

CENTRAL ADMINISTRATIVE TRIBUNA: HYDERABAD BENCH: AT HYDERABAD.

REVIEW APPLICATION No.44 of 1997

In

O.A.No. 1027 of 1992

Date of order :- 6th May, 1998.

Between :

B. Srinivasa Rao

...

Applicant

And

1. Chief Personnel Officer,
S.C.Railway, Secunderabad
2. Divl. Rly. Manager (P) (BG),
S.C.Railway, Secunderabad.

...

Respondents

For the Applicant

... Mr. S. Lakshma Reddy, Advocate.

For the Respondents

... Mr. V. Rajeswara Rao, CGSC

Coram :

The Hon. Mr. H. Rajendra Prasad, Member (Admn.)

The Hon. Mr. B.S. Jai Parameshwar, Member (Judl.)

O R D E R.B.S. Jai Parameshwar, Member (J):

1. Heard Mr. S. Lakshma Reddy the learned counsel for the applicant and Mr. V. Rajeswara Rao, the learned Standing Counsel for the respondents.

2. The applicant has filed this application under Rule 17 of the Central Administrative Tribunal (Procedure) Rules, 1987 praying this Tribunal to review its order dated 30.10.1996 passed in the O.A. By the said order, this Tribunal dismissed the O.A. filed by the applicant.

3. The applicant was working as Parcel Supervisor in the Railway Administration. During the year 1991, he submitted his candidature for the post of Probationary Officer (Junior Management Grade Scale-I) in response to the advertisement issued by the Banking Service Recruitment Board, Bhopal.

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It may be mentioned that the applicant had undergone training before he was appointed as Parcel Supervisor. The applicant was selected by the Banking Recruitment Board and was directed to report at the Zonal Office, Central Bank of India, Ahmedabad on 2.11.1992. He was also directed to report along with due discharge certificate issued by the Railway Administration. The Railway Administration refused to issue the Discharge Certificate as he had failed to fulfil certain terms and conditions of the letter of appointment.

4. The applicant had produced a copy of the letter of appointment along with his O.A. the relevant condition in the terms and conditions of the letter of appointment reads as follows:

"5. You will have to produce an INDEMNITY BOND duly affixing a special adhesive stamp (NOT COURT-FEE STAMP) to the value of Rs.5/- (Rupees Five only) binding yourself and Surety who should be a State or Central Govt : or quasi Govt: employee whose gross pay is not less than Rs.1600/- (Rupees one thousand six hundred only) per month jointly and severally to pay and refund the cost of training in the event of your failing to satisfy the conditions stipulated in paras (3) & (4) the cost of training (being understood to be 12½ of pay and allowances drawn) and all the monies paid to you from the date of your appointment as Trainee excluding Travelling Allowance, if any."

5. After considering the various contentions raised by both the parties, this Tribunal found no merits in the O.A. and dismissed the same.

6. The applicant has prayed for review of the order on the following grounds :

(a) At the time of his appointment in the Railway Administration he had not executed any bond or agreement in favour of the Railway Administration and that the Tribunal could not have

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relied upon any subsequent material or statement made by him as tantamount to execution of the agreement.

(b) The rights of the parties have to be governed either by the contract or by the statutory rules and the Railway Administration having failed to establish their right, could not have insisted upon the payment of the cost of training. Thus the Tribunal committed jurisdictional error in repelling his contention.

(c) The Tribunal failed to take into consideration Serial the/circular No.69/86 dated 2.6.1986. According to the applicant, the said circular clearly held that the persons without educational qualification were given the benefit of training to the higher studies resulting in acquiring new skills such as, Matriculates being given the training of Diploma holders to hold the Technical post as specific avocation and in such an event, the said Matriculate without the higher educational qualification at the initial stage but having acquired the benefit of higher technical diploma certificate at the cost of the railways should be treated as training given as a specific avocation and in all other cases, they should be treated only as induction courses and therefore, the Tribunal had committed an error apparent on the face of the record in passing the impugned order.

(d) The Tribunal ought to have seen that in case of training given towards induction course and any employee is later recruited to any State or Central Government organisations, they are entitled for exemption from the refund of the cost of training subject only to the condition that the employee would execute a bond in favour of the new employer for the balance of the period and this Tribunal has not considered this aspect.

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(e) The Tribunal ought to have seen that the impugned action of the Railway Administration amounts to infringement of his fundamental rights guaranteed under Articles 14 and 19(1)(g) of the Constitution of India and in the absence of any agreement or contract undertaken by the applicant at the time of his appointment, the Railway Administration cannot plead any waiver of his fundamental right on the basis of any subsequent statement made by him and there is an error apparent on the face of the record and that the order dated 30.10.1996 needs review.

7. The respondents have filed their counter stating that the grounds urged by the applicant have been duly considered by this Tribunal in page 5 para-8 of the order wherein this Tribunal has observed that the contract of service containing the terms and conditions stipulated in the letter of offer thus became final and binding upon both the parties. Further this Tribunal observed that not only under para-4 of the contract but under the rules contained in the IREM, the applicant was required to serve the railways for a period of at least 5 years, if so required.

8. They further submit that prior to the filing of the O.A. the applicant somewhere during the last of October, 1991 had given an undertaking wherein he had agreed to refund the cost of training plus 12½ % amount in full as per the agreement with the railway at the time of his relief, if required. Thus they contend that the applicant himself had undertaken to repay the cost of training as per the offer of appointment.

