

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9588 of 2019

Ashish Ranjan, Son of Sri Brajnandan Prasad, Senior Traffic Inspector of Accounts, N.F. Railway, Alipurduar. Resident of Village-Upwara, PO/PS-Biharsharif, District-Nalanda (Bihar) 803101.

... .. Applicant-Petitioner/s

Versus

1. The Union of India through the Secretary, Railway Board, Ministry of Railway, Rail Bhawan, New Delhi.
2. The Member (Finance), Railway Board, Ministry of Railway, Rail Bhawan, New Delhi.
3. The General Manager, North Frontier Railway, Maligaon, Guwahati 781011.
4. The General Manager (P), North Frontier Railway, Maligaon, Guwahati 781011.
5. The Financial Advisor and Chief Accounts Officer, North Frontier Railway, Maligaon, Guwahati 781011.
6. The Deputy Financial Advisor and Chief Accounts Officer, North Frontier Railway, Maligaon, Guwahati 781011.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Shailendra Kumar, Advocate
For the Respondent/s	:	Mr. S. D. Sanjay, Addl. Solicitor General
		Mr. Ramadhar Shekhar (Add.SC.Railway)
		Mr. S. K. Ravi, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 13-05-2019

Heard learned counsel for the petitioner and Shri S. D.

Sanjay, learned Additional Solicitor General for the respondents.

We had heard the matter on the previous occasion on

30th of April, 2019 and the following order was passed:-

“After the matter was heard, learned counsel for the petitioner submits that the document filed as Annexure 5 to the writ petition may not be applicable



or attracted on the facts of the present case. Learned counsel for the petitioner prays to enable him to file an affidavit of the petitioner in this regard.

A week's time is prayed for.

List on 13th May, 2019.”

Pursuant thereto, the petitioner has filed a supplementary affidavit dated 4th of May, 2019. There is a categorical assertion that the petitioner does not stake his claim on the basis of Annexure-5 to the writ petition.

The arguments commenced today afresh and the learned counsel for the petitioner has invited the attention to Clause 3, 4 and 5 of the letter of appointment of the petitioner dated 30th of December, 2004. The said conditions are extracted hereinunder:-

“3. You will be required to pass the All India Railways Appendix-3 (IREM) Departmental Examination to render you eligible for confirmation in the Travelling Inspector of Accounts Category. The Appendix-3 (IREM) Examination is ordinarily held once in each year. The syllabus of the Examination shall be as prescribed by the Railway Board and given in Appendix-3 of Indian Railway Establishment Manual.

4. You will have to pass Appendix-3 (IREM) Examination within a period of 3 years from the date of joining as per Railway Board's instructions. 1st chance to appear in Appendix-3 (IREM) examination will be available after completion of training at ZTC. If you qualify the Appendix-3 (IREM) examination



within 2 ½ years, your services will be confirmed. If you do not pass the Appendix-3 (IREM) examination within 2 ½ years, then another 6 (six) months period will be provided as extended period of probation to facilitate passing Appendix-3 (IREM) examination within a period of 3 years from the date of joining.

5. You will be allowed a maximum of 2 chances to appear in the Appendix-3 (IREM) Examination within a period of three years and failure to qualify in the Appendix-3 (IREM) Examination within three years will render you liable for discharge from service in terms of Railway Board's letter No. E(NG)-II/2000/RR/1/12 dated 23.08.2001."

The petitioner's services have been terminated vide letter dated 27th of May, 2016 which is obviously after almost 12 years of his service. It is worth quoting the termination order itself which is extracted hereinunder:-

“ NORTHEAST FRONTIER RAILWAY
Office of the
FA & Chief Accounts Officer
N.F. Railway, Maligaon.

No. PNO/AD/75/403 Pt. XVI Dated 27/05/2016

To
Shri Ashish Ranjan
Temporary Sr. TIA/HQ,
O/O The FA & CAO,
N.F.Railway, Maligaon

