

**CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
OA/050/00479/2019**

Date of Order: 30.07.2019

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

Alok Kumar, Son of Sri Yogendra Kumar Keshri, Ex. Senior Section Engineer/Electric/Drawing, office of the Chief Administrative Officer (CON), East Central Railway, Mahendrughat, Patna, Resident of Masaurhi, Main Road, near SBI ATM, District- Patna- 804452 (Bihar).

.... Applicant.

By Advocate: - Mr. M.P. Dixit

-Versus-

1. The Union of India through the Chairman, Railway Board, Ministry of Railways, Government of India, Rail Bhawan, New Delhi- 110001.
2. The General Manager, East Central Railway Hajipur, PO- Digghi Kalan, PS- Hajipur, District- Vaishali at Hajipur, Pin Code- 844101 (Bihar).
3. The General Manager (Personnel), East Central Railway Hajipur, PO- Digghi Kalan, PS- Hajipur, District- Vaishali at Hajipur, Pin Code- 844101 (Bihar).
4. The Chief Administrative Officer (CON), East Central Railway, Mahendrughat, Patna- 800004.
5. The Deputy Chief Personnel Officer (Construction), East Central Railway, Mahendrughat, Patna- 800004.
6. The Senior Personnel officer (Construction), East Central Railway, Mahendrughat, Patna- 800004.

.... Respondents.

By Advocate: - Mr. Vinay Kumar, ASC

O R D E R
[ORAL]

Per Dinesh Sharma, A.M:- The instant OA has been filed against the orders dated 04.01.2019 and 26.02.2019 issued by the Sr. Personnel Officer (Construction), EC Railway, Mahendrughat, Patna by which the applicant has been ordered to be terminated from service and further recovery of Rs.

1,53,354/- incurred during training for second time, has been ordered to be realized from the applicant. The applicant has alleged that these orders are bad in law, arbitrary, punitive, discriminatory, against the conditions of his appointment and also against various judicial pronouncements. The applicant was offered provisional appointment in Group 'C' category by letter dated 14.09.2016 of EC Railway (Construction Organization). According to the terms of this appointment, he had to be on probation for a period of two years during which he underwent training including field training. His services have been terminated by office order no. NG/06/2019 dated 04.01.2019 stating that he has not been successful in his training at ZRTI (Zonal Rail Training Institute), Muzaffarpur which was held for training in General and Subsidiary Rules (G&SR) despite his having been given two opportunities. He has also been asked to pay back the stipend (Rs. 1,53,354/-) given to him for training for the second attempt as per the rules relating to such second chances. The letter (dated 26.02.2019) mentions that this stipend has been paid to him by mistake. The applicant has also claimed that there were four other persons selected along with the applicant, namely, Rohit Raj, Narendra Meena, Navneet Kumar and Nawal Kishore Jaiswal, who have been confirmed without their having been being sent for G&SR training at ZRTI, Muzaffarpur and therefore termination of the applicant on this ground is discriminatory and thus violative of Article 14 and 16 of the Constitution of India.

2. The respondents have denied the claim of the applicant. They have stated that three candidates including the applicant, who were

allotted to the Construction Organization, were sent to ZRTI, Muzaffarpur vide letter dated 06.11.2017. The result of training, for altogether 33 candidates, were published by Principal, Muzaffarpur. Names of these candidates figure at Sl. No. 29,32 and 34 of the said result (Annexure R/5). In these results while the other two candidates have been shown as passed the applicant has been marked as failed. The applicant was given another chance on his request, but he again failed in this examination (Annexure R/9). Since the applicant could not successfully complete this part of the training, despite sufficient opportunity, his probation was terminated. He has also been asked to return the stipend paid for the second attempt since the rules do not allow such stipend to be paid for second attempt in case of unreserved candidate (Annexure R/7). The respondents have categorically denied any discrimination against the applicant since no one who failed in such training was given an appointment. His case cannot be compared with those who were not sent for this particular training.

3. The applicant has filed a rejoinder in which he reiterated his earlier claim and stated that “the mandatory criteria is fixed for passing in FIELD TRAINING only”. He has also alleged that, in the past, Senior Section Engineer/Elec./Drawing have never been sent for G&SR training and many persons appointed along with the applicant have been posted directly without being sent for such training.

4. We have gone through the pleadings and heard the arguments of learned counsels for both the parties. The main arguments of the applicant in support of his case can be summarized as follows: -

(i) He has been successful in “FIELD TRAINING” and he cannot be terminated only on account of his being unsuccessful in any other part of training.

(ii) Four other candidates who were selected along with him were not sent for the G&SR training and therefore his termination on ground of failure in this training is violative of Article 14 and 16 of the Constitution of India.

5. The respondents have given a clear reply to both these grounds. As per the terms and conditions of provisional appointment letter dated 14.09.2016 his service is liable to be terminated if his performance in the field of training during probation period is found unsatisfactory. They have also mentioned that besides the applicant, two other persons, who were allotted to Construction Organization, were sent for the training at Muzaffarpur. Thus, it cannot be said that applicant alone has been picked and chosen for a special punitive training. The fact that those other two candidates (from the same Construction Organization) and 32 others passed this exam and also the fact that in the 2nd attempt, 31 out of the 34 candidates cleared this exam, also proves that this training/test was not particularly taxing and the applicant could not have been sent for this training with any prior intention to make him fail. We also note that the applicant has, deliberately or inadvertently, tried to mislead this Tribunal by repeatedly mentioning “FIELD TRAINING” as a mandatory requirement while the provisional appointment letter only mentioned performance in the “FIELD OF TRAINING”. There can be no doubt that it referred to the applicant’s performance in the FIELD OF TRAINING during probation period and not just to the FIELD TRAINING which the applicant wants us to believe.

6. Since, as detailed above, we do not see any legal infirmity in the order of termination dated 04.01.2019, and there is nothing to prove that the authorities have discriminated amongst similarly placed persons, we are unable to accede to the prayer of the applicant for quashing this order of termination. However, we feel that the order dated 26.02.2019, which seeks to recover the stipend the Department allegedly gave by mistake, appears to be slightly harsh. Though it is argued by the respondents that a stipend paid during the training can be recovered from a trainee if he does not serve for five years, it will be unfair to use this clause in case of the Department themselves finding the performance of the employee unsatisfactory and terminate his services. We, therefore, dismiss the OA with an observation for the respondent department to consider sympathetically if a request is made by the applicant to waive the repayment of stipend already paid to him. No order as to costs.

[Dinesh Sharma]
Administrative Member
Srk.

[Jayesh V. Bhairavia]
Judicial Member