
(2017) 01 AHC CK 0080
In the Allahabad High Court
Case No : Writ A No. 51958 of 2010

Mahendra Pratap Singh

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 18-01-2017

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 3 ADJ 485 : (2017) 122 ALR 310

Hon'ble Judges : Dilip Gupta and Siddhartha Varma, JJ.

Bench : Division Bench

Advocate : N.P. Singh and Arimardan Singh Rajpoot, Advocates, for the Petitioner; Govind Saran, Kaushlesh Pratap Singh and N.C. Nishad, S.C, for the Respondent

Final Decision : Dismissed

Judgement

1. The petitioner seeks quashing of the order dated 7 August 2009 passed by the Central Administrative Tribunal, Allahabad 1 Bench, Allahabad by which the Original Application No. 774 of 2009 filed by the petitioner for quashing of the order dated 8 May 2008 passed by the respondents has been dismissed. The petitioner had also sought the quashing of the order dated 9 December 2009 by which the Review Petition filed by the petitioner was rejected by the Tribunal.

2. The Railway Recruitment Board Bhopal had issued a notice in 1996 for providing a Vocational Course. The selected candidates were required to undergo two years job-linked Vocational Course. The petitioner was selected and thereafter the petitioner was directed to take admission in CBSE Class-XI and Class-XII, so that after passing he could be provided employment. The petitioner appeared at the CBSE Class-XII Examination in 1 the Tribunal 1999 and failed. He again appeared at the CBSE Class-XII Examination in 2000 but did not succeed. The petitioner did not appear at the said Examination in 2002 and only when he appeared in the 2003 main Examination, he could succeed. The petitioner was, however, not provided employment as a result of which he

initially filed Original Application No. 166 of 2006 before the Tribunal, which was disposed of on 2 January 2008 with a direction to the Competent Authority to decide the representation filed by the petitioner. The representation filed by the petitioner was ultimately rejected by order dated 8 May 2008. The said order is reproduced as below:-

"It is submitted that initially you had attempted 1st time in VCRC Main Examination in the year 1999, wherein you have been declared failed as per mark-sheet dated 29.05.1999, but not appeared in immediate compartment examinations of year 1999. Again you appeared in the main examination of year 2000, but failed as per mark-sheet dated 26.05.2000, submitted by yourself. Thereafter, you have not appeared in the compartment examination of the said year or Main or Compartment exams, of year 2001 & 2002. Finally you had appeared and passed the examination in the year 2003 with requisite marks of 46.8% marks in aggregate as well as getting more than 55% marks in the Railway working."

3. This order dated 8 May 2008 was assailed by the petitioner before the Tribunal in Original Application No. 774 of 2009. This Application was rejected in view of the Circulars issued by the Railway Board for the reason that the petitioner could not clear the CBSE Class-XII Examination within the period stipulated in the Circulars.

4. Learned counsel for the petitioner has placed reliance upon the Circulars dated 6 October 2003, which in turn refers to a Circular Dated 12 September 2003. Learned counsel has also relied on the Circulars dated 10 December 2004 and 1 January 2004 to support his contention that even if the petitioner cleared the CBSE Examination in 2003, he would still be eligible for appointment by the Railways as the petitioner had cleared the Class-XII Examination in three attempts. According to the petitioner, his first attempt would be of the year 1999, the second attempt would be of the year 2000 and third attempt would be of the year 2003. His contention, therefore, is that the Railways have wrongly interpreted the Circulars to deny service to the petitioner.

Sri Kaushlesh Prasad Singh, learned counsel for the respondents has however, placed reliance upon the Circular dated 20 May 1994 as also the minutes of the meeting of the monitoring committee of the Vocational Courses of the Railways held on 17 October 1995.

5. In order to appreciate the contentions advanced by the learned counsel for the parties, it would be appropriate to first refer to the circular dated 20 May 1994, which is as follows:-

"The General Managers

All Indian Railways

Sub: Vocational Course in Railway Commercial.

Appointment on Railways of candidates successful in Supplementary examination.

- - - - -

Students who pass the Vocational Course with at least 55% marks (45% in case of SC/ST) in "Railway Commercial working as well as in the aggregate are to be offered appointment on the Railways as Commercial Clerks or Ticket Collectors, question has been raised in this connection whether students who clear the Course through Supplementary examination may be offered appointment. It is clarified that appointment may be offered to the candidates who were either placed under compartment or who could not secure the prescribed percentage of marks on their clearing the compartment and securing the prescribed percentage in the subsequent chances given by CBSE on taking the examination.