Sub: **Termination of Service**



1. Whereas, you were appointed as temporary Travelling Inspector of Accounts vide CPO/NFR letter No.E/227/216/RRB/GHY/2004/TIA dated 30.12.2004 and posted in Accounts Department as Trainee Travelling Inspector of Accounts vide FA/CAO's Office Order No.1414 dated 02-02-2005, with the condition that, you will have to pass Appendix-III (IREM) Examination (TIA Group) within a period of 3 years from joining the service within 2 chances, failing which your service is liable to be terminated.
 - 1.1. The above condition was modified vide Railway Board's letter no E(NG) II/2000/RR-1/12 dated 15.05.2008 with the stipulation that, directly recruited TIAs will have to pass Appendix-III (IREM) Examination in two chances in the consecutive examinations conducted immediately after their joining, failing which their services are liable to be terminated.
 - 1.2. That, you had appeared in the allotted two chances in the consecutive Appendix-III (IREM) Examinations held in the years 2006 & 2010, but failed to pass in both the chances.
2. On request, you were given one additional chances for appearing in the examination vide Railway Board's letters No.E(NG)-II/2000/RR-1/12 dated 19-01-2011, subjected to the condition that "***in the event of not clearing the said examination your services shall be liable to be terminated***". You appeared in the year 2012 and failed to pass the examination.
3. Once again vide Railway Board's letters No. E(NG)-II/2000/RR-1/12 dated 07-05-2014 you were once again given another additional chance to pass the examination. Based on Boards directive letter dt. 07-05-2014 it was



communicated to you that ***“in the event of not clearing the said examination your services shall be terminated”***.

Accordingly, you had appeared in the Appendix-III (IREM) Examination held in 2015, but you once again failed to pass the examination.

4. Since you failed to pass in the Appendix-III (IREM) Examination (TIA Group) in the allotted two consecutive chances as per conditions stipulated in your Appointment letter and also in two additional chances, therefore, your service is terminated w.e.f. 31.05.2016, within one month's pay (plus allowances) in lieu of Notice period in terms of para 301 of Indian Railway Establishment Code Vol-I.
5. Your one month's pay (plus allowance) in lieu of Notice period, after adjusting necessary deductions, has been credited to your Bank Account where your salary is credited.

Sd/
(K. Chakraborty)
Dy. Chief Accounts Officer (G),
For FA & Chief Accounts Officer,
N.F. Railway, Maligaon.
Dy. Chief Accounts Officer (G)
N.F. Railway, Maligaon
Guwahati-781011”

Challenging the said termination order, the petitioner approached the Tribunal and the Tribunal has dismissed the Original Application of the petitioner finding that the petitioner in spite of having been extended the chances as provided for under the letter of appointment and the circulars of the Railways could not succeed even though he was given two additional chances. The



argument of the learned counsel for the petitioner is that now the petitioner is overage and after 12 years of service the giving of chances not within the time prescribed itself militates against the respondents who could not have terminated the services of the petitioner at this stage.

Learned counsel for the petitioner has further submitted that this amendment which has been brought about with regard to the examinations to be availed of within three years would be applicable prospectively as the amendment was given effect to on 2nd of February, 2005. It is, therefore, submitted that even otherwise the terms and conditions could not have been applied on the facts of the present case as the appointment of the petitioner is of the year 2004.

We have considered the submissions raised and we find that on the facts of the present case, the petitioner has been granted too wide an indulgence by the respondents by not only giving him two chances, but also two additional chances beyond that which was prescribed in the terms of the letter of appointment of the petitioner himself as is evident from clause 3, 4 and 5 of the letter of appointment extracted hereinabove. Learned counsel submits that since the said chances had to be availed within three years



and was not extended to the petitioner, therefore, the subsequent amendment was unjust.

We are unable to agree with this proposition inasmuch as if the terms and conditions of the appointment are taken to be applicable, the petitioner did not question the appointment letter or the terms and conditions thereof which was binding on him. He was, therefore, given an indulgence as stated above which spread over 12 years and which is beyond either under the terms of the appointment and even beyond the Circular which was amended subsequently. Thus, the petitioner has been sailing in a boat without a rudder. He did not have any such right to claim of continuance without having passed the examination either under the terms of the appointment letter or even under the amended Circular. The petitioner having failed four times, it does not lie in his mouth to question the continuance which was at the benevolence of the Department and, in our opinion, was an unjust approach of the Department to the detriment of others who were waiting in the queue. To continue the petitioner for 12 long years without having passed the examination was itself a negation of the Rules. We, therefore, do not appreciate the manner in which the petitioner was allowed to continue, but that by itself will not get



converted into a right of legitimate expectation on the part of the petitioner merely because he has continued for 12 years.

Learned counsel submits that a sympathetic view should be taken by providing another chance. This would be violative of Articles 14 and 16 of the Constitution of India inasmuch as giving of a chance is totally within the domain of the Department and not for the Court to amend or bend the Rules for the convenience of the petitioner.

There is no merit in this petition and it is accordingly rejected.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

Sunil/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	14.05.2019
Transmission Date	

