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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

M.P. No.4070 of 1992 in

O.A. No.3339 of 1992

New Delhi this the 27th day of January, 1994

Mr. Justice S.K. Dhaon, Vice-Chairman
Mr. B.N. Dhoundiyal, Member

1. Shri Deepak Chaudhary
R/o 73, Windsor Park,
Jalandhar City.
2. Shri Harvinder Singh
R/o EE-50, Panjpeer,
Jalandhar City.

...Petitioners

By Advocate Shri R.K. Relan

Versus

1. Chairman,
Railway Board,
Ministry of Railways,
Rail Bhawan,
New Delhi.
2. General Manager,
Northern Railway,
Baroda House,
New Delhi.
3. FA&CAO,
Northern Railway,
Baroda House,
New Delhi.
4. The Deputy Chief Accounts Officer,
Traffic Accounts Office,
Northern Railway,
Traffic Accounts Office,
Delhi Kishanganj.
5. Accounts Officer,
Traffic Accounts Branch,
Northern Railway,
Jalandhar City.

...Respondents

By Advocate Shri Romesh Gautam

ORDER (ORAI)

Mr. Justice S.K. Dhaon, Vice-Chairman

These are two petitioners before us. By separate but similar orders, they were appointed as Clerks Grade-I and were known as Junior Accounts Assistants in the Northern Railway. They came to this Tribunal by means of this O.A. apprehending that their services may be terminated upon the basis of a letter of the Railway Board dated 24.06.1986.

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2. The prayers, to this OA, are these:

(i) The said letter dated 24.06.1986 of the Railway Board contemplating denial of further opportunity after 3rd attempt to qualify in the departmental examination and envisaging immediate termination of services of employees in such contingencies being arbitrary, mala fide, contrary to the various statutory rules, is discriminatory and thereby ultravires of the Articles 14 and 16, 20(2) and 21 of the Constitution and opposed to Directive Principles of State Policy as contained in Articles 38, 39 and 40, may be quashed.

(ii) The respondents may be directed to consider the request of the petitioners for grant of additional chance in accordance with the provisions of Rule 167 read with clause 4(a) of Appendix II of the Indian Railway Establishment Manual keeping also in view the parity of services between Junior Accounts Assistants with their counter-parts Auditors on the Audit side in the identical scales of pay who are entitled to six chances straightway and in view of the judgment of this Tribunal in OA 1530 of 1989 and connected matters decided on 21.02.92.

(iii) In view of the principle of parity in service between Accounts staff and in the various staff in the various Accounts Organisations in different departments under the Central Government having already been accepted in implementation of the recommendations of the IVth Pay Commission, the Railway Board may prescribe such conditions for passing the confirmatory departmental examination as may be in harmony with the conditions obtained in other Accounts Organisations under the Central Government for the directly recruited staff in the Accounts Department of P&T, Defence etc. under the Comptroller and Auditor General of India's office in the time scale of Rs.1200-2040.

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3. Admittedly, the petitioner No.1, Shri Deepak Chaudhry was appointed on 05.06.1989 and the petitioner No.2, Shri Harvinder Singh was appointed on 12.10.1989. At this stage, we may refer to the contents of the letter of appointment issued to petitioner No.1. The salient features of the contents of the said letter are these:

- (i) The petitioner No.1 had been selected for appointment on a temporary post.
- (ii) He was being appointed on probation against the temporary post on a temporary basis.
- (iii) He would remain on probation for a period of one year and he would be entitled to be considered for confirmation after passing the departmental examination. He would be sent for training for six months.
- (iv) If he fails to pass in the examination and his performance was unsatisfactory, his period of probation could be extended.
- (v) His services could be terminated if he fails to pass the departmental examination during a period of 3 years.
- (vi) During the period of probation, his services could be terminated by giving him a notice of 14 days.

4. When the petitioner entered service, admittedly, Rule 167 of the Indian Railway Establishment Manual was enforced. This Rule, as material, inter alia, provided that directly recruited Clerks Grade-I will be on probation for a period of one year and will be eligible for confirmation only after passing the prescribed departmental examination in Appendix-II. Necessary facilities may be given to them to acquire knowledge of the rules and procedure. We may note at this stage that the said Rule, as referred to above, was clear and specific. It, in our opinion, clearly conveyed the idea that the

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confirmation was dependant upon passing the prescribed departmental examination. It could, therefore, be interpreted to mean that only one chance was available to a candidate. It clearly excluded the giving of more than one chances. It, however, stopped short there and did not prevent it being supplemented by either departmental instructions or otherwise. We may also indicate the legal position that a statutory rule cannot be supplanted but can be supplemented by departmental instructions.

