

OPEN COURT

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

Allahabad this the 13th day of December 2010

PRESENT:

HON'BLE MR. JUSTICE S.C. SHARMA, MEMBER-J
HON'BLE MRS. MANJULIKA GAUTAM, MEMBER-A

Original Application 1511/2002
(U/s 19 of Administrative Tribunals Act 1985)

Onkarnath Choubey,
S/o Sri Nand Kishore Choubey,
R/o Mohaddipur South – 2 Labour Colony,
District Gorakhpur.Applicant

(By Advocate Shri A.K. Gupta)

Vs.

1. Union of India through General Manager,
N.E. Railway, Gorakhpur.
2. F.A. and C.A.O./Administration,
N.E. Railway, Gorakhpur. ...Respondents

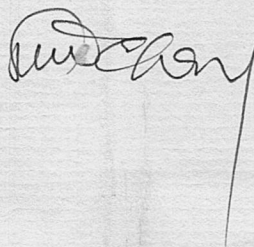
(By Advocate Shri K.P. Singh)

ORDER

HON'BLE MR. JUSTICE S.C. SHARMA, MEMBER-J

The instant O.A. has been instituted for the following reliefs:

- i. Issue order in the nature of certiorari quashing the order dated 2.8.2001 (Annexure A-1) and order dated 16.10.2002 (Annexure A2) of Compilation No.1 passed by Respondent No.2.
- ii. Issue an order in the nature of mandamus directing respondents to pay the applicant's salary on the post of Group 'D' employee as Accounts Clerk w.e.f. 2.8.2002 onwards with all consequential benefits till the date of payment.
- iii. Respondents may further be directed to pay 18% interest per annum on the dues.



2. The pleadings of the parties have been summarized as follows:

The applicant was initially engaged as Group'D' employee in the office of the 2nd respondent. The applicant thereafter got educational qualification for the post of Group'C'. While the applicant was in service in the month of September 1999 an incident took place in front of the office of respondent No.2, in which a number of R.P.F. employee had beaten a number of railway workers, in which the applicant was seriously injured and became unconscious. He had been admitted in the hospital. The incident was highlighted in the news papers also. In the incident which took place during the course of the employment the applicant's right hand fingers were badly injured. He had undergone treatment for a long time but, ultimately his right hand fingers were damaged and the same were not working properly, especially the middle finger. A certificate was obtained from CMO, Gorakhpur regarding the disability on 10.12.2001, that applicant had already appeared in written suitability test for the post in Group'C' held on 2.5.99 and qualified in the said test and the result was declared on dated 18.5.99. Viva Voce was conducted on 14.6.99. Applicant appeared in the Viva Voce and in that also he was qualified. The applicant's name was noted in the panel of Group'D' on dated 30.8.99 and he was placed at Sl.No.7. Thereafter he was placed on the post of Accounts Clerk in the pay scale Rs.3050-4590 vide panel dated 30.8.99 (Annexure A-5). Applicant had been working on the post of Accounts Clerk and also qualified in the theoretical training of the Clerical Cadre and declared successful vide letter dated 17.10.2000. Applicant's name ~~was~~ appeared at Sl.No.51. As per circular letter of the Railway Board dated 7.4.1994 an employee on

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promotion from Group 'D' to Group 'C' is required to qualify the typing test within two years from the date of selection. On 18.4.2000 and 17.4.2001 typing tests were held. In both the tests applicant appeared, but due to not getting the handicapped certificate, he could not qualify in the tests. The Circular letter of the Railway Board provided that within two years the test must be qualified or if there is any employee who is handicapped then it may be relaxed. After the certificate of the C.M.O. Gorakhpur, the respondents were required to relax in accordance with the Railway Board's letter but the respondents have not relaxed irrespective of the fact that there was ~~not~~ the certificate of the C.M.O. and hence, this O.A.