(This disposes of Northern Railway's letter No. 220E/1878/Pt.III dated September, 1993)"

The decision taken in the meeting held on 17 October 1995 is as follows:-

"No of Chances to be given to the failed candidates of class XII for improving position to get appointment on Railways.

Vocational Course in Railway Commercial is a job linked course and its main objective is to have recruits with better academic standard, spirit of service, discipline and pride of profession in the image of categories of Commercial Clerks/ Ticket Collectors. The aim is to "Catch them young". Railways being the employer have every right to fix the minimum standards required by the candidates.

CBSE representatives mentioned that CBSE now provides only, one chance for improving the position in the main examination held in March / April of academic year.

It was decided that a student who has failed or has been placed in compartment or who did not obtain the requisite marks in the first attempt may be offered appointment only if he obtains the required percentage of marks after clearing the compartment or improving the position in the main examination conducted in the next academic year, and not later."

6. A perusal of the resolution dated 17 October 1995 clearly shows that the Vocational Course in "Railway Commercial" is a Job-linked course and the purpose is to have recruits with better academic standards. The aim is to "Catch them young" and since the Railway was the employer it had every right to fix the minimum standards required by the candidates. The committee, therefore, had resolved that a student who failed in the main Examination or had been placed in the compartment or did not obtain the requisite marks in the first attempt, could be offered appointment only if he obtained the required percentage of marks after clearing the compartment or improving the position in the main Examination conducted in the next academic year "and not later".

7. This clearly emphasizes that a candidate could take three attempts namely,

the main Examination and the compartmental Examination of that particular year and the immediately next main Examination.

8. In the instant case, the petitioner appeared in the main Examination in the year 1999. He could have appeared in the compartmental Examination in the 1999 also, if eligible. The petitioner had also appeared in the main Examination in the year 2000. According to the 1995 resolution, the petitioner could not have been granted opportunities to appear in any further examinations.

9. The Circular dated 6 October 2003 refers to the Boards letter dated 12 September 2003. The said communication dated 12 September 2003 is as follows:-

"Sub: Vocational Course on Railway Commercial ? No. of chances to be given to candidates to secure prescribed percentage of marks"

In supersession Board's letter nop. E(W) 89ED1-13 dated 20.5.94 and para 2.3 of Boards letter of even no. dated 27.10.95 it has been decided that candidates who secured the prescribed percentage of marks (55% for general candidates, and 45% marks for SC/ST/OTC in Railway Commercial working as well as in the aggregate) either in the main examination or its compartmental examination, or subsequent main examination or its compartmental examination allowed under CBSE Rules (i.e. 4 chances in all), may be offered appointment on the Railways under the VCRC scheme.

All the cases pending with the Railways may be reviewed and action taken accordingly."

10. Thus, this subsequent Circular dated 12 September 2003 gives one more chance i.e. the fourth attempt. This means that a candidate can also appear in the compartmental Examination at the next Academic Year in the main examination.

The letter dated 1 January 2004 sent by the Deputy Director (Establishment) Railway Board to all the General Managers of Indian Railways in connection with the Vocational Course also clarifies the aforesaid position. It is as follows:-

"Instructions were issued vide Board's letter dated 24/5/94 prescribing the number of chances to be given to the failed VCHC candidates to secure prescribed percentage of marks for the purpose of appointment on the Railways. It was further clarified vide para 2,3,6 of Board's letter dated 27/10/95 that appointment may be offered to the failed candidates if they obtained the required percentage of marks after clearing the compartment or improving the position in the main examination conducted in the next academic year and not later. Accordingly, students who secured the prescribed percentage of marks in the compartment examination of the second year's main exam. Were not considered eligible for appointment on the Railways. This has resulted in litigations in various Tribunals and certain Tribunals held the view that compartmental examination forms part of the main exam. and candidates the

prescribed percentage of marks in the 2nd year's compartment examination should also be given appointments by the Railways. Based on the directives of the Tribunals certain candidates who obtained marks on the fourth chance were offered appointments on some of the Railways while in other railways such candidates were not given appointments. In order to remove the anomaly, revised instructions were issued vide Board's letter of even number dated 12/9/03 allowing four chances. While implementing the revised instructions, some Railways requested clarification whether four chances would mean within four academic years or four attempts in the main and compartment exam. and whether candidates who secured the marks within four attempts after a gap of 1-2 years after the first attempt shall be given appointment. The matter has been examined and it is clarified as under -

