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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI

O.A.1542/94

M.A.2017/94

New Delhi, This the 31st Day of October 1994

Hon'ble Shri Justice S.C.Mathur, Chairman

Hon'ble Shri P.T.Thiruvengadam, Member(A)

1. B.C.Paul  
s/o(Late) Shri Rattan Ram  
131, Sector -VIII, R K Puram  
New Delhi.
2. Ashok Rallan  
S/o Shri K.N.Rallan  
C-216, South Anarkali  
Delhi.
3. Ravinder Kumar  
S/o Shri Nand Kishore  
B-34, Mandawali Ext.  
Gurudwara Road,  
Opp. Primery School  
Delhi.
4. Ramesh Kr.Sharma  
S/o Shri G R Sharma  
234, Sector IV RK Puram  
New Delhi.
5. Kamal Kumar  
s/o(Late) Shri Kishan Chand  
2654, Hudson Line,  
Kingsway Camp,  
New Delhi.
6. Charanjit Grover  
S/o Shri H D Grover  
2A/70, Ramesh Nagar  
New Delhi.
7. S.N.Sharma  
S/o Shri R L Sharma  
364, Income Tax Colony  
Pitam Pura  
New Delhi.
8. Buran Mal,  
s/o (Late) Shri Nagar Mal  
221, Income Tax Colony  
Pitam Pura  
New Delhi.
9. Gokul Chand  
s/o Shri D D Gupta  
42, Moti Bagh-II(Vill)  
New Delhi.
10. Prithi Chand  
s/o Shri Mangha Ram  
H-55, Kalibari Marg,  
New Delhi.
11. Suresh Kumar  
s/o Shri Om Prakash  
Railway Road, Ganour Mandi  
Behind Central Bank of Inter India  
Haryana, Sonipat. *l*

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12. Meena Malhotra  
s/o Shri V K Malhotra  
99, I.T.Colony  
Pitam Pura, New Delhi.
13. Manju Khara  
w/o Shri Guleshan Khara  
C-19 Kidwai Nagar(East)  
New Delhi.
14. Seema Nagpal  
W/o Shri Jagdish Nagpal  
D-25, Gujrawalan Apartment  
J-Block, Vikas Puri  
New Delhi.
15. Vijay Laxmi Gupta  
w/o Shri Parmod Gupta  
H-3/75, Vikas Puri  
New Delhi.
16. Veena Rani  
w/o Shri Subhash Chander  
136, Gagan Vihar Extn  
Delhi.
17. Jasbir Kaur  
D/o (Late) Shri R.S.Nanda  
257, G.H.-I Paschim Vihar  
New Delhi.
18. Rajender Kumar  
S/o(Late) Shri Hira Lal  
H.No.5751, Block No.5  
Street No.3, Dev Nagar  
Delhi.
19. Tej Ram  
s/o Shri Khubi Ram  
Village Tukmir Pur  
P.O.Gokul Puri  
Delhi.

All Permanent L.D.C.s working as Data Entry  
Operators under Respondent No.1.

....Applicants,

By Shri R.V.Sinha, Advocate and  
Shri B.T.Kaul, Advocate

Versus

1. Directorate of Income Tax(RSP & PR)  
6th Floor, Mayur Bhawan  
Cannaught Place,  
New Delhi.  
(through its Director)

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2. Central Board of Direct Taxes  
Union of India  
M/o Finance, Deptt. of Revenue  
North Block, New Delhi  
(through its Chairman)
3. Union of India  
M/o Finance, Deptt of Revenue  
North Block, New Delhi.  
(through Secretary (Revenue) .... Respondents

By Shri R S Aggarwal, Advocate

O R D E R (oral)

Hon'ble Shri Justice S.C.Mathur, Chairman

1. The Directorate of Income Tax (RSP & PR) issued notice dated 24.6.94 inviting applications from Lower Division Clerks of the Directorate for appearing at the speed test which was being held to fill vacancies of Data Entry Operators (DEO) in Grade 'A' and Grade 'B'. This notice is under challenge in the present application filed by 19 Lower Division Clerks. The applicants' plea is that they are discharging duties of the post since the year 1991 and they are now entitled to be regularised after giving them relaxation in age and therefore there is no occasion to hold the test. Applicants assert that they have already undergone the test and training. Apart from praying for the quashing of the notice dated 24.6.94 and the consequential notice dated 29.7.94 whereby 2.8.94 was fixed for the test, the applicants have prayed for directions to the respondents to regularise their services on the post in question and also to pay them salary in the scale applicable to the post instead of paying them only a special pay of Rs.40 per month.

