

(14)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH : NEW DELHI

O.A. NO. 2146/90

DATE OF DECISION: 31st JAN. 92

ATUL KUMAR SHARMA

...

APPLICANT

-Versus-

UNION OF INDIA & ORS.

...

RESPONDENTS

CORAM

HON'BLE MR. T. S. OBEROI, MEMBER (J)

HON'BLE MR. P. C. JAIN, MEMBER (A)

For the Applicant

...

Shri B. S. Mainee, Advocate

For the Respondents

...

Shri P. S. Mahendru, Advocate

J U D G M E N T

(Hon'ble Shri P. C. Jain, Member (A)) :

In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant who is said to have been appointed as a Junior Accounts Assistant, W & S Accounts Office, Western Railway at Ajmer in pursuance of his selection by the Railway Recruitment Board, has assailed the impugned order dated 9.10.1990 (Annexure A-1) by which he was given 14 days notice in accordance with the terms and conditions offered to him at the time of his appointment for termination of his services on the expiry of the aforesaid notice. He has prayed that the above impugned order be quashed and that the Railway Board circular dated 24.6.1986 (copy at Annexure A-3) be also quashed. He has also prayed for a direction to the respondents to re-evaluate/re-assess his performance with relaxed standard due to curtailment of his training from six months to three months as also for a direction to the

Cu.

15

- 2 -

respondents to consider his request to grant additional chances to appear in Appendix II Examination. As an interim relief, he has prayed that the respondents be restrained from implementing the impugned order dated 9.10.1990 and for directing them to continue him in service till the final disposal of the OA. By an order passed on 27.10.1990, as an interim measure, the respondents were restrained from terminating the services of the applicant till 5.11.1990, which order has continued up to 11.3.1991.

2. The respondents have opposed the OA by filing a return to which the applicant filed a rejoinder.

3. We have perused the material on record and also heard the learned counsel for the parties.

4. The applicant has not filed the appointment letter issued to him stating that the same is not available. Instead he filed an appointment letter in favour of one Shri Murari Lal Sivasiya stating to be a similar appointment. However, with their reply the respondents have filed a copy of offer of employment made to the applicant vide letter dated 15.7.1987 (Annexure R-I). From a perusal of this letter it is seen that the applicant was offered appointment as "Temporary Clerk Grade I (Trainee Clerk) in the scale of Rs. 1200-2040 (RP) on Rs.1200/- pay p.m. plus Dearness Allowance admissible under the Rules". He was put on probation for one year and eligible for confirmation only after successful completion of probation

Cu.

16

period and passing "Appendix 2 (IREM) Examination." If he failed to pass the above examination or if otherwise found to have made unsatisfactory progress, the probation could be extended at the discretion of the administration. During the period of 12 months, he was required to "undergo training for a period of 6 months (viz. 3 months theoretical and 3 months practical)". After completing six months' training as above, he was to be given regular charge and he was required to appear in the first Appendix 2 (IREM) Examination which is held after the expiry of the training. It was also stated in the offer of appointment that "A maximum of 2 chances to appear at the Appendix 2 (IREM) Examination within a period of three years from entering service will only be allowed to you and failure to qualify within these 2 attempts will render you liable for discharge from service". It was further stated that the appointment offered was purely temporary and his services were liable to be terminated with 14 days' notice or 14 days' pay in lieu thereof on either side. His services were also liable to be terminated in case he was found surplus to the requirements. The other conditions in the offer of appointment are not relevant for the issue before us. The case of the applicant is that instead of six months' training as mentioned in the offer of appointment, he was given only three months' training and that too only in the forenoon, i.e., for half a day and for the remaining half of the day he used to work on his seat. His further case is that he has been given only two chances to pass the Appendix II (IREM) Examination while a number of other persons have been given more than two chances and in some cases even

Cu.

upto five chances. Another contention is that in some cases Clerks Grade-I who could not pass the above examination were transferred as Senior Clerks in other branches of the Railways and he has mentioned some names in this connection. He has asserted that the staff is being granted with the approval of the higher authority, two plus one additional chances, as a matter of routine. Accordingly, he has also raised the plea of discrimination.