Students who pass course by securing at least 55% (45% by SC/ST/OBC) marks in "Railway Commercial working" as well as in the aggregate in the prescribed subjects within four attempts as allowed by CBSE (i.e. main exam-its compartment-the immediate following year's main exam, - its compartment) will be offered appointment on the Railways as ticket collector/ commercial clerk subject to medical exam, as per prescribed standard and after formalities which are required to be cleared before entry into government service.

In case of doubt regarding number of chances available of by candidates, CBSE may be consulted before offering appointment to a candidate.

All pending cases with the Railways may be reviewed on the above line and the result of the action taken may be advised to Board's office immediately. "

11. It is, therefore, not possible to accept the contention of the learned counsel for the petitioner that three attempts would be Examinations in which he had appeared i.e. of the years 1999, 2000 and 2003. As noticed above, the three attempts would be the main Examination of 1999, the compartmental Examination of 1999 and the main Examination of 2000. The petitioner had necessarily to clear the CBSE Class-XII Board Examination, latest in the compartmental Examination of 2000. The petitioner has, however, cleared the CBSE Class-XII Examination in 2003. Such being the position the Railways were justified in not offering appointment to the petitioner in the Vocational Course.

Learned counsel for the petitioner has, however, placed reliance upon the judgement rendered on 7 February 2001 of a Division Bench of this Court in Writ-A No. 18939 of 2009 (Sanjeev Khare v. Union of India and others). The Court relied upon paragraphs 6 and 7 of the counter affidavit filed in that petition and did not consider the aforesaid Circulars, on the basis of which we have concluded that the petitioner is not eligible to be granted appointment since he did not clear the CBSE Class-XII Examination in the stipulated three attempts. The conclusion which we have arrived at is based on a reading of the Circulars issued by the Board. It is further noticed that Sanjeev Khare had been selected in 1997 by the Railway Recruitment Board for being given appointment after he had cleared the

CBSE Class-XII Examination. It was only in March 2003 that the present petitioner had cleared the examination. This is admittedly after five years. The Railway is justified in noticing that it had a right to "Catch them young". The Railways could not wait indefinitely for the petitioner to clear the CBSE Examination and that too against the terms of the Circulars issued by them.

12. The view which we have taken is supported by the view taken by the Patna High Court in Civil Review No. 208 of 2014 in Civil Writ Jurisdiction case No. 10491 of 2013 (Union of India and Another v. Bijay Kumar). Paragraphs 7 and 8 of the judgement are reproduced below:-

"7. The case of the Railways is that the opposite party secured qualifying marks in his 9th consecutive attempts, whereas he ought to have secured qualifying marks within 6th consecutive attempts. Learned counsel, appearing for the Railways, submits that this Court committed an error apparent on the face of record by misreading the departmental Circular, dated 10.12.2004, which provides a maximum of 6th consecutive attempts and not total of six attempts and, thus, the writ Court was incorrect in taking the view that the Circular aforementioned permitted passing of the examination in an individual's 6 (six) attempts, which may not be at consecutive examinations held by the Railways.

8. We have perused the Examination Bye-laws of the year 1995 and the Circular, dated 10.12.2004. The Examination Bye-laws of the year 1995 was modified vide Circular, dated 01.01.2004 and 10.12.2004. Para 2 of the Circular, dated 10.12.2004, clearly stated that the students should attain qualifying marks in his 6th attempt, which must be at examination held immediately after each other. para 2 of the Circular, being referred, is quoted herein below for easy reference:

"Para 2: It has now been decided by the competent Authority that in addition to the above-mentioned chances, students who secured prescribed percentage of marks in the immediate next year's main and / or its compartment examination (5th and / or 6th chances) may also be considered for appointment on the Railway subject to medical examination as per prescribed standard and other requisite formalities."

There is, therefore, no infirmity in the judgement rendered by the Tribunal.

The Writ Petition is, accordingly, dismissed.