

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No.
T.A. No.

169

1988

DATE OF DECISION 24.11.1989

Smt. Vijay Vashisth

Applicant (s)

Shri S.M. Rattanpal

Advocate for the Applicant (s)

Versus
Union of India & Ors

Respondent (s)

Ms. Raj Kumari Chopra

Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. P.K. KARTHA, VICE CHAIRMAN

The Hon'ble Mr. I.K. RASGOTRA, MEMBER (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ? *yes*
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ? *no*
4. To be circulated to all Benches of the Tribunal ? *no*

JUDGEMENT

(Judgement of the Bench delivered by Hon'ble
Shri I.K. Rasgotra, Member (A)).

The applicant who is working for the last 15 years in Armed Forces Headquarters as Lower Division Clerk, has filed this application under Section 19 of the Administrative Tribunals Act, 1985, with the grievance that she has not been exempted from passing the typewriting test even though her juniors have been granted the exemption. This has caused her hardship by way of stagnation in the grade of L.D.C. without entitling her to draw any increments.

2. The facts of the case are that L was appointed as Lower Division Clerk in the AFHQ, Ministry of Defence on 6.7.74 on compassionate grounds. One of the conditions of appointment was that she would be required to qualify in the prescribed typewriting

test within one year of her appointment. Although she appeared in the typewriting test four times, she failed to qualify.

3. To provide relief in such cases the Department of Personnel and Administrative Reforms vide O.M. No. 14020/2/80-Estt (D) dated 15.1.1981 decided that:

" L.D.C. appointed through Employment Exchange and those L.D.Cs appointed on compassionate grounds and who were below 35 years of age on the date of their appointment may be exempted from passing the typewriting test on completion of 8 years of service provided they had made two genuine attempts to pass the test".

4. The provisions made in the above referred O.M., however, were of no help to the applicant as out of the four attempts made by her to qualify in the typewriting test, only one attempt has been considered as "genuine attempt".

(1) The learned counsel for the applicant contended that "genuine attempt" is an illegal, arbitrary and incomprehensible expression as it has nowhere been defined. The applicant made very sincere attempts after attending typing classes in a typing school at Sarojini Nagar to qualify in the examination and earn her increments. Despite this, only one of her attempts has been declared as "genuine attempt".

(2) Further Department of Personnel and Administrative Reforms Vide O.M. No. 12/8/82-CS-II dated 30.12.1983 (Annexure A-III to the application) also decided to exempt all;

" L.D.Cs recruited on the basis of the Clerks Grade Examinations between 1964 & 1973, and who have not so far been able to qualify the typewriting test, (they)

will be exempted from qualifying in such test, and that their withheld increments may be released with immediate effect, subject to the condition that no arrears will be payable on account of refixation of pay on the release of withheld increments."

Consequent to the above instructions, 3 persons who joined after her have been exempted from passing the typewriting test. (Para 6.10 of the application).

(3) It has been stated that L.D.Cs are recruited from several sources which converge into one single mainstream. It has been contended that while the benefit of exemption from qualifying the typewriting test has been given to the L.D.Cs. recruited from other sources, the same has been denied to the applicant who was appointed on compassionate grounds and joined the service in the same period.

5. We have heard the learned counsel for both the parties. We are of the opinion that the phrase "genuine attempt" used in the Department of Personnel O.M. dated 15-1-1981 is vague and subjective as it is not capable of precise definition. We have been shown a letter dated 6-11-1989 sent by the Staff Selection Commission to the Administrative Officer, Ministry of Defence stating that a candidate who actually types 250 words or more in English Typewriting Test or 200 words or more in Hindi Typewriting Test of 10 minutes duration is treated as having made a "genuine attempt". They have not disclosed any law or administrative instructions in this regard. The definition of genuine attempt given by them is tantamount to relaxing of the prescribed standard for passing the typing test with 300 words in English Typewriting in 10 minutes. We are further told that achieving a speed of 250 words on two occasions cannot be replaced for the prescribed standard speed of 300 words in 10 minutes in English Typewriting and 250 words in Hindi Typewriting.



6. Be that as it may, the more germane issue which has been raised in this case is the gross discrimination in the treatment given to the applicant as compared to those who were inducted in the same period through the S.S.C. The source of recruitment should have lost its validity, once the personnel have joined the service as L.D.Cs. Any favoured treatment to persons recruited from one source and denying the same to those who come from a different source after they have merged in the mainstream of one cadre would constitute patent discrimination. In Roshan Lal Tandon Vs. Union of India, AIR-1967-SC-1889, the Supreme Court has held that once the persons coming or recruited to the service from two different sources are absorbed into one integrated class with identical service conditions, they cannot be discriminated against with reference to the original service, for the purposes of further promotion to the higher grade. In G.M. Southern Railway Vs. Siddhanti 1974-SCC(L&S) 290, the Supreme Court observed that what was said about further promotion in Roshan Lal Tandon's case was equally applicable to absorption and seniority. Following the aforesaid rulings, it can be said that L.D.Cs. appointed on compassionate grounds have lost their distinctive birth mark/or "genetic peculiarities" in the common unified stream of the clerical cadre. We find that some candidates recruited through Clerks Grade Examination in 1974 joined the service towards end of 1974 and early 1975 while the applicant joined as L.D.C. in July, 1974. In the interest of justice, equity and fairplay, we, therefore, direct that the applicant be also granted exemption from passing the typewriting test in accordance with the instructions contained in the Department of Personnel & Administrative Reforms O.M. dated 30-12-1983 (Annexure A-3 to the application) for releasing the

withheld increments. Her pay should be refixed after taking into account the increments, she would have drawn had she passed the typing test in 1975. In the facts and circumstances of the case, we hold that no arrears will, however, be payable on account of such refixation of pay on the release of withheld increments.

The parties will bear their own costs.

Dilip
(I.K. RASGOTRA)
MEMBER (A) 24/11/85

Onward
24/11/85
(P.K. KARTHA)
VICE CHAIRMAN