

**CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.**

ORIGINAL APPLICATION NO. 590/2015

Dated this Thursday the 1st day of March, 2018.

CORAM:- HON'BLE SHRI R. VIJAYKUMAR, MEMBER (A)

1) Shri Birendra Kumar,
Residing at Income Tax Quarter Type 2/II.
Sakri Road, Dhule - 424001.

...Applicant

(By Advocate Shri R. P. Saxena)

Versus

1) Union of India,
through The General Manager,
Western Railway, Churchgate, Mumbai - 400020.

2) Sr. Divisional Personnel Officer,
Office of the Divisional Railway manager(E),
Western Railway, Mumbai Central - 400008.

...Respondents

(By Advocate Smt. H. P. Shah)

Reserved on :- 27.02.2018.

Pronounced on:- 01.03.2018.

O R D E R

This application is a second stage litigation following an application in O.A. 157/2015 for directions to respondents to consider his representation dated 04.03.2013 by which he had requested refund of training amount of Rs. 88,265 that had been recovered by respondents prior to relief to join the Income Tax Department where he had been

appointed based on a no-objection from the respondents. Following that decision on 24.03.2015, the respondents issued impugned speaking order which is reproduced below:

“ **Speaking Order**

Hon'ble CAT/ Mumbai has passed on order dt. 24/3/15 in OA. NO. 157/2015 filed by yourself Ex. ESM II of Signal and Telecommunication Deptt. Of Mumbai Division in which direction has been given to decide your representation dt. 4/3/13.

Accordingly I have gone through your representation dtd. 4/3/13 and have seen the instructions available on records.

It is seen that you were appointed as a apprentice ESM Gr.III on 11/5/2006 and under gone practical training. On completion of training, you were regularized on 08/06/2007. Subsequently you were promoted as ESM Gr.II. You had applied for the post of Tax Assistant and on Selection you were relieved on deposition of training cost Rs. 88265/- as per laid down rules to join as Tax Assistant.

Your's contention that as per letter E(NG)I-84 AP/9 dtd 11/4/86's Para 3&4, you were exempted from training cost.

The para 3&4 pertains to induction training and not for practical training. So you were relieved after deposition of training cost is within rule only. Thus you are not entitled for refund of training cost deposited by yourself for relieving from the post of ESM Gr.II.

In view of the above, your representation dtd. 4/3/13 is hereby disposed off. “

2. The applicant is aggrieved by the distinction sought to be made between induction training and practical training and for not extending to him the benefits of Railway Board's order nos. E(NG)I-84 AP/9 dated 11.04.1986 and E(NG)I-84 AP/5 dated 30.01.1995. He has sought the following reliefs:

“**8.01** This Hon'ble Tribunal may be pleased to call for the record of the case and after examining the same to hold and declare that the said recovery of Rs. 88,265/- is in defiance of the orders dated 11.04.1986 and 30.01.1995, issued by the Railway board.

8.02 The Hon'ble Tribunal may be pleased to hold and declare that the impugned order dated 01.06.2015 cannot be sustained being arbitrary and the said order may be quashed and set-aside with costs.

8.03 The Hon'ble Tribunal may be pleased to direct the respondents to refund an amount of Rs. 88,265/- to the applicant with 12% interest thereon from the date of recovery till the date of refund/payment.”

3. At the outset, we may consider the issue of delay. The applicant deposited the training cost of Rs. 88,625 on 23.09.2011 prior to relief on 30.09.2011 to join his new assignment as Tax Assistant in the office of the Joint Assistant of Income Tax, Dhule, Maharashtra. By his statement, the applicant had submitted a representation to respondent no. 2 on 04.03.2013 and on failing to obtain a reply, had filed an OA No. 157/2015 on 06.02.2015 which was decided on 24.03.2015 directing respondents to pass suitable speaking orders and this was done on 01.06.2015 after which this application has been filed on 29.09.2015. The respondents have not specifically challenged the delay but it also appears that this Tribunal while passing orders with directions to the respondents in March 2015 implicitly condoned the delay. In the circumstances, the original delay in approaching this Tribunal for relief is condoned as a continuation of the previous proceedings before this Tribunal.

4. The applicant was appointed as an Apprentice with the Railways on 10.05.2006 and he was placed on training as an Apprentice Electrical Signal Maintainer(ESM) Gr.III on a stipend of Rs. 3050 + Dearness Allowances as admissible, for which he signed

a bond with the respondents consenting to be engaged as an Apprentice and then upon completion, to serve for a minimum period of five years at the discretion of the Railways. The applicant completed his apprenticeship successfully on 07.06.2007 when he was regularized as ESM Gr.III in the scale of pay Rs. 5200-20200 with GP Rs. 1900. He was thereafter promoted as ESM Gr. II on 21.05.2009 with GP of Rs. 2400. The applicant applied in good order for a competitive exam conducted by the Staff Selection Board and was offered appointment as a Tax Assistant in the Income Tax Department and by reference to the letter of the Joint Commissioner of Income Tax dated 30.06.2011, approval was granted by the respondents to relieve him to join that post subject to recovery of training costs since he had not completed 5 years of service(A-2). While all these aspects are not in dispute, the issue for consideration is on the nature of training and whether such training falls within the ambit of the exceptions provided by the Railway Board in its circulars cited Supra dated 11.04.1986 and 30.01.1995.

