
(2012) 06 DEL CK 0011

In the Delhi High Court

Case No : Writ Petition (C) No. 7670 of 2011

Sh. Hansraj

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 01-06-2012

Acts Referred:

Railway Protection Force Rules, 1987 — Rule 65, 65.2, 65.3

Citation : (2012) 06 DEL CK 0011

Hon'ble Judges : Sudershan Kumar Misra, J;Anil Kumar, J

Bench : Division Bench

Advocate : Sanjoy Ghosh, for the Appellant; R.V. Sinha and Ms. Sangita Rai, for the Respondent

Final Decision : Allowed

Judgement

Anil Kumar, J.—The petitioner has sought a writ of certiorari for quashing the result of the petitioner declared by the respondent (Central Examination Committee) declaring the petitioner as ?fail? and for quashing the discharge order dated 12th May, 2010 issued by Deputy Chief Security Commissioner and Chief Security Commissioner and a direction to the respondents directing them to appoint the petitioner to the post of Sub Inspector in RPF Training Centre or in the alternative to grant a second chance to appear in the final written examination. Brief facts to comprehend the disputes are that the petitioner pursuant to an advertisement had applied for the post of Sub Inspector in RPF/RPSF against OBC category. The petitioner alleged that he was found eligible to appear in the written examination. The petitioner appeared in the written examination and he was declared successful and thereafter, he was called for viva voice by letter dated 16th December, 2008. For viva voice, the petitioner had to appear before the Senior Commanding Officer, 7th Battalion, RPSF ZTS Road, Moula-Ali, Hyderabad.

2. The petitioner was declared successful in viva voice and after medical examination and police verification was appointed to the post of Sub Inspector in

Railway Protection Special Force with effect from 20th April, 2009 in its 50th batch, under the reserved category of OBC (Other Backward Class). The petitioner averred that though he was posted as Sub Inspector with effect from 20th April, 2009, however, he was not issued any appointment letter to this effect though the petitioner even sought the information and the necessary communication by filing an application under Right to Information Act.

3. Pursuant to the application by the petitioner under the Right to Information Act, it was disclosed to the petitioner by the Railway Protection Force, Jaipur by letter dated 2nd March, 2011 that the concerned office has only done medical examination and the proceedings related to his character certificate are not with them and no appointment letter was issued to the petitioner.

4. The petitioner stated that after his appointment he underwent training, which was completed by him successfully. The petitioner contended that he belongs to 50th Batch which is apparent from the letter dated 4th October, 2011 issued by Staff Officer, Chief Security Commissioner, Railway Protection Force. According to the petitioner, under the scheme of training subsequent to the appointment he had to undergo an initial training/course in two phases. The phase I (Basic Professional Training) of nine months and phase-II (Practical Training) at Zonal Head Quarters for two months. The petitioner further disclosed that prior to completion of basic professional training, the petitioner and his other batch mates were sent for practical training for two months between 20th November, 2009 and 20th January, 2010. The petitioner along with his batch mates were sent for basic professional training and thereafter, he was again sent for practical training for 20 days between 5th April, 2010 and 25th April, 2010. Thereafter, the petitioner had to appear in the written examination which was scheduled to be held with effect from 14th March, 2010 upto 20th March, 2010. The grievance of the petitioner is that unfortunately he fell seriously ill during the course of written examination which fact was also intimated by him verbally to higher officials. Since the requisite medical facilities were not available in the training centre, the IG had allowed the petitioner to avail the medical facilities outside the training centre. To avail the medical facilities outside the training centre the petitioner visited private doctor on 14th March, 2010 who had advised him to undergo certain diagnostic tests which revealed that the petitioner was suffering from Typhoid and he was advised complete bed rest for 10 days.

5. Though the petitioner was seriously ill and the medical advice for the petitioner was for the complete bed rest, however, he was made to appear in the written examination in which the petitioner appeared.

6. After appearing in the written examination, the petitioner was sent for practical training during the period 9th April, 2010 to 25th April, 2010 for a period of 15 days though the petitioner had already undergone the requisite practical training before appearing in the written examination. The petitioner, however, could not qualify the examination in the paper of Law and General Organization and consequently, the petitioner was discharged by letter dated

12th May, 2010.

