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Central Administrative Tribunal
Principal Bench: New Delhi

O.A. No. 679/2001

New Delhi this the 3rd day of October, 2001

Hon'ble Mr. Justice B. Dikshit, Vice-Chairman (J)
Hon'ble Mr. V.K. Majotra, Member (A)

1. National Federation of the Blind
Through its General Secretary
having its office at
2721, Chowk Sangtrashan,
Pahar Ganj, New Delhi-55

2. Shri Pankaj Lakhera,
S/o Shri Ajit Lakhera,
R/o IA-32, Sector-2, DIZ Area,
Gole Market, New Delhi-110001

-Applicants

(None Present)

Versus

1. Union of India
Through its Secretary
Ministry of Consumer Affairs
Food & Public Distribution,
Krishi Bhawan, New Delhi-110001

2. The Secretary
Deptt. of Personnel Training & Public Grievances,
North Block, New Delhi.

-Respondents

(By Advocate: Mrs. P.K. Gupta)

ORDER (Oral)

By Mr. V.K. Majotra, Member (A)

The applicant has sought quashing and setting aside of order dated 16.1.2001 (Annexure-A) whereby his services have been de-confirmed and order dated 28.2.2001 whereby his services stand terminated with effect from the date of expiry of a period of one month from the date of service of notice on him. The applicant had been appointed as LDC w.e.f. 4.12.91 on specific terms and conditions which included that the applicant was required to acquire the skill of typing *at* 30 w.p.m. in English and 25 w.p.m. in Hindi within a period of 9 months from

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the date of his appointment, but the applicant failed to meet the requirements (Annexure-I). The applicant suffers from visual disability. He has contended that he was not sent for typing test conducted by S.S.C from time to time for blind persons. He was confirmed w.e.f 4.12.93 (Annexure-E). However, on the ground that the applicant had not passed typing test as one chance having been given to him in 1996, not only the applicant was de-confirmed, his services have also been terminated.

2. The applicant was not present on the last date of hearing i.e. on 18.9.2001. None is present on behalf of the applicant even today. We have proceeded to dispose of this matter in the absence of the applicant in terms of Rule-15 of CAT (Procedure) Rules, 1987, after considering the pleadings of both sides, material on record and after hearing the learned counsel of the respondents.

3. It is an admitted fact that the applicant has been functioning as LDC from the last over 10 years. Whereas the respondents have contended that the applicant was confirmed erroneously on 4.12.93, he had to be de-confirmed as the applicant had neither passed the typing test nor had been exempted from passing the typing test, a condition precedent for confirmation as well as for eligibility for promotion to the next higher grade. According to the respondents, the applicant had been given notice of termination of services and also reasonable opportunity to explain his case. The respondents have also stated that the applicant had not

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made any genuine attempt as he had been declared failed in the type test held by S.S.C on 8.10.96 (Annexure-6).

4. Whereas the applicant has contended that the blind employees have not been provided any opportunity for appearing in the type test being conducted by the S.S.C. from time to time, the respondents have stated that the applicant had been given the final chance of qualifying the type test on 8.10.96. To a specific query, the learned counsel of the respondents, on instructions, stated that the applicant had been provided only one chance to qualify the type test on 8.10.96. She stated that it is not the obligation of the respondents to provide opportunities to appear in the type test conducted by the S.S.C but the applicants have themselves to appear in such tests. However, the learned counsel failed to show any departmental instructions on the subject where it is not the obligation of the Department but the responsibility of the applicants themselves to take the type test. The respondents have also failed to give any proof that the applicant had been provided more than one opportunity of taking the type test. Therefore, their contention that the applicant had been given final chance of qualifying the type test, is not acceptable.

5. Annexure-E dated 30.8.94 whereby the applicant had been confirmed in the post of LDC states that the confirmation had been made after "satisfactory completion of the probation/trial period of two years". Whereas as per the appointment letter, the applicant was supposed to have cleared the type test within a period of 9 months

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and also that the total period of extension of probation could not have exceeded one year beyond the probationary period of two years, the services of the applicant have been continued for a period of 10 years. As per Annexure-3 filed with the counter, orders relating to confirmation of Government servants are treated as erroneous "if the order of confirmation was clearly contrary to statutory rules and there is no power or discretion to relax the rules". As per Annexure-7 of the respondents as regards exemption, the Government's instructions are reported to be as follows:-

"When a member of the service appointed to Lower Division Grade on probation has passed the prescribed tests (including typewriting tests held by the Staff Selection Commission) or has been specifically exempted from passing the typewriting test in consultation with Department of Personnel & Training in the Ministry of Personnel, Public Grievances and Pensions, and completed his probation to the satisfaction of the appointing authority, he shall become eligible for being confirmed in that grade. Until a probationer is confirmed under this rule or is discharged or reverted under the provisions of rule 16, he shall continue to have the status of a probationer".

6. As per these instructions, exemption from passing the typing test has to be accorded in consultation with Department of Personnel and Training. Annexure-8 relates to non-qualifying in the typewriting test by LDCs selected on the basis of SRD for blind persons, 1990. As per this OM dated 23.10.2000, the Department of Personnel and Training has advised the Department of Food and Public Distribution whereunder the applicant had been working as LDC that failure to appear

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or qualify in the typing test for any reason would result in the automatic disengagement of the concerned person and it may not be possible to give any further chance. The perusal of this communication establishes that the respondents have not obtained consent of the Department of Personnel and Training for granting exemption of the applicant for qualifying the typing test.

7. Obviously, the applicant had been confirmed in the post of LDC erroneously. However, DOPT OM dated 13.7.97 (Annexure-G), contemplates provision of two opportunities to the LDCs concerned to pass the type test. In the present case, from the record, we find that the applicant has so far been allowed only one opportunity to take the type test and that the respondents have wrongly contended that the applicant had been offered more than one opportunity and the opportunity provided in the year 1996 was the final one. We are also not in agreement with the respondents that the applicant had not made any genuine attempt in passing the typing test just because "he had been declared failed in the type test". The respondents have not shown any record to establish that the applicant had not made any genuine attempt for passing the type test. In our view, justice demands that the applicant must be provided one more opportunity to take the typing test and in case the applicant fails to qualify the typing test this time, the respondents would be competent to resort to action against the applicant as per law.

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8. In the facts and circumstances of the case and in view of the reasons recorded above, orders dated 16.1.2001 and 28.2.2001 (Annexure-A) are quashed and set aside and respondents are directed to allow the applicant one more opportunity of taking the type test to be conducted by the S.S.C for purposes of confirmation in the post of LDC.

9. The OA is disposed of in the above terms. No costs.

V. K. Majotra

(V.K. Majotra)
Member (A)

cc.

B. Dikshit

(B. Dikshit)
Vice-Chairman (J)