

OPEN COURT

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH  
ALLAHABAD**

( THIS THE 29<sup>th</sup> DAY OF MAY, 2009 )

PRESENT :

**HON'BLE MR. JUSTICE A. K. YOG, MEMBER-J**  
**HON'BLE MRS. MANJULIKA GAUTAM, MEMBER-A**

**ORIGINAL APPLICATION NO. 734 OF 2006**  
( U/s, 19 Administrative Tribunal Act.1985 )

1. Indrajeet, Son of Late Ramdeo,
2. Habibullah, Son of Late Gabbu,  
R/o both are presently posted as Junior Clerk  
In the office of Deputy Materials Manager/Depot, North  
Eastern Railway, Gorakhpur.

.....Applicants

By Advocate : Shri R.G. Tripathi

Versus

1. The General Manager,  
North Eastern Railway,  
Gorakhpur.
2. The Controller of Stores,  
North Eastern Railway,  
Gorakhpur.
3. Chief Personnel Officer,  
North Eastern Railway,  
Gorakhpur.

..... Respondents

By Advocate : Shri Devendra Pratap Singh

**ORDER**

(DELIVERED BY: JUSTICE A. K. YOG- MEMBER-JUDICIAL)

1. Heard Shri Ram Gopal Tripathi, Advocate on behalf of the applicant and Shri Devendra Pratap Singh, Advocate representing the respondents. Perused the pleadings and the documents on record. To appreciate the controversy/issues raised in this OA, it is desirable to give a brief factual matrix of the case.



2. Both the applicants were initially engaged/appointed as Khalasi (Group 'D') in North Eastern Railway, Gorakhpur. They are allowed to continue and thereafter possessing requisite qualifications and eligibility conditions. According to the applicant, vacancies on the post of Junior Clerk in Grade 'C' fell vacant on 31.03.1997. As per notification dated 20.08.1997; examination was conducted/held on 08.03.1998 and the names of the candidates declared successful (including that of the applicants) were notified on 29.05.1998, Annexure A-3/compilation-II. The names of the applicants are shown at serial no.1 and 2 in the said notification. It appears that respondents authorities issued another notification dated 20.08.1997, Annexure A-2/compilation-II whereby it was provided that persons promoted from Group 'D' to Group 'C' in Clerk Pay Scale of Rs.950-1500 which had fallen vacant upto 31.03.1997; should possess proficiency in typing (as prescribed in the said notification). The said notification further provided that employee in question should also indicate whether he/she is willing to appear for typing test that he/she desires to acquire said notification within two years. It appears that candidates (including the applicants) were declared successful; as per notification dated 29.05.1998 to satisfy eligibility/proficiency in typing as per notification dated 20.08.1997, Annexure-2/Compilation-II. One of the candidates declared successful namely Jai Prakash, Nagesh and Ramphal Prasad shown at serial no.5, 6 and 7 in the said notification, being aggrieved filed OA No.268 of 2005 (Three Others Versus U.O.I. and Others) which was dismissed by the Tribunal vide order dated 2.9.2005. Being



in that OA filed Civil Misc. Writ petition No.65560/05, Jai Prakash and Others Vs. Central Administrative Tribunal, Allahabad Bench, and Ors., Annexure-9/compilation-II. For convenience relevant extract of the said order reads:-

*".....We have considered the rival submission made by learned counsel for the parties and perused the record.*

*In Y.V. Rangaiah & Ors. Vs. J. Sreenivasa Rao & Ors, AIR 1983 SC 852; A.A. Calton Vs. The Director of Education & Anr., AIR 1983 SC 1143; P. Gyaneshwas Rao & Ors. Vs. State of Andhra Pradesh & Ors., AIR 1988 SC 2068; P. Mahendran & Ors. Vs. State of Karnataka & Ors., AIR 1990 SC 405; N. T. Devin Katti etc. Vs. Karnataka Public Service Commission & Ors., AIR 1990 SC 1233 & Ram Sewak Prasad Vs. State of U.P. & Ors., AIR 1991 SC 1818, the Hon'ble Apex Court has held that in a case of promotion, vacancy is to be filled up as law prevailing on the date the vacancies occurred. In the instant case the vacancy is required to be filled up as per the law existing on the date the vacancy occurred for the reason that statutory Rule or Government Order is always prospective in nature unless it is expressly or by necessary implication made to have retrospective effect.*

