

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

Original Application No. 1216 of 2006

Allahabad this the 1 day of June, 2011

**Hon'ble Mr. Justice S.C. Sharma, Sr. J.M./HOD
Hon'ble Mr. Shashi Prakash, Member (A)**

1. Jai Prakash, Son of Shri Shyam Bihari Tiwari, Presently posted as Junior Clerk in the Office of Deputy Chief Material Manager/Depot, North Eastern Railway, Gorakhpur.
2. Nagendra Nath, Son of Shri Ram Pyare, Presently posted as Junior Clerk in the Office of Deputy Chief Material Manager/Depot, North Eastern Railway, Gorakhpur.
3. Ramphal Prasad, Son of Late Budhu Sahu, Resident of Village Sarsopar, Post Bhusawal, District Gorakhpur.
4. Jai Singh, Son of Late Ram Avadh Singh, Resident of Village Pakadi, Post Khirkita Dubey, District Gorakhpur.

Applicants

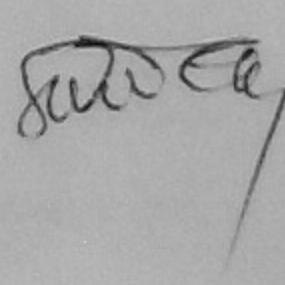
By Advocate: Mr. R.G. Tripathi

Vs.

1. Union of India through Secretary Ministry of Railway, New Delhi.
2. General Manager, North Eastern Railway, District Gorakhpur.
3. General Manager (Personnel), North Eastern Railway, District Gorakhpur.
4. Controller of Stores, North Eastern Railway, District Gorakhpur.
5. Deputy Chief Material Manager/Depot, North Eastern Railway, District Gorakhpur.

Respondents

By Advocate: Mr. Rajnish Kumar Rai



ORDER

By Hon'ble Mr. Justice S.C. Sharma, Sr. J.M./HOD

Instant O.A. has been instituted for the following relief (s): -

"a) That this Hon'ble Tribunal may very graciously be pleased to direct the respondents to ensure the payment of arrears of salary, pay scale, increments and all consequential benefits admissible to the post of Senior Clerk and Head Clerk treating the applicants to have been promoted on the post of Senior Clerk from the period 28.05.2000 and Head Clerk from the period 28.05.2002 respectively within stipulated time and further the benefit of promotion upto the post of Head Clerk.

ii) That this Hon'ble Tribunal may very graciously be pleased to direct the respondents to ensure the benefit of promotion, payment of arrears of salary, pay scale, increments and all consequential benefits admissible to the post of Senior Clerk and Head Clerk treating the applicants to have been promoted within due course as their juniors namely Shri Shabbir Ahmad and others have been assigned/given the benefit of promotion as well as all the consequential benefits in terms of pay scale, increments, arrears of salary etc."

2. Pleadings of the parties may be summarized as follows: -

It has been alleged by the applicants that they ^{are} Ex ₁ Military personnel and joined Class IV post as Khalasi in the pay scale of ₹ 750-940/- on 22.06.1989, and were promoted to the post of Junior Clerk in the scale of ₹ 3050-4590/- w.e.f. 29.05.1998 after passing the requisite examination/test. A notification was issued by the respondents on 20.08.1997 requiring that for promotion

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from Group 'D' category to the post of Junior Clerk, employees will have to pass the Typing Test within two years. The applicants were not aware about the said notification when they were promoted in Class III post. It is stated that the vacancies for the post of Junior Clerk (for short JC) on which the applicants were promoted, had arisen earlier to 31.03.1997, and at that time there was no such condition of passing the Typing Test for being promoted from Group 'D' category to Group 'C' category, and the respondents did not insist the applicants to qualify the Typing Test otherwise they would have been reverted. It was not required on the part of the applicant to pass the Typing Test, despite that such kind of insistence was put on the part of respondents, as such the applicants have not been considered for promotion to the post of Senior Clerk. The test is going to be held on 29.06.2000 for promotion to the post of Senior Clerk, and the respondents requested the respondent No. 5 for permitting them to participate in the test. It is alleged that the applicants are entitled to appear in the suitability test of Senior Clerk, but the respondents are adamant that as the applicants have not passed the Typing Test hence they are not entitled to participate in the test for the post of Senior Clerk. Ten Junior Clerks who were junior to the applicants, have already been promoted as Senior Clerk