3. The respondents contested the O.A., they filed the counter affidavit and denied the allegations of the O.A. It has been alleged in para 9 of the counter that the applicant was injured in the incident in the year 1999 and he was admitted in the Railway hospital for treatment. After being cured he resumed his duty. But, he never informed the respondents that his right hand middle finger is not working properly. The applicant was treated in the hospital of the Railways. Even after the incident the applicant appeared thrice in the typing tests held on 10.4.2000, 17.4.2001 and 27.11.2001. But in all the typing tests the applicant could not qualify. No information was given by the applicant to the Railway authorities that he had approached the medical authorities for getting the handicapped certificate, but after remaining unsuccessful in three consecutive typing tests moved an application on 5.12.2002, the date of publication of third typing test that he is unable to type in full speed due to finger injury. Thereafter, he produced

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a certificate dated 10.12.2001, allegedly issued by C.M.O., Gorakhpur indicating temporary handicappedness in right hand middle finger. After remaining unsuccessful in three consecutive attempts a certificate was produced and an application was moved. Prior to that he never moved any application that he is handicapped and hence the applicant is not entitled to the relaxation. Being unsuccessful, the applicant ^R ^{along with 2} ~~was~~ moved the certificate ₁ which was produced in the month of December 2001, that the applicant was promoted provisionally to Group 'C' post from Group 'D' with the condition that he will have to qualify the typing test in three attempts within two years otherwise he will be reverted to his earlier post and as the applicant could not qualify the typing test and hence he was reverted to his original post and the O.A. is liable to be dismissed.

4. We have heard Mr. A.K. Gupta, advocate for the applicant and Mr. K.P. Singh advocate for R.1&2. It is an admitted fact ^R ~~that~~ as is evident on a perusal of the pleadings of the parties that the applicant was promoted provisionally from Group 'D' to Group 'C' post on condition that the applicant will have to qualify in the typing test within two years. During this period of two years three typing tests were conducted and in all the three tests the applicant appeared, but admittedly, in all the three tests the applicant remained unsuccessful in qualifying the typing test. As was the condition that in case remained unable to qualify the typing test, then he will be reverted to his original post. Learned counsel for the respondents argued that as applicant remained unsuccessful in qualifying the typing test within two years irrespective of the fact that the applicant appeared in three

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typing tests consecutively and he was reverted to his original post as was the condition. There is no dispute to the fact that in all the three typing tests the applicant failed to qualify. It has also been alleged by the respondents that in all the three typing tests the applicant appeared without bringing the fact to the notice of the railway authorities that he ^{has} suffered due to a permanent disability of finger of the right hand. After appearing in all the three typing tests only in the month of December 2001 a certificate issued by the C.M.O., Gorakhpur, was produced regarding temporary type disability of one finger of the right hand.

5. It is also an admitted fact that the ² same incident took place in the year 1999 in between R.P.F. employees and Railway employees and in that incident besides the applicant several other railway employees ~~were~~ ^R sustained injuries. The applicant was also admitted in the railway hospital for treatment and after being cured the applicant resumed his duty in the office in group 'C' post. At that time it was not brought to the notice of the railway authorities that he ² ~~has~~ suffered from permanent disability. Learned counsel for the applicant has also not disputed this fact. Not a single word has been asserted in the O.A. that prior to 5.12.2001 he brought this fact into the notice of the railway authorities that he had suffered an injury in which he had permanently disabled and irrespective of the fact that he has suffered an injury with permanently disabling him from typing. He appeared in the typing tests held on 10.4.2000, 17.4.2001 and 27.11.2001. All these tests were conducted after sustaining the injury by ² the applicant. If the applicant suffered by such injury by which he was permanently disabled

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then it was bur natural that he might have moved an application for exemption from typing test in view of Railway Board circular letter. But at ^{no 2} ~~any~~ point of time prior to appearing in the typing test this fact was not brought into the notice of the Railway authorities, rather the applicant continued to appear in the typing tests as if he was quiet fit in order to qualify the test. It has been alleged by the respondents' counsel that when the applicant failed in all the three typing tests then an application was moved annexing the certificate issued by the C.M.O., Gorakhpur that he ^{had 2} ~~was~~ suffered temporary handicappedness in his right hand's middle finger. All these circumstances and facts show that it was entirely an after-thought. When he remained unable to qualify the typing test ^{then} ~~he~~ he manipulated this certificate.

