

(2013) 08 KAR CK 0234
In the Karnataka High Court
Case No : Writ Petition No. 64 of 2013 (S-CAT)

Bipin Kumar

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 14-08-2013

Acts Referred:

Citation : (2014) 1 AKR 10 : (2013) 5 KarLJ 359

Hon'ble Judges : D.V. Shylendra Kumar, J;B.S. Indrakala, J

Bench : Division Bench

Advocate : P.A. Kulkarni, for the Appellant; Kavitha H.C., for the Respondent

Judgement

B.S. Indrakala, J.—Though the matter is listed for Preliminary Hearing, with the consent of both the learned Counsel for the petitioner and the respondents, the same is taken up for Final Hearing. Being aggrieved by the order dated 10-4-2012 passed in OA No. 335 of 2011 on the file of the Central Administrative Tribunal, Bangalore Bench, Bangalore, the petitioner has preferred the above writ petition seeking to quash the said order and consequently, to pass an order or direction to set-aside the order of termination and request for additional chance as prayed for in the OA.

2. It is the case of the petitioner that on 4-5-2007 he was appointed as Apprentice--Grade III with a condition that he should successfully complete the prescribed period of twelve months and also has to pass the test conducted by ZRTC/TPJ. In pursuance of the same, he served in the said capacity for more than two years with good performance in the training conducted by ZRTC as per the prescribed syllabus. However, by order dated 22-6-2009 he was terminated from service alleging that he failed in the test conducted by ZRTC/TPJ. Further, it is contended that subsequently on 27-3-2010 he gave a representation contending that similarly placed co-employee under OBC category was given third chance for training by Ministry of Railway Board and hence, his case may also be considered for third chance of training for which he did not receive any reply; Again on 31-1-2011, he gave another representation enclosing a copy of

the order dated 26-9-2003 issued by the Government of India, Ministry of Railways to his co-employee where he was accommodated by giving third chance for training with incentive training in Hindi. In this regard, it is further contended that as the petitioner also belonged to OBC category, he may also be given a chance in similar manner. However, the 4th respondent-Railways by its order dated 4-3-2011 rejected the representation of the applicant stating that such benefit given by the Ministry of Railway Board vide its letter dated 26-9-2003 is applicable only in that particular case and the same shall not be a precedent. In the circumstances, he approached the Central Administrative Tribunal seeking direction to the 4th respondent to consider his case for providing third chance of training with incentive training in Hindi. The Tribunal by observing that the claim of the applicant is not genuine, has deemed it fit to dismiss the application.

3. Aggrieved by the same, the writ petitioner has preferred the above writ petition inter alia contending amongst other grounds that the Railway Board is vested with the discretion in the matter of relaxation of any conditions of service and the order providing additional chance to 4 other OBC candidates by the authority to clear the training examination in similar situation like the one faced by the petitioner is one such case of exercise of discretion by the Competent Authority and as such, the Tribunal was not justified to find fault with the benefit given by the Railway Authorities in similar cases. It is also contended that unless the authorities provide a reason as to why it granted such permission earlier and why it has denied the same to the petitioner, he is entitled for a direction to the authority in the matter of extension of additional chance to him to clear the training examination and has sought allowing of the petition.

4. Learned Counsel appearing for the petitioner reiterated such contention of the petitioner and further submitted that when persons similarly placed were given the benefit of appearing in the examination again, the petitioner cannot be denied of the same.

5. Per contra, Counsel for the respondent submitted that the petitioner was recruited by Railway Recruitment Board, Bangalore to the post of Apprentice ESM/ Gr.III (Technician/III/Signal) on a stipend of Rs. 3050/- plus allowances as admissible from time to time and such appointment was subject to the condition that he has to undergo training for a period of 12 months and only on successful completion of the training, he would be absorbed. Further, it is submitted that the petitioner was directed for a training at Zonal Training School at Tiruchirapalli for a period of 12 months; Petitioner did not come out successful in the examination conducted by the said training school and as such, he was sent for repeating the course. Further, he has failed in the repeated course also and as such he was given a show-cause notice on 22-6-2009 and termination order was issued subsequently on 24-7-2009.

6. It is further submitted that the representation of the petitioner was examined in detail and as there is no provision to given a third chance of training, the Railway Board rejected his representation.

7. Further, it is contended by the respondent that petitioner was only a trainee and he has not worked in the post; The Zonal Training Institute which is located at Tiruchirapalli, Tamil Nadu is under "C" Zone where the medium of instruction is English and not Hindi and though the training is imparted in English medium, the candidates are at liberty to write the examination at the end of the course either in English or in Hindi provided they exercise their option. The petitioner having accepted the working knowledge of English, got trained in the said "C" region. With regard to providing a third chance to others, it is contended by the respondent that it is in 2003 from the Southern Railway that the Board allowed as a special case in favour of the specified candidates which was neither a policy decision nor a circular applicable to the case and as such relaxation granted as a special case cannot be made applicable to South Western Railways.

8. Thus admittedly it is seen that petitioner was recruited in South Western Railway only as trainee and he was not successful in completion of such training. Further, it is also seen that as observed by the Tribunal, just because 4 others were given a third chance as per Annexure-A10, it cannot be said that such a relaxation can be extended to others as a matter of parity.

On perusal of Annexure-A10, it is clear that in the said letter itself it is seen that such a relaxation cannot be quoted as a precedent for others and admittedly, it is seen that such relaxation was issued by Southern Railway, Chennai while the petitioner was apprentice in South Western Railway. Thus, the impugned order rejecting the claim of the petitioner seeking direction to the respondent to extend such relaxation to him cannot be said to be improper and the above writ petition is liable to be dismissed. Accordingly, it is dismissed.