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w.e.f. 06.07.2004 under the scheme of restructuring of the Railways. A notification was also issued on 13.10.2005 holding suitability test against 21 vacancies. It is alleged that depriving the applicants from participating in the said test, is illegal and arbitrary. The applicants are not required to qualify the Typing Test but the respondents are insisting hence, it is illegal. The Hon'ble High Court passed a Judgment on 17.10.2005 in the matter of the applicants, exempting them from appearing in the Typing Test but even then the respondents are insisting to appear in the Typing Test. Reminders were sent to the respondents but they are ~~not~~ paying any heed and again and again posts are being advertised. The aforesaid facts have been repeated several times in the O.A. which are not required to be mentioned in detail.

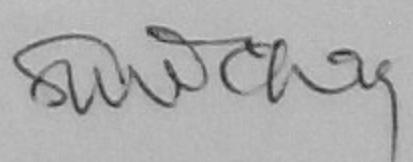
3. The respondents contested the case, filed the Counter Affidavit, and denying from the allegations made in the O.A. It has further been alleged that the applicants were appointed as Khalasi under Deputy CMM/Depot on 22.06.1989. Vacancies of Junior Clerk arose against 33 1/3% quota and these posts are to be filled up every year and left over vacancies, if any, were to be carried forward to next year. No selection was conducted up to the year 1997 against this quota hence the left over vacancies

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carried forward up to 1997 were '14'. A notification was issued by the respondents on 20.08.1997 to the effect that those who qualified the Written Test will have to pass the prescribed Typing Test of 30 words per minute (WPM) in English or 25 WPM in Hindi. It has also been provided specifically in the Notification that those who will not qualify the prescribed speed test of typing within two years prescribed period after their passing of written examination, they will be reverted back to their previous post. In the earlier order of Railway Board dated 03.02.1997 this condition has also been mentioned. Six candidates qualified the Typing Test hence they were promoted, and posted to the post of Junior Clerk, and their promotions were regularized to the post of Junior Clerk, and after two years those persons became entitled for further promotion as Senior Clerk in the pay scale of ₹ 4500-7000/- by qualifying the Written Test by seniority-cum-suitability and after two years services as Senior Clerk. They became further entitled for further promotion as per rule to the post of Head Clerk ₹ 5000-8000/- on the basis of seniority-cum-suitability. The applicants failed to qualify the pre-requisite speed of typing as such they are liable to be reverted back to their original post i.e. Khalasi. O.A. No. 268 of 2001 was filed by the applicants for seeking exemption from typing test. The CAT Allahabad

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Bench dismissed the O.A. with the observation that the applicants had failed to achieve the required speed of typing in Hindi or English; therefore, they had no right for retention on the post of Clerks and were liable to be reverted. The Order passed by the Tribunal dated 02.09.2005 was challenged by the applicants before the Hon'ble High Court in Civil Misc. Writ Petition No. 65560 of 2005, and the Hon'ble High Court disposed of the Writ Petition at the admission stage on 17.10.2005 with the direction to the respondents to re-consider the whole case after determining the date on which the vacancy occurs and pass orders on application for exemption from typing test. The Judgment was passed by the Hon'ble High Court without calling the CA from the respondents. However, as per direction of the Hon'ble High Court, applicants were regularised on the post of Junior Clerk after exempting the applicants for one time from passing the pre-requisite speed test. But the applicants had neither fulfilled the criteria already fixed by the Railway Board and hence they were not promoted to the post of Senior Clerk twice as per rules. The Hon'ble High Court dismissed the Writ Petition No. 54669 of 2006 for further promotion on the ground that alternative remedies were available to the applicants and thereafter the present O.A. has been instituted by the applicants. The applicants had



already been exempted once from passing the pre-requisite condition of passing the typing test on promotion to the post of Junior Clerk hence they are not entitled for further exemption. O.A. lacks merits and is liable to be dismissed.