*In view of the above, as the notification-dated 20.08.1997 does not operate retrospectively, the issue requires to be examined as on what date the vacancy occurred and then to proceed in accordance with law. In case, the vacancy had occurred prior to the date of issuance of the said notification, the respondents cannot insist for passing the typing test but if the vacancy occurred subsequent to the same, the judgment and order of the Tribunal does not require any interference.*

*In view of the above, we dispose of this writ petition directing the respondents to reconsider the whole case after determining the date on which the vacancy occurred and pass orders on applications for exemption from typing test. The petition stands disposed modifying the judgment and order of the learned Tribunal dated 2<sup>nd</sup> September, 2005, to that effect....."*

3. From the record before us, it is clear that respondents in compliance to the above referred High Court order passed order dated 03.06.2006, Annexure A-11/compilation-II and M/s Jai Prakash and three others have been regularized extending exemption from typing proficiency. Learned counsel for the



applicant contends that the applicants (Indrajeet and Habibullah) are entitled to the same treatment as has been meted out by the respondent authorities to the candidates shown at serial No.5,6,7, and 8 in the notification dated 29.05.1998,Annexure-3/compilation-II and as per High Court order, the applicant should not be treated different only on the ground that they have not approached Tribunal/High Court. In support of this contention, reliance is placed upon AIR 1979 SC 765, State of Kerala Vs. Km. T.P. Rosana and 1997(2)SCC 1, 1982 UPLBEC 480 (Km. Sneh Deep Vs. State of U.P. & Ors.)

4. On the other hand learned counsel for the respondent has endeavored to persuade us that the applicants are not entitled to the benefit of High Court order (referred to above); the applicants failed in Typing test and the judgment/order passed by High Court in the case of Others-wherein relevant facts were not brought to the notice of High court, deserves to be ignored.

5. Having given due considerations to the respective contention of the parties, we are of the opinion, that the applicants cannot be treated differently in view of the 'ratio' laid down in the case of T.P. Rosana (Supra) and other cases relied upon by the Applicant.

6. The contention on behalf of the respondents that High Court judgment be ignored (on any ground whatsoever) cannot be accepted. Firstly, the respondent should have challenged the order before Apex Court if the respondents found that in High Court order they had failed to bring correct facts into the notice of Court



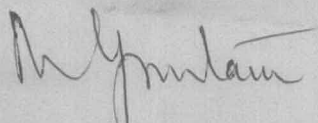


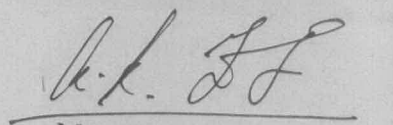
and/or they had been deprived of the opportunity to contest. Not having do so, High Court judgment has attained finality. In case Government and its Authorities under Article 12, Constitution of India, one does not expect that it shall extend equal treatment when all aggrieved persons, compelled to approach court for various reasons-beyond their control. Particularly in case of preparation of merit -list; if there is some illegality it has to be prepared afresh, and all concerned to be considered and given advantages of the same.

7. Accordingly, we find that orders dated 8.6.2006/Annexure-12, 18.06.1998/Annexure-4, 14.9.2000/Annexure-5 and 22.05.2000/Annexure-6 cannot be sustained and are, accordingly, set aside, with direction to the respondents to consider the Applicants and all other persons, (who are similarly situated as the applicants), to be considered and treated similarly as Jai Prakash, Nagendra Nath, Jai Singh and Ramphal Prasad and others as per order dated 03.06.2006 (Annexure-11-Compilation-II) and should not be compelled to rush to Tribunal/Court.

8. OA stands allowed with the above directions/observations.

No Costs.

  
Member-A

  
Member-J

/ns/