

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

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(11)

O.A. NO. 581/1991

DATE OF DECISION : 10.1.92

SHRI KIRPA SHANKAR

...APPLICANT

VS.

UNION OF INDIA & OTHERS

...RESPONDENTS

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SHRI I.K. RASGOTRA, HON'BLE MEMBER (A)

SHRI J.P. SHARMA, HON'BLE MEMBER (J)

FOR THE APPLICANT

... SHRI ANIS SUHRAWARDY

FOR THE RESPONDENTS

... MS. SUNITA RAO

1. Whether Reporters of local papers may be allowed to see the Judgement? *JK*

2. To be referred to the Reporter or not? *J*

JUDGEMENT

(DELIVERED BY SHRI J.P. SHARMA, HON'BLE MEMBER (J))

The applicant has filed this application under Section 19 of the Administrative Tribunals Act, 1985 aggrieved by the action of the respondents in not regularising him in his appointment as a Typist and not implementing the judgement of OA-1417/1989 and OA 1116/1989 decided by the Principal Bench in Rakesh Kumar and Poornima Dutt Chaudhary's cases respectively.

2. The applicant claimed the relief for a direction to the respondents to regularise the applicant in the post

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of Typist forthwith and also declare him as confirmed Typist in view of his long services on ad-hoc basis with all the consequential benefits from the dates allowed to his juniors.

3. The facts of the case in brief are that the applicant was initially appointed with the respondents as a Waterman in April, 1978 and was screened as Khalasi by the letter dt. 28.12.1983. The applicant was asked to work as Typist by the letter dt. 18.10.1985 and he is discharging the functions of a Typist w.e.f. 25.10.1985 (Annexure P1). The applicant is a graduate from Delhi University. On 20.4.1987, a test for the post of Typist was held. The applicant appeared in the said typing test and came out successful (Annexure P2). Again in June, 1989, a typing test was held and the applicant was declared successful by the letter dt. 6.6.1989 (Annexure P3). The applicant had to appear in the test of English and viva-voce test. However, the applicant failed in the written test. On the basis of the judgements in Ms.Poornima Dutt Chaudhary- OA No.1116/1989 (Annexure P4) and Rakesh Kumar-OA No.1417/1989 (Annexure P5), the applicant claims that he should have been regularised. Thus the case of the applicant

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is that he having put in about 10 years of service as Typist, should have been regularised and his attempts to persuade the respondents failed, hence this present application.

4. The respondents contested the application. The respondents at the outset stated that the cases of Shri Rakesh Kumar and Ms. Poornima Dutt Chaudhary are totally different and not applicable on facts as well as on ratio to the present case of the applicant. In Rakesh Kumar's case, the applicant has passed the written test, while the applicant has wrongly written that Rakesh Kumar has failed in the written test. In the case of Poornima Dutt Chaudhary, no screening was held for years together and it was directed by the Tribunal in the judgement of that case that screening be held within three months from the date of passing the order. In the present case of the applicant, he had already been screened and worked as a Class-IV employee, though on ad-hoc basis he has been asked to work as a Typist. The applicant, however, passed the typing test, but miserably failed in the written test as well as the viva-voce. The applicant was continued as ad-hoc Typist purely as an internal arrangement.

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5. We have heard the learned counsel of the parties at length and have gone through the record of the case. It is not disputed by the respondents that the applicant was screened as a Khalasi, but seeing to his education, he was assigned the work of Typist on ad-hoc basis as an internal arrangement. The promotion from Class-IV to Class-III is only by way of written examination. The letter of 1985 (Annexure P1) clearly shows that the applicant was given a chance to work as ad-hoc Typist till such time ^{he} is replaced by a selected person. Again, the memo of June, 1989 (Annexure P3) shows that the applicant passed the typing test which was held on 1.6.1989, but was required to appear in the written test in English and viva-voce test. The applicant himself has admitted that he failed in the written test and viva-voce. The applicant cannot be regularised as a Typist de hors the rules. When the rules provide that a person for promotion from Class-IV to Class-III has to pass the pre appointment test which includes written examination as well as viva-voce, then in that case, the applicant cannot claim regularisation until he successfully clears those examinations. In Shri Jethanand Vs. Union of India & Others (T. No.844/1986), decided by

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the Full Bench on 5.5.1989, the applicant had not made out a case for being regularised without any selection test merely because they had held the promotional post in Class-III as ad-hoc for more than 10 years. Thus for regularisation of an employee holding an ad-hoc post, passing of selection test is a must. The ratio of Jethanand case was again approved in the Review Petition by the Full Bench in RA 135/1989 cited on 21.5.1990. In view of the above Full Bench decision, the applicant could not be regularised nor he could be confirmed in his appointment as Typist.

6. In view of the above discussion, we find that the present application is devoid of merit and is dismissed leaving the parties to bear their own costs.

J. Sharma
(J.P. SHARMA) 10.1.92
MEMBER (J)

I.K. Rasgotra
(I.K. RASGOTRA)
MEMBER (A)