5. The terms contained in the offer of appointment, a copy of which has been filed by the respondents, are not in dispute. We may first take up the issue of duration of the training. Offer of appointment, as already stated above, states that the applicant would have to undergo training for a period of six months (viz. three months theoretical and three months practical). The respondents in para 4.21 of their reply have stated that the applicant had been imparted training as per extant rules in force at the relevant time. It is further stated that imparting of training is programmed at making the directly recruited Clerks Grade-I/Junior Accounts Assistants acquainted with the day to day work of the various sections in the accounts office, but the same has no bearing upon the passing of the Appendix II Examination for which the employee has to prepare himself. The respondents also produced before us a copy of a letter dated 4.8.1981 issued from the office of the FA & CAO. This letter shows that in terms of Railway Board's letter No. 56 ACS-INSP/35 dated 4.7.1956 the direct recruits to the post of CGIs should receive theoretical study for a

period of three months and a practical training for a period of three months during their probation period of twelve months. It further states that "In para 1(iii) of Board letter No. PC III/78/UPG/8 dt.16.5.80 the directly recruited clerk grade I would be given a training condensed into a concentrated course over a period of 3 months. This training shall be arranged to ensure that new recruits are adequately trained in the work of the office in accordance with the instructions by the Railway Board from time to time. The trainees should receive lectures for a period of 3 months on General Principles of Accounting, Classification of Expenditure, Compilation of Accounts, Important Financial/Fundamental Rules and should receive co-ordinated practical lessons in the afternoon. The training Section Officer, should demonstrate the actual process of accounting of different class of vouchers etc. in the class room, the trainees should be taken to the concerned section." The communication further stated that "in view of the above instructions, the directly recruited graduate clerks Gr.I are to be given comprehensive training so that they may pass App.II A Examination to be conducted after completion of their training." Brief narration of the subjects required to be covered and the time allotted for each was shown in Annexure-A, together with Annexure-B, showing important items of work that were required to be covered under each subject shown in Annexure-A. It is in the background of these instructions that the

Cm

12

respondents appear to claim that the applicant was imparted training in accordance with the instructions on the subject. The fact, however, remains that inspite of these instructions the condition incorporated in the offer of appointment mentioned training for six months and accordingly the applicant has contended that his performance in the prescribed examination was adversely affected due to curtailment in the period of training and as such his performance should have been assessed on relaxed standards ^{or he be given grace marks.} We are not inclined to be persuaded by the above contention of the applicant for the simple reason, firstly, in the matter of duration of training, there is no plea that he was discriminated against by imparting training of longer duration to others equally placed and imparting training of shorter duration to the applicant, and secondly, if he had really any grievance on that count, he should have represented in this regard when he first appeared in the Appendix II Examination in April, 1988. There is nothing on record to show that he made any grievance in regard to the shorter duration of training at that time or when the examination was again held in September, 1989 or when he was allowed at his request an additional chance to appear in the Examination held in May, 1990. In our view, his plea on this ground is an after-thought and by his own conduct, in all fairness and equity, he is now estopped from taking this plea. Here it may also be stated that in clause (iii) of sub-para 4 of para 171 of the Indian Railway Establishment Manual, Volume I (Revised Edition

Cu-

-1989) it is clearly stated that "A concentrated training course of three months as per instructions issued by the Railway Board from time to time" is one of the conditions for such appointees. We may clarify that the lowest category of posts in the accounts wing is that of Accounts Clerks in the scale of Rs.950-1500 and Accounts Clerks are eligible for promotion as Junior Accounts Assistants (earlier known as Clerks Gr. I) in scale of Rs.1200-2040 against 20 per cent quota vacancies. Remaining 80 per cent of the vacancies in the grade of Junior Accounts Assistant in the scale of Rs.1200-2040 are to be filled by direct recruitment as per conditions laid down, which inter alia include a concentrated training course of three months, as already stated above and passing the Appendix II Examination within a period of three years and in two chances, failing which they are liable to be discharged from service. The applicant was selected and offered appointment as a Trainee Clerk against one of these 80 per cent posts reserved for direct recruitment.

