

**CENTRAL ADMINISTRATIVE TRIBUNAL**  
**PATNA BENCH, PATNA**  
**OA/050/00433/16**  
**With**  
**MA/050/00483/16**

Reserved on : 26.02.2019  
Pronounced on: 01.03.2019

**C O R A M**  
**HON'BLE MR. JAYESH V. BHAIKAVIA, JUDICIAL MEMBER**  
**HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER**

Uttam Kumar, Son of Sri Mathura Prasad, Senior Traffic Inspector of Accounts, N.F. Railway, Dharmanagar (Tripura), Resident of Village-Kutlupur, Post- Bara, PS- Ben, District- Nalanda (Bihar).

..... Applicant.

By Advocate: - Mr. M.P. Dixit

-Versus-

1. The Union of India through the Secretary, Railway Board, Ministry of Railway, Rail Bhawan, New Delhi.
2. The Member (Finance), Railway Board, Ministry of Railway, Rail Bhawan, New Delhi.
3. The General Manager, North Frontier Railway, Maligaon, (Guahati)- 781011.
4. The General Manager (P), North Frontier Railway, Maligaon, (Guahati)- 781011.
5. The Financial Advisor & Chief Accounts Officer, North Frontier Railway, Maligaon (Guwahati)- 781011.
6. The Deputy Financial Advisor & Chief Accounts Officer, North Frontier Railway, Maligaon (Guahati)-781011.

..... Respondents.

By Advocate: - Mr. S.D. Sanjay  
Mr. S.K. Ravi

**O R D E R**

**Per Dinesh Sharma, A.M.:-** The case of the applicant is that vide order dated 27.05.2016 issued by Dy. Financial Advisor and Chief Accounts Officer, North Frontier Railway, Maligaon, Guwahati (Respondent No.6) the

applicant has been terminated from service from the post of Senior Traffic Inspector of Accounts/HQ after service of more than 12 years for the sole reason that he could not pass in the Appendix-III (IREM) Examination in two consecutive chances. This, according to him, is wrong since it is contrary to para - 4 and 5 of the terms and conditions of his appointment letter which says that an employee has to pass the said examination in two chances within a period of three years from the date of his joining. The applicant has alleged that the first such examination for him was conducted in the year 2006 but the second was not conducted prior to December, 2008 (within the cut-off date of 3 years). The respondents have conducted second examination in the year 2010 and on the request of the applicant they have conducted another examination in 2012 and 2015, but the applicant has been declared unsuccessful without any rhyme or reason. Since the applicant has been doing his work for more than 12 years without any complaint about his work, he should not be terminated only on ground of his not passing the exam.

2. The respondents denied the claim of the applicant. They have alleged that passing of the examination under Appendix-III (IREM) was a necessary condition for confirmation. Hence, the appointment as Travelling Inspector Accountant (TIA) was conditional on his passing this examination in two attempts within three years. While all but three of the applicants, who were selected following the selection process which commenced with Railway Board's letter No. E(NG)II/2000/RR1 dated 05.10.2000, have passed this examination but the three candidates which include the applicant have

not done so despite department having provided them ample opportunities. The applicant had full knowledge that he had to clear this examination. He was informed at every additional opportunity given to him (on 19.01.2011 and 07.05.2014) that in the event of his non-clearing this examination his services will be liable to be terminated. Hence, this case does not deserve any intervention by this Tribunal. The respondents also annexed a circular of the Railway Board dated 15.05.2008 in which it has been clarified that on non-passing of Appendix-III (IREM) Examination in two chances in two consecutive examinations concluded immediately after joining, their services will be terminated.

3. The applicant has filed a rejoinder in which he has contested the applicability of the Railway Board's letter dated 15.05.2008 since this letter is issued much later after their recruitment. The condition at the time of their selection is only about clearing of Appendix-III (IREM) Examination in two chances within a period of three years. Since the respondents did not conduct the 2<sup>nd</sup> examination within three years and conducted it after only about 5 years the applicant cannot be made to suffer.

4. The respondents have filed a supplementary written statement in which they have argued that applicant has himself made request for allowing him further chances and these additional chances were given to him beyond the period of three years only on his request. After failing to pass in these chances he cannot complain about the second examination not being held within three years. They have again stated that, out of 21 TIAs temporarily appointed along with the applicant, 18 have qualified and

only 3 including the applicant have failed despite repeated opportunities given to them.

5. The case was earlier heard on 23.12.2016 and reserved for orders. However, on the applicant filing an M.A. (483/2016) the matter was de-reserved and time was granted to the respondents to file a reply to this M.A. The applicant has claimed in his MA that the IREM Vol. I in para-9.1 provides for extending the number of chances for appearing in Appendix-III (IREM) Examination for each class of appointment and under these rules the number of chances can be extended from 3 to up to 10 (depending on various levels at which this extension was granted). Since the applicant has been given only four chances, he requested for re-hearing this OA.

6. The respondents have filed a detailed reply to this MA where they have stated that the number of chances for appearing in Appendix-III (IREM) Examination for Account Assistants is not at all comparable with the number of chances available to the direct recruited TIAs. The vacancies of TIAs were filled up following a one-time relaxation due to acute shortage of staff at that level, and the appointment letter dated 30.12.2004 provided only two chances. The applicant's service was temporary and he was not paid any increment till his service was terminated. The heading of Appendix-III of IREM itself makes it clear that it is applicable only for promotion of eligible staff of accounts and is not applicable to direct recruit TIAs.

7. We have gone through the records and heard learned counsels for the parties. The main issue here is whether the respondents are correct in terminating the service of the applicant on his failure to pass the IREM

Appendix-III Examination despite having given four opportunities to do so in the last 10 years. The main argument of the applicant is that the failure of the department to conduct two examinations within three years after applicant's selection bars the respondents from terminating them now. The respondents, on the other hand, have argued that they have given enough opportunities to the applicant to fulfil the condition which was necessary in order to confirm his temporary appointment as TIA. While it is admitted that the second examination was not conducted within three years, that fact alone cannot give a right to the applicant to get confirmed without his passing the examination which he fully knew was a condition for his appointment. By asking for further opportunities to pass this examination and appearing in these examinations, he has forgone his right to complain about the non-happening of second examination within the first three years. There is no disputing the fact that the applicant did not pass the required examination when it was conducted in the 2<sup>nd</sup> and the 5<sup>th</sup> year and also in the two additional chances which were provided to him at his own request. The failure of the applicant to pass the examination, despite repeated opportunities provided to him over a sufficient length of years, debars him to claim any right to get confirmed to a post which was subject to passing this examination. The OA is, therefore, dismissed and the MA too, stands disposed of accordingly. No costs.

**[ Dinesh Sharma ]**  
**Administrative Member**  
**Srk.**

**[Jayesh V. Bhairavia]**  
**Judicial Member**