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CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : HYDERABAD.

C.A.No. 1027/92

T.A. No.

DATE OF DECISION:

30.10.96

B. Srinivasarao

PETITIONER(s)

Mr. Srinivas for Mr. S. Lakshma Reddy

ADVOCATE FOR THE PETITIONER(s)

VERSUS

Chief Personnel Officer,
SC Railway, Secunderabad & another RESPONDENT (s)

Mr. V. Rajeswara Rao, ACGSC

ADVOCATE FOR THE
RESPONDENT (s)

THE HON'BLE SHRI JUSTICE M.G. CHAUDHARI, VICE CHAIRMAN

THE HON'BLE SHRI H. RAJENDRA PRASAD, MEMBER (ADMN.)

1. Whether Reporters of local papers may be allowed to see the judgement? yes
2. To be referred to the Reporter or not? yes
3. Whether their Lordships wish to see the fair copy of the judgement? No
4. Whether the Judgement is to be circulated to the other Benches? No

Judgement delivered by Hon'ble Shri Justice M.G. Chaudhari, VC

M.G. Chaudhari

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A. No.1027/92

Dated: 30.10.1996

Between

B. Srinivasarao .. Applicant

and

1. Chief Personnel Officer,
South Central Railway,
Secunderabad.

2. Divisional Railway Manager (P),
Broad Gauge, SC Railway,
Secunderabad. .. Respondents

Mr. Srinivas for Mr. S. Kakshma Reddy .. Counsel for applicant

Mr. V. Rajeswara Rao, Addl. SC .. Counsel for respondents

CORAM

Hon'ble Shri Justice M.G. Chaudhari, Vice Chairman

Hon'ble Shri H. Rajendra Prasad, Member (Admn.)

JUDGEMENT

Order (per Hon'ble Shri Justice M.G. Chaudhari, VC)

The applicant was recruited as Goods Guard in the South Central Railway in the year 1986 and was appointed as Probationary Goods Guard. He was required to undergo the training for a period of 45 days. After he underwent the training he was regularly appointed as Goods Guard on 5.8.86. He was appointed as Commercial Apprentice on 23.10.89 after working for 3 years as Goods Guard. He applied in the year 1989 for the post of Commercial Apprentice and after being selected, was appointed as Commercial Apprentice on 23.10.89 on Rs. 1400/- monthly stipend plus D.A. to be absorbed in a later regular post carrying scale of Rs. 1600-2660. After he was appointed he was sent for training at Zonal Training School, Mouiali and other places for a period of two years. After completion of the training he was regularly appointed as Parcel Supervisor in the office of Senior Divisional Commercial Manager, Secunderabad on 20.4.1992.

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2. In the year 1991 the applicant applied for the post of Probationary Officer, Junior Management Grade, Scale-I in pursuance of an advertisement issued by the Banking Recruitment Board. He wanted to join service with the bank leaving the Railway service. He therefore applied for issuance of No Objection Certificate to enable him to attend the interview being held by the Banking Recruitment Board. The No Objection Certificate was issued by the Railways on 20.2.92. He was selected and appointed in the bank as Probationary Officer and was directed to report at Zonal Office Ahmedabad along with a discharge certificate. He requested for issuance of discharge certificate to the respondents on 12.10.92. While so applying he also requested for waiving refund of cost of training. The South Central Railway authorities, however, refused to issue the discharge certificate and accept his resignation unless he paid the money incurred by the railways on his training. Aggrieved with that action of the respondents the applicant filed the instant OA on 19.11.92 challenging the order No. CP/135/Commercial Bills/SC dated 30.10.92 issued by the second respondent.

3. By the aforesaid order the applicant was advised that since he had not rendered five years service with the railways after completion of training he was required to pay back all the monies paid to him plus 12½% towards cost of training as per the agreement before his resignation could be accepted and that his request for waiver was rejected. The order also gave the particulars of the amounts i.e. Rs. 65,679 towards stipend paid for the period from 28.10.89 to 5.2.92 plus Rs. 8210 towards 12½% on the aforesaid amount as cost of training. To these amounts was added the amount as paid/ex gratia and in the aggregate an amount of Rs. 79,870 has been shown as refundable by the applicant.

