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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
CIRCUIT BENCH
LUCKNOW

O.A. No. 118 of 1990(L)

Prem Shanker Sharma

Applicant

Versus

Union of India & Others

Respondents.

Hon. Mr. Justice U.C. Srivastava, V.C.
Hon. Mr. A.B. Gorthi, Admn. Member.

(Hon. Mr. Justice U.C. Srivastava, V.C.)

The applicant has approached this Tribunal against the order dated 29.3.90 passed by respondent No.5, terminating his services from the post of Accounts Clerk Grade I and the Railway Board's letter dated 24.6.86, which, according to the applicant, has been issued in contravention of para 167 of the Indian Railway Establishment Manual. The applicant was appointed on 1.1.1978 on the post of Cleaner in Loco Running Shed Northern Railway, Lucknow in the pay scale of Rs 196-232 and ultimately, after due trade test promoted to the post of Skilled Fitter in the scale of Rs 260-400 and was confirmed on 7.3.84 as Skilled Fitter. Railway Service Commission advertised 414 posts of Accounts Clerk Grade I in scale Rs 330-560 and 524 posts of Senior Clerks in the scale of Rs 330-560. The minimum qualifications prescribed in the same were fulfilled by the applicant. The applicant appeared in the same and also qualified for viva-voce test and in the result he was declared successful and was placed at 25th position. Offer of appointment was

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was also issued to him and he was required to submit testimonials and medical examination report. Thereafter, he was posted as Accounts Clerk, Grade I in the office of Senior Accounts Officer, Northern Railway at Moradabad on 28.5.1986 on probation for a period of one year. The applicant appeared at the Appendix II examination as per para 167 of the Indian Railway Establishment Manual but could not succeed. On 23.10.89 the applicant submitted an application to respondent No. 3 requesting him to change his category from Accounts Clerk Grade I to Senior Clerk again showing his desire to appear in the Appendix II examination but instead of granting his prayer for additional chance, his services were terminated. The respondents have taken the plea that no candidate was allowed 4th or 5th chance, though elsewhere in the reply they had stated that to bring uniformity and remove the disparity Railway Board has framed final guidelines vide letter dated 24.6.86 putting an end to fourth and fifth chance. The applicant was not entitled to any further chance. The respective pleadings of the parties have been considered by us in O.A. No. 115 of 1990 'Raj Kumar Gupta ^{Gupta} & another vs. Union of India & others' which has also been pronounced today. The facts of the present case and that of Raj Kumar Gupta case are identical and in that case we have allowed the application holding that for non passing examination the services cannot be terminated and the respondents cannot impose a condition which does not find place in the statutory rules without amending the same and the change of category if it had not been done can also be considered for the applicant and without considering this their services cannot be terminated. This judgment shall affirm our view of that judgment also.

Accordingly the order of termination being arbitrary and illegal and without any legal sanction

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or authority is quashed and the applicant will be deemed to be in continuous service and if any action for examination is taken, then the respondents shall also consider the case of the applicant before the change of category taking into consideration that it has done so for persons belonging to same service.

Shaukat Ali
Admn. Member

[Signature]
Vice Chairman.

Shakeel/

Attested
Dated: 31- 7-91