

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.795/1997

New Delhi, this 24th day of August, 1998

Hon'ble Shri T.N. Bhat, Member(J)
Hon'ble Shri S.P. Biswas, Member(A)

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Shri K.P. Singh
Deptt. of Company Affairs
CGO Complex, New Delhi .. Applicant

(By Advocate Shri K.B.S. Rajan)

versus

Union of India, through

1. Secretary
M/Finance, New Delhi
2. Chief Controller of Accounts
West Block, RK Puram, New Delhi
3. Principal Accounts Officer
M/Finance, CGO Complex
New Delhi ... Respondents

(By Advocate Shri Madhav Panikkar)

ORDER.

Hon'ble Shri S.P. Biswas

The applicant herein is seeking reliefs in terms of issuance of directions to the respondents for regularisation of his services with effect from 17.6.85 as regular LDC and also to release increments pursuant to his regular appointment vide Annexure A-II.

2. Description of the background facts is required to appreciate the legal issues involved. These are as under:

Applicant was appointed as ad hoc LDC under R-3 on 23.6.80 and was subsequently appointed as regular LDC with effect from 17.6.85 in pursuance of his success in the limited departmental examination held in terms of order dated 4.6.85.

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This was, however, subject to his qualifying the typing test both in English as well as Hindi at a speed of 30 and 25 words per minute respectively. Provisions exist under Government of India instruction No.14 in FR 26 for grant of exemption to LDC from passing the typing test. Such exemptions have been earmarked in two parts namely (i) one relating to age and (ii) other relating to exemption to those "physically handicapped". In respect of the latter category, certificate from a authorised civil surgeon is required to be produced in proof of handicapness. There is, however, no stipulation that persons seeking exemption under "physically handicapped category" should have been recruited under specific quota of "physically handicapped persons". The Medical authorities of Ram Manohar Lohia (RML for short) Hospita vide their letter dated 14.3.91 (A-X) issued the necessary certifiacte stating that the applicant is not fit for typing. Applicant having not earned any increment ever since his joining the post of LDC on regular basis from 17.6.85, requested for grant of increment by giving necessary exemption from typing on the basis of medical certificate issued by RML Hospital. To get this benefit, he made representations in February, 1988, November, 1989 and March, 1990 but without any rresult. Respondents initially issued an order on 16.4.91 for the release of said increment from 14.3.91. Subsequently, respondents directed that the ad-hoc service put up by the applicant prior to the date

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of his regular appointment would not count for annual increment. Meanwhile, respondents issued promotion-cum-transfer orders vide A-XIII by which his juniors namely Shri Gautam and Saighal were promoted as Accountants in the category of UDC. Applicant made appropriate representation requesting for consideration of his case for promotion with effect from the date of promotion of his juniors since qualifying in the typing test or exemption thereof cannot come in the way of seniority and once exemption is granted, he becomes eligible for promotion from the date of such exemption. It is necessary to mention here that applicant was exempted from typing test by the medical certificate issued by the appropriate authority on 14.3.91. Initially DoPT on 25.9.92 indicated that ad hoc service rendered prior to exemption cannot count for increment. But subsequently on 9.11.94, DoPT issued clarifications as under:

"2. Although according to our OM of dated 29.9.92 the date of regularisation cannot be from a date earlier than the date of exemption, since in the instant case the individual had qualified the exam in 1985 and there has been undue delay in granting exemption as it has come through the Medical authorities only in March, 1991 and the individual cannot be held responsible for the delay because he has been presumably representing for the same from the beginning and since he was working on ad-hoc basis since 1980 and on the analogy of granting regular promotion w.e.f. the date of DPC in the case of those already working on ad-hoc basis, there may, perhaps, be no objection to the proposal to regularise him w.e.f. the date of his promotion on the basis of 1985 examination i.e. 17.6.1985 and fix his seniority on that basis".

3.- In the above background, there is practically no bar for treating the services of the applicant as regular employee with effect from 17.6.85 onwards, fixing his seniority as well as granting of increments.

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4. It is against the background of the aforesaid factual position that the applicant has challenged A-1 communication dated 4.11.96. Among a variety of grounds, as at pages 10-13 of the paper book taken to assail the impugned A-1 order, the most important grounds that have vital bearing on the issues involved here are at paras 5.2 (d) and (f) in the OA.