6. We may now deal with the controversy between the parties about the number of chances actually given to the applicant for passing the prescribed Appendix II Examination. Needless to repeat that as per offer of appointment, only two chances were required to be given. However, in the Railway Board's letter No. 84/ACIII/20/17 dated 24.6.1986 on the subject — Directly Recruited Clerks Grade I in the Accounts Department of Railways,

On

2

circulated vide Northern Railway Headquarter Office letter dated 3.9.1986 (copy at Annexure A-3), the Railway Board after review of the then existing instructions on the subject, had issued revised decisions to which were required to be followed by the Railways/Units meticulously in future. The objective of reviewing and taking ^{their} ~~the~~ decision is stated to be 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. According to the new instructions, it was to be ensured that — (1) two clear chances to appear in the Appendix 2 (IREM) Examination within three years of their service should be made available to them after their training is over; (2) those who have availed of two chances within three years of service but still apply for being given third chance, within or beyond three years, their cases, if found justified, could be referred to the Board with the personal approval of the F.A. & C.A.O. along with details of performance of the candidates in earlier examination; (3) in respect of those who did not avail of any chance within three years of service, on medical grounds, involving request for leave of absence supported by sick certificate from the Railway doctor, in spite of the examinations having been conducted during that period, request for grant of chance after completion of three years of service, will be considered by the Board only on the basis of personal approval of the F.A. & C.A.O. concerned and if the case is otherwise found to be fit

Ue

2

justified; (4) in case the employee did not appear in the earlier examination within three years due to genuine health reasons duly supported by proper Railway medical certificate, and if a chance was granted by the Board after completion of three years of service, vide (3) above, which was availed, the employees' request for grant of one more chance, i.e., the second chance after three years' service may be referred to the Railway Board, with the personal approval of the General Manager; (5) merely absenting in the two examinations held within three years of service will not amount to chance 'Not counted' and no reference should be made to the Board for additional chances; and the employee's service should be terminated without any reference to Board and in terms of extant orders; (6) wherever sanction for an additional chance is given after three years' service vide (2) (3) and (4) above, it should be so acted upon that the employee in any case will not be recommended for additional chances after these brought out therein, and that in any case the employee will not be given any chance beyond two/three chances which too should be availed of within a span of four years of service, and the action of termination of service in the event of failure in the last chance granted within the period of four years of service will be taken immediately after the announcement of the results of the examination, if the results happen to be announced after the expiry of four years; and (7) in cases where the employees do not qualify in the examination even after availing of chances referred to above, the services as

Ca.

23

CGI should be terminated, but in case the employees refuse request, their cases for appointment as CGIIs, as fresh entrants in the Accounts Department will be considered by the Board on merits on receipt of proposal from the Railway/Unit concerned, duly recommended by the General Manager provided a vacancy in CGII grade is available. These orders were made effective immediately and past cases, however, were not to be re-opened.

7. From the averments of the applicant in his O.A., it appears that three Appendix II Examinations were held during his period of three years of service. We find from the reply of the respondents that the first examination in this connection was held in April, 1988 but the applicant did not qualify. The second examination was held in September, 1989 but the applicant did not appear in the same and submitted a private doctor's certificate of sickness, which was not accepted by the competent authority. Here it may be stated that as per the Railway Board's instructions referred to above, the certificate of sickness was required to be from a Railway doctor. As such, the said absence was treated as one more chance countable as per the instructions. The third examination was held in May, 1990 and an additional chance was given to him at his request and it is stated that it was made clear to the applicant that the additional chance was given to him and in which he should appear and pass the same. However, he did not pass even in this examination. These facts read with the relevant instructions of the

Cu.

