

CENTRAL ADMINISTRATIVE TRIBUNAL
JABALPUR BENCH
JA BALPUR

Original Application No. 320 of 2005

Jabalpur this the 10th day of May, 2006.

Hon'ble Dr.G.C.Srivastava,Vice Chairman
Hon'ble Ms. Sadhna Srivastava, Judicial Member

1. Om Prakash Chakravorty, Aged about 37 years,
S/o Shri Rameshwar Singh, R/o C/o Shri Amit Kumar
Subhash Colony, RB-II, 23/256, Jabalpur.
2. Kamakhya Narayan Singh, aged about 33 years,
S/o Shri Ram Chander Singh, R/o C/o Shri Amit Kumar
Subhash Colony, RB-II, 23/256, Jabalpur. **-Applicants**

(By Advocate – Shri S.K.Nandi)

VERSUS

1. Union of India through its Secretary,
Ministry of Railways, Rail Bhawan,
New Delhi (MP)
2. The General Manager through its Secretary,
Ministry of Railway, Rail Bhawan, New Delhi.
3. The Divisional Railway Manager,
West Central Railway, Jabalpur Division,
Jabalpur **-Respondents**

(By Advocate – Shri S.S.Gupta)

ORDER

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By Dr.G.C.Srivastava, Vice Chairman.-

This application has been filed jointly by Om Prakash Chakravorty and Kamakhya Narayan Singh, challenging the order dated 05-07-2004 (annexure A-1) passed by the Divisional Railway Manager (P) Jabalpur rejecting the representations of the applicants whereby they sought permission to join training of Pro.Assistant Station Master (for short 'Pro.ASM') course for the fourth time. The applicants have prayed that the impugned order be set aside and the respondents be directed to send the applicants for training on the fourth occasion.

2. The facts of the case, as narrated by the applicants are that, on their selection as Pro.ASM in 1997, they were sent for the training course successively on three occasions, but they could not complete the course successfully. Since they could not complete the training course successfully twice, their services were discontinued but the third opportunity for training was given to them after discontinuance of their service. They made a request to the railway authorities that they may be sent for the training for the fourth time, but their request was rejected, despite the fact ^{that} this Tribunal had issued directions, in OA no.405 of 2000 dated 11-02-2004 (annexure A/2) filed by the applicants, that their representations for permitting them for training may be considered by applying the principles of parity. The applicants have prayed for quashing of the order of rejection (annexure A/1) on the ground that in the past similarly situated persons, namely, Raj Kumar,

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Jyoti Chandra Das, Nirmal Chandra and Shailesh Kumar Mishra, were allowed to go on training for the fourth time.

3. The respondents in their reply stated that as per Railway Board's orders dated 25-08-1962 and 22-09-2000, a total of three chances of repeat course can be given to general candidates and only one of these three chances will be with stipend and the remaining two chances without stipend. In terms of these instructions, the request for going on the training for the fourth time was rejected by a reasoned and speaking order.

4. We have heard the arguments advanced by the learned counsel on behalf of the applicants as well as the respondents. We have also perused the original departmental file produced by the respondents, in which various cases for deputing Pro.ASMs for training have been dealt with. We have also seen the circulars and instructions issued by the railway authorities from time to time regarding the policy to be followed in respect of deputing such recruits for training courses. Our attention has been drawn to circular no. E(NG)58RC1/150 dated 21-11-1961 on the subject of "[R]ecruitment and training of Apprentices/Trainees Repeat Courses-Stipends". The relevant extract from this circular is reproduced below:-

- (i) Stipend should be withheld when an extension/ a repeat course is considered necessary at the end of prescribed period of training for the reasons that the Apprentice has failed to complete the prescribed training satisfactorily. The stipend need not, however, be withheld at an intermediate stage but it should be considered on individual merits whether the Apprentice should continue to receive training or be discharged.
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(ii) So far as the persons recruited as trainees in the categories of Signallers, Commercial Clerks, Ticket Collectors, Accounts Clerks, Tracers, Guards etc., are concerned, if the existing terms of appointment do not allow stoppage of stipend/pay for the extended period of training, the services of such of the trainees as do not complete the prescribed period of training satisfactorily should be terminated in accordance with the terms of appointment for example, by giving 14 days' notice. After the termination of their services, they will cease to be Railway servants. If the Railway Administration desire to give a repeat course to such trainees as have ceased to be Railway servants this should be done by the competent authority and in individual cases, such trainees may be asked whether they are willing to have a repeat course without stipend, which should be arranged by the Railway Administration.

