

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI.

(3)

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O.A./XXXX No 2267 of 1993

Decided on: 1-7-93

Kumari Chandra .....Applicant(s)

(By Shri M.P. Raju Advocate)

Versus

U.O.I. & Others .....Respondent(s)

(By Shri P.H. Ramchandani and Advocate)

Shri M.K. Gupta

CORAM:


THE HON'BLE SHRI K. MUTHUKUMAR, MEMBER (A)

THE HON'BLE ~~SHRI~~ DR. A. VEDAVALLI, MEMBER (J)

1. Whether to be referred to the Reporter or not?

yes

2. Whether to be circulated to the other Benches of the Tribunal?

  
(K. MUTHUKUMAR)  
MEMBER (A)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. No. 2267 of 1993

New Delhi this the 13<sup>th</sup> day of July, 1998

HON'BLE MR. K. MUTHUKUMNAR, MEMBER (A)  
HON'BLE DR. A. VEDAVALI, MEMBER (J)

Kumari Chandra  
D/o Shri Hukam Chand  
R/o H.14/7, Malviya Nagar,  
New Delhi-110 017. ...Applicant

By Advocate Dr. M.P. Raju.

Versus

1. Union of India through its Secretary and Financial Adviser, Defence Services, South Block, New Delhi.
2. The Controller General of Defence Accounts, West Block V, R.K. Puram, New Delhi.
3. The Controller of Defence Accounts (Headquarters), G Block, New Delhi-110 011.
4. Shri Bhagwan Singh o/o CDA (Hqrs), G-Block, New Delhi. ....Respondents

Shri P.H. Ramchandani, Sr. Counsel for respondents 1 to 3

Shri M.K. Gupta, Counsel for respondent No.4.

ORDER

Hon'ble Mr. K. Muthukumar, Member (A)

In a departmental examination for filling up 10% of vacancies in the cadre of Clerks/Typists Group 'C' by recruitment from educationally qualified Group 'D' employees, as prescribed under the Recruitment Rules, applicant was declared as qualified.

2. It is stated that as per the Recruitment Rules, 10% of the vacancies is by promotion from the

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grade of Record Clerks who have not less than 7 years of service and subject to passing the departmental test. The other 90% is filled by other modes of recruitment, namely, 10% by recruitment from educationally qualified Group 'D' employees subject to a selection to be made from departmental examination confined to Group 'D' employees fulfilling the requirement of minimum educational qualification and also with 5 years service as Group 'D' with a maximum age limit for admission to the examination being 45 years relaxable upto 50 years for SC/ST candidates. It is also stated in the Recruitment Rules that unfilled vacancies will not be carried over. The balance is by recruitment by transfer from the grade of KPOs who have completed 5 years of service as such and they are adjudged fit for clerical duties and rest by direct recruitment. In the aforesaid departmental examination against the 10% quota, the applicant who is a Group 'D' employee was declared passed and she was also duly promoted as Clerk with effect from 19.3.1993 by the orders of the respondents dated 18.3.1993. Subsequently, by the impugned order the respondents decided to conduct a re-test for all the three educationally qualified Group 'D' employees including the applicant. It was stated that although the applicant was considered to have achieved the typing speed above 30 words per minute which is the minimum requirement, as per the Recruitment Rules, it was found that on receipt of certain representation regarding the conduct of the examination and re-examination of answer papers it was found that all the three candidates had

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not qualified in the typing test as they did not achieve the requisite speed.

3. In the meanwhile, one of the Group 'D' candidate stated to be seniormost among the three educationally qualified Group 'D' employees Shri Bhagwan Singh, approached the Tribunal in his O.A. No. 1299 of 1993 with a prayer for quashing the result of that test held on 8.2.1993 in which the applicant before us was declared qualified and also for a direction to promote him to the post on the ground that he had fulfilled the minimum qualification and that the respondents action in prescribing minimum marks for passing the typing test was not provided in the Recruitment Rules. This application was allowed by the order dated 9th of September, 1993 in O.A. 1299 of 1993.