23

Railway Board make it quite clear that he was given two chances as stated in the offer of appointment given to him and an additional chance was also given to him in terms of the instructions in para 2(b) as reproduced as instruction (2) above. Thus, the action of the respondents in this regard has been strictly in conformity with the conditions in the offer of appointment read with the instructions of the Railway Board on the subject. The applicant has mentioned some cases in which even five chances were given. However, all these relate ^{to the period} before the revised instructions were issued by the Railway Board and the applicant has failed to state in his pleadings or show to us that any candidate appointed to the post of Clerk Grade I/Junior Accounts Assistant after the revised instructions were issued by the Railway Board in April, 1986, has been given additional chance/chances in violation of the aforesaid instructions of the Railway Board. The applicant was appointed in July, 1987 and these instructions were fully applicable to him and he has availed of the maximum number of chances for passing the examination.

8. The applicant has raised the plea that the restrictions imposed by the Railway Board in their letter dated 24.6.1986 limiting the chances to three, are contrary to the provisions contained in Indian Railway Establishment Manual and that even otherwise are irrational, unjust, unfair, discriminatory and violative of Articles 14 and 16 of the Constitution. There is

Ca.

21

nothing before us to show how the aforesaid instructions of the Railway Board dated 24.6.1986 are contrary to the provisions contained in the Indian Railway Establishment Manual. Further, the contention that these are irrational etc. and discriminatory is also without any force. A perusal of the instructions, as briefly reproduced above by us, makes it quite clear that there is nothing irrational, unjust or unfair about these instructions. These cannot be held to be discriminatory on the sole ground that before the issue of these instructions, candidates were being allowed more chances. The authority which had issued instructions earlier was fully competent to revise those instructions. If any authority has the power to issue instructions, it also has the power to review and modify the same. These instructions were not made applicable with retrospective effect. As such, we do not see any force in the contention of the applicant that the instructions issued by the Railway Board in their letter dated 24.6.1986 are either irrational unjust, unfair or discriminatory.

9. In para 4.23 of the OA, the applicant has stated that the rules regulating the confirmation of directly recruited Clerks Grade I, after passing the prescribed Appendix II Examination are contained in rule 167 of the Indian Railway Establishment Manual, and a copy of the same is said to be annexed as Annexure-A-6 to the OA. However, we find that at Annexure A-6 is a copy of letter dated 3.5.1988 from National Federation of Indian Railwaymen addressed to the Secretary, Railway

Cm.

2

Board, New Delhi and there is nothing in it to show that it is a copy of Rule 167 of IREM. We further find that in the Indian Railway Establishment Manual Volume I (Revised Edition-1989) rule 167 deals with the post of 'Mid Wife'. For the accounts staff the relevant rule is rule 171 about which we have already referred to above. Even otherwise, provision about confirmation would not appear to be relevant in view of the clear terms indicated in the offer of appointment which are not in dispute and in which one of the conditions necessary is that the appointee should pass the Appendix II Examination which the applicant has admittedly failed to pass. The reply of the respondents in this regard is that rule 167 of IREM (probably it refers to an earlier edition of the Manual) relates to the promotion examination for Accounts Clerks working in grade Rs.950-1500 while Appendix II Examination is not for their confirmation in service but actually for their promotion as Clerk Grade I/Junior Accounts Assistants in grade Rs.1200-2040, and in the circumstances that rule is not applicable in the case of the applicant.

10. The applicant has raised another contention to the effect that in some of the cases Clerks Gr.I who could not get through the Appendix II-A Examination were transferred as Senior Clerks in other branches of the Railways. He has mentioned the names of Smt. Alka Sawhney and Smt. Sharda Singh, directly recruited Grade I employees in Stores Accounts Branch (Hq.) Office in this regard. He has also mentioned the names of Shri Harjit Singh and Ms. Neeru Nijhawan, who are said