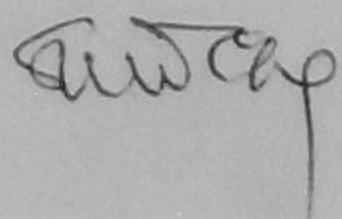
4. In response to the C.A. filed by the respondents, on behalf of the applicants RA has been filed and thereafter on behalf of the respondents as well as the applicants number of affidavits have been filed as Suppl. CR and Suppl. RA repeating and reiterating the same facts as have been alleged in the O.A. as well as in the CA. The relevant facts shall be discussed at the relevant place.

5. We have heard Sri R.G. Tripathi, Advocate for the applicants and Sri R.K. Rai, Advocate for the respondents, and perused the entire facts of the case.

6. Considering the facts alleged by the applicants and the respondents, it is an admitted fact that the applicants being Ex Army Personnel were appointed as Khalasi (Class IV post in the respondents' department, and afterwards applicants were promoted on the post of Junior Clerk in the pay scale of ₹ 3050-4590 w.e.f. 29.05.1998. It is also an admitted fact that the applicants did not qualify the

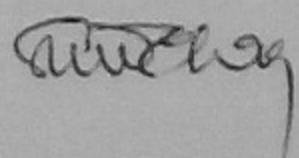
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prescribed Typing Test, which is required as per rules of the Railway and when a notice was served on the applicants by the respondents that either they qualify the typing test or they shall be reverted. Then, O.A. No. 268 of 2001 was filed by the applicants seeking exemption from typing test. That O.A. was dismissed by the Tribunal on the ground that as per rules of the Railways, qualifying the typing test is must and is a condition precedent, and as the applicants did not qualify the typing test hence they are not entitled for exemption. However, the Order passed by this Tribunal on 02.05.2005 was challenged before the Hon'ble High Court in WP No. 65560 of 2005, and that Writ Petition was disposed of at the admission stage itself on 07.10.2005 with a direction to the respondents to reconsider the whole case after determining the date on which the vacancy occurs and pass orders on application for exemption from typing test. The main contention of the applicants is that the Hon'ble High Court exempted the applicants from qualifying the typing test hence they had been exempted permanently from qualifying the typing test and hence they are entitled to be promoted as Senior Clerk as well as on the post of Head Clerk. It is also alleged by the applicant that their juniors had been promoted to the post of Senior Clerk but they have not been permitted to participate in the Departmental



Promotion Examination as Senior Clerk. In pursuance of the directions of the Hon'ble High Court, the respondents passed an Order in order to exempt the applicants from typing test for the post of Junior Clerk and the applicants had been regularised as Junior Clerk but the respondents had not permitted the applicants to participate in the promotional examination for the post of Senior Clerk as well as Head Clerk as pre requisite condition had not been fulfilled by these applicants.

7. It has been argued by the learned counsel for the applicants that as a Judgment was passed by the Hon'ble High Court to exempt the applicants from qualifying the typing test hence they have been exempted from typing test forever and now the respondents cannot compel the applicants to qualify the typing test, copy of the Order passed by the Hon'ble High Court in CMWP No. 65560/2005 is on record. It is annexure-5 of the O.A. and from perusal of the Judgment of Hon'ble High Court, it is evident that learned counsel for the applicants advanced arguments before the Hon'ble High Court that the Rules were amended and the requirement of passing the typing test was introduced vide notification dated 20.08.1997, and in case the vacancies had occurred prior to the said date, the same are required to be filled up as per the law



existing on the date on which the vacancy occurred. This aspect has not been considered by the authorities nor by the learned Tribunal. Hence, the petition was allowed. Moreover, a direction was given by the Hon'ble High Court to the respondents to re-consider the whole case after determining the date on which the vacancy occurred and pass orders on applications for exemption from typing test. Annexure-11 to the O.A. is the copy of the Order dated 20.05.2006 passed by the respondents in pursuance of the direction of the Hon'ble High Court. It will be appropriate to re-produce the order passed by the respondents: -

"In view of the above fact and in compliance to the judgment of Hon'ble High Court, Allahabad, I consider the petitioners S/ Shri Jai Prakash, Ram Phal Prasad, Jai Singh and Nagendra Nath, all qualified Jr. Clerk (3050-4590), Working under Dy. C.M.M. Depot, N.E. Railway, Gorakhpur to be exempted one time from typing test. This opportunity is only given to the petitioners to the instant case."