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2. The facts which are either undisputed or which stand established from the record are as follows:-

The applicants are permanent Lower Division Clerks(LDCs) in the Directorate. In the year 1987, computers/data entry machines were introduced in the Directorate. For operating these items staff was required. This staff was drafted from the cadre of LDCs. By order dated 31.7.91, Annexure P-2, 18 LDCs were directed to work on personal computers/data entry machines and by another order of the same date, Shri Suresh Kumar, applicant No.11 was directed to work on personal computer using Hindi software. A special pay of Rs.40 per month was allowed to all of the 19 persons with effect from 1.8.91 until further orders. It was stated in both the orders that the grant of special pay was subject to the satisfactory performance of the officials in the job assigned and that their work would <sup>/be</sup> monitored and evaluated every month and in the event of the performance falling below the standard the special pay would stand withdrawn. Apart from these 19 LDCs, certain other LDCs were also assigned to work on computers/data entry machines, but they were not sanctioned any special pay. At the time this assignment <sup>/of</sup> job was done there was no sanctioned post of data entry operators. By order dated 4.8.93, Annexure J to the counter affidavit, 87 posts of LDCs

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were abolished and 19 posts of Data Entry operators were created. At the time the orders dated 31.7.91 were passed recruitment to the post of data entry operator was governed by the Income Tax Department (Attached and Subordinate Offices) Data Entry Operators Recruitment Rules 1987 framed in exercise of the power conferred by the proviso to article 309 of the Constitution.

These rules were superseded by the Income Tax Department Data Entry Operators Recruitment Rules 1994 framed in exercise of the same power. The former rules will hereinafter be referred to as 1987 Rules and the latter rules as 1994 Rules. The 1994 Rules were notified in the Gazette on 11.5.94 and they came into force with effect from the said date. It was after enforcement of 1994 Rules that the impugned notice dated 24.6.94 was issued.

3. On the above facts, the question for consideration is whether the applicants have acquired any right to thwart the attempt of the respondents to fill the newly sanctioned posts in accordance with statutory rules.

4. Under 1987 Rules, 90 per cent vacancies were to be filled by Direct Recruitment and 10 per cent by transfer on deputation failing which even the 10 per cent vacancies were <sup>to</sup> be filled by direct recruitment. Applicants were already working in the Directorate and did not fall in either of the two categories if the orders dated 31.7.91 are treated to be orders of their appointment to the post of data entry operator. The learned counsel

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submits that there was power to relax the rules and the applicants were appointed by exercising power in that behalf. We may assume that there was power to relax the rules. The question still surviving is whether that power was actually exercised. Orders dated 31.7.91 do not exhibit such an exercise of power. In fact the occasion to exercise that power would arise only when the department proceeds to fill up the vacancies. Admittedly on 31.7.1991 there was no sanctioned post. Accordingly there was no vacancy which could be filled. Consequently there was no occasion to exercise the power of relaxation. In our opinion, by working on computers and data entry machines by virtue of orders dated 31.7.91, the applicants have acquired no right to prevent the respondents from filling up the newly created posts in accordance with Rules.

5. Under the Rules of 1994, the posts in question are to be filled by direct recruitment through CCITS/CITS. Only certain temporary vacancies may be filled by transfer on deputation. Accordingly the position of the applicants is not improved even under the 1994 Rules. Under Rule 5, the Central Government has power to relax any provision of the rule. For doing this, it has to record reasons in writing and consult the Union Public Service Commission.

