

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

ORIGINAL APPLICATION NO.200/00407/2018

Jabalpur, this Tuesday, the 03rd day of March 2020

HON'BLE MR.NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE MR.RAMESH SINGH THAKUR, JUDICIAL MEMBER

1. Bal Krishna Mishra (B.K.Mishra) S/o Shri Ram Kumar Mishra,
Aged about 58 years, R/o House No.5, Tilhari Chaggar Farm House,
Jabalpur (M.P.)-482001

2. Bhagwandas S/o Late Shri Kalloo, Aged about 56 years,
R/o House No.11, Sai Baga Nagar, E/6, Arera Colony,
Bhopal (M.P.)-462001

(By Advocate – Shri Kapil Duggal)

- APPLICANTS

Versus

1. Union of India through Secretary, Ministry of Railways,
Rail Bhawan, Rafi Marg, New Delhi-110 001

2. Senior Assistant Finance Advisor/Administration, F.N.C.
Office, Indira Market, Jabalpur (M.P.)-482001

3. Sr.DFM, Western Central Railway, DRM Office,
Opposite High Court of M.P. Jabalpur (M.P.)-482001- **RESPONDENTS**

(By Advocate – Shri Vijay Tripathi)

(Date of reserving the order:05.08.2019)

ORDER

By Navin Tandon, AM.-

The applicants who were promoted from Group-D to Accounts Clerk-cum-Typist vide order dated 30.06.2010 (Annexure A-4) are aggrieved by their reversion to Group-D vide order dated 29.04.2016 (Annexure A-9) on account of their failure to pass the typing test.

2. The undisputed facts of the case are as under:-

2.1 The respondents had promoted the applicants from the post of Record Sorter/Peon to Accounts Clerk-cum-Typist in grade pay of Rs.1900/- vide order dated 30.06.2010 (Annexure A-4). It was mentioned therein that as per Railway Board order dated 07.04.2000 (RBE 66/2000) the promoted employees have to pass the typing test within two years' period in three attempts for English @ 30 words per minute (w.p.m.) and Hindi @ 25 w.p.m.

2.2 The applicants participated in the typing test held on 25.06.2011, 12.01.2013 and 22.06.2014, but could not pass the typing test. Therefore, they were reverted vide order dated 29.04.2016 (Annexure A-9). Local orders for applicant No.1 were issued on 05.05.2016 (Annexure A-10).

2.3 The Department of Personnel & Training (for brevity '**DoPT**') vide their OM dated 29.09.1992 (Annexure A-5) had exempted those employees from passing the typing test who were above 45 years of age on the date of their appointment.

2.4 Further, DoPT vide OM dated 22.04.2015 (Annexure A-6) also extended the same exemption for the test to be conducted on computer.

2.5 Railways vide their letter dated 16.01.2017 (RBE No.2/2017) (Annexure A-13) adopted both the above mentioned OMs with the stipulation that "the above instructions will take effect from the date of

issue of this letter. Cases already decided in the past need not be re-opened”.

2.6 Applicant No.1 had also passed the Hindi Typing Examination conducted by the Department of Official Language as per certificate of January, 2015 (Annexure A-7).

3. There have been protracted correspondence between West Central Railway and Railway Board for providing this exemption to those who have been reverted between 22.04.2015 and 16.01.2017 (Annexure A-13). Last such communication placed on record is of 09.08.2017 (Annexure A-19)

4. The case of the applicants is that since they were above the age of 45 years when they were promoted, the exemption granted by the DoPT vide their first memorandum dated 29.09.1992 should be made applicable to the applicants also.

4.1 Further the applicant No.1 has also passed the typing test conducted by the Department of Official Language and, therefore, he should have been exempted from the typing test.

5. Following relief has been prayed for by the applicants in this Original Applicant-

“8(i) Issue an appropriate order or direction setting aside the impugned order of reversion dtd.29/04/16;

(ii) Issue an appropriate order or direction setting aside the impugned order dtd. 05/05/16 and hold that the Applicants are entitled to work on the post of Accounts Clerk;

(iii) Any other appropriate writ/order/direction, which this Hon'ble Tribunal may deem fit and proper also kindly be issued in the interest of Justice".

6. The applicants have filed M.A. No.200/00910/2018 praying for condonation of delay. In the said application it has been submitted that even though they were reverted on 29.04.2016 there were regular correspondence between the West Central Railway and Railway Board, which has been placed on record. This OA was filed on 19.04.2018. We find that the respondent-departments were seized of the matter till as late as July,2017 and after that the applicants have approached this Tribunal in April,2018. Considering the circumstances explained above, the delay is condoned.

7. There are two issues which need to be adjudicated, namely;-

(i) is the exemption granted by the DoPT vide their OM dated 29.09.1992 and 22.04.2015 (Annexures A-5 & A-6) applicable to the applicants; and

(ii) is applicant No.1 exempted from passing the typing test.