5. We may now consider the impugned letter of the Railway Board. It recites that, under the extant orders, directly recruited Clerks Grade-I were given a maximum of two chances to appear at the examination within a period of 3 years from the date of entering service and those who fail to qualify within these two attempts render themselves liable for discharge from service. With a view to bring uniformity, as also to make the concerned employees known of the extant rules (so that the availability of additional chances is not taken for granted), Board vide their letters dated 4.9.85 and 10.02.86 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 Appendix-II (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 Railway Board and the following decisions have been taken which should be followed by the Railways/Units, meticulously in future:

- (i) In respect of directly recruited Clerks Grade-I, it should be ensured that two clear chances to appear in the examination within three years of their service should be made available to them duly taking into consideration the training period involved. After the training is over, the employees should be able to appear in the examination

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within a period of 3 years from the date of their appointment. This should be ensured by even holding specifically examinations for such candidates, if need be.

(ii) 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.

The letter of the Board clearly intends to supplement the contents of the aforesaid Rule. We may note at this stage that, according to the petitioners themselves, they were given 3 chances within a period of 3 years to appear in the departmental examination and they remained unsuccessful on each occasion.

6. We are unable to discern any conflict between the rules aforementioned and the instructions aforementioned. We have already indicated that the rules are being supplemented by the instructions. We may also note at this stage that neither in the O.A. nor at the Bar even a whisper has been made about the validity of the Rule, referred to above. If the Rule is kept intact, the provisions supplementing them can hardly be struck down for no useful purpose will be served by doing so. The supplementing provisions are clearly giving better chances to the deserving candidates. Even otherwise, we do not find any element of arbitrariness in the instructions. It is very clearly stated that a candidate will get 2 chances to appear in the examination within a period of 3 years and his service could be terminated by giving him a notice of 14 days. Even a third chance has been given to certain candidates, provided they fulfil certain conditions. We take it that the Railway Board or the

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authority concerned while giving them third chance to appear in the examination have acted rationally and not arbitrary. If in an individual case any act of arbitrariness is brought to the notice of this Tribunal, then the occasion will arise to ^{down the act} strike of arbitrariness and not the validity of the instructions. Learned counsel has vehemently urged that the contents of Annexdix II are mandatory and it is part of Rule 167. It appears to us that Rule 167 is a general rule covering different situations and only a part of that rule has been extracted in this O.A. We have also a feeling that Appendix II contains directions or instructions to cover numerous situations. The other situation being, promotion.

7. The specific stand taken in the counter-affidavit is that the rules, as contained, are applicable to the cases of promotion. Even assuming the rules are applicable, the Rule merely states that it is desirable that more than 3 chances should ^{be} given to a candidate.

8. We have considered the matter with some anxiety. and we have come to the conclusion that the contents of the Rule, as contained in Appendix II insofar as they relate to giving of more than 2 chances are merely directory.

9. In the counter-affidavit filed, the averments are these. The petitioners have been given three chances to qualify in the departmental examination, as envisaged in Appendix IIA, but failed, although, the policy dated 24.06.1986 of the Railway Board provides for two chances. The third chance has been given to the petitioners as a matter of grace and in fact leniency has been shown. There has been no violation of Articles 14, 16, 311, 38, 39 and 21 of the Constitution of India. The services of the petitioners are liable to be terminated in accordance with the terms and conditions of the letter of appointment. They can apply for their appointments as CS-II as fresh entrants. If they desire, their cases will be examined subject to the availability of vacancies. Learned

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counsel has vehemently urged that a judgment given by this Tribunal in the case of Nirmal Singh Vs. U.O.I. and other in OA 1530 of 1989 and other connected matters disposed on 21.02.1992^{is also applicable to their case.} This Tribunal gave certain directions. He relies upon direction No.(2) and (3), which runs as follows:-

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

(b) The respondents should consider the cases of the applicants (before the Tribunal) in those cases for change of category in the same pay scale. In cases where any additional chance for confirmatory examination on accounts side is given in pursuance of direction (a) above, the change of category should be considered thereafter.

We may note that in those cases, the Tribunal categorically held that the orders of termination passed therein were illegal as the same had been rendered without giving the requisite ~~one month's~~ notice since the applicant before it had worked for more than 3 years continuously. The directions (a) and (b) referred to above, ~~are~~ in our opinion, are ^afall out of the specific direction No.(1) given by the Tribunal, namely, the finding that the termination order in those cases were bad. The direction Nos.(a) and (b), referred to above, could in our opinion be given only in those cases where the employees concerned were in service. In the present case, admittedly, the petitioners are out of service since an order of termination had been passed in their cases. We shall presently refer to the said orders. We, therefore, come to the conclusion that the petitioners cannot take any advantage of the aforesaid judgment dated 21.02.1992.

