22

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH : NEW DELHI

.....

R.A. No. 94/92 in O.A. 1530/89
MP-940,941/92

Union of India Sh.Ramesh Gautam
V/s Nirmal Singh " E.X.Joseph
" S.N.Sikka,O.P. Kshtria

With
RA-217/92
MP-1803,1804/92
OA-395/90

Union of India " Ramesh Gautam
V/s Sanjay Mehta

RA-215/92
MP-1799,1800/92
OA-34/90

Union of India -do-
V/s Ashwni Kr.

RA-216/92
MP-1801,1802/92
OA-123/90

Union of India -do-
V/s A.K.Jain

RA-218/92
MP-1805,1806/92
OA-360/90

Union of India -do-
V/s Amrish Kr.

RA-219/92
MP-1807,1808/92
OA-182/90

Union of India -do-
V/s A.K.Shukla

RA-220/92
MP-1809,1810/92
OA-262/90

Union of India
V/s H.A.Kazmi -do-

RA-221/92
MP-1811,1812/92
OA-185/90

Union of India -do-
V/s V.K.Rahija

RA-222/92
MP-1813,1814/92
OA-584/90

Union of India -do-
V/s Smt.AshaKhuraaa

RA-223/92
MP-1815,1816/92
OA-587/90

Union of India -do-
V/s S.K.Sharma

...2

RA-224/92 Union of India Sh.Ramesh Gautam
V/s Som Dutt

MP-1817,1818/92

OA-1219/89

O__R__D__E__R

The review applications have been filed by the petitioners/respondents in the aforesaid O.As., whose judgement was pronounced on 21.2.1992 by a Bench consisting of Hon'ble Mr. Justice Ram Pal Singh and myself.

2. In the judgement the following directions were given -

(1) The termination orders without one month's notice in case of applicants who had served continuously for over three years are quashed and the applicants would be deemed to be in continuous service with no back wages for the periods they have not actually worked as CG1;

(2) The respondents should consider each case on merit to determine whether more chances should be given for passing the confirmatory examination; and

(3) The respondents should consider the cases of the applicants for change of category in the pay scale of pay. In cases where additional chance for confirmatory examination on accounts side is given in pursuance of (2) above, the change of category should be considered thereafter. The directions should be complied with as early as possible.

...3

cannot be sustained. Regarding the judgement of the Hon'ble Supreme Court in the case of Kaushal Kumar Shukla (Supra) it was observed by the Apex Court that a temporary employee has no right on the post and his services were liable to be terminated in accordance with the relevant service rules and terms of contract of service. There is no inconsistency between this observation of the Hon'ble Supreme Court and the findings in our judgement datad 21.2.1991 whereto it was observed that termination against rule 301 of IREC could not be maintained.

5. As regards the judgement in O.A. 2146/90 of Atul Kumar Sharma v/s Union of India & Ors. it may be mentioned that this judgement related to applicants who were appointed after the issue of the instructions by the Railway Board on 24.6.1986. The judgement in O.A. 115/90 related to applicants who were appointed in December 1985 i.e. prior to issue of the said instructions. In the present case also all the applicants were appointed prior to 24.6.1986 except one whose case was that of compassionate appointment.

6. In any case the judgement dated 31st January 1992 in O.A. 2146/90 was available to respondents at the time of hearing of the case and they should have raised the issue at that stage. Similarly, in OA 322/92 quoted by the petitioner in R.As., the applicants were appointed on 21.6.1988 i.e. after the issue of the Board's instructions.

7. In view of the above findings the directions at S.No.(1) above as given in the judgement of 21.2.1992 remain unaltered as there is no good ground in the review petition to modify or alterthis direction.

8. In the second direction given in our judgement of 21st February it was said that the respondents should consider each case on merit to determine whether more chances

(23A)

3. As regards (1), it has been mentioned in the review application that the applicants have tried to take up the issue of non-issuance of notice before termination as per para 301 of the IREC. He states that rule 301 is not applicable in the case of the applicants as their continuance is subject to passing the examination of Appendix 2A. Moreover, he draw attention to the judgement of the Hon'ble Supreme Court in State of Uttar Pradesh and others v/s Kaushal Kumar Shukla [JT 1991 (1) SC 1087. It has further been added that the judgement relied on by the applicant being O.A. No. 115/90 decided by Lucknow Bench has already been distinguished by the judgement in O.A. No. 2146/90 of Atul Kumar Sharma v/s Union of India. Further, in the case of Raj Kumar and Ors. v/s Union of India decided by Lucknow Bench the respondents have filed SLP. A decision in O.A. No. 322/92 has been taken on similer points where the application has been dismissed.

