

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

(3)

PRINCIPAL BENCH: NEW DELHI

OA NO.322/92

DATE OF DECISION: 11.2.1992.

SHRI ASAD AKHTAR KHAN

...APPLICANT

VERSUS

UNION OF INDIA

...RESPONDENTS

CORAM:

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

HON'BLE MR. I.K. RASGOTRA, MEMBER (A)

FOR THE APPLICANT

SHRI SUDHIR KULSHRESHTHA, COUNSEL

(JUDGEMENT OF THE BENCH DELIVERED BY HON'BLE
MR. I.K. RASGOTRA, MEMBER (A))

Shri Asad Akhtar Khan, the applicant, in this Original Application filed under Section 19 of the Administrative Tribunals Act, 1985 has challenged the Railway Board's instructions vide No.84/AC-III/20/17 dated 24.6.1986 which are said to have arbitrarily stipulated maximum number of chances to be given to directly recruited clerk Grade-I/- Junior Accounts Assistant to qualify Appendix II IREM Examination for their confirmation to the post within three years.

2. The brief facts of the case are that the applicant was appointed as Clerk Grade I on 21.6.1988 in the Accounts Department of the Northern Railway. The terms and conditions of employment said to be relevant read as under:-

"(c) If you fail to qualify Appendix II Examination prescribed in Indian Railway Establishment Manual or otherwise your performance is considered unsatisfactory, the period of probation can be extended but the candidate has to qualify the aforesaid examination in two attempts within three years from the date of appointment failing which

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the services of the applicant may be terminated." The following grounds have been adduced by the applicant for challenging the Railway Board's order of 24.6.1986:

- i) The Railway Board has fixed arbitrarily two chances to appear in Appendix II, IREM examination in a period of three years from the date of entering service failing which the candidates are liable to be discharged. This condition is not being followed honestly and uniformly and the same is mended to suit the favourable ones. This condition is, therefore, said to be arbitrary and discriminatory, offending Articles 14 and 16 of the Constitution of India. It is alleged that respondents have granted more than four chances to some persons even beyond three years of service.
- ii) The condition of qualifying examination is also not enforced uniformly to all directly recruited C.G.I. Some of them are appointed in other branches of the Railway without qualifying in the said examination by changing their category.
- iii) The policy of the respondents in granting two chances in three years does not flow from any statutory rule and the administrative instructions issued vide letter dated 24.6.1986 cannot supplant the statutory Rule 167 of IREM which does not prescribe any such condition.
- iv) That some persons situated similarly as the applicant, were threatened with termination orders and they approached the Tribunal through different applications like O.As Nos. 105, 1219/89 and OAs Nos. 34, 123, 182, 262, 360, 584, 587/90 where the applications have been admitted and interim orders granted for staying the termination of service from the post of C.G.I.

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3. The applicant has not clearly averred as to how many chances he had availed of in the Appendix II Examination. All that he has stated in the O.A. is that "the applicant is suffering from severe jaundice and is not able to attend the office w.e.f. 15th January....."

"It is learnt that the result of the last examination which was held in July 1991 has been pronounced on 29.1.92 and the applicant has failed..." "The termination orders of all such failed candidates are said to be in process, however no such termination has been served on the applicant so far as he is unwell for the last three weeks....."

4. By way of relief the applicant has prayed:

"a) restrain the respondents from terminating the services of the applicant from the post of clerk Gr.I

b) struck down para 2 and 3 of the circular dated 24.6.86 to the extent it provides for three chances within a period of three years failing which the termination and also that after termination from the post of clerk Grade I employee will be reappointed on the post of clerk grade II in the lower pay scale."

He has also prayed for interim relief. In support of his contention in the O.A. he has cited the decision of the Central Administrative Tribunal, Allahabad Circuit Bench, Lucknow O.A. No.115/90, OA 127/90 and OA 118/90.

5. As similar a matter had earlier come up before the Tribunal (in which one of us Hon'ble Shri T.S. Oberoi was a party), we felt it desirable to consider the case at the preliminary stage itself.

The said matter was decided by the Principal Bench in OA 2146/90 decided on 31.1.92 **Atul Kumar Sharma v. U.O.I. & Ors.** which is based on identical set of facts as set out in the present O.A. The applicant Shri Atul Kumar Sharma was appointed after the issue of Railway Board's letter dated

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24.6.86. He questioned the validity of the Railway Board's instructions dated 24.6.1986. The challenge to the validity of the said instructions was, however, rejected as for the reasons given in the said judgement. The judgement in **Atul Kumar Sharma** (supra) also points out that no specific cases were cited where Clerk Grade I had been appointed after the issue of Railway Board's said instruction of 24.6.1986 granting ordinarily two and in exceptional cases third chance with the approval of the Railway Board. The provisions made in Rule 167 of IREM have also been discussed therein. The Bench also referred to the judgement of the Allahabad Bench in OA 115/90 **Raj Kumar Gupta & Anr. v. UOI** and OA No.86/90 **R.S. Panu & Ors. v. UOI** and came to the conclusion that the "issues raised in OA 115/90 are neither identical nor similar to the issues raised before us." (OA 2146/90). "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 Railway Board in April, 1986..." The Bench also observed that judgement in OA 86/90 is based on the judgement in OA 115/90. Thus both these said cases do not support the case of the applicant.

In view of the above circumstances we are of the view that the application is devoid of merit and is accordingly dismissed at the admission stage itself.

I.K. Rasgotra
(I.K. RASGOTRA)
MEMBER (A)

T.S. Oberoi 11.2.92.
(T.S. OBEROI)
MEMBER (J)

February 11, 1992.,