

(13)

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI

O.A.No.2575/89

New Delhi, This the 20th Day of May 1994

Hon'ble Shri C J Roy, Member(J)

Hon'ble Shri P.T. Thiruvengadam, Member(A)

1. All India Railway Ministerial Staff Association C-16/L Railway Colony Lajpat Nagar, New Delhi 110024. through its General Secretary (N. Rly) - Mr. Jamal Uddin
2. Raj Bir Singh S/o Shri Ganga Ram CGI Catering Section FA & GA Office Baroda House, New Delhi.

...Applicants

By Shri P. L. Mimroth, Advocate

Versus

1. Secretary Railway Board, Rail Bhawan New Delhi.
2. Secretary to Govt of India(Ex Office) Ministry of Railways & Member Staff Railway Board, Rail Bhawan New Delhi.
3. General Manager Northern Railway Baroda House, New Delhi.
4. Financial Adviser & Chief Accounts Officer Northern Railway Baroda House, New Delhi.

...Respondents

By None

O R D E R(Oral)

Hon'ble Shri P.T. Thiruvengadam, Member(A)

1. In this OA the applicants have prayed for quashing the Railway Board's letter No.85/ACIII/20/17 dated 24.6.86. For proper appreciation the extracts from the above letter are reproduced below:-

"Under the extant orders on the subject directly recruited clerks Grade I are required to be given a maximum of two

chances to appear at the Appendix 2(IREM) Examination within a period of three years from the date of entering service, and those who fail to qualify themselves within these two attempts render themselves liable for discharge from service. In a few cases, additional chance was given to some candidates on the basis of the recommendation of the FA & CAO/GM of the Railways. However, with a view to bring in uniformity, as also to make the concerned employees fully aware of the extant rules in this respect (SO) that the availability of additional chance is not taken for granted) Board under their letters No.84-AC III/20/31 dated 4.9.85 and 10.2.86, reiterated the position and directed the Railways that they may approach the Board for retaining the staff in service beyond three years, or for permitting them to sit in App.2(IREM) Examination beyond three years or for the third time in the said examination in relaxation of the extant rules, provided there were compelling reasons for such relaxation.

The entire position has been reviewed by the Department of Railways(Railway Board), and the following decisions have since been taken which should be followed by the Railways/Units, meticulously in future:

- a) In respect of directly recruited clerk Grade I, the Railways/units should ensure that two clear chances to appear in the Appendix 2(IREM) Examination within three years of their service should be made available to them duly taking into consideration the training period involved. In other words, after their training is over the employees should be able to appear in two examinations within a period of three years from the date of their appointment. This should be ensured by even holding Appendix 2(IREM) examination, specifically for such candidates, if need be.
- b) As regards candidates who have availed of two chances within three years of service,

who still apply for being given a third chance within or beyond three years, their cases if found justified, could be referred to the Board with the personal approval of the FA & CAO alongwith details of performance of the candidates in earlier examinations.

- c) .....
- d) .....
- e) .....
- f) .....
- g) .....

3. In cases where the employees do not qualify in the Examination even after availing of chances referred to in para 2 of this letter, their services as CGI should be terminated. In case however the employees so request, their cases for appointment as CG-IIIs, as fresh entrants in the Accounts Department will be considered by the Board on merits on receipt of a proposal from the Railway/Unit concerned, duly recommended by the General Manager provided a vacancy in CG-II grade is available.

4. These orders will be made effective immediately. Past case should not however be reopened.

5. .... "

(Portions not extracted are not material to <sup>the</sup> OA)

2. The grounds advanced by the applicants are as under:-

(a) The policy of the respondents as per Railway Board's letter dated 24.6.86 is highly discriminatory and a pick and choose <sup>absorption</sup> policy for reduction in service of those who have failed in the qualifying examination is being adopted.

(b) Service conditions of the directly recruited clerks Grade I have been affected by the impugned notification without giving any opportunity to the affected parties.

(c) Instructions of 24.6.86 are in the nature of administrative instructions which can not override the provisions at para 167 of Indian Railway Establishment Manual.

(d) The conditions imposed by impugned order give rise to discriminatory directions between the employees stationed in the Railways and others similarly stationed in the Comptroller and Auditor General Office.

3. The respondents in their reply traced the background to the issue and have stated that to improve the efficiency of the accounts department direct recruitment in the scale of Rs.330-560 (Rs.1200-2040) was introduced by Board's letter dated 4.7.56. Even then it was stipulated that the passing of Appendix 2 examination is a condition provided for confirmation as clerks Grade I. The maximum of 4 chances within a period of three years from entering service was allowed and those who failed to qualify within 4 attempts rendered themselves liable for discharge from service. Later Railway Board reconsidered and instructed that the number of chances should be restricted to only two vide Board's letter 58 AC-III/20/7 dated 27.6.59 (Annexure 3). Even in this letter it has been stipulated that those who fail to qualify themselves within the two attempts allowed would render themselves liable from discharge from service.

4. The respondents have also brought out that the applicants have mis-intrepretted the provision available for promotees in contrast to direct recruits. For promotees i.e., those to be

promoted from C G II to C G I passing of Appendix 2 examination is a must and for this category three chances were being allowed for passing the Appendix 2 examination and in special cases even upto 5 chances. Such provision has no relevance to directly recruited CG I candidates.

5. Thus there is no curtailment of chances vide Board's letter 24.6.86 and what this letter attempted was to streamline the procedure regarding the grant of ~~chances~~ in deserving cases for the direct recruits. Prior to Board's letter of 24.6.86 the individual applications of the candidates were being forwarded to Railway Board for decision. The letter of 24.6.86 spelt out guidelines for recommending the individual requests for the grant of third chance. In other words, this letter which has been impugned did not take away any existing facilities but rather systematised the conditions for sanctioning a third chance based on merits.

6. As regards comparison between employees of different departments we agree with the respondents that Railway Services is governed by its own Rules and any variation ~~cannot~~ be faulted.

7. At the time of argument, the learned counsel for the applicant mentioned that the provisions of impugned order are being implemented by a pick and choose policy. Certain instances of absorption of those direct ~~recruits~~ who do not fulfil the condition stipulated in Board's letter of 24.6.86 was referred to. These absorptions have taken place in departments other than the accounts department. The background regarding absorption in other departments has not been brought about. In any case, the contents of Board's letter

-6-

dated 24.6.86 did not mention anything about absorption in other departments and the allegation that the impugned letter has been implemented on a pick and choose policy basis does not get substantiated.

8. Under the circumstances, the OA is dismissed.  
No costs.

P.T. Thiruvenkadam

(P.T. THIRUVENGADAM)  
Member (A)

C.J. Roy  
(C.J. ROY)  
Member (J)

LCP