10. - During the pendency of this O.A. on 01.01.1993 notices were issued to the petitioners informing them that

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that their services will be terminated after the expiry of one months' notice. The petitioners filed an application (M.P.) seeking the amendment of this O.A. and alongwith that application, a copy of the said order dated 1.1.1993. This Tribunal refused amendment. However, it observed that since the basis of the order of termination, as alleged by the petitioners initially in the O.A., would be contrary to the contents of the letter of the Railway Board dated 24.06.1986, amendment, in fact, was not necessary.

11. We shall, therefore, now examine the legality of the order dated 01.01.1993. We have already referred to the contents of the letter of appointments issued to the petitioners. Therein, a notice of 14 days were assured to them. Whereas in the instant case, it is clearly recited in the notice dated 22.12.92 issued to the petitioners that since they had failed to qualify in the Appendix-II-A(IREM) Examination within the prescribed number of chances and within the stipulated time their services shall be terminated and the termination shall be effective on the expiry of one months' notice, i.e., one month after the issue of the notice. It is significant to note that, in the notice, a reference has been made to the letter of the Railway Board dated 24.06.1986, the legality of a part of which, we have already examined. The contents of the letter, as extracted in the termination notices, are these:

"The cases where the employees do not qualify in the examination after availing of chances referred to para 2 of the aforementioned letter, their services as CG-I should be terminated. In case, however, the employees so request for appointment as CG-II as fresh entrants in the Acocunts 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".

12. Apart from contending that the contents of the letter of the Railway Board referred to above, should be struck down as violative of the various provisions referred to in the reliefs claimed in the O.A., no submission has been made before us on behalf of the petitioner challenging the legality of the order dated 24.06.1986.

13. Learned counsel has urged that since the petitioners were assured a training of six months and they were not given six months' training, the respondents could not take resort to the Rule or the instructions. In the counter-affidavit filed on behalf of the respondents, it is asserted that the system of training was changed and substituted by a Centralized Training of 4 weeks at the respective Zonal Training Schools. Accordingly, the petitioners were given one months condensed training.

14. In reply to the averments made by the petitioners that different sets of rules were being followed in the case of Railways and Audit Departments and the other organisations, it may be stated that Article 14 of the Constitution permits classification, and in every classification, there is an element of discrimination. The question to be examined in each case is whether the classification is rational. We find that Article 14 has not been violated at all as the Railways and Audit Departments are two different organisations and the services in these two departments cannot be co-related to each other. Article 14 mandates that equals should not be treated as unequals and the like should be treated alike. We are satisfied that Article 14 has not been violated in the present case.

15. Learned counsel for the petitioner has urged that the judgment given by this Tribunal in OA Nos. 1530 of 1989 and other connected OAs decided on 21.02.1992 are

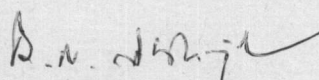
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under challenge before the Supreme Court in Special Leave Appeal Nos. 790-800 of 1993. He prayed that he should stand over the hearing of this O.A. till an authoritative decision is given by the Supreme Court. We have already indicated that the decision of the Tribunal dated 21.01.92 is not apposite to the cases of the petitioners. However, we direct that in case the applicants can derive any benefit of the judgment given by the Supreme Court later on in the SLPs pending before it, the petitioners (in the OA) too shall be given the benefit of that judgment.

16. Learned counsel has urged that the petitioners are entitled to the benefit of the judgment of this Tribunal in Nirmal Singh's case (supra) as they are continuing in service even now. We find that on 24.12.92 this OA was admitted and notices were issued to the respondents with the direction that the OA shall be listed on 11.01.93 and till then, the services of the petitioners were not to be terminated, if they had not already been relieved. It appears that the said interim order continues to operate even now. As already stated, we have found no illegality in the notices whereby the services of the petitioners were terminated. The interim order would, therefore, merge in the final order which is passed today and since the order we propose to pass is of the dismissal of this OA, the interim order will be deemed to be void ^{from} ~~on~~ the day passed. The petitioners, therefore, cannot take any advantage of the interim order passed by this Tribunal.

17. Before parting with this case, we may refer to the contents of the letter of the Railway Board which have been quoted in the notices served upon the petitioners. If the petitioners desire to avail the offer given in the notices and if they make a proper application, we have no doubt that the authority concerned shall consider their cases sympathetically and make proper recommendations for being appointed afresh as CG-II.

18. With these directions, this application is dismissed but without any order as to costs.


(B.N. DHOUNDIYAI)
MEMBER (A)
27.01.1994


(S.K. DHAON)
VICE CHAIRMAN
27.01.1994