

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

**ORIGINAL APPLICATION NO. 291/473/2012
With
MISC. APPLICATION NO. 291/290/2012**

DATE OF ORDER: 09.07.2020

CORAM

**HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER
HON'BLE MRS. HINA P. SHAH, JUDICIAL MEMBER**

Ashalata Yadav wife of Late Shri Satish Kumar Yadav, aged around 45 years, resident of Railway Colony, Jaipur. Presently working as Clerk (Signal and Telecom), North Western Railway, Jaipur.

....Applicant

Shri Amit Mathur, counsel for applicant.

VERSUS

1. The Union of India through its General Manager (personnel), North Western Railway, Jaipur (Rajasthan).

....Respondent

Shri Anupam Agarwal, counsel for respondent.

ORDER (Oral)

Per: Hina P. Shah, Judicial Member

The applicant has filed the present Original Application under Section 19 of the Administrative Tribunals Act, 1985 seeking for the following reliefs:

"(i) The impugned order Annexure-A/1 dated 25/29.06.2012 and Annexure-A/2 dated 19.03.2012 may kindly be quashed and set-aside. The applicant may be allowed to continue on the Group-C post after declaring that she has qualified the examination conducted on 2 July 2011. The applicant may be treated as Group-C Employee for all purpose.

(ii) any other order or direction which deem fit and proper in the facts and circumstances of the case may also be passed in favour of the applicant.

(iii) Cost of this original application also may be awarded in favour of the applicant."

2. Brief facts of the case as stated by the applicant are as under: -

The applicant was given appointment in the office of the respondent on compassionate grounds in the year 2003 after the death of her husband, who was an employee of the respondent-railway. She was appointed on Group 'D' post. For promotion from Group 'D' to Group 'C' post, the incumbent is required to qualify written examination as well as computer / typing test. The written test was conducted in the year 2009 itself and she was promoted on Group 'C' post vide order dated 16.09.2010 (Annexure A/4). However, she was required to qualify typing/computer typing test in two years. She appeared in the said

type test on 27.05.2010 and 27.11.2010 but was declared unsuccessful. Again, she appeared in the examination on 28.05.2011 but the result of the said examination was not declared. The applicant demanded to supply copy of the answer-sheet of the said examination but the same was not communicated to her. She made a representation to the respondent on 14.05.2012 but was informed that the said examination has been cancelled. The respondent, thereafter, again conducted examination on 02.07.2011 and the result of the same was declared on 19.03.2012. For appearing in the said examination, the applicant gave an option under para 2 (iii) of Board's letter (Annexure A/7). The said para 2 (iii) provides that an employee is required to secure 35% marks in the typing / computer typing examination. Para 2 (iii) also provides that if an employee gave option for Hindi typing at 25 words per minute and 30 words per minute in English then he will not be entitled for using editing tool. However, if an employee has opted for para 2 (iv) then he/she will be entitled for editing tool and there he/she will not be entitled for more than 5% mistakes. As per the result of the said examination, the applicant was declared unsuccessful and no justifiable grounds were given. A

bare perusal of the answer-sheet reveals that the copy of the applicant has been checked twice. Firstly, copy was checked on 11.07.2011 and thereafter on 16.09.2011. It is clear that the provisions of the Railway Board's letters and instructions have been flouted by the respondents while checking the copy of the applicant. The applicant being a widow is facing harassment at the hands of few of the staff members. It is clear from the option letter (Annexure A/9) that she has never opted for appearing in the examination as per para 2 (iv) and, therefore, she is aggrieved by the respondent's impugned order dated 25/29.06.2012 whereby she has been reverted from Group 'C' post to Group 'D' post. Accordingly, she has filed the present Original Application for quashing and setting aside the impugned orders dated 25/29.06.2012 as well as 19.03.2012 and that she may be allowed to continue on the Group 'C' post after declaring that she has qualified the examination conducted on 02nd July, 2011 treating her as Group 'C' employee for all purpose.