The respondents' Advocate argued that in pursuance of the Judgment of the Hon'ble High Court, exemption was granted but it was only one time, and it will not be deemed that the applicants have been exempted from qualifying the typing test permanently for further promotions. Learned counsel also argued that in the Judgment of the Hon'ble High Court, nothing has been alleged in this connection.

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8. It has also been argued by learned counsel for the respondents that the Writ Petition was disposed of by the Hon'ble High Court without calling for the CA and it was contended before the Hon'ble High Court that the rules have been changed providing the qualifying typing test vide notification dated 20.08.1997, and the respondents' Advocate also agreed to that, that such notification was issued on 20.08.1997 whereas the fact is that these rules were existing from earlier to 20.08.1997. Learned counsel for the applicants argued that the Railway Board issued Circular No. 118/1992 on 17.07.1992 providing typing test for all future direct recruits. It may be presumed that the circular letter of 17.07.1992 was not applicable to the applicants who are promotees. A condition has been provided that it will be applicable to the direct recruits. But the typing test was required for other category of persons. Moreover, learned counsel for the respondents also argued that a circular letter was issued by the Railway Board on dated 07.04.1994 (annexure CA-2) wherein it has been provided that "For all promotions from group 'D' to group 'C' in the Ministerial cadre and from Clerks to Sr. Clerks against LDCE quota to be made after 2 years from the date of issue of these orders, possession of typing skill (30 w.p.m. in English and 25 w.p.m. in Hindi) will be a pre-requisite condition for eligibility to

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appear in the selection/LDCE." Hence, in view of this circular letter in case of a promotion from Group 'D' to Group 'C', to qualify the typing test was must. Learned counsel for the respondents argued that such rule was existing earlier. Learned counsel also argued that on 03.02.1997 also Railway Board issued a letter in this connection, which provides as under: -

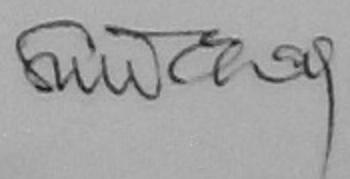
".....henceforth promotions from Group 'D' to Group 'C' against 33-1/3% of quota in the Ministerial cadre and from Clerks to Sr. Clerks against LDCE quota may be allowed on provisional basis and the concerned staff may be given two years time from the date of promotion to qualify the prescribed typewriting test and if they fail to qualify the typewriting test within this period, they will be liable to be reverted.

This circular letter also shows that on promotion from Group 'D' to Group 'C', typing test was must, and moreover when a Junior Clerk is to be promoted as Senior Clerk against L.D.C.E. quota, qualifying the typing test is also essential and when the applicants failed to qualify the typing test, they would be reverted, and again the same circular letter was repeated in the circular letter dated 20.08.1997 (annexure CA-4). Hence, we are of the opinion that this circular letter established that earlier to 20.08.1997, the Railway Board provided that qualifying the typing test is must when a candidate is promoted from Group 'D' to Group 'C'. It has only been provided that

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such candidate is required to qualify the typing test within a period of two years from the date of promotion. This typing test is must when a Junior Clerk is to be promoted to the post of Senior Clerk.

9. Learned counsel for the applicants also argued that qualifying the typing test was required only when an employee is promoted from Group 'D' to Group 'C' but thereafter employee is not required to qualify the typing test when he will appear in the examination for further promotion. As we have stated above that the circular dated 07.04.1994 specifically provides that for all promotions from Group 'D' to Group 'C' in the ministerial cadre and from Clerks to Senior Clerks against LDCE quota, the candidates shall have to qualify the typing test and it was existing from the year 1994 hence this contention of the applicants is not justified that for the first time this rule was introduced in the year 1997 vide circular dated 20.08.1997. In the year 1994 also, same rule was existing and in view of this rule also, an employee will have to qualify the typing test when promoted from Group 'D' to Group 'C' in all the ministerial cadre, and the applicants were promoted from Group 'D' to Group 'C' in the ministerial cadre as Junior Clerk hence the applicants were also required to qualify the typing test as per circular