6. Order dated 31.7.91 which is in respect of 18 persons reads as follows:-

"1. In supersession of all earlier orders granting Spl.pay for working on PCs/DEM, it has been decided that the following LDCs shall work on personal computers/Data Entry Machines and draw Spl.Pay of Rs.40 per month with effect

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from 1.8.1991 and until further orders.

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2. The grant of spl.pay is subject to the satisfactory performance of the officials in the assigned job. This would be monitored regularly and evaluated every month. In the event of the performance of any official falling below the standard spl.pay will stand withdrawn.

3. The grant of special pay is on purely temporary basis and may be withdrawn at any time without assigning any reasons with the approval of the DI(RSP&PR).

4. The grant of special pay shall confer no benefits as regards seniority etc.,".

The other order in respect of Shri Suresh Kumar is more or less in identical terms.

7. From a reading of the above orders it is apparent that the applicants were not appointed to the post of data entry operators. They were only assigned to work on data entry machines or computers. This does not amount to appointment on the post.

8. In a situation like the above, in our opinion, the applicants could, at the most, on the basis of the experience gained by them, claim that they should not be excluded from the zone of consideration or field of eligibility and that the respondents be commended to exercise the power of relaxation. We find from the material on record that the power of relaxation has been exercised to the advantage of the applicants and by relaxing the rules they have been brought in the zone of consideration and field of eligibility.

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In fact, the rules had been relaxed to the extent that the first recruitment to the 19 newly sanctioned posts was confined to LDCs working in the Directorate alone. It was not open to outsiders. In making appointment to the sanctioned posts the department could insist fulfilment of certain standards of efficiency. For that purpose a speed test was being conducted. It has been stated in the department's reply that a general candidate was required to have minimum speed of 8000 Key depressions per hour while a SC/ST candidate was required to have a minimum speed of 5000 Key depressions. The speed was to be adjudged by conducting speed test. In our opinion, the department acted quite fairly. The applicants acted unfairly by approaching this Tribunal with an imaginary grievance.

9. The learned counsel for the applicants cited (1991) 1 SCC 28 Jacob M Puthuparambil and others Vs Kerala Water Authority and others for the proposition that where an employee having requisite qualification has served for a reasonably long period, his services deserve to be regularised. This authority has no application to the facts of the present case as the applicants were not appointed to the post of data entry operator on which they are seeking regularisation.

10. Dr Arundhati Ajit Fargaonkar Vs State of Maharashtra & Anr JT 1994(5) S.C.378 was a case where Their Lordships of Hon'ble Supreme Court have observed in para 7 of the report as under:-

"Eligibility and continuous working for howsoever long period should not be permitted to over-reach the law. Requirement of rules

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of selection through Commission cannot be substituted by humane considerations. Law must take its course. Consequently the appellant was not entitled to claim that she should have been regularised as she had been working without break for nine years."

This judgement is <sup>authority</sup> for the proposition that where there are statutory rules relating to employment they must prevail and no benefit can be given to a petitioner on humane considerations. By the application of this law, the applicants have no case.

11. The learned counsel for the applicants has submitted that some time may be allowed to the applicants to appear at the test. The learned counsel for the respondents has stated that the date for holding test is already over and on the date fixed the applicants did not appear for the test. On 19.8.94 a statement was made on behalf of the applicants that they had already been subjected to high speed test. In view of this statement an interim order was passed to the effect that the applicants will not be compelled to appear in the speed test. The Bench made it clear that the non appearance of the applicants at the test will be on their own risk. If the applicants have not appeared at the test they are themselves to blame. There is no question of our requiring the respondents to hold the test again. However, if the respondents desire to hold the test in order to give the applicants a second opportunity this judgement will not

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stand as a bar in holding the said test.

12. The learned counsel for the applicants has stated that the applicants are now overage.

The applicants may apply for relaxation and the respondents may consider the representations in accordance with law if they propose to hold fresh speed test.

13. In view of the above the application lacks merit and is hereby dismissed. There shall be no order as to costs.

*P. T. Thiruvengadam*

(P. T. THIRUVENGADAM)  
Member(A)  
31-10-94

*S. C. Mathur*

(S. C. MATHUR)  
Chairman  
31-10-94

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