4. In regard to the above contentions of the Learned Counsel for the petitioner, it may be pointed out that it is settled that provisions relating to power to review constitute an exception to the general rule that when once a judgement is signed and pronounced it cannot afterwards be altered or added to and hence the right to review is exerciseable only where circumstances are distinctly covered by statutory exceptions. By a review application a case cannot be re-argued and the judgement re-written on points which have already been discussed earlier. As regards applicability of para 301 of the IREC the judgement dated 21.2.1992 dealt with the issue and it was observed that the termination orders were violative of rule 301 of IREC in case of applicants who had not been given one month's notice and who had served continuously for over three years. The appointment letter did say that the services were terminable in the event of failure to pass the confirmatory test within three years in two chances but such termination without notice against rule 301 of IREC

....4

should be given for passing the confirmatory exam. The petitioner has stated that during the course of arguements on 14.2.1992 the Counsel for the applicants had made the allegations that even after 1986 more than three chances were given to some Clerk Grade I. The Counsel for the respondents, however, controverted the arguements and denied the allegations. On his doing so, the Bench had directed the counsel for the respondents to file an affidavit to the effect that no direct recruited CGI had been given more than three chances after the policy of the Railway Board dated 24.6.1986. The respondents filed the affidavit on 17.2.1992 but this was not taken notice of by the Bench while the judgement was being written and after delivery of the judgement when the court directed the search of the affidavit it was located on the record.

9. While it is true that this affidavit was not taken notice of, the point for consideration is whether this affidavit would alter the direction No. (2) given in the judgement. The affidavit says that Shri Iqbal Ahmad and Shri Atar Singh were appointed in 1978 and they were given more than three chances but this was prior to the final policy laid down by the Railways on 24.5.1986. It was certified that after the policy had come into existence no Clerk Grade I had been given more than three chances.

10. The Learned Counsel for the respondents in the revision petitions said they had quoted specific references of the respondents namely Northern Railways' letter No. 89/Adm/C/4/1/Appendix II dated 4th July 1989 where it was mentioned that Shri N.C. Walia and Shri R.K. Sood were being given the third chance and by another letter of even number dated 11.7.90

they amongst others/given a chance to appear at Appendix II of the examination. Be that as it may, on acceptance of the affidavit referred to, our direction at S.No.2/remains unaltered in view of the fact that it was observed in the judgement that para 167 of IREM provides that normally no railway servant will be allowed to take the examination more than thrice but the FA&CAO may in deserving cases permit the candidates to take examination fourth time and in very exceptional cases the General Manager may permit a candidate to take examination for the fifth and the last time. The direction given by us was for the respondents to consider each case on merit for giving more chances and no mandatory direction as such/to compel the respondents to allow a chance was given.

11. As regards the third direction which said that the respondents should consider the cases of the applicants for change of categories in the same scale of pay it has been mentioned in the review application that the category of Shri Ramesh Kumar Srivastava was allowed to be changed before his result of examination at Appendix II-A was declared. His category was changed only because of the fact that Shri Srivastava was applying for inter-railway transfer since 10.9.1986 due to his domestic circumstances and on his persistent requests the matter was considered by FA&CAO of both the railways and he was allowed inter-railway tra-nsfer by order dated 14.6.1989. The applicant cannot claim appointment as a matter of right.

12. The Learned Counsel for the respondents in RAs/pointed out that apart from the case of Shri R.K. Srivastava there were cases of Shri Harjeet Singh and Kumari Neeru Nijhawan and in respect of the latter two, the order of the Western Railway dated 9.5.1989 was quoted where they were transferred from Junior Accounts Assistant to the post of Senior Clerk in the same scale. Be that as it may, no direction to the

..7

effect that the applicant can claim change of appointment as a matter of right was given. All that was said was that respondents should consider the cases of the applicants for change of category in the same payscale. This direction is surely not asserting that the applicant can claim a change of category as a matter of right.

13. In view of the aforesaid observations, the review petitions do not warrant a modification of the directions and are dismissed. The M.Ps. also stand disposed of.

(I.P. Gupta)
Member (A)

10/8/92

Hon'ble Mr. Justice Ram Pal Singh.

I agree.

10.8.92

True copy
Attested.

(PRITAM SINGH)
Section Officer/Court Officer
Central Administrative Tribunal
Principal Bench, Faridkot House
New Delhi-110001