

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

JAIPUR BENCH : JAIPUR

Date of order : 17.11.2000

O.A. No. 582/94

Hari Ram Meena son of Shri Prahalad Ram, aged about 31 years, No. 371/26, Meena Colony, Ramganj, Ajmer, at present employed on the post of Accounts Clerk at Ajmer Division, under Dy. CAO (TA), Ajmer.

... Applicant.

versus

1. Union of India through General Manager, Western Railway, Church Gate, Bombay.
2. The Financial Advisor & Chief Accounts Officer, Western Railway, Church Gate, Bombay.
3. The Divisional Accounts Officer, Western Railway, Ajmer Division, Ajmer.
4. Dy. C.A.O. (TA), Ajmer, Western Railway, Ajmer.
5. The Divisional Personnel Officer, Western Railway, Ajmer Division, Ajmer.

... Respondents.

Mr. J.K. Kaushik, Counsel for the applicant.

Mr. U.D. Sharma, Counsel for the respondents.

CORAM:

Hon'ble Mr. Justice E.S. Faikote, Vice Chairman

Hon'ble Mr. U.P. Nawani, Administrative Member.

: O R D E R :

(Per Hon'ble Mr. Justice E.S. Faikote)

This application is filed for declaring 171(4)(iv)&(v) of Indian Railway Establishment Manual Vol.1 as unconstitutional. The applicant also has challenged the order dated 1.10.93 (Annexure A/1) by which notice-cum-termination order was issued to the applicant by terminating him after the period of 14 days. The further prayer of the applicant is that he may be given extra chances as per Appendix II of Indian Railway Establishment Manual (IFEM, for short) Vol.1, to pass the Appendix II

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examination.

2. The case of the applicant is that he was appointed as Junior Accounts Assistant (Prob.) in the scale of Rs. 1200-2040 (RF) vide Annexure A/4 dated 31.10.90. By the said order, he was required to pass Appendix II (IREM) Examination within three years by taking 2 chances from the date of the appointment. However, the applicant could not pass the necessary departmental examination in three chances. The applicant belongs to Scheduled Caste community, he should have been given atleast one more chance before issuing the impugned order or termination. Therefore, the impugned order of termination is bad and illegal.

3. The learned counsel appearing for the applicant submitted that in terms of Appendix II of the IREM, the Railway servant would be required to pass the Appendix II examination within three chances and the concerned General Manager and FASCAO have been delegated with the power to extend such chances even upto 6 or 7 chances, and the said benefit should have been extended to the applicant. He also relied upon Railway Board's letter No. FC-60/RTF-3/1 dated 6th July, 1961. (Annexure A/16), contending that under that letter, the employee belonging to Scheduled Castes/ Scheduled Tribes, may be given one additional chance even after 3 chances. At any rate, he further submitted that the applicant belongs to Scheduled Caste community, therefore, he is entitled to one more chance under general principle and, therefore, the impugned order is illegal and without jurisdiction.

4. By filing counter, the respondents have denied the case of the applicant. They have stated that the applicant was required to pass the concerned Appendix II Examination in 2 chances, and in his case, one more chance was given as a special case only because he belongs to Scheduled Caste community. They have also stated that the appointment order clearly indicates that he should pass the said examination in 2 chances within 3 years of his appointment. Inspite of taking that 3 chances within a period of 3 years, the applicant has not passed the said examination. They have denied the case of the applicant that the applicant is entitled to additional chance in addition to the chances already given. The Appendix II applies only for promotion from Clerk Grade-II to Grade-I and it does not apply to the direct recruitment. The applicant is a direct recruit and he was required to pass the said examination within a period of 3 years in 2 chances as per appointment order. They have also stated that 10% relaxation in the minimum marks in respect of Appendix-II Examination is only allowed for promotion from Grade-II to Grade-I. At any rate, the said Appendix II examination

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does not apply to the Accounts Department. Therefore, there are no merits in the application and accordingly, the same deserves to be dismissed. They have also stated that Para 171 (4) (iv) of the IREM, which is a statutory provision, clearly provides that the direct recruits will have to pass the said Appendix II Examination and it cannot be said to be discriminatory or ultra vires of the Constitution of India. Accordingly, they have prayed dismissal of the application.