3. This Tribunal while issuing notice to the respondent on 16.07.2012 has granted status quo in favour of the

applicant to be maintained as an interim measure and, accordingly, the said interim relief is being continued.

4. After issue of notice, the respondent has filed reply as well as M.A. for vacation of interim relief on 27.08.2012. The respondent has raised preliminary objection of multiple reliefs being claimed by the applicant, which are not consequential to each other. Therefore, they prayed that as per Rule 10 of the Central Administrative Tribunal (Procedure) Rules, 1987, the present Original Application is not maintainable and, therefore, deserves to be dismissed. The main plea of the respondent is that the applicant was promoted to Group 'C' post on the condition that she is required to qualify the typing test within the stipulated period. She availed all the three chances but was declared unsuccessful all the times. Therefore, the action taken by the respondent to revert her cannot be said to be illegal or unwarranted as the applicant herself had given an option (Annexure MA/1), while appearing for 3rd chance in the examination, as per para 2 (iv) of the Railway Board's letter dated 04.02.2011. It is not denied by the respondent that the result of the type test was declared in the month of

March, 2012 but since the applicant had given her option under para 2 (iv) i.e. 40 words per minute typing in English and as per the said option, she is not entitled for even a single mistake as she has been allowed to editing tool. But as her result was wrongly evaluated by the evaluating officer, her copy was rechecked and the result was declared as per letter dated 16.09.2011 (Annexure R/3). Therefore, the respondent has no option but to revert her on a substantive post in Group 'D'. Therefore, there is no illegality in the action of the respondent and, accordingly, the Original Application deserves to be dismissed.

5. Heard learned counsels appearing for the applicant and respondent.

6. Despite reiterating the submissions made earlier, the applicant has filed an additional affidavit dated 24.07.2019 and has relied on OM dated 22nd April, 2015 issued by the DOPT and RBE No. 02/2017 (dated 16.01.2017) issued by the Railway Board. It is the contention of the applicant that as per the said OM, the

applicant is fulfilling the condition prescribed therein and, therefore, as she is entitled for relaxation from qualifying the typing test after attaining the age of 45 years, she cannot be reverted from Group 'C' to Group 'D' post on the ground merely that she has not qualified typing test.

7. The ground raised by the applicant is that the respondent has committed grave error in treating the applicant under para 2 (iv) of the Railway Board's letter dated 04.02.2011 instead of para 2 (iii) and, therefore, by intentionally disqualifying the applicant, the respondent's order is illegal, arbitrary and unlawful as no justifiable reason has been given by the respondents in checking her answer-sheet on 2nd occasion, which is in complete violation of the rules on the subject.

8. Considered the rival submissions made by learned counsels for both the parties and perused the material available on record.

9. It is clear that the applicant was appointed on compassionate grounds on Group 'D' post. Thereafter, she was promoted to Group 'C' post vide order dated

16.09.2010 with a condition that she has to qualify the typing / computer typing as she had already passed in the written test. The applicant was declared unsuccessful in the test conducted on 27.05.2010, 27.11.2010 as well as 28.05.2011. It is also clear that in the examination conducted again on 02.07.2011, the applicant has chosen her option as para 2 (iii) for appearing in the said examination. The relevant para 2 (iii) and para 2 (iv) of Railway Board's letter dated 04.02.2011 are reproduced as under: -

"2 (iii) Use of editing tools for correcting the mistakes of the typed matter should not be permitted in case typing test is conducted on computer if the candidate opts to type at speed of 25 w.p.m. in Hindi and 30 w.p.m. in English. This function should be disabled before conducting typing test.

2 (iv) In case, typewriting skills are tested on Personal Computers (PCs) at the speed of 40 w.p.m. in English and 35 w.p.m. in Hindi, the use of editing tool for correcting the mistake may be permitted to function as per procedure in vogue but the benefit of ignorance of 5% mistakes will not be allowed."