4. The applicant has prayed that it be declared that the action of the respondents in refusing to issue discharge certificate and insisting upon the payment of cost of training vide the above

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mentioned impugned order is illegal and is violative of articles 14 and 19 of the Constitution of India. He has also sought a direction to the respondents to issue the discharge certificate without insisting for payment.

5. The respondents resist the application. They, inter alia, contend that the applicant had accepted the terms and conditions of offer of appointment and had undergone training in pursuance thereof and therefore he is governed by the rules whereunder he is bound to refund the amounts spent over his training as stipulated in the agreement and as he had left the service without completing the period of 5 years. They, therefore, pray that the application is liable to be dismissed.

6. The offer of appointment was issued on 3.10.89. It mentions the subject as 'temporary appointment for the post of Commercial Apprentice in the scale of Rs.1400-1440 - stipend'. It recited that the applicant was advised to report to the office of the General Manager (Personnel) Branch, Secunderabad for being sent to medical examination, subject to his being prepared to accept the terms stipulated in that offer. Term No.(1) stated that the training was due to commence from 25.10.89 and he will have to pass the necessary medical examination before his appointment. Clause (3) provided that his appointment in a working post on satisfactory completion of the training will be for 3 months probation and he will continue in service on his work being found satisfactory. Clause (4) provided that after successful completion of training and if he were selected for appointment against a working post he will have to serve the railway administration for a minimum period of 5 years if so required. Clause (5) contained the following condition:

"....You will have to produce the indemnity bond duly affixing a special adhesive stamp.....the value of Rs. 5 binding yourself and surety would be ^{State or} a/Central Government or quasi government employee whose gross pay is not less than Rs. 1600/- per month jointly and severally to pay and refund the cost of

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training in the event of your failing to satisfy the conditions stipulated in para (3) and (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".

✓ 7. In para 13 the applicant was desired to ^{note} know the points mentioned below thereto before deciding upon to accept the offer. One of the points stated was that he had to pass the initial training course in the first attempt. Another point stated was that on successful passing the examination of the initial training course he will be eligible for retention in temporary employment against a temporary post and he will be governed by rules applicable to temporary employees in Indian Railways from time to time. (We have set out only the relevant portions of the said letter of offer).

8. The terms and conditions of the offer of appointment clearly show that the offer was made for the post of Commercial Apprentice and the training which was necessary to be undergone was for that particular avocation. The applicant accepted the terms and conditions and joined the training. The contract of service containing the terms and conditions stipulated in the letter of offer thus became final and binding upon both the parties. 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 5 years, if so required. It is nobody's case that the Railway did not require the service of the applicant for the full period of 5 years. The applicant, however, discontinued the service with the Railways without completing the period of 5 years. He opted for applying for a banking job that was outside the Railway service. When he applied for permission to attend the interview for Probationary Officer to be conducted by the Banking Service Recruitment, the DRM (P) of South Central Railway issued No Objection Certificate on 20.2.92 subject to his refunding

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the cost of training plus 12½% amount in full as per the agreement with the Railways before he could be finally relieved from the Railways. The applicant was handicapped for non-issuance of the discharge certificate since he did not agree to refund the amount. Hence he applied for interim relief after filing the O.A. By interim order dated 24.11.92 the following directions were issued:

"We hereby direct the applicant to execute a personal bond for a sum of Rs. 80,000/- and with two sureties for a like sum who are permanent Railway employees to the satisfaction of the 2nd respondent. On executing such a bond, as directed above, we direct the respondents to relieve the applicant forthwith so as to enable him to join the new post at Ahmedabad in time. We make it clear that if the respondents succeed in the OA the applicant and the sureties who execute such bond would be liable to pay the said sum of Rs. 80,000/- to the respondents."

9. It is however material to note that prior to filing the OA the applicant had some time in the month of October 1991 (possibly on 30.10.91) made the following statement in writing to the respondents, i.e. " received letter No. P(C) 478/II dated 29.10.91 and noted the contents. I am prepared to pay the cost of training plus 12½% of the amount in full as per the agreement at the time of my relief if required." Pursuant to the interim order discharge certificate was issued to the applicant.

