

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment Reserved On: 19th August, 2011
Judgment Delivered On: 29th August, 2011

+ W.P.(C) 3/2011

AMARDIP SINGH JADEJA Petitioner
Through: Mr.P.S.Bindra, Advocate

versus

RAILWAY BOARD & ORS. Respondents
Through: Mr.J.K.Singh, Advocate

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE SUNIL GAUR

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

PRADEEP NANDRAJOG, J.

1. The question of law which arises for consideration in the instant writ petition relates to the interpretation of Rule 65 of the Railway Protection Force Rules 1987. It reads 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 per cent 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 or the Chief Security Commissioner concerned.”

2. The facts which necessitate the aforesaid Rule to be interpreted are, as pleaded by the petitioner, that the petitioner has lost out the opportunity to be promoted as a Sub-Inspector on account of the respondents dividing the subject ‘Law’ into two papers i.e. ‘Law-I’ and ‘Law-II’. Each paper was of 75 marks and the petitioner has attained 42 marks in one paper and 26 in the other. If the two papers of law are to be treated as one subject the petitioner would have attained (42+26) 68 marks out of (75+75) 150 marks i.e. 45.3% and since as per Rule 65.2 the petitioner is required to obtain minimum of 50% marks in each subject and on said account having failed, under Rule 65.3 would be allowed a second chance for the reason as per the mandate of said Sub-Rule a candidate who fails in a subject by a maximum of 10 marks is entitled to a second chance. If however the two

papers in law are to be treated as two subjects, having obtained 26 marks out of 75 the petitioner having got 35% marks would not be entitled to the benefit of a second chance since only those candidates who are within 10 marks less than the qualifying marks are entitled to a second chance.

3. The petitioner seeks a mandamus to be issued praying that since a second chance was denied to the petitioner to take the law papers, the respondents be directed to promote him as a Sub-Inspector, a relief which under no circumstances can be granted, inasmuch as, if the petition succeeds the direction which can be issued is to permit the petitioner to sit for a second time at the law exam.

4. The argument of the petitioner is that Rule 65.2 clearly indicates the intent of the Rule, being that minimum marks to be obtained have to be considered subject wise and not paper wise.

5. As per the counter affidavit filed the Rule has to be interpreted to mean each paper i.e. the word 'Subject' is to be read interchangeable with the word 'Paper'.

6. It is unfortunate that the petitioner as also the respondents have not applied themselves correctly and have not even bothered to read properly the Rule for if they had so done, the same conclusion which petitioner has arrived at would have been reached with a better reasoning.

7. The petitioner as also the respondents have totally ignored that the heading of the Rule refers to an examination on conclusion of a course. Rule 65.1 requires an examination to be conducted at the conclusion of each course. Sub-Rule 2 of Rule 65 stipulates the benchmark to pass the examination

and thus uses the expression 'Subject' but with respect to the entitlement to take a second attempt contemplates 3 situations where a candidate who fails is entitled to a second attempt. Situation (i) is a candidate failing in a subject by 10 marks, or (ii) in two subjects by 5 marks in each subject or (iii) in any course by 10 marks in the aggregate marks for that course.

8. The training manual for Sub-Inspectors shows that the duration of the training spanning 9 months requires 1104 periods allotted for imparting knowledge in various disciplines, one of which is law. To put it differently various courses have to be taught, one of which is law and we find that of the 1104 periods the break up is as under:-

“The Indoor training is imparted to Sub-Inspectors
Cadets at one stretch.

Total duration of the course is 09 months with 1104
periods allotted for indoor subjects.

S. Nos.	Subject	Period
1	Law	344
2.	Crime	110
3.	Psychology & Management	54
4.	Working of Railway	145
5.	General Organization	125
6.	Disaster Management	75
7.	Visits & Report writing	86
8.	Use of Computers & Technology	100

9.	Revision & Snap Test	40
10.	Ethics in Policing	05
11.	Library	10
12.	Rajbhasa	10
	TOTAL PERIODS	1104

9. 344 periods assigned to law require the candidates to be subjected to evaluation in Law Paper-I and Law Paper-II. In other words pertaining to the law course, it would be clause (iii) of Sub-Rule 3 of Rule 65 which would be attracted for the reason clause (i) and clause (ii) of the said Sub-Rule deal with a subject and clause (iii) deals with a course and needless to state where two different expressions are used within the same Rule, the intent obviously is to give them a different meaning. In other words the word 'course' in clause (iii) of Sub-Rule 3 of Rule 65 must have a meaning different than the meaning of the word 'Subject' in clause (i) or clause (ii) of Sub-Rule 3.

10. In an inartistically drafted writ petition the petitioner has kept on harping that the two papers of law have to be treated as a subject and in an equally inartistically drafted counter affidavit the respondents have kept on harping that each paper of law has to be read as a subject; both parties have ignored the requirement of clause (iii) of Sub-Rule 3 of Rule 65 which refers to a course. Both parties are blissfully oblivious of the training manual and the various courses in which training has to be imparted and at the end of the training the cadets have to be subjected to a test of

knowledge gained during training of the various courses undergone by them.

11. We have highlighted hereinabove that the training manual refers to the duration of the course and lists the subjects to be taught. The requirement of the second attempt is to allow a second chance to a candidate to appear for a particular subject or a course for a second time provided the person has failed within 10 marks below the minimum prescribed in each subject or 5 marks below in two subjects or 10 marks below *the aggregate marks for that course*.

12. If the discipline of law is not to be treated as one subject it has to be treated as one course in terms of the training manual and thus since the petitioner is within less than 10 marks below the minimum prescribed he certainly would be entitled to a second attempt and thus we issue a mandamus to the respondents that the petitioner be given a second attempt to take the law examination.

13. The mandamus be complied with within 12 weeks from today. The petitioner would be permitted to reappear i.e. take a second attempt at the law papers. Rest to follow as per law depending upon whether the petitioner clears the law papers by attaining 50% marks in the aggregate for the course or less.

(PRADEEP NANDRAJOG)
JUDGE

(SUNIL GAUR)
JUDGE

AUGUST 29, 2011/mm