9. They further contend that the Railway Administration did not refer to the ^{Circular} Sl./No.69/86 dated 2.6.1986. They say that the said circular is applicable in respect of technical categories, namely, Apprentice Train Examiner, Apprentice Mechanics and Inspectors of Works etc. and that only those categories of persons are exempted from the refund of the cost of training and obtaining the continuity bond for the

left over period of minimum service with the new employer. They submit that since the post of Commercial Apprentice is a non-technical post, the applicant has to refund the cost of training. The training given to the Commercial Apprentices cannot be regarded as either Induction course or any other course applicable to technical personnel.

9. The applicant is liable to pay the cost of training as ordered by this Tribunal in its order dated 30.10.1996. If the applicant feels that the finding recorded by the Tribunal is not correct, then he may challenge the ^{same} ~~the~~ in an appropriate forum.

10. They submit that the training imparted to the applicant was not an Induction course. They also submit that no fundamental right of the applicant was infringed by forcing a contract which was not executed by the applicant.

11. It may be noted that at the time when the applicant was deputed for training prior to his appointment, the Railway Administration failed to get the proper bond written ^{and executed} ~~in~~ in accordance with the condition extracted above. When the Railway Administration refused to issue the Discharge Certificate ^{and when} when requested for ~~the~~ the applicant was insisted upon to refund the cost of training as per the said condition, then only he approached this Tribunal. Non-execution of a bond is not the criteria to enforce the agreement. The offer of appointment clearly indicated the terms under which the appointment was offered to the applicant. The applicant was aware that he was required to serve the railway administration atleast for a period of 5 years after undergoing the training. He was also fully aware that he was required to refund the cost of training (12½% of the pay and allowances drawn by him during the training).

12. When that is so, the applicant accepted the post, underwent the training and served as Parcel Supervisor. Notwithstanding it is too much for him to contend that he is not liable to

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pay any amount because he had not executed the agreement as provided under the terms and conditions of the offer of appointment. In fact, this contention was considered by this Tribunal in page 5 para-8 of the order.

13. The learned counsel for the applicant in the R.A. attempted to rely on Serial Circular No.69/86 dated 2.6.1986 and further contended that the persons without educational qualification were given the benefit of training to the higher studies resulting in acquiring new skills, such as, Matriculates being given the training of diploma holders to hold the technical post as specific avocation and in such an event the said Matriculate without the higher educational qualification at the initial stage but having acquired the benefit of higher technical diploma certificate at the cost of the railways should be treated as training given as a specific avocation and in all other cases, they should be treated only as induction courses. Further they pointed out that the said circular did not properly differentiate between the specific avocation and induction course to come to a right conclusion and thereby ^{the Tribunal} has committed an error of jurisdiction necessitating the interference in the review application.

14. This circular has been brought to our notice only for the first time in the R.A. This circular is in no way relates to the terms and conditions under which the applicant was appointed. It was specifically stated in the terms and conditions that after completion of the training the applicant was bound to serve the Railway Administration atleast for a period of 5 years. The applicant had not done so. Therefore, in our humble view, this circular may not come to the aid of the applicant. Any new point to be considered in the R.A. is not proper unless the applicant urging the same must establish that it was not within his knowledge when the O.A. was decided

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and that he could not discover the new point with reasonable care and caution and that the new point was brought to his knowledge only after due diligence. Such facts are not explained in the R.A. affidavit to consider this aspect of the matter.

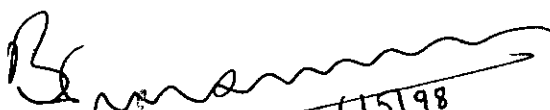
15. The applicant further contended that the impugned action of the Railway Administration to recover the cost of training from him as per the terms of conditions of the letter of appointment without obtaining a necessary undertaking or agreement/bond from him, is against the fundamental rights guaranteed to him under Articles 14 and 19(1)(g) of the Constitution of India. No doubt, the Railway Administration failed to get a proper bond or agreement executed incorporating the terms and conditions of appointment. The applicant underwent the training and even after completion of the training, was serving the Railway Administration. When the applicant was served with the letter of offer of appointment specifically bringing to his notice the terms and conditions of the offer of appointment, knowing fully well and knowing fully the implications of the terms and conditions of the offer of appointment, the applicant joined the training course and completed it. During the training, he was paid the necessary stipend or salary. The training was given to him on his assurance to serve the Railway Administration at least for a period of 5 years. The applicant has not served the Railway Administration the minimum period required under the terms and conditions of offer of appointment. When that is so, the Railway Administration was justified in refusing to issue the Discharge Certificate, unless he repaid the cost of training to the Railway Administration. It is only at that stage the applicant approached this Tribunal and by an interim order he was directed to execute a bond and accordingly he has executed the bond. Accepting for the moment that he had not executed any agreement before undergoing the training, the fact that he has executed the bond in terms of the interim

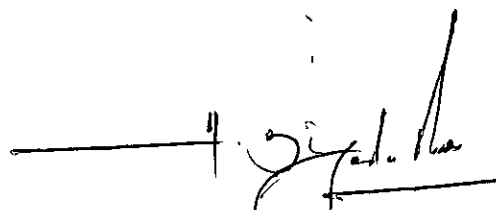
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order clearly indicates that he would obey the directions of the Tribunal given in the O.A. That means, when the O.A. is dismissed, he is bound to obey the conditions of the bond executed by him. What that is so, he is bound to repay the cost of training to the Railway Administration.

16. We find no error apparent on the face of the record in the order passed under review. There are no grounds to entertain the Review Application.

17. Hence the Review Application is dismissed, leaving the parties to bear their own costs.


(B.S. JAI PARAMESHWAR)
MEMBER (J)


(H. RAJENDRA PRASAD)
MEMBER (A)

Dated the 6th May, 1998.


Deputy Registrar

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