7. The petitioner, therefore, made a representation dated 19th May, 2010 to Director General, Railway Protection Force, Railway Board and also visited the officials for taking a lenient view in the matter. As nothing relevant was done by the officials, the petitioner made an application under Right to Information Act dated 11th August, 2010 in order to ascertain the status of his representation.

8. The petitioner stated that pursuant to his application under Right to Information Act, the respondents by office letter No. 2009-SEC(E)/RC-3/19 (SI Trg.) dated 3rd May, 2010 intimated that a policy decision has been taken to discharge all the 8 SI cadets including the petitioner and action was not called for on individual representation.

9. The petitioner disclosed that even an enquiry was conducted about the sickness of the petitioner. The enquiry resulted into the finding that the petitioner was, in fact, sick and he had availed medical facility out of the training centre as the proper medical facilities were not available within the premises of the training centre. The letter written by Chief Security Commissioner to Director General, Railway Protection Force is as under:-

?Ref: Railway Board letter No. -2010 Protection (Establishment) R.P.F Dated 02.06.2010

It is to be informed in respect of the abovestated subject complete investigation was got done by Principal, Railway Protection Force, Training Centre, Gorakhpur and report is enclosed herewith. On the basis of documents it is certified that Shri Hansraj was ill on date 14.03.2010 and got his treatment done from local hospital. The subject in which Sh. Hansraj failed, its examination held on 16.03.2010. Sh. Hansraj had provided information in respect of his family which was found correct. Majority of recruits opt for Private treatment during training. Hence, Shri Hansraj going for private treatment is not an exceptional thing.

Report and other documents are respectfully enclosed for your kind reference and merciful order.

Enclosed as stated above.

Sd/-

(Che. Damodaran)

Chief Security Commissioner

10. The enquiry report which was conducted in case of the petitioner also opined that as the Government of India had invested a lot of money to train the petitioner, therefore, if the administration thinks fit he be given another chance to reappear in the written examination and to demonstrate his ability.

11 The petitioner contended that there were other cadets also who were similarly placed who had not qualified the written examination for various reasons and

who had made representations. On the basis of the representations of the petitioner and other similarly situated cadets an office order dated 11th May, 2011 was issued and a decision to give second chance with the stipend/pay to the SI cadets of 50th batch was taken. It was rather further resolved that even a 3rd chance may also be given to such cadets of the 50th batch, however, for the 3rd chance they should not be paid any stipend/pay. The relevant decision which was taken with the approval of the Board is as under:-

MINISTRY OF RAILWAYS

(RAILWAY BOARD)

NO 2009-SEC(E) RC-3/19(SI TRNG) Pt -I New Delhi Dated 11.05.2011 Chief security commissioner/RPF

ALL INDIAN RAILWAYS

CHIEF SECURITY

COMMISINOER/RPSF RAIL

BHAWAN NEW DELHI

SUB: FINAL EXAMINATION OF CADETS AND RECRUIT REPEAT COURSES REGARDING

While examining the request of a sub inspector cadet of 50th batch the issue of allowing second chance to reserved category candidates in the final examination conducted at the end of the initial training came up for consideration. In consultation with establishment Directorate of railway board it has been decided that the candidates belonging to SC; ST and OBC category shall be given second chance with stipend/pay and third chance if considered necessary without stipend/pay on failing in the final examination conducted at the end of the initial training.

This has the approval of the board.

Sd/

Joint Director/Security(e)

12. According to the petitioner, he belongs to 50th batch and he also belongs to a reserved category which facts have not been disputed by the respondents and so he became entitled for a second chance for the written examination with stipend/pay in consonance with the decision dated 11th May, 2011 which was, however, denied to him entailing filing of a writ petition, being W.P(C) No. 7163/2011, which was however, withdrawn by the petitioner, on account of deficiency in the pleading. However, while withdrawing the writ petition he was given liberty to file a fresh petition by the High Court of Delhi by its order dated 27th September, 2011. The order passed by this Court dated 27th September, 2011 is as under:-

27.09.2010

1. Due to the deficiency of in the pleadings in all probability, the writ petition be dismissed as no cause of action emerges. Counsel seeks leave to withdraw the writ petition with right reserved to file the fresh petition on the same cause but after making proper pleading.