As regards future trainees in the above categories, it should be prescribed in the terms of appointment that a repeat course, if considered necessary by the Administration shall be given without stipend or any other remuneration.

(iii) Scheduled Caste/Tribe Apprentices /Trainees may be given a second chance with stipend/pay and the third chance, if considered necessary without stipend/pay.

(iv) The Apprentices/ trainees for whom repeat course is given, will rank junior to those passing in their first attempt. Such of the Trainees/ Apprentices, who fail in the initial training and who will be given repeat course without stipend, will be governed by the terms and conditions as given in Annexure 'A' to this letter. These conditions should be incorporated in the formal agreements in the case of Apprentices and in the officer of appointment in the case of trainees.

The grant of stipend/pay during the second chance of training in item (iii) above has the sanction of the President".

The above instructions were supplemented by additional guidelines issued by the Railway Board through letter no.

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E(NG)62AG/1/2 dated 25-08-1962. The relevant portion of this letter reads as follows:-

"The Govt. have, however, the discretion to decide, on individual merits, whether the Apprentice should (a) be allowed to continue to receive training by withholding his/her stipend in case an extension/ repeat course is considered necessary at the end of the prescribed period of training for the reasons that he/she has failed to complete the prescribed training satisfactorily or (b) be discharged from his/her apprenticeship in terms of Clause (3)".

The instructions issued in 1961 have been partially modified through Railway Board letter no. F(MPP)2000/3/10 (RBE no.96/2000) dated 10-08-2000. The relevant extract from this letter is given below:-

"a) The Trainees/Apprentices, other than those covered under the Apprentices Act, 1961, may be given one repeat course or 2nd chance without any stipend or any other remuneration.

b) The Trainees/Apprentices, other than those covered under the Apprentices Act, 1961, belonging to OBC categories may be given one repeat course or 2nd chance without any stipend or any other remuneration.

c) The Trainees/ Apprentices, other than those covered under the Apprentices Act, 1961, belonging to SC/ST categories may be given 2nd chance with stipend/pay and the third chance, without stipend or any other remuneration".

5. A careful perusal of above mentioned three letters shows that an apprentice recruit of general ^{category} ~~categories~~ *or* is expected to complete the training course successfully in the first attempt, but, the government has the discretion to decide on individual merits whether he should be allowed to continue to receive training

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beyond the first attempt (which may be without stipend) or to discharge him from his apprenticeship. It is also clear from these letters that in respect of payment of stipend during the repeat courses, there are separate instructions for SC/ST trainees, who unlike general candidates, could be given the second chance with stipend and the third chance, if considered necessary, without stipend. Prior to the issue of letter of 10.8.2000, there were no specific instructions for OBC candidates, who presumably were treated at par with general candidates. The only contribution of this letter is to confirm that OBC candidates would be at par with general candidates in respect of repeat courses and payment of stipend. No limit has, however, been placed by these letters about the number of attempts that an apprentice, would be allowed for repeating the training. The only thing that has been categorically said through these letters is that even if repeat courses are allowed, general and OBC trainees will get stipend only for the first course and subsequent courses can be allowed without stipend. In case of SC/ST trainees, however, stipend can be allowed on two occasions and the third one, if allowed, will be without stipend. No where it has been mentioned categorically that the third or fourth chance would not be allowed. It appears that the normal practice has been to allow trainees of general ^{category} ~~categories~~ to undergo the training course for the second time without payment of stipend and for the third time also without payment of stipend, as a matter of routine, on the request of the candidates concerned. So far as the fourth chance is concerned, it appears that the respondents have not been following a uniform policy.



6. A perusal of the original records produced by the respondents shows that Jhansi and Mumbai division had allowed some Pro ASMs to go on training for the fourth time. On this analogy, the applicants of the present OA along with Shailesh Kumar Mishra sought permission for training on the fourth chance through their joint application dated 14-07-1999 (available in file of case no. JBP/P/114/T/Pro-ASM/Inst. of DRM (P), Jabalpur). Subsequently, Shailesh Kumar Mishra approached this Tribunal through OA No.475/1999 wherein directions were issued, vide order dated 9.9.1999, directing the respondents to dispose of the representation of Shailesh Kumar Mishra within two weeks. The representation of Shailesh Kumar Mishra was considered by the General Manager and he, vide communication no.HPB/706/854/T/D/TR dated 22-12-1999, "decided to give him a one more final chance for training". Encouraged by this action of the respondents, the remaining two applicants also approached this Tribunal for relief through OA no.405/2000. In the aforesaid OA, the Tribunal, vide order dated 11-02-2004 (annexure A/2), directed the respondents to apply "the principles of parity and to dispose of the representation within a period of two months". By then, the Railway Board's instructions of 2000 had already been issued and the representation of the applicants was considered, purportedly in the light of these instructions, and it was rejected on the ground that under these instructions, the Railway Board has "clearly directed that only two chances are permitted".

