

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 277/89. 198
~~TAX MM.~~

DATE OF DECISION 19.12.1990.

Shri Jagat Singh Applicant (s)

Shri R.K. Kamal Advocate for the Applicant (s)

Versus
Lt. Governor & Ors. Respondent (s)

None present. Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. Justice Amitav Banerji, Chairman.

The Hon'ble Mr. I.K. Rasgotra, Member (A).

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. To be circulated to all Benches of the Tribunal ?

AB
(AMITAV BANERJI)
CHAIRMAN
19.12.1990.

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... Applicant.

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... Respondents.

CORAM: THE HON'BLE MR. JUSTICE AMITAV BANERJI, CHAIRMAN.
THE HON'BLE MR. I.K. RASGOTRA, MEMBER(A).

For the Applicant.

... Shri R.K. Kamal,
Counsel.

For the Respondents.

... None present.

(Judgement of the Bench delivered
by Hon'ble Mr. Justice Amitav Banerji,
Chairman)

In this Application, the applicant Shri Jagat Singh has challenged the order dated 18.1.1989 (Annexure '10' to the O.A.) whereby various increments granted to him from 1973 to 1981 were withdrawn and a further order was passed that he would not earn any increment till he passes the typing test or gets exemption from passing the typing test by the competent authority. There was a further order of recovery of over-payment already made to the applicant. The applicant has challenged the order on the ground that it has been passed mala fide by the Respondent No. 3 (Commissioner, Food Supplies and Consumer Affairs, Delhi Admn. 2, Underhill Road, Delhi). He has also challenged the order as violative of Articles 14, 16 and 21 of the Constitution of India as well.

The applicant has filed the O.A. before the Principal Bench on 1.2.1989 and an interim order staying the recovery from the salary of the applicant was passed.

We have heard learned counsel for the applicant, Shri R.K. Kamal. None appeared for the respondents although this was an expedited and date fixed case.

The applicant joined service as a peon in the office of the Directorate of Education, Delhi Administration on 20.8.1966. He requested the office for consideration of his promotion to the post of L.D.C. in 1967. He was asked to pass the typing test vide letter dated 3.6.1966 signed by the Assistant Director of Education. The applicant registered himself with the Employment Exchange, Darya Ganj, Delhi. He appeared in the typing test and qualified in the same at the speed of 35.2 w.p.m. On passing the said test, the Employment Exchange allotted to the applicant, Registration No. DC/26044/70 NCC Code No. 211.10E and made an endorsement to the effect that the applicant had qualified the typing test at the speed of 35.2 w.p.m. thereon. This was conveyed to the Assistant Director of Education by the Principal, Govt. Boys Higher Secondary School, Naraina and the attested copy of the certificate ^{the typing test} passing/was communicated to the Assistant Director of Education for placing the same on the personal file of the applicant. The applicant was promoted as L.D.C. on 7.7.1972 on the basis of his qualifying the departmental written test held for that purpose. Thereafter, he became eligible to be promoted to the post of U.D.C. He had earned various increments, crossed efficiency bar and had also earned seniority in the cadre of L.D.C. The applicant came to know that the other L.D.C.s who were junior to him had been promoted as U.D.C., but he has been ignored. He made representations to the Secretary, Services, Delhi Administration for having been superseded. He received a reply to the representation made in December, 1984 from the Food & Supplies Officer vide his letter dated 26.12.1984 stating that the service book of the applicant did not show that he had passed the typing test from a recognised Government Institution and, therefore, he should appear for typing test immediately. Thereafter, the

applicant forwarded a reply stating therein that he had appeared and qualified the typing test as far back as in the year 1970. A query was made from the Sub Regional Employment Officer in March, 1985 about the applicant having passed the typing test. This was answered in the affirmative. The applicant states that even after all this, he was being denied his promotion.

In paragraph 4.9 of the C.A., the applicant stated that the respondents' office did not take any note of the documents submitted by him about the fact of his qualifying the typing test and the verification of the fact by S.R.E.O. for the reasons of malafide and arbitrariness. This was established by the fact that the respondents have not given any reason whatsoever rebutting the stand of the applicant and that of the Employment Office on the question of the applicant having passed the requisite type test. The impugned order dated 18.1.1989 was passed to deprive/him of the increments earned by him and the future increment till he qualifies the typing test. It will be relevant to quote the impugned order dated 18.1.1989 (Annexure '10' to the C.A.), which reads as under:

"ORDER.

In pursuance of Delhi Administration order No. F.14/7/87.S.III/Vol.II dated 3.11.88, the increments granted to Sh. Jagat Singh, LDC w.e.f 7.7.1973 to 1.7.1981, in the pay scale of Rs.110-3-131-4-155-EB-4-175-5-180 upto the period from 7.7.72 to 31.12.72 is hereby withdrawn, the pay of the official is fixed at Rs.266/- in the revised scale of Rs.260-6-290-EB-8-390-10-400 w.e.f. 1.1.73 and the future increments again granted to the official after 1.1.73 i.e., on 7.7.73 to 1.7.81 are also hereby withdrawn and hence, the official will continue to get the salary @ Rs.266/- upto 31.12.1985 and w.e.f. 1.1.86, the pay of the official in revised scale of Rs.990-20-1150-EB-25-1500 is hereby fixed at Rs.990/-. He will not earn any increment till he passes the type test or exemption in passing the test is granted by the competent authority.

The necessary recovery of over-payment already made to the official, on a/c of increments already granted, which have now been withdrawn, may be made from the salary of the official.

Sd/- x x x
(Raj K. Saxena)
Deputy Commissioner(Admn)
No.F.6(324)/73-F&S/Admn./1040 dated 18.1.89."

Shri Kamal drew our attention to paragraph 4.9 of the counter affidavit, which reads as follows:

"That the impugned order was issued on the direction of the Deputy Secretary (Services), Delhi Administration, Delhi".

The contents of paragraph 4.9 of the counter affidavit show that the order was not passed at the instance of the Respondent No. 3, Commissioner, Food Supplies and Consumer Affairs, Delhi Administration, Delhi, but at the behest of the Deputy Secretary (Services), Delhi Administration, Delhi.

A perusal of the impugned order shows that it gives no reason as to why this order was passed particularly when the applicant had supplied relevant papers of having passed the typing test. There is nothing to indicate in the impugned order as to why the typing test passed by the applicant was not accepted.

The impugned order provides for three things; firstly, withdrawal of increments; secondly, stoppage of future increments and thirdly, recovery of increments amount. One would have expected speaking order or a reasoned order before the above order was passed. It is evident that the impugned order is wholly arbitrary and contrary to law. We are also satisfied that the allegations made by the applicant of the order having been passed mala fide cannot be ruled out.

We are satisfied that the impugned order is liable to be struck down. We are further satisfied that this is a fit case in which the applicant should be awarded a token amount by way of cost for he was made to approach the Tribunal whereas the certificate of passing the test was filed as early as 1970.

We, therefore, allow the Application, quash the impugned order dated 18.1.1989 (Annexure 10 to the O.A.) with a token cost of Rs.500/- to the applicant.

I.K. Rasgotra

(I.K. RASGOTRA)
MEMBER(A)

AB

(AMITAV BANERJI)
CHAIRMAN

SRD