2. The writ petition is dismissed as withdrawn with liberty as prayed for.

PRADEEP NANDRAJOG, J

SUNIL GAUR, J

27.09.2010 14.

13. The petitioner thereafter has filed the present petition contending, inter-alia, that he belongs to 50th batch and he is a reserved category candidate and he is entitled for a second chance in the written examination with stipend/pay. According to him, even if he fails in the second chance examination, the petitioner who belongs to 50th batch and other cadets of 50th batch, after failing in the second chance examination are still entitled for third chance of examination, however, that chance will be without stipend/pay.

14. The petitioner also alleged discrimination in as much as another cadet Sh. Ramkaran Paswan (constable chest No. 98, Training Centre, Valsad, Maharashtra) who had secured 35 marks less than the required marks had been granted second chance. However, the second chance has been denied to the petitioner without any rational and cogent reason. The petitioner also relied on the information sought under the Right to Information Act where the respondents categorically admitted that Ramkaran Paswan was given a second chance as he had failed in two stages that is in Crime & Psychology and Working of Railways. The respondents alleged that in terms of para 65.3 of RPF Rules, 1987 the second attempt to a candidate can be permitted, if he fails in two subjects by a maximum of 5 marks in each subject.

15. The petitioner asserted that he is a meritorious candidate and he had completed his training successfully securing 160 out of 200 marks and as such he ought to have been appointed to the post of Sub Inspector.

16. The respondents have contested the claim of the petitioner and have filed a counter affidavit dated 21st December, 2011 contending, inter-alia, that discharging the petitioner, who was under gone SI/RPF initial training at RPF Training Centre/Gorakhpur, after he was declared failed by the Central Examination Committee by order dated 12th May, 2010 was issued in compliance with order dated 4th May, 2010 issued by the Inspector General-cum-Director, JR RPF Academy, Lucknow in accordance with rules, 65 of RPF Rules, 1987 and Railway Board letter dated 3rd May, 2010. Rules 65 of RPF Rules, 1987 is as under:-

65. Examination on conclusion of course at any training institution of the Force;

65.1 At the conclusion of each course at any training institution of the Force, the final examination shall be conducted by a Board of Examiners which shall be nominated by-

(a) the Director General in case of training courses for Sub Inspectors and above, and

(b) the Chief Security Commissioner concerned in case of training courses for other members of the Force.

65.2 Pass marks: In order to pass the examination, the candidates would be required to obtain a minimum of 50 per cent marks in each subject and 60 percent marks in the aggregate.

65.3 Second attempt: any candidate who fails-

(i) in one subject by a maximum of 10 marks, or

(ii) in two subjects by a maximum of 5 marks in each subject, or

(iii) in any course by 10 marks in the aggregate marks for that course. shall be allowed a second chance to appear for that subject or course in such manner as may be specified by the Director General of the Chief Security Commissioner concerned.

65.4. On failure in the first attempt or, where the candidate is eligible for the second attempt, on failure in the second attempt, the candidate shall be discharged from service without notice or reverted to his substantive rank.

17. The respondents contended that on behalf of the Director General, RPF, it was communicated to the Director, JR RPF Academy, Lucknow that it was inadvertently advised to direct 34 repeaters to appear in the supplementary examination as, in fact, 33 repeaters were to appear in the supplementary examination as Sh. Vadhel Sidi Bhai Pujabhai was a failed cadet and the said candidate along with seven other were to be discharged.

18. The respondents further contended that the petitioner was provisionally selected for appointment to the post of SI/RPF. Any person who enters service as direct recruit in any rank has to undergo an initial training course for the efficient performance of his duty and at the conclusion of the course, the candidate is required to obtain a minimum of 50% marks in each subject and 60% marks in aggregate to pass the examination. In the circumstances, the respondents asserted that only after successfully completion of initial training, the directly recruited persons are appointed to the post. Since the petitioner failed in the examination, he was not appointed to the post of SI/RPF.