23

to have been retained in service and absorbed as Senior Clerks in the same scale of pay in the Statistics Branch of Western Railway at Delhi-Kishanganj and D.R.M. Jaipur Office respectively by order dated 5/89. In their reply in this regard, the respondents have stated that Smt. Alka Sawhney, Smt. Sharda Singh, Shri Harjit Singh and Ms. Neeru Nijhawan were appointed by the competent authority and their mode of appointment and service conditions were different from those appointed Clerks Grade I/Junior Accounts Assistants directly through the Railway Recruitment Board. It is further stated that many facilities given to the employees recruited against sports quota are not applicable to others, and in these circumstances the case of the applicant cannot be compared with the case of the persons mentioned by him. Here it is relevant to point out that in accordance with the provisions of para 171 of the Indian Railway Establishment Manual Volume 1 (Revised Edition-1989), Accounts Clerks recruited directly against 75 per cent direct recruitment quota and promoted by selection from Group 'D' staff against 25 per cent quota, in the scale of Rs.950-1500, are eligible for promotion as Junior Accounts Assistants in the scale of Rs.1200-2040 against 20 per cent quota of such higher post. It appears that the respondents have taken the plea that the above-mentioned employees fall in that 20 per cent promotion quota and as such they were in a different category than the directly recruited candidates against 80 per cent quota for the post of Junior Accounts Assistants. We would, however, like to state that in the absence of relevant particulars of all these other employees

Encl.

22

it is not possible for us to hold that the applicant was equally placed or not with these employees, and accordingly on the ground if the contention raised in this regard we cannot hold that the applicant is entitled to the relief prayed for by him.

11. Learned counsel for the applicant cited the judgment of the Allahabad Bench of the Tribunal in — (1) OA-86/90 : R. S. Panu & Ors. vs. Union of India & Ors. and (2) OA-115/90 : Raj Kumar Gupta & Anr. vs. Union of India & Ors. We were also supplied photo copies of the above two judgments ^{as} no citation was furnished. Copy of the judgment in OA-86/90 is ^{not} fully legible and that of in OA-115/90 is virtually unreadable. Even then we have tried to go through these judgments and we find that judgment in OA-86/90 is based on the judgment in OA-115/90. All the issues raised in OA-115/90 are neither identical nor similar to the issues raised before us. In OA-115/90, the applicants were appointed in December, 1985 while the applicant in the case before us was appointed after the issue of instructions by the Railway Board in April, 1986. In the cited case, the conditions mentioned in the advertisement for the post against which the applicants therein were appointed also did not mention the condition about termination of service in the event of failure to pass the Appendix II Examination. In the case before us no such advertisement has been filed or produced. There is a reference to an advertisement issued at Chandigarh but

Cy,

the relevancy of that advertisement to the recruitment of the applicant before us has not been established.

In the cited case, the services of the applicants were terminated with immediate effect without any notice while in the case before us the applicant was given 14 days' notice in accordance with the terms and conditions of his appointment. The following observations of the Bench in OA-115/90 may be re-extracted as below :-

"The Railway Board, in this manner, cannot add a condition for termination of service which does not find place in the advertisement or in the appointment letter or in para 167 of the IACP under which the examination took place."

In the case before us, as already stated above, the advertisement is not an issue and the condition of passing the Appendix II Examination within three years and by availing of two chances is clearly mentioned and it is also mentioned that the failure to pass the above Examination as aforesaid will render the appointee liable for discharge. This condition is also mentioned in para 171 of the IREM as already discussed above. Thus, the judgment in the cited case is not relevant for the case before us.

12. In the light of the foregoing discussion, we are of the considered view that the OA is devoid of merit and the same is accordingly dismissed. The interim order passed on 22.10.1990 is also hereby vacated.

It is nowhere stated by the applicant that he applied for appointment as CGII as fresh entrant in the Accounts

Cu

- 17 -

Department, as such a request could be considered in terms of the instructions contained in the Railway Board letter dated 24.6.1986, as already discussed above. We, therefore, reserve to the applicant the liberty to approach the competent authority for appointment as CGII as fresh entrant in the Accounts Department in accordance with the pen-ultimate para of the Railway Board letter dated 24.6.1986.

On the facts and in the circumstances of the case, we leave the parties to bear their own costs.

(Signature)
(P. C. JAIN)
MEMBER (A)

(Signature) 31.1.92
(T. S. OBEROI)
MEMBER (J)

as