5. Sufficient opportunities were given to the respondents right from May, 1997 to file counter. Ultimately, on 18.8.98 respondents' right to file counter had to be forfeited. In course of oral arguments, learned counsel for the respondents submitted that the applicant was suffering from acute pain from spondylitis which could be relieved by suitable treatment and hence certificate given by the RML Hospital could not be relied upon for the purpose of providing exemption. As regards relaxation of age, respondents have, however, conceded the point that exemption could be provided on applicant's attaining 45 years of age i.e. in 1989. A-1 order itself indicates respondents' willingness to provide exemption from typing test on attaining 45 years of age.

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6. The position of rules/regulations/executive instructions that would govern such cases need to be elaborated. Instructions for grant of exemption to an LDC from typing test are available in DoPT's OM No.12/5/91/CS.II dated 23.8.91. In para 2(b) it has been mentioned that "if between the age of 35 years and 45 years at the time of appointment may be granted exemption on attaining the age of 45 years". In para 5 of the OM it has been stipulated that "Broken periods of service, if any, as LDC on a regular scale of pay may also be taken into account".

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7. As regards regularisation, instructions provide that such officials would be eligible for regularisation/confirmation in LDC grade from the date not earlier than the date of exemption or the date of the test at which they passed the typing test, as the case may be.

8. As regards release of increments, the OM provides the following:

"(a) On such exemption being granted, the increment of affected persons may be released from the date from which such exemption is granted to them without any arrears for the period prior to the date of exemption, subject to the retention of normal annual date of increment.

(b) On their passing the typing test, the increments may be released from the date of the test without any arrears for the period prior to the date of the Test subject to retention of the normal annual date of increment."

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9. We find from a perusal of the records that respondents themselves had directed, vide their communication dated 22.1.91, the applicant to go in for the test for the purpose of exemption needed. On being officially sponsored by the Dy. Controller of Accounts (Admn.) to appear before the medical authorities at RML Hospital, the applicant attended for the test and the appropriate authority certified as under:-

"He has pain in neck due to spondylitis which can be relieved by suitable treatment. He is not fit for typing."

10. We also find that the respondents are fully aware that the applicant had crossed 45 years of age in 1989. Therefore, the purpose of directing the applicant in 1991 to have him medically examined for the purpose of exemption from typing test cannot but be considered to reaffirm their earlier stand of 1989. Thus, the applicant was entitled to exemption from 1988 itself.

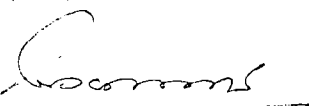
11. Even assuming that the certificate issued by the RML Hospital cannot be considered, even then the promotion of his juniors took place in May, 1991, and, therefore, there was practically no reason why the applicant could not be considered for promotion at par with his juniors. We did not get an appropriate reply this case. Applicant's case was well within the rules either in terms of relaxation of age or exemption from passing typing test. DoPT vide their noting dated 21.11.94 clearly advised that the applicant is eligible for

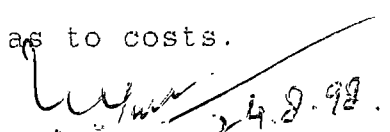
regularisation as LDC w.e.f. 17.6.85. In the background of these, respondents' stand in declining promotion as well as grant of increment to the applicant cannot be sustained. On the basis of advice of DoPT, the applicant is evidently eligible for promotion in his turn without any embargo as to non-qualifying in the typing test.

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12. In the background of the detailed reasons as aforesaid, the OA is allowed with the following directions:

- (i) Respondents shall pass necessary orders for regularisation of the applicant with effect from 17.6.85;
- (ii) Respondents shall grant annual increments to the applicant from 17.6.1986 onwards and also pay him arrears accrued thereof.
- (iii) Respondents shall also consider promoting the applicant to the post of UDC when his juniors were promoted and grant him other consequential benefits.
- (iv) These directions shall be carried out within a period of three months from the date of receipt of a certified copy of this order;
- (iv) There shall be no order as to costs.


(S.P. Biswas)
Member(A)


(T.N. Bhat)
Member(J)

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