19. The respondents denied that medical facilities were not available in Railway Hospital at Gorakhpur. According to the respondents, the Railway Hospital of Gorakhpur was a well equipped with medical facilities and the competent doctors were also available. According to the respondents, the petitioner willfully and for

ulterior reason did not go to the Railway Hospital. It was, however, admitted that the petitioner was ill on 14th March, 2010 to 15th March, 2010. The certificate issued by the private doctors regarding illness of the petitioner was not admitted by the respondents in the facts and circumstances. The respondents also did not admit that the petitioner was forced to appear in the examination though he was unwell.

20. Regarding the marks obtained by the petitioner, the respondents disclosed that he obtained 23 marks out of 75 marks in law-1 and 40 marks out of 75 marks in law-2. The petitioner thus, obtained 63 marks out of 150 marks in the subject of law and 48 marks in the subject of General Organization out of 100. Relying on Rules 65.2 of RPF Rules, 1987, the respondents contended that since the petitioner failed to obtain a minimum of 50% marks in each subject and 60% marks in the aggregate, therefore, he failed. Since the petitioner failed, therefore, he was discharged along with other candidates in view of the policy decision dated 3rd May, 2010. The alleged policy decision dated 3rd May, 2010 is a communication addressed on behalf of the Director General, RPF to the Director JR RPF Academy, Lucknow, which is as under:-

CONFIDENTIAL

No. 2009-Sec(E0/RC-3/19(SI Trg) New Delhi, dt. 3.5.2010

Director,

JR RPF, Academy,

Lucknow.

Sub: Initial training of Sub -Inspector Cadets.

Vide letter of even number dated 3.5.2010, it was inadvertently advised to direct 34 Repeaters to appear in the supplementary examination. This may please be read as 33 Repeaters to appear in the supplementary examination as Sh. Vadhel Sidi Bhai Pujabhai (Chest No. 61) appearing at S. No. 34 in the list of Repeaters is a failed cadet. Hence, Sh. Vadhel Sidi Bhai Pujabhai along with 7 (seven) others are to be discharged.

2. This is as per the approval of the proceedings returned to the Academy vide this office letter quoted above.

(A.K.Kshirsagar)

For DG/RPF

DA: Nil

Copy to: IG-cum-CSC/Const., Northern Railway, New Delhi for information please

21. Relying on the policy decision dated 26th November, 2010, the respondents contended that same is not binding on respondent Nos. 1 and 2. The

respondents further contended that the petitioner was not found eligible for the second attempt as he was short by 12 marks in law and 2 marks in general organization.

22. Regarding the inquiry report, the respondents asserted that it is not binding on them, nor any decision could be taken in violation of the provision of RPF Rules. Regarding the letter dated 11th May, 2011, it was contended that it was of no help to the petitioner as there is no provision for 3rd chance made in RPF Rules, 1987.

23. The respondents also challenged the jurisdiction of the Courts at New Delhi on the ground that the cause of action of whole or partly arose at Gorakhpur in the State of U.P. and thus, the petition was liable to be rejected as the Court does not have jurisdiction.

24. The petitioner refuted the allegations made by the respondents in their counter affidavit. Rejoinder affidavit dated 17th January, 2012 categorically refuted that Courts at Delhi does not have jurisdiction. It was asserted that the nodal ministry is located in the New Delhi which is responsible for the appointment, dismissal and discharge of its employee and the letter dated 16th December, 2008 was issued by the Chairman, Central Recruitment Committee, Rail Bhawan, New Delhi. The petitioner also relied on a decision of this Court in WP(C) No. 3/2011 dated 29th August, 2011 where the respondents were directed to give a second attempt to a candidate. The petitioner also relied on the in-house inquiry conducted by the respondents reiterating that the petitioner suffered typhoid and he was ill during the period dated 14th March, 2010 to 15th March, 2010. The inquiry report also established that the father of the petitioner had died on 27th September, 2001 and the petitioner was listed in the BPL Family and he had received training as a trainee Sub Inspector for one year. The inquiry had also emphasized that since the Govt. of India had invested a lot of money to train him, therefore, he may be given a chance to reappear in the written examination and to prove his ability. The petitioner emphatically denied that he was demanding a 3rd chance. The petitioner asserted that he had not been given even second chance to appear in the written examination, and in accordance with the office order dated 11th May, 2011 he is entitled for a second chance as he belongs to a reserve category candidate of 50th batch who have failed in the final examination and he would be entitled for second chance with stipend/pay.