5. On the basis of the arguments as well as the pleadings of the parties, we find that it is an admitted fact that the applicant was appointed as Junior Accounts Assistant on the basis of the order Annexure A/4 dated 31.10.90. Paragraph 2 (ii) of the said order states as under:-

"2.(ii) A maximum of 2 chances to appear at the Appendix 2 (IREM) Examination within a period of three years from entering in service will only be allowed to you and failure to qualify within these 2 attempts will render you liable for discharge from service."

From the above condition which the applicant has accepted, it is clear that the applicant should have passed Appendix II Examination in 2 chances within a period of three years. The applicant cannot go back on the condition, which he has already accepted. The same is reiterated in Para 171 (4) (iv) of IREM, which is reproduced hereunder:-

"171(4)(iv) - They will have to pass Appendix II Examination within a period of three years of their appointment and in two chances failing which they are liable to be discharged from service."

6. From the reading of both the appointment order and Para 171 (4) (iv) of IREM, we find that it was a statutory condition imposed on the applicant that he should necessarily pass the concerned Appendix II Examination within a period of 3 years in 2 chances. It was not in dispute that the applicant was given additional chance in terms of Railway Board's letter No. 84-ACIII/20/17 dated 24.06.86 (Annexure R/2). According to this letter, the candidates who have availed of two chances within three years of service, who still apply for being given a third chance, within or beyond three years, their cases if found justified, could be referred to the Board with the personal approval with the FASCAO alongwith the details of performance of the candidates in earlier examinations. From this letter, it is clear that the applicant was not entitled more than three chances within three years. The learned counsel for the applicant has not brought to our notice any rule/letter,

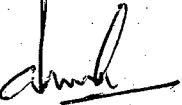
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providing any relaxation in case of Scheduled Caste community. However, he strongly relied on Appendix II of the IREM itself. But the said Appendix II of IREM relates to only regarding the qualifying examination for the purpose of promotion and it does not apply to the direct recruitment. So far as the direct recruitment is concerned, Para 171 of the IREM directly applies. As we have already stated, the instant case is a case of direct recruitment. Therefore, the Appendix II Examination does not apply to the case. The learned counsel for the applicant also relied upon the Railway Board's letter No. FC-60/RTP-3/1 dated 6th July, 1961. This letter also applies only for the purpose of promotion from Grade-II Grade-I and it is for such promotion, an employee may be given maximum 3 chances and for the candidates belong to Scheduled Caste/Scheduled Tribe, may be given additional chances. This letter also, as we have already stated, is relatable only to Appendix II Examination for the purpose of promotion. Therefore, this letter also does not apply to the case of the applicant.

7. During the course of arguments, the learned counsel for the applicant has brought to our notice another letter No. 97-E(SCT)-I/25/25 dated 08.09.98. The second para of the letter itself indicates that 10% of marks in the minimum of qualifying marks prescribed in Appendix IIIA of the IREM may be relaxed in case of SC/ST employees for the purpose of promotion from Clerk Grade II to Grade I. This also does not apply to the facts of the case. Therefore, prescribing 2 or 3 chances for passing the concerned departmental examination cannot be said to be arbitrary. Passing of concerned departmental examination is prescribed for effective discharging of duties in a department like Accounts department. Unless a person is well versed with the accounts and other departmental work by passing the necessary departmental examination, he will not be effectively discharging the duties. This has been the intention of legislature. In this view of the matter, the contention of the learned counsel for the applicant regarding ultra vires of Para 171(l)(iv) also is not acceptable. In fact, a similar contention was specifically raised before Principal Bench of the C.A.T, New Delhi in O.A. No. 2146/90, and ultimately, the said OA was dismissed, rejecting similar contentions. We find that the said judgement/order of the Principal Bench applies to the facts of the case. It has also been brought to our notice that after termination of the service of the applicant, he was offered a lower post, which he accepted and on which he is working.

8. For the above reasons, we do not find any merit in this application. Accordingly, we pass the order as under:-

"Application is dismissed. But in the circumstances,
without costs."


(N.P. NAWANI)
Adm. Member


(JUSTICE B.S. RAIKOTE)
Vice Chairman

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