5. The applicant contends that in contrast to what is stated in the speaking orders, he had actually been given induction training and therefore, under para 2, he should have been exempted from any

recovery. Moreover, he had joined the Central Government and there was only need to obtain a further bond for the balance period of about one year to complete the full term of five years as required in the bond. This requirement is specified in para 3 of the Railway Board Circular supra dated 11.04.1986. He has also referred to para 5 of the same circular which reads as follows:

“A doubt has also been raised whether the word 'training' covers apprenticeship and whether exemption from recovery of expenses, as laid down in these instructions, includes payments made to an individual in the shape of training allowance and stipend. It is hereby clarified that these instructions are not restrictive, but cover all aspects of training, including apprenticeship. It is further clarified that exemption from recovery of expenses applies to all types of expenditure – direct or indirect – including payments made as training allowance or stipend.”

The applicant further contends that the circular of the Railway Board supra dated 30.01.195 further expanded the scheme of exemption to include Railway Employees who had received training in a specific avocation at Railway expenses and which had been excluded for the purpose of exemption in the circular of 11.04.1986. He points out that the specific submission at para 4.01 of his application that he was under induction training has not been denied by respondents in their reply at para 7 but learned counsel for applicant fairly admits that such a denial is contained in other paras of the same reply. Learned counsel for the applicant provides a definition of

induction training from an online
www.businessdictionary.com which reads as under:

"Training provided to new employees by the employer in order to assist in adjustment to their new job tasks and to help them become familiar with their new work environment and the people working around them. This type of training will also outline the basic overview of the business and its services as well as the new employee's role in the environment.
"

He argues that he was given training for the same post for which he was regularly appointed and continued to work till he was promoted to Gr. II level.

6. Respondents deny the contention of the Applicant that his training was an induction training and that they had faithfully followed the terms of the Bond executed by him to recover the training cost of Rs. 88,265. They also clarified that the applicant was appointed as Apprentice ESM Gr. III in accordance with IREM Para 149 by which it was compulsory to complete one year training. They have enclosed the recruitment rules for this post which specifies that for direct recruitment, the qualifications are matriculation and

- a) ITI certification in Electrician/ Electrical fitter/ Wireman Trade and one year's experience as casual ESM in the S & T Department; or
- b) Must be a casual ESM/Electrical fitter for 3 years in S & T Department; or
- c) a pass in plus two stage with Physics and Maths in

Higher Secondary or equivalent.

They also assert that the Railway Board Circular of 11.04.1986 pertained to induction training and not for practical training which was undergone by the applicant. Therefore, they claim that the grounds specified in the application are not tenable. They also refer to the RBE circular of 11.04.1986 which refers to a previous circular dated 09.02.1979 that

“... non-gazetted employees who have not received training at Railway expenses in a specific avocation but only have been given an “induction course” to make them suitable to the cost of training in the event of their selection to other posts under the Central Government/ State Government or in the public sector undertakings”.

The learned counsel for respondents asserts that the reference to the word 'may' makes this a discretionary matter and the Railways are not obliged to extend further exemption.

7. In reply, learned counsel for applicant argues that there is no way to distinguish between practical training and induction training and the Railway Board Circulars supra dated 11.04.1986 and 31.01.1995 fully cover the case of the applicant.

8. We have heard both the learned counsels and have carefully considered the facts and circumstances of the case, law points and contentions by parties in the case.

9. The word 'practical' refers to (Oxford Dictionary) “Of or concerned with the actual doing or

use of something rather than with theory and ideas". Further an online explanation of the aim of practical training is "to familiarise the student with future working situation, tasks at work, and operations at organizations besides the meaning of entrepreneurship. Content and extent of practical training varies according to each degree programme". We may consider this definition of practical training and the previously mentioned definition of 'practical' in relation to the qualifications of Apprentice ESM Gr. III. The qualification suggests that the recruit could be a person who has passed the Higher Secondary examination with Physics and Mathematics or have an ITI certificate with one year experience or as a casual ESM with 3 years experience. Although induction may be relevant for a person with longer years of experience, both induction and practical experience are necessary for raw school graduates or ITI holders with one year experience. Clearly, therefore, the apprentice is not one who is fully knowledgeable about the work but needs to be trained and also to be guided to adapt to the work environment. The training clearly included induction and also practical application. The third concept introduced in the Railway Board circular is of avocation. The persons inducted as ESM Gr. III

Apprentice are trained at the job and finally appointed by regularization as ESM Gr. III. Therefore, the term avocation combines both induction training and practical training for preparing persons such as the applicant for the job that they have been employed. By virtue of the Railway Board Circular supra dated 30.01.1995, training in a specific avocation at Railway expenses has also extended benefits as specified in the Circular of 11.04.1986. Further, para 5 of the circular which has been extracted above shows that the instructions for exemption are not restrictive but cover all aspects of training included apprenticeship and the exemption will cover all types of expenditure, direct or indirect including allowances and stipend. Therefore, the case of the applicant falls squarely within the dispensation provided under the Railway Board Circular dated 11.04.1986. The impugned speaking order is, therefore, clearly in error by attempting to make a distinction between the kind of training that the applicant had undergone and for creating a new classification in order to deny him the benefits of the exemption.

10. The learned counsel for respondent has argued that there is a discretion available under para two of the Circular dated 11.04.1986. However, this

discretion by use of the 'may' should be read with the next two paras whereby a person who fails to perform as per bond executed by him, shall be required as part of this dispensation to execute a further bond to stay with the Central Government or other organization for the balance of the original bond period. The Circular is complete in itself as plainly read and provides no further discretion to the respondents.

11. In the circumstances, the O.A. is allowed and the respondents are directed to refund the amount recovered of Rs. 88,265 along with 6% simple interest from the date of recovery to date of payment. There shall be no further order as to cost.

(R. Vijaykumar)
Member(A)

gm.