7. We have, as indicated above, carefully and minutely examined the instructions issued by the Railway Board in 1961,

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1962 and 2000. We find that there is no categorical decision about the number of chances that can be given to a trainee for completing the necessary training successfully. The only thing that is clear is that stipend will be given only during the first chance (for general and OBC trainees) and subsequent chances will be without payment of stipend. The other thing that is clear is that allowing repeat training would depend upon individual cases, and if repeat training is not allowed, the trainee is to be discharged after giving notices etc. Even the latest instructions issued in 2000 do not make any substantial change in the earlier position except that it categorically states that the second chance (for general and OBC candidates) will be without stipend. Similarly, these instructions also clarified that SC/ST trainees could be given the second chance with stipend and third chance without stipend. The position that, therefore, emerges is that there is no bar even under the instructions of 2000, on giving the fourth chance to a trainee for undergoing training.

8. A perusal of the original record produced by the respondents shows that Shailesh Kumar Mishra, and the two applicants of the present OA initially submitted a joint representation on 14.7.1999 to the Senior Divisional Personnel Officer, Jabalpur requesting for the fourth chance to undergo training. Subsequently, only Shailesh Kumar Mishra followed it up ~~separately~~ and on not getting redressal from the department, came alone to this Tribunal through OA No.475/1999. On getting the direction of the Tribunal to consider his representation, Shailesh Kumar Mishra was allowed the fourth chance. At that stage, the respondents could have also considered


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the cases of the two applicants who had joined Shailesh Kumar Mishra in submitting the original representation dated 14.7.1999. In the order, by which the authorities allowed Shailesh Kumar Mishra the fourth chance, no specific reason was given, distinguishing the case of Shailesh Kumar Mishra from other similarly situated candidates. Parity and equity demanded that all the three cases should have been given similar treatment. If that was done, the applicants would not have been required to run to the Tribunal for getting relief. It is surprising that the respondents rejected the representation of the applicants on the ground that the railway board has clearly directed that only two chances are permitted. A reading of aforesaid Railway Board's letter dated 10.8.2000 shows that it is nowhere mentioned that only two chances can be permitted. Instead, it says that "Traineesmay be given one repeat course or 2nd chance without any stipend or any other remuneration". This letter has not modified the original instructions of 1961 and 1962, which have given discretion to the government to decide about the continued training of candidates. Since Shailesh Kumar Mishra has already been allowed to undergo training for the fourth time and the case of the applicants is in no way different from his case, the action of the respondents in rejecting the request of the applicants on the basis of mis-interpretation of instructions can not be sustained in the eyes of law. Moreover, these instructions, which were issued on 10.8.2000, can not be relied upon for deciding a case which originated on 14-07-1999, the date on which the joint representation of the applicants and ~~Sh~~ Shailesh Kumar Mishra

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was submitted. The impugned order is, therefore, bad in law and is liable to be quashed and is quashed. The respondents are directed to consider the representation of the applicants dated 14.7.1999, which is available at page 22 of the DRM (P)JPB file no.JBP/P/114/T/Pro-ASM/Inst., and in the light of the observations made by us above pass and appropriate reasoned order within a period of two months from the date of receipt of a copy of this order.

9. In the result, the OA is disposed of in the above terms. No order as to costs.


(Ms. Sadhna Srivastava)
Judicial Member


(Dr. G.C. Srivastava)
Vice Chairman


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पृष्ठकन सं ओ/न्या.....जवलपुर, दि.....

पतिलिपि अर्चयितः-

- (1) सचिव, उच्च न्यायालय एवं एडमिनिस्ट्रेशन, जवलपुर
- (2) आवेदक श्री/श्रीमती/कु.....के काउंसल
- (3) प्रत्यर्था श्री/श्रीमती/कु.....के काउंसल
- (4) मंडलपाल, को.प्र.अ., जवलपुर न्यायालय
सूचना एवं आवश्यक कार्यवाही हेतु

S.K. Nandi 22/7/99
S.S. Gupta 22/7/99


उप निरीक्षक

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