25. During the pendency of the writ petition, by order dated 7th March, 2010 counsel for the respondents, Mr. Sinha was given time to seek clarification as to why second chance sought by the petitioner in terms of policy decision dated 11th May, 2011 was construed by the respondents as the petitioner claiming a 3rd chance, as had been contended on behalf of the respondents. Despite opportunity granted by the Court neither any relevant record was produced by the respondents, nor any additional affidavit was filed. On 17th April, 2012, the learned counsel for the respondents had sought further time to file an additional

affidavit which was, however, declined and the arguments were heard.

26. The emphasis of the learned counsel for the respondents, Mr. Sinha, was that the letter dated 11th May, 2011 is not applicable. Mr. Sinha, learned counsel for the respondents also emphasized that the letter dated 11th May, 2011 does not entitle any relief to the petitioner as Rule 65.3 of RPF Rules, 1987 does not contemplate 3rd chance. Reliance of the respondents on Rule 65.3 does not support their pleas and contentions as the said rule does contemplate the second chance to a candidate who fails in the examination after completion of training. Admittedly, rule 65.3 does not contemplate a 3rd chance to a cadet. However, even the petitioner has not claimed a 3rd chance to appear in the examination.

27. This Court heard the learned counsel for the parties on various dates and also perused the writ petition, counter affidavit and rejoinders filed on behalf of the parties and the documents produced along with them. From perusal of letter dated 11th May, 2011 which is relied on by the petitioner, it is apparent that this has been issued with the approval of the Board. The said letter contemplates allowing second chance to the 50th batch of the reserve category candidates as also the 3rd chance to Sub Inspector cadets of 50th batch. The only difference is that the Sub Inspector cadets of 50th batch who became entitled for second chance were also entitled for stipend, whereas the Sub Inspector cadets of 50th batch of the reserve category for their third chance were not entitled for any stipend/pay.

28. The learned counsel for the respondents is unable to deny and cannot deny that the said communication was issued by the Joint Director Security addressed to the Chief Security Commissioner with the approval of the Board. Though at one stage it was canvassed that the said letter could not grant the third chance as the rules could not be amended by the said communication. However, the case of the petitioner is not regarding claiming third chance but claiming second chance only. The communication dated 11th May, 2011 contemplates second chance and the relevant rules also permit second chance to the cadets. Rather Mr. Sinha, candidly admitted later on that a second chance is permissible to a candidate who is not able to qualify in the first chance. However, under the rules the second chance is given only to those candidates who have scored the marks as prescribed therein whereas the latter decision of the Board was to allow second chance to all the reserve category candidates, who had failed in the examination after training.

29. The matter had been reserved for arguments, however, later on, the matter was re-listed to consider the power of the Railway Board to modify or clarify the relevant rules regarding the said examination. On re-hearing on 18th May, 2012, the learned counsel for the respondents, Mr. Sinha, rather produced the copies of the circulars dated 5th October, 2006 and 7th January, 2012 issued with the approval of the Railway Board regarding training of Apprentices/trainees and the repeat chances agreed to be given to them. By circular dated 7th January, 2012 it was held that the trainees of RPF will be governed by RB Letter No. 145/2006

dated 5th October, 2006 and the said communication dated 7th January, 2012 was issued with the approval of the Board. By communication RBE No. 145/2006 dated 5th October, 2006 it was decided that the trainees/apprentices other than those covered under the Apprentices Act, 1961 would be granted one repeat chance after failure to complete the prescribed training satisfactorily i.e the trainees/apprentices will be allowed total of two chances only. First chance as part of the training course and the 2nd chance will be without any stipend or any other remuneration. It was further held by communication/circular dated 5th October, 2006 that trainees/apprentices other than those covered under the Apprentices Act, 1961 belonging to OBC category may also be allowed one repeat chance i.e total of 2 chances and the 2nd chance will be without any stipend or any other remuneration. By the said communication/circular it was further held that Trainees/Apprentices other than those covered under the Apprentice Act, 1961 belonging to Scheduled Castes, Scheduled Tribes be allowed two repeat chances i.e a total of 3 chances and the 3rd chance will be without stipend or any other remuneration. Thus even the learned counsel for the respondents have contended that the Railway Board could modify the applicability of relevant Rules and, in fact, had been doing so which is apparent from the circulars relied on produced by the respondents. Thus the validity of circular/ communication dated 11th May, 2011 cannot be challenged or doubted by the respondents.