8. On the first issue, learned counsel for the applicant placed reliance on two judgments of Hon'ble High Court of Rajasthan in the matters of **Union of India through General Manager, Northern Railway Vs. Rajendra Kumar Gaur & ors**, 2002 SCC OnLine Raj266, 2002 Lab.IC

2843 and **Union of India through General Manager, HQ Office, North Western Railway & ors Vs. Surgyan Meena & ors**, 2017 SCC OnLine Raj 1493, wherein it has been held that DoPT instructions are mandatorily to be followed by the Railway Board.

9. The learned counsel for the respondents relied upon the decision of the Hon'ble Supreme Court in the matters of **Prabhat Ranjan Singh and another Vs. R.K.Kushwaha and others**, (2019) 1 SCC (L&S)786.

10. In the matters of **Prabhat Ranjan Singh** (supra), a three Judge Bench of Hon'ble Supreme Court has held as under:-

“(21). A perusal of the Allocation of Business Rules, 1961, especially the highlighted portion leaves no manner of doubt that the Railways is specifically excluded from the ambit of the scope of business allocated to the DoPT, whether it be for classification of posts, recruitment of ministerial staff, appointment of non-indians to civil posts, fixing of service conditions including conduct rules, general policy regarding retrenchment and revision of temporary service of the Railways etc., and as such the DoPT cannot issue binding circulars upon the Railways. We may make it clear that if the DoPT issues a circular and the Railways specifically accepts the circular or makes it applicable, then such a circular may apply but if the circular is not made specifically applicable then it has no force so far as the Railways and its employees are concerned”.

10.1 From the above, it is clear that DoPT's circular are not binding on the Railways. Since the Railways have adopted the DoPT's circular only on 16.01.2017 with the proviso that these instructions will take effect from the date of issue of the letter, therefore, the provisions of DoPT's OM dated 29.09.1992 (Annexure A-5) and 22.04.2015 (Annexure A-6)

will not be applicable on the applicants, who were reverted on 29.04.2016 (Annexure A-9).

11. Applicant No.1 has submitted a certificate of January,2015 (Annexure A-7) wherein he has been declared successful in Hindi typing test @ 31.0 w.p.m. conducted by Hindi Teaching Scheme, Department of Official Language, Ministry of Home Affairs.

12. The respondents have submitted that after getting unsuccessful in the typing test, the applicant No.1 cannot seek relaxation on the ground that he has a certificate issued by the Department of Official Language, (Annexure A-7).

13. The applicants along with their Rejoinder have filed Railway Board's letter dated 05.01.2009 (Annexure A-22) which clearly stipulates that those who passed the Hindi Typing test conducted under Hindi Teaching Scheme, shall not be again required to pass the typing test.

14. The learned counsel for the respondents brought to our notice that as per the promotion order dated 30.06.2010 (Annexure A-4) the employees were required to pass the English and Hindi typing as per the Railway Board's RBE No.66/2000 dated 07.04.2000.

15. We have perused RBE No.66/2000 (Annexure A-8). This letter does not mention about passing of both Hindi and English typing test.

16. Para 189(iii) of the Indian Railway Establishment Manual Vol.1 2009 Edition reads as under:-

“(iii)For promotion to Group-C posts in the Ministerial cadre, Group ‘D’staff will be required to possess a typing speed of 30 w.p.m. in English or 25 w.p.m. in Hindi. Promotions may however be allowed on provisional basis and the concerned staff given two years time from the date of promotion to qualify the prescribed typewriting test; and if they fail to qualify the typewriting test within the said period, they will be liable to be reverted”.

16.1 From the above it is clear that the stipulation is only to pass the typing test in English or in Hindi and not in both the languages.

17. Since the applicant No.1 is already having in his possession the certificate of passing the typing test in Hindi issued by the Ministry of Home Affairs, Department of Official Language, Hindi Teaching Scheme (Exam.Wing) in January,2015 (Annexure A-7), which has also been accepted by the Railway Board as communicated vide letter dated 05.01.2009 (Annexure A-22), the applicant No.1 should get the advantage of this scheme. It is also noted that he has received the certificate in January 2015, which is much before his reversion in the year 2016.

18. In view of the aforesaid, this Original Application is allowed so far as it relates to applicant No.1. The impugned orders dated 29.04.2016 (Annexure A-9) and 05.05.2016 (Annexure A-10) so far as they relate to applicant No.1 B.K.Mishra, are quashed and set aside. The respondents are directed to grant him all consequential benefits.

18.1 As regards applicant No.2 is concerned, in view of the discussions made in the earlier part of the order, he is not entitled to any relief and, therefore the Original Application so far as it relate to Applicant No.2 is concerned, the same is dismissed.

19. No costs.

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

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