It is clear that the applicant was declared unsuccessful as per the result of the said examination declared on 19th March, 2012. A perusal of the answer-

sheet of the applicant clearly reveals that the copy of the applicant was re-checked. First rechecking was done on 11.07.2011 wherein she secured 40 w.p.m. speed and secured 08 out of 10 marks. Subsequently, her copy was rechecked on 16.09.2011 wherein her marks were even reduced and also her typing speed from 40 w.p.m. has been reduced to 39 w.p.m.

10. It is made clear that after going through the option letter of the applicant dated 15.06.2011, which is annexed by the respondent as Annexure MA/1 (page 51 of paper book) that she has chosen para 2 (iv) of Railway Board's letter dated 04.02.2011 i.e. 40 w.p.m. typing in English and that she is not entitled even for a single mistake as she has been allowed to editing tool but her result was wrongly evaluated by the evaluating officer and, therefore, her copy was required to be checked afresh. The same can be perused at Annexure R/3. The said result was declared on 16.09.2011. It is clear from the record that the applicant has been declared unsuccessful all the three occasions. Therefore, the respondent has left with no option but to revert the applicant in Group 'D' post.

11. It is seen that now in 2020, the applicant is nearly 53 years old. A bare perusal of OM dated 22nd April, 2015 issued by the DOPT reveals that the same is on the subject of 'instructions on exemption from passing the Typewriting Test on Computer in respect of LDCs'. It is also noted that as per para 2(i)(b) of OM dated 22nd April 2015, if between the age of 35 years and 45 years at the time of their appointment, such persons may be granted exemption on attaining the age of 45 years. Para 2(i)(d) of OM dated 22nd April, 2015 provides that those LDCs who have made two genuine attempts for passing the typing test prior to issue of this OM but have not completed 8 years service as LDC, may be granted exemption from the typing test after completion of 8 years of service or on attaining the age of 45 years, whichever is earlier. Therefore, taking into consideration of above OM, it is seen that the applicant has already completed 45 years at the time of filing of the present O.A. and, therefore, it is clear that the respondent should have given her the benefit of said OM dated 22nd April, 2015. Also as per RBE No. 02/2017 dated 16.01.2017, the applicant is entitled to get the benefits of exemption from passing the Typing Test as she has already completed around

53 years now. Therefore, there is no instance and ground made out for reverting her from Group 'C' to Group 'D' post.

12. As it seems from the interim order passed by this Tribunal on 16.07.2012, status quo was granted to the applicant and since that date, the applicant is continuously working in Group 'C' post. It is merely because of the interim order, the applicant is working on Group 'C' post but as per rules, she is not entitled to for the same because it was the applicant herself, who has chosen the said option and as per the said option she was declared unsuccessful.

13. It is also seen that the applicant is a widow. Since after the death of her husband, she has been granted compassionate appointment and since then she is working in the respondent-department also and because of the interim orders of the Tribunal, she is working on Group 'C' post. She has worked for nearly 08 years on the said post of Group 'C' after the interim orders passed by the Tribunal. Therefore, now reverting the applicant to Group 'D' post does not make any sense. A sympathetic view has been taken by the

Bench in order to protect a widow, who has already been working on the said post of Group 'C' since 2012 and also taking into account that she is facing harassment at the hands of few of the staff members.

14. Therefore, keeping in view the above circumstances, a sympathetic view is taken towards the applicant, who is working on Group 'C' post.

15. Accordingly, in view of the above facts and circumstances of the case, the impugned orders dated 25/29.06.2012 (Annexure A/1) and 19.03.2012 (Annexure A/2), qua the applicant, are quashed and set aside. The applicant is hereby allowed to continue on the Group 'C' post treating her as qualified in the examination conducted on 02.07.2011. All the benefits, which she may get as continuously working in Group 'C' post may be granted to her and she may be treated as working on Group 'C' post for all purposes.

16. In view of the above observations and directions, the Original Application is disposed of with no order as to costs.

17. In view of the order passed in the O.A., nothing survives in the M.A. for vacation of interim order and the same is disposed of as having rendered infructuous.

(HINA P. SHAH)
JUDICIAL MEMBER

(DINESH SHARMA)
ADMINISTRATIVE MEMBER

Kumawat