4. In compliance of this order, the respondents had appointed Shri Bhagwan Singh in the single vacancy of Clerk against the aforesaid quota of 10%. In the meanwhile, as stated before, by the time the order in the aforesaid OA was passed, the respondents proceeded with the aforesaid re-test by the impugned order dated 22.4.1993 in this O.A. filed on 21.10.1993. The applicant herein has asked for the quashing of the impugned order for holding the retest for all the three candidates. The applicant has also prayed for a direction not to promote respondent No.4 who was the applicant in the aforesaid O.A. (O.A. No. 1299/1993) and also for a direction to promote her as she has

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better merit as she has secured higher percentage of marks than the respondent No.4.

5. In the order passed in the O.A. filed by Shri Bhagwan Singh, respondent No.4, in the present O.A., it has been held that the minimum speed of 30wpm was not prescribed either in the Recruitment Rules notified on 23.7.1971 or in the Scheme of the examination. On this basis, it was directed that the results of the test held on 8.2.1993 was to be declared on the basis of the provisions contained in the rules and scheme of selection and the applicant therein, namely, Shri Bhagwan Singh be promoted to the aforesaid post on the basis of the said declaration. As stated above, the aforesaid order was passed on 9.9.1993. Pending the adjudication of the above matter in the aforesaid O.A., the impugned order in the present application was passed cancelling the appointment of the applicant as Clerk w.e.f. 19.3.1993 and ordering that her service rendered from 19.3.1993 to 26.4.1993 should be treated as ad hoc. The present application is in challenge to this order.

6. The applicant contends that the impugned order cancelling her appointment is not permissible under the rules and the cancellation is in violation of principles of natural justice since no notice was given. She also contends that in the order passed in the OA 1299 of 1993 on the basis of which the respondents had promoted respondent No.4, and had cancelled her appointment, she

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was not made a party even though she was substantially affected and the respondents were wrongly directed to promote respondent No.4 despite the fact that seniority had no relevance under the rules and the promotion was to be based on selection. She also contends that she had secured higher percentage of marks compared to respondent No.4.

7. It is averred by the applicant that she had filed a Review Application (RA 426 of 1993) after she had come to know about the direction of the Tribunal in the aforesaid OA. She filed the Review Application on 21.10.93 by which time she already stood reverted to the post of Peon. The Tribunal, therefore, rejected the Review Application holding that she would not rectify the position by filing the Review Application in OA in which she was not a party and that the remedy for her was to challenge her order of reversion in another OA. It was also pointed out in the order disposing of the Review Application that the appointment of the applicant in the Review Application, namely, Kumari Chandra was cancelled as erroneous and she was treated as having held that post in an ad hoc capacity from 19.3.1993 to 26.4.1993 and on the basis of the counter-reply filed in the above OA, there was no mention that the review applicant had secured higher marks than Shri Bhagwan Singh. We also note that the SLP filed by the applicant against the order in the aforesaid OA was dismissed by the Apex Court. It was in these circumstances that she had filed this application cancelling her appointment as

LDC.

8. Arguing on the pleadings, the learned counsel for the applicant laid considerable emphasis on the fact that even on the basis of the examinations held without taking into account the typing speed, the applicant had secured a higher merit position and since this position is being filled on selection, the right course for the respondents was to have appraised the court in the other O.A. that the applicant therein did not have a higher position than the applicant in the present O.A. The applicant was not impleaded in that petition and the respondents without examining the matter in its entire perspective, simply cancelled the results of the earlier examinations merely on the basis of certain representations that the candidates did not achieve the requisite speed in typing test and had ordered retest. The counsel for the applicant also argued that having given the promotion on the basis of the duly declared result, the respondents were estopped from cancelling the same when particularly it was held by the Tribunal that the grounds for cancellation were not valid.