6. We have perused the so-called handicapped certificate issued by C.M.O. Gorakhpur on 10.12.2001. It had been stated by the C.M.O. Gorakhpur that the applicant had 40% temporary type disability. C.M.O. has not stated in his certificate that this injury is incurable. The very wordings of the certificate shows that the disability was of temporary type which means that it can be cured. It is also ^{an} ~~a~~ controversial matter that whether actually the applicant suffered any disability temporarily or permanently. In the year 1999 some incident took place in between the Railway employees and R.P.F. staff and the applicant suffered injury and he was hospitalized and remained under treatment of the Railway Doctors. If there was some fracture in the middle finger of the right hand then the doctors of the Railway Hospital might have obtained the X-ray of this fact

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and they could have also detected that the applicant suffered from some permanent disability. No certificate has been filed by the Railway hospital or by the applicant in order to show or highlight that he had any such ^{injury} ~~disease~~ which can cause permanent disability of middle finger of the right hand. Immediately after sustaining the injury the railway hospital treated the applicant. It was but natural for the railway hospital to observe that whether the applicant suffered by any such injury which can cause permanent disability. But, keeping silence for a long period and consistently appearing in three typing tests and not raising any objections that he had suffered any disability of permanent type shows that, it is all an after-thought and ^{when} ~~they~~ remained unsuccessful in all the three typing tests. It was mandatory or condition has been provided in the promotion order that ^{case 2} ~~in~~ the applicant remained unsuccessful in qualifying the typing test within a period of two years then he will be reverted and as the applicant remained unsuccessful in three typing tests then he was reverted to his original post.

7. Learned counsel for the applicant argued much relating to the Railway Board's circular letter which provides that in case there is a handicapped employee or an employee who suffered injury after the employment which makes him permanent disability then relaxation must be granted to that employee from typing test etc. Learned counsel also argued that railway authorities have got authority under this Railway Board's letter to grant exemption to the applicant from qualifying the typing test but he has not been granted the relaxation in pursuance of the Railway Board's letter. The fact is that the applicant is entitled to seek exemption and the

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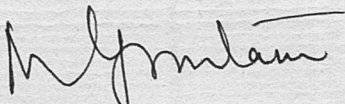
application was moved in this connection in the month of December 2001, but exemption was not granted. Attempt has also been made to explain the delay in filing the certificate of the C.M.O. ^{if} ~~which~~ has been alleged that the C.M.O. remained busy in certain epidemic deceases in the area and as he was not available, hence the certificate was obtained delayed. Learned counsel also argued that merely by filing a certificate delayed, he cannot be deprived from the benefit of circular letter of the Railway Board. We may agree to this explanation of delay in filing the certificate but it goes to indicate that actually he ^{not} ~~was~~ handicapped permanently. [?] Firstly the so-called certificate of the C.M.O. shows that he was temporarily handicapped. More over, the first available treatment was given and the condition was observed by the doctors of the railway hospital and ^{not} ~~at any~~ point of time ~~that~~ ² they have stated that the applicant has suffered any fracture of the middle finger or he can suffer permanent disability. Hence, the respondents are justified in not granting the relaxation to the applicant.

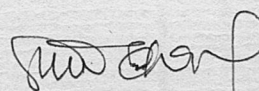
8. For the reasons mentioned above we are of the opinion that the applicant was promoted from Group'D' to Group'C' on condition that he will have to qualify the typing test within two years otherwise he will be reverted to the original post and promotion was provisional, on fulfilling the condition within a period of two years. In case any candidate remains unsuccessful in qualifying the typing test within two years then he will have to be reverted as per the condition and ^{is} ~~as~~ an admitted fact that the applicant remained unsuccessful in ⁱⁿ ~~qualifying~~ the three typing tests and as per the condition of the promotion order the respondents reverted the applicant to

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his original post. Moreover, we are also of the opinion that the so called certificate of the C.M.O. filed to show the permanent disability is not to be relied upon. No reliance can be placed on this document, firstly it indicates that ^{is} disability of temporary nature. More over, it is 40% of one finger, hence, it cannot be inferred the certificate is to be ^{accepted} ~~expected~~ ^{is} genuine that the applicant is suffering from permanent disability of middle finger of right hand. We have got serious doubts of the genuineness of the C.M.O.'s certificate. But as we have stated that if it ^{is} ~~has~~ to be ^{admitted} ~~stated~~ even then no reliance ^{can} ~~is taken~~ place on the documents that the applicant was permanently disabled. The respondents were fully entitled to refuse to give the applicant the relaxation as per Railway Board's circular letter. The O.A. is liable to be dismissed.

9. O.A. is dismissed. No costs.


MEMBER (A)


MEMBER (J)

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