

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.925/97.

Wednesday, this the 22nd day of December, 1999.

Coram: Hon'ble Shri Justice Ashok Agarwal, Chairman,
Hon'ble Shri D.S.Baweja, Member(A).

S.C.Gupta,
C/o. G.S.Walia,
Advocate, High Court,
Industrial Traders Bldg.,
Opp. Maha. State Co-op. Bank,
Nagindas Master Road,
Fort, Mumbai - 400 023.
(By Advocate Shri G.S.Walia)

...Applicant.

Vs.

1. Union of India, through
The Secretary,
Railway Board,
Rail Bhavan,
New Delhi - 110 001.

2. General Manager,
Western Railway,
Headquarters Office,
Churchgate,
Mumbai - 400 020.

(By Advocate Shri V.S.Masurkar)

...Respondents.

: O R D E R (ORAL) :

(Per Shri Justice Ashok Agarwal, Chairman)

The applicant had appeared for the Combined Engineering Services Examination conducted by the UPSC in the year 1988. According to the applicant he was placed at Sl.No.2 in the merit order at the said examination. According to him the candidate at Sl.No.1 did not join the service and as such for all practical purposes, he was placed at Sl.No.1 in the order of merit. He was allocated to the Indian Railway Service of Engineers Group 'A' Service on the basis of his preference and was further allotted Western Railway for actual appointment.

2. Though an order of appointment ~~was~~ issued in ~~his~~ favour on 19th December, 1989, the applicant along with other batchmates were directed to report on 22.1.1990. The applicant by an application applied for extension of time to join, as according to the applicant he desired to appear for I.A.S. examination. As far as other candidates who had appeared for the aforesaid examination along with the applicant, ^{they} joined on 22.1.1990. As far as the applicant is concerned, he by his application dt. 18.1.1990 applied for extension, ^{and} by a communication dt. 9.2.1990 he was granted extension of time to join up to 22.3.1990. Prior to the aforesaid date, the applicant applied for further extension of time to join, ^{and} by a communication dt. 7.11.1990 the time was extended up to 7.1.1991. The applicant accordingly joined on 7.1.1991. In the seniority list which was published on 17th April, 1988, he has been shown as juniormost in the 1988 batch. Placement of applicant as juniormost in the 1988 batch is impugned in the present OA.

3. We have heard Shri G.S.Walia, the learned counsel on behalf of the applicant, as also Shri V.S.Masurkar, the learned counsel appearing on behalf the respondents and we find that the present OA is devoid of merit and the same deserves to be rejected for the following reasons. As far as the application of the applicant for extension of time to join is concerned, the same has been granted on certain conditions. The same ^{as a} is to be

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found in the communication dt. 9.2.1990 granting extension. The aforesaid communication recites as under :

" I am directed to refer to your letter dt. 8.1.1990 requesting extension of joining time and to state that this Ministry after careful consideration have decided to grant you extension of joining time upto 22.3.1990 as a very special case. You are therefore directed to report to your respective Institute on 22.3.1990 positively. (Not a day sooner and not a day later).

In case you fail to report on 22.3.1990, and require further extension beyond 22.3.1990 you will be allowed to join only with the next batch of 1989 Examination subject to the following conditions:

- i) You will be allowed to join the training along with 1989 examination batch of IRSE.
- ii) You will be given bottom seniority in 1988 batch of IRSE.

The acceptance of the above two conditions may be confirmed to the undersigned within 15 days of issue of this letter failing which it will be presumed that you are neither interested to join on 22.3.1990 nor alongwith the next batch and the offer of appointment made to you vide this Ministry's letter of even number dt. 19.12.1989 will stand cancelled without any further notice and no further correspondence shall be entertained in this regard.

In case you are interested to join for training on 22.3.1990, please return the railway pass for revalidation."


The aforesaid letter stipulates two conditions viz. that the applicant will be allowed to join training along with 1989 examination batch of IRSE and that he will be given bottom seniority in 1988 batch of IRSE. The sum total of the aforesaid conditions is that though the 1988 examination batch would have started their training, yet the applicant would be given seniority in the said batch and he will be placed at the bottom of the seniority list and this is despite he being permitted to join the 1989 examination batch. Before the aforesaid period of joining expired the applicant by his further letter dt. 19.12.1989 applied for further extension and the applicant was

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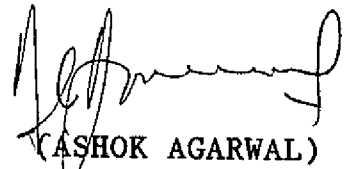


granted time up to 7.1.1991 for joining, this was on the same terms and conditions as conveyed in the earlier communication dt. 9.2.1990. As far as the communication dt. 9.2.1990 is concerned the same cast upon the applicant ^{an obligation} to convey his acceptance in regard to the two conditions imposed within 15 days of the issue of the said letter of 9th February, 1990. It is therefore, safe to presume that the applicant had conveyed his acceptance of the said conditions. Based on the said acceptance applicant was granted the extension to join. Similarly, further extension was also granted by the communication dt. 7.11.1990 also on the same conditions as imposed by the communication dt. 9.2.1990. Applicant, in the circumstances, cannot argue ^{and} is estopped claiming to be relieved from those conditions after having obtained the advantage of the grant of extension. As far as batchmates who had appeared along with him at the examination, they had joined earlier on 22.1.1990, as far as applicant is concerned, he joined a year later on 7.1.1991. He joined ~~the~~ ⁱⁿ ~~batchmate of~~ ^{when his} 1991, though the batchmates of 1988 had completed the training and probation period much prior to the applicant having completed the same. Despite this, he has been granted seniority along with 1988 batch and this is despite his having joined in the 1989 batch. The applicant cannot be permitted to blow hot and cold. He cannot seek advantage of the order without being bound by the conditions imposed. The present OA, in the

circumstances we find is devoid of merit, the same is accordingly dismissed. However, in the facts and circumstances of the case there will be no order as to costs.


(D.S. BAWEJA)

MEMBER (A)


(ASHOK AGARWAL)

CHAIRMAN

B.