letter dated 20.08.1997 but an argument was advanced on behalf of the applicant that this provision was made in the year 1997 but it was existing since 07.04.1994 when a circular letter was issued by the Railway Board. But the correct facts could not be placed before the Hon'ble High Court at the time of passing the Judgment. The O.A. was also filed on behalf of the applicants seeking exemption from typing test but the O.A. was dismissed by the Tribunal. However, the Hon'ble High Court disposed of the Writ Petition at the admission stage on the basis of contentions of learned counsel for the parties, and the circular dated 07.04.1994 could not be brought to the notice of the Hon'ble High Court that this provision is existing from earlier to 1997. Moreover, the Hon'ble High Court provided that the case of promotion of the applicants may be considered according to the vacancies existing in the relevant year, and if the vacancy occurred earlier to 1997, then exemption may be granted. It was also held by the Hon'ble High Court that the notification dated 20.08.1997 will not operate retrospectively but it is prospective in nature, and considering the directions of the Hon'ble High Court, the respondents exempted the applicants from typing test as Junior Clerk and in pursuance of directions of the Hon'ble High Court, the respondents regularised the services of the applicants.

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But this exemption was not granted to the applicants permanently and this exemption shall not be available to the applicants while they will have to appear in the promotion examination from Junior Clerk to Senior Clerk, or the Head Clerk. In all circumstances, the applicants will have to qualify the typing test whether to be considered for promotion as Senior Clerk or Head Clerk because it has been specifically provided in the circular letter dated 07.04.1994 that from Clerk to Senior Clerk against LDCE quota an employee will have to qualify the typing test and in the notification dated 20.08.1997, same provision has been made. We disagree with this argument of learned counsel for the applicants that the applicants had been exempted by the respondents as per direction of the Hon'ble High Court and they have been exempted permanently to qualify the typing test and in future the applicants cannot be compelled to qualify the typing test but it is against the above mentioned circular letters.

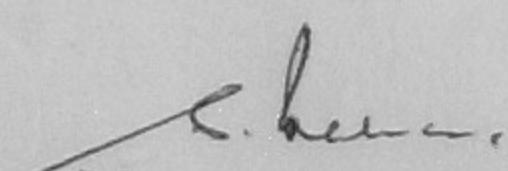
When the respondents considered the directions of the Hon'ble High Court and exempted the ~~Hon'ble High Court~~ ^{applicants} from qualifying the typing test for one time and it has been specifically mentioned in the Order by the respondents that this exemption is granted to the applicants at one time and it will not be applicable subsequently for higher promotions. As is the rule of the respondents, the

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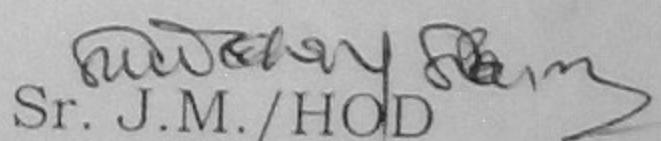
applicants will have to qualify the typing test and they cannot be exempted.

10. For the reasons mentioned above, we are of the opinion that as per rules of the Railways, existing from the year 1994 and repeated the same in the year 1997, the applicants were required to qualify the Typing Test for promotion from Junior Clerk to Senior Clerk, and as Head Clerk. In pursuance of directions of the Hon'ble High Court, one time exemption was granted to the applicants and when the applicants were promoted from Group 'D' to Group 'C' then exemption was granted and they were regularised on the post of Junior Clerk but the exemption was not granted to the applicants forever, and they were not exempted to appear in the examination for the post of Senior Clerk and Head Clerk without qualifying the typing test. As the applicants had not qualified the typing test hence no direction can be issued to the respondents to permit them to appear in further promotional tests. O.A. lacks merits and is liable to be dismissed.

11. O.A. is dismissed. No cost.


Member - A

/M.M/


Sr. J.M./HOD