under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

- (i) to set aside the termination order dated 21.8.1989;
- (ii) to direct the respondents to pay him arrears of pay; and
- (iii) to direct the respondents to exempt him from appearing in the examination and change his category from Clerk Grade I to Senior Grade of equal pay-scale.

2. By the impugned order dated 21.8.1989, the respondents have informed the applicant that his services are terminated with immediate effect as he has not qualified the Appendix II (IREM) Examination within the prescribed period as per his service conditions.

3. Pleadings in the case are complete. We feel that the application could be disposed of at the admission stage itself.

4. The facts of the case in brief are that the applicant was appointed as Clerk Grade I on compassionate grounds on 23.3.1985 in the Office of the Divisional Accounts Officer, Ferozepur. The letter of appointment which is at Annexure 'A' to the application (vide page 18 of the paper-book), deals with the appointment of four persons as temporary Clerks Grade I on compassionate grounds. It is further stipulated that their retention in the Accounts Department is subject to successfully undergoing six months' training provided for Accounts Clerks and passing the trainee's viva-voce test and also subject to qualifying the confirmatory Appendix-II-A Examination IREM in two attempts [redacted]
[redacted] within 3 years under the extant rules.

5. The applicant appeared at the said examination in the years 1986 and 1988, but he could not avail of this opportunity in 1987 when he was not keeping well and was under the treatment of Railway doctors. He has cited instances in which the respondents have granted exemption and permission to other candidates to appear in special examination, but the same treatment has not been accorded to him. Another grievance of the applicant is that he was not given the benefit of changing his category from Clerk Grade I to Senior Grade. He made a representation on 18.7.1989 which did not yield any result.

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6. The respondents have contended in their counter-affidavit that the applicant had been given three chances to appear at the examination in 1986, 1987, and 1988. He could not, however, qualify at the examinations. Additional chances had been given in the past to some persons. After 1983, no such concession has been given to any candidate.

7. As regards change of category, the respondents have stated that according to the instructions of the Railway Board contained in their letter dated 7.4.1983, "Once an appointment on compassionate grounds of the ward/widow, etc., has been made in a particular category, no change of category is subsequently permissible."

8. We have carefully gone through the records of the case and have heard the learned counsel for both the parties. Appointment of persons on compassionate grounds is governed by the instructions issued by the Railway Board in their letter dated 7.4.1983. The object of giving such appointments to the dependents of the deceased Government servant is to grant relief to the family of the deceased employee so that there will be at least one bread winner in the family. Such appointment is, however, subject to the person concerned fulfilling the conditions of eligibility regarding age and qualifications prescribed for appointment to the post or grade concerned. This is provided for in the Railway Board's Instructions dated 7.4.1983.

9. In the instant case, the appointment of the applicant was on a temporary basis and his retention in the Accounts Department as Clerk Grade I was subject

to his qualifying the Appendix II-A examination. As he did not pass the said examination within the time given to him, he cannot claim, as of right, that he should be retained as Clerk Grade I in the Accounts Department. At the same time, we also do not consider that the respondents were justified in passing the impugned order dated 21.8.1989 whereby the services of the applicant have been sought to be terminated. Such termination would run counter to the very purpose of appointing the applicant on compassionate grounds. In case the applicant is not suitable for appointment in the Accounts Department, the respondents shall consider his eligibility and suitability for appointment in some other department. The respondents are bound to do so suo motu and without any representation being received from the applicant.

10. In the facts and circumstances of the case, we consider it just and proper to quash the impugned order dated 21.8.1989. The respondents are directed to allow the applicant to continue to work as a temporary Clerk Grade I in the Accounts Department till they ~~can~~ identify an alternative job for him commensurate with his qualifications and experience, and give him an offer of appointment to the said assignment.

11. The application is disposed of with the above directions at the admission stage itself. The parties will bear their own costs.

D. K. Chakravorty
(D. K. Chakravorty)
Administrative Member

11/1/1990

P. K. Kartha
(P. K. Kartha)
Vice-Chairman (Judl.)