30. The earlier circulars/communication issued with the approval of the Railway Board had been reiterated with slight modification about the entitlement for stipend for the second chance in the communication/circulars dated 11th May, 2011 which also had the approval of the Board. The said order/circular which is reproduced herein above categorically stipulated that the candidates belonging to SC, ST & OBC shall be given second chance with stipend, however, the 3rd chance if considered necessary will be given without stipend/pay on failing in the final examination conducted at the end of the initial training. The learned counsel for the respondents has not challenged the competence of the Railway Board to relax the condition about the stipend to the candidates who had been allowed second chance who belonged to 50th batch and who belonged to reserve category.

31. Consequently, the opposition of the respondents to the pleas of the petitioner is based on the wrong notion that the petitioner is seeking 3rd chance. Though the communication/notification produced by the respondents, which had been issued with the approval of the Railway Board, contemplates even the third chance without stipend, a fortiori the second chance cannot be denied on the basis of any of the documents produced by the respondents and relied on by the petitioner.

32. The case of the petitioner is not claiming the 3rd chance but for claiming second chance with stipend after failing in the final examination for various reasons detailed hereinbefore conducted at the end of initial training. The reason

given by the petitioner because of which he allegedly failed in the first attempt are not material. What is material is whether the petitioner is entitled for second chance to appear in the examination or not. The learned counsel for the respondents himself has admitted that the modifications in respect to second chance or third chance in respect of OBC, Scheduled Caste and Scheduled Tribe candidates could be permitted with the approval of the Railway Board and, in fact, it was done pursuant to which the letter dated 11th May, 2011 and even the earlier letters dated 5th October, 2006 and subsequent letter dated 7th January, 2012 were issued and they cannot be refuted by the respondents. Rather the letter dated 7th January, 2012 and 5th October, 2006 were produced and relied on by the learned counsel, Mr. Sinha, on the last date of hearing.

33. From consideration of various facts and proposition detailed hereinabove, it emerges that the Railway Board was competent to modify the terms for the second chance to Trainees/Apprentices belonging to Scheduled Castes, Scheduled Tribes, OBC who had failed in the final examination conducted at the end of final training and it was done by the Railway Board which was circulated by communication dated 11th May, 2011. If the respondents themselves had modified the conditions for taking second chance after failing in the final examination conducted at the end of the training, the respondents cannot contend that the petitioner who belongs to the reserve category is not entitled for second chance with the stipend.

24. In the totality of facts and circumstances and for the foregoing reasons, the respondents themselves have been unable to refute their own decisions allowing second chance to the reserve category candidates who failed in the final examination conducted at the end of initial training and reserve candidates of the 50th batch are eligible for second chance with stipend in the facts and circumstances.

35. Therefore, in the facts and circumstances and for the foregoing reasons, the petitioner is entitled for a second chance to appear in the examination after the conclusion of his initial training. The respondents are liable to allow the petitioner to appear in the second chance examination after completion of his training which had been completed by the petitioner before he appeared in the first chance examination. Therefore, the writ petition is allowed. Consequently, the respondents shall allow the petitioner to appear in the final examination as a second chance and the petitioner shall also be entitled for stipend during the relevant period in terms of their own circular/letter dated 11th May, 2011. Since the petitioner is entitled for second chance, the order of discharge dated 12th May, 2010 issued by respondent No. 3 on the petitioner failing in the final examination on conclusion of his training is also liable to be set aside and is, therefore, quashed. The respondents in the facts and circumstances will conduct the second chance examination of the petitioner and in case the petitioner qualifies the same, shall appoint him to the post of Sub Inspector in accordance with rules. The second chance examination be conducted in accordance with

rules and regulations expeditiously with prior intimation to the petitioner. The appropriate stipend in accordance with rules and regulations be also paid to the petitioner before conducting his examination. With these directions, the writ petition is allowed. The petitioner is also awarded a cost of Rs.10,000/- in the facts and circumstances which will be payable by the respondents. The costs be paid within four weeks