10. The contention of the applicant firstly is that he had never executed any bond in writing, therefore he is not bound to pay the money claimed by the respondents. It is not possible to accept this submission as that would amount to breach of the contract which was binding upon the applicant. The next contention of the applicant is that insistence of the respondents to refund the amount is violative of articles 14 and 19(1)(g) of the Constitution. This contention cannot be accepted as the applicant had accepted that condition when he accepted the offer. The applicant also cannot approbate and reprobate. It was open to him

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to refuse to agree to this condition if it was offending his fundamental right. Having accepted it, he cannot now turn round, and after having availed of the training, put the respondent to monetary expense. The monetary expense incurred by the respondents on training was based upon an implied promise made by the applicant to fulfil his obligation in return thereof. He cannot, therefore, escape from that obligation.

11. The next contention urged by the applicant is that he was not sent for training for a specified avocation but the training was to equip him with the need of the department and as such it was only an induction course and therefore in terms of para 1410 of the IREM the expenses incurred on his training are not refundable. The said para of the Manual, to the extent material, reads as follows:

"Non-gazetted railway employees who have not received training at railway expense in a specific avocation but only have been given an "induction course" to make them suitable to the working needs of the railway may be exempted from refunding the cost of training in the event of their selection to other posts under the Central or State Government or any public sector undertaking/autonomous bodies wholly or substantially owned/financed/controlled by the Central Government or a State Government...."

None of these conditions are attracted in the case of the applicant. He cannot claim that he is a non-gazetted railway employee who has not received training at railway expense in a specific avocation because the railway has actually incurred expenses. Moreover, the training was for a specific category of service as he was made the offer of appointment to a working post and it being a regular training it cannot be described as "induction course".

12. The circular of the Railway Board No. E(NG)/1/83-AP-7 dated 24.12.83 shows that an induction course is one which is given

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As such as to diploma holders to make them suitable for work as against specified training in an avocation given to apprentice. The applicant does not fall in this category and therefore he cannot get help from para 1410 of IREM to seek exemption from refunding the cost of training.

13. All the grounds urged in the application are indeed formulated at the time of the filing the OA. We say so, because in his representation dated 12.10.92 the applicant himself stated that he had undergone training as Commercial Apprentice and even though he was going into a government organisation in a higher capacity he was asked to refund the cost of training and in the circumstances he requested to consider the service rendered by him and to waive the amount. The very fact that he requested for waiver of the amount implies that unless it was waived he had accepted the obligation and liability to refund the same.

14. Thus, having regard to the terms and conditions of the contract of service and the conduct of the applicant himself, ^{From the conclusion} there is no escape that under the rules the applicant is liable to refund the amount of cost incurred on his training by the Railways in accordance with rules. No dispute has been raised about the correctness of the calculation shown in the letter of the respondents dated 30.12.92. We therefore find no merit in the application and it deserves to be dismissed. However, we would like to make it clear that the respondents will be entitled to recover only the amount of Rs. 79,870/- as was mentioned in the impugned letter dated 30.12.92 and no further amount shall be added there to by way of interest by reason of pendency of the case till so far. We also hope that in the event of applicant applying for instalments, that request will be considered sympathetically having regard to the fact that nearly a period of 2 years has elapsed since the date of filing of the OA. It is however made clear that in the event of grant of instalments the manner and quantum thereof including condition to pay interest in default etc., will be open to be determined by the appropriate authorities.

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O.A.1027/92.

To

1. The Chief Personnel Officer,
SC Rly, Secunderabad.
2. The Divisional Railway Manager (P)
Broad Gauge, SC Rly, Secunderabad.
3. One copy to Mr.S.Lakshma Reddy, Advocate, CAT.Hyd.
4. One copy to Mr.V.Rajeswar Rao, Addl.CGSC,CAT.Hyd.
5. One copy to Library, CAT.Hyd.
6. ~~One~~ Copy to All Reporters as per standard list of CAT.Hyd.
7. One spare copy.

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