

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH, ALLAHABAD

Original Application No: 158 of 1992

Smt. Prabha Mishra Applicant
Versus
Union of India & Ors. Respondents.

Hon'ble Mr. S.Das Gupta, Member-Administrative
Hon'ble Mr. T.L.Verma, Member-Judicial

(By Hon'ble Mr. S.Das Gupta, A.M.)

Through this O.A. filed under Section 19 of the Administrative Tribunal's Act, 1985, the petitioner has approached this Tribunal seeking the relief that the impugned letter dated 3.9.1986/ 24.6.1986 (Annexure, A-1) regulating the numbers of chances to be given to the directly recruited Clerks Grade-I to appear in Appendix-2 (I.R.E.M.) examination be quashed and set aside.

2. The facts of the case giving rise to this application are that the applicant's husband who was a Clerk Grade-I in the Railways died in harness on 3.10.1987. The applicant was appointed on compassionate ground as Clerk Grade-I/Junior Accounts Assistant vide appointment letter dated 27.9.1988 (Annexure, A-2). The directly recruited Clerks Grade-I/Junior Accounts Assistants are required to pass Appendix-2 (I.R.E.M.) examination within a specified period for being confirmed and retained in service. The number of chances which a candidate is permitted to take is a subject of controversy in this case. While the petitioner claims that the maximum number of chances which can be allowed is

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5 under the statutory Rules contained in Indian Railway Establishment Manual (I.E.R.M.), the number of chances provided in the impugned order is 3. The applicant has taken all the 3 chances and has failed to qualify in the said examination. The petitioner has challenged the impugned order dated 3.9.1986/26.6.1986 (Annexure, A-1) on the ground that the same deviates from the statutory provisions contained in Rule 167 of I.E.R.M. ~~Inasmuch as~~ while the said Rule permits 3 normal chances, ~~The a~~ fourth chance on a special recommendation of the FA & CAO and a fifth chance by the General Manager of the concerned Railway, the impugned Rules provide only 2 clear chances and a third chance on the basis of personal recommendation of the FA & CAO. Moreover, the petitioner contends that while under Rule 167 of I.E.R.M., the said examination is only a confirmatory test for Clerk Grade-I, in terms of the impugned order, the failure in the test ~~even~~ after availing the prescribed number of chances will result in termination of service. The petitioner contends that the impugned order is in the nature of executive instructions and cannot therefore over-ride statutory provisions contained in Rule 167 of I.E.R.M.

3. Contesting the claim of the applicant, respondents in their Counter Reply have stated that the letter dated 27.9.1988 (Annexure, A-2) itself clearly specifies that the appointment of the applicant shall be on one year's probation and that in case the applicant did not pass the prescribed test within stipulated period, her services would be

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terminated. The respondents contend that since the appointment itself was subject to this condition, the applicant is bound by the terms and conditions contained in the appointment letter. The respondents have also submitted that the impugned letter dated 24.6.1986 contains instruction regulating the policy of direct recruitment of Junior Accounts Assistant against 80% graduate quota and is a comprehensive collection of all circulars on the subject issued by the Railways from time to time. In terms of the order contained in this letter, a directly recruited Clerk Grade-I can avail maximum 3 chances within a period of 4 years from the date of appointment. They have averred that this impugned letter has a binding effect on the concerned employees working in the Railways. Since the applicant could not pass the examination within prescribed time limit and the chances available to her, the applicant has no right to be retained in service. The date of issue of the impugned letter being prior to date of appointment of the applicant the impugned letter shall be applicable to the petitioner. The respondents have also taken a plea that the application is not maintainable being premature as no notice of termination has been issued so far to the petitioner.

4. As regards the argument regarding non-maintainability of the application, the learned counsel for the applicant brought to our notice that in 1991 services of a number of Railway servants appointed as Clerk Grade-I were terminated for their not passing Appendix-II examination, which gave rise to O.A. No.

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323/91 and O.A. No. 159/92. The applicant of O.A. No. 159/92, whose services were terminated had been appointed on compassionate ground. This, in our opinion was sufficient to cause reasonable apprehension in the mind of the applicant that, she, not having passed the required examination within the prescribed period, may also be removed from service on that account and as such the application is in our opinion maintainable.

5. The validity of Railway Board's letter No. 84-AC III/20/T 7 dated 24.6.1986, whereby it was provided that the appointment will be on probation for a period of one year from the date of joining and that he will be considered for confirmation only after he successfully passes the examination referred to Appendix II-A of the Indian Railway Establishment Manual and that if the incumbent fails to pass the examination within 3 years from the date of joining, his services will be terminated, was considered by this Tribunal in O.A. No. 323/91. The Tribunal after examining the rival contentions held that the impugned orders cannot be said to be bad or illegal and that the provisions of Rule 311 do not apply to the candidates who are governed by the specific terms and conditions of service read with Rule 16⁷ IREM. The case of the applicant being similar to the applicants of O.A. No. 323/91 and she, having been appointed subsequent to the issue of the order in question, is bound by the provisions of the said order and the terms of appointments issued there under. That being so the prayer to quash the Railway Board's letter in question

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as being violative of Article 14 & 16 of the Constitution can not be allowed.

6. This, however, does not conclude the matter because the applicant has been appointed on compassionate ground. From the averments made in the memo of application, which have not been controverted, it appears that the applicant appeared in the eligibility test of Clerk Grade-I in the Accounts department held on 8.7.1988 she qualified in the said examination but as there was no post available, instructions were issued to absorb her on any suitable post according to her eligibility. She was ultimately appointed on 27.9.1988 as Clerk Grade-I/Junior Accounts Assistant in the Accounts department.

7. It is not in dispute that the applicant was entitled to appointment on compassionate ground according to the instructions issued by the Railway Board in their letter dated 7.4.1983. It has been held by the apex Court in more than one case that the basic object of making provision for appointment on compassionate ground is to mitigate the hardship of the wards of the Government employees who die in harness. If the services of the applicant are terminated for not passing Appendix II examination, it would run counter to the very purpose of hard appointment on compassionate ground. In the case Smt. Sushma Gosain & Ors. Vs. Union of India & Ors. reported in A.I.R. 1989, S.C. 2, page 1967, the Supreme Court has laid down the following proposition of law in regard with the appointment on compassionate ground;

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"It can be stated unequivocally that in all claims for appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in the family. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such case pending for years. If there is no suitable post for appointment supernumerary post should be created to accommodate the applicant."

8. In the facts and the circumstances of the case we find and hold that the letter No. 84-A C III/20/T 7 dated 24.6.1986 issued by the Railway Board cannot be said to be bad as violative of the provisions of Article 14 & 16 of the Constitution of India. Notwithstanding the above finding the services of the applicant are not liable to be terminated. In case, the applicant is not found suitable for appointment in the Accounts department for her having failed to pass Appendix II examination, we direct the respondents to consider her eligibility and suitability for appointment in some other department. If there is no suitable post for her appointment, supernumerary post should be created to accommodate her.

This application is disposed of accordingly.



Member-J



Member-A

Allahabad Dated: March 10, 1994

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