9. Respondents in their counter-reply while reiterating the facts of the case as mentioned above have averred that the typing speed in the examination achieved by the applicant was computed over 30 w.p.m. by mistakenly allowing 5% additional marks by the examiner who under mistaken notion instead of accepting 5% mistakes increased the marks by 5%. As a result of

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this, the applicant was wrongly declared successful and when the mistake was detected and review was conducted it was found that none of the applicants had achieved the minimum 30 w.p.m. However, since the Tribunal had held in the case filed by Shri Bhagwan Singh that the minimum typing speed had not been prescribed in the Recruitment Rules, the results had to be declared in accordance with the Scheme of the examination. He was appointed as Clerk with effect from 19.3.1993, the date on which the applicant was originally appointed. Since there was only one vacancy which was filled in this manner, there was no vacancy of clerical grade to be filled on promotion from Group 'D'. In reply to para 4.8 where the applicant had contended that the promotion is by way of selection and that he had secured higher percentage of marks than Shri Bhagwan Singh, respondent No.4, the respondents have not given any comments. No doubt respondent No.4 in his reply has stated that it has been a long standing practice to make promotion in the 10% quota on the basis of seniority-cum-fitness provided the Group 'D' employee is qualified in the test. This part of the averment, by respondent No.4 has been denied and opposed by the applicant in her rejoinder.

10. In a separate reply respondent No.4 contends that promotion in the 10% quota is strictly made on the basis of seniority provided the Group 'D' passed the said departmental test. It is also contended that while he had passed the test it was illegally declared that he

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had not passed the test on the ground that he had not obtained the 30 w.p.m. speed when the typing test was not an essential qualification and the Tribunal had rightly allowed his application and had directed the respondents to promote the applicant on the basis of the results declared in accordance with the rules and scheme of the examination. He also contends that the order of promotion of the applicant earlier was bad in law and was rightly rectified when her promotion was cancelled in pursuance of the order of the Tribunal.

11. We have heard the learned counsel for the parties and have perused the records.

12. As stated above, the Recruitment Rules provide for 10% by recruitment from educationally qualified Group 'D' employees. From this it appears that this 10% is not by way of promotion but by way of recruitment by selection through the departmental examination confined to Group 'D' employees who are educationally qualified. From the Scheme of recruitment it transpires that while 10% is by promotion from the grade of Record Clerks, 90% is by recruitment out of which 10% is from recruitment from educationally qualified group 'D' employees on the basis of selection through departmental examination and the rest by direct recruitment. In the scheme of the examination as notified by the respondents in Annexure R-3, it also confirms that the 10% of the vacancies reserved for educationally qualified group 'D' employees formed part of the direct recruitment quota in

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accordance with the Recruitment Rules and the aforesaid instructions provide for the Scheme of the examination which includes the details of the test and the minimum marks to be obtained in each test. No doubt, the aforesaid scheme does not provide for minimum speed for typewriting. However, it is clear that this 10% quota is a part of the direct recruitment quota and, therefore, has to be filled only on the basis of selection through a departmental test.

13. From the statutory rules of recruitment and scheme of the examination, it is clear that the selection for appointment of educationally qualified Group 'D' employees is by a departmental examination as a part of direct recruitment quota. From the instructions regarding the scheme of the examination which provide for the minimum percentage of marks to be obtained by the candidate in the aggregate in this examination, it is clear that this departmental examination is only a qualifying examination open to the eligible Group 'D' employees. It cannot be, therefore, construed that this departmental examination is a departmental competitive examination. If it is not so, the Recruitment Rules should have specifically provided that it is a departmental competitive examination. This not being the case, the relative merit obtained by the candidates is not material and the results are not to be declared in the order of merit.

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14. So long as the the eligible candidates among the Group 'D' qualify in the departmental test for selection, they will be eligible for appointment and in this selection by a departmental qualifying examination, the successful candidates will have to be appointed in accordance with the seniority. Therefore, we are unable to appreciate the contention of the applicant that the respondents have irregularly promoted Shri Bhagwan Singh although she had secured a higher percentage of marks. It is also an admitted position that Shri Bhagwan Singh, respondent No.4 is senior to the applicant. By the declaration of the results, as ordered by the Tribunal in the O.A. filed by him, he has also qualified. Therefore, respondents action in appointing respondent No.4 being the senior Group 'D' employee and having qualified in the departmental test, cannot be faulted.

15. In the conspectus of the above discussion, we do not find any merit in the application. The application is accordingly dismissed. There shall be no order as to costs.

*A. Vedavalli*  
(DR. A. VEDAVALLI)  
MEMBER (J)

*K. Muthukumar*  
(K. MUTHUKUMAR)  
MEMBER (A)

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