

Open Court

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD  
BENCH, ALLAHABAD

(This the 17<sup>th</sup> Day of April, 2012)

Hon'ble Mr. Shashi Prakash –AM

Original Application No.844 of 2006  
(U/S I9, Administrative Tribunal Act, 1985)

Smt. Madhubala Sharma, wife of Sri R.K. Sharma Lower Division Clerk, L.R.G. Sub Division Gorakhpur, R/o House No.160 Jail Road, Shahpur Near Bengali School Post Geeta Vatika Gorakhpur.

..... Applicant

By Advocate: Shri S.K. Om

Versus

1. Union of India, Secretary Ministry of Water Resources Shram Shakti Bhawan, New Delhi.
2. Central Water Commission, Sewa Bhawan R.K. Puram, New Delhi, through its Chairman.
3. Director (M&A) Office of Chief Engineer Upper Ganga Basin Organization, C.W.C. Jahanwi Sadan, 21/496 Indiranagar Lucknow.
4. Under Secretary Central Water Commission, Government of India Sewa Bhawan R.K. Puram, New Delhi.
5. Superintending engineer (Co-ordination) office of Chief Engineer Upper Ganga Basin Organization, C.W.C. Jahanwi Sadan, 21/496 Indiranagar Lucknow.
6. Executive Engineer, Middle Ganga Division-I, Jal Tarang Bhawan Pratap Bagh Aliganj, Lucknow.

..... Respondents

By Advocate: Shri Anil Dwivedi

6

## ORDER

In the present O.A., the applicant is seeking among others the following relief/s:-

- "(i) issue an order or direction quashing the office orders dated 7<sup>th</sup> March 2005 issued by Head Quarter C.W.C. new Delhi, order dated 28th March 2005 issued by Superintending Engineer (Coordination) office of Chief Engineer Upper Ganga Basin Organization C.W.C. Lucknow, order dated 23 April 2005 passed by Executive Middle Ganga Division I C.W.C. Lucknow and order dated 19<sup>th</sup> May 2006 passed by Under Secretary C.W.C. Government of India New Delhi (Annexure 9 and 10, II, I3 to the original application compilation I respectively)
- (ii) issue an order or direction directing the respondents not to recover any amount from the salary of the applicant much less the amounts paid to the applicant towards annual increments w.e.f. 1.8.1996 to 29.4.2004.
- (iii) issue an order or direction directing respondents not to reduced and fixed basic salary of the applicant at Rs.3050 as on 20<sup>th</sup> April 2004 as ordered by the Executive Engineer Middle Ganga Division I C.W.C. Lucknow by his order dated 23<sup>rd</sup> April 2005 (Annexure No.II compilation II)."

2. The father of the applicant, who was working as Junior Engineer in the Central Water Commission died on 12.04.1993 while in service. On the death of her father, the applicant submitted application for her appointment against a suitable post on compassionate ground in Uttar Pradesh. By the appointment letter dated 25.7.1995, the applicant was appointed on compassionate ground on regular basis with the condition that appointment of the applicant is subject to passing the type test at the speed of 30wps within a year from the date of joining. In pursuance to the

5

appointment letter, the applicant joined as LDC on 09.08.1995 in the Office of Chief Engineer Upper Ganga Basin C.W.C. Lucknow. Before expiry of one year period in terms of Clause 2(iv) of the terms and conditions of the appointment letter of the applicant, the applicant was called by the Superintending Engineer (co-ordination) in the office of the Chief Engineer Upper Ganga Basin C.W.C. Lucknow to appear in a departmental type test. In the type test the applicant secured speed of 34wps, which was little more than the required speed as per the condition of the appointment order. Subsequent to passing of the type test by the applicant, she was allowed yearly increment w.e.f. 1.8.1996 in the scale of 950 to 1500/-.

3. A seniority list was circulated by the Under Secretary, C.W.C., Head Office, New Delhi, which showed the status of the applicant as temporary employee and placed her at lower position than many, who had joined much after the joining of the applicant. Against the alleged incorrect entries in the aforesaid seniority list, the applicant submitted a representation on 4.9.2003. In response to her representation, the applicant received a reply from the Section Engineer CWC, stating that as per the Government instruction, that LDCs appointed by promotion or otherwise including appointment of compassionate ground should pass the type test or examination conducted by Staff Selection Commission. As the applicant had not cleared any type test conducted by Staff Selection Commission (SSC), she was not eligible for confirmation in the grade of LDC. Accordingly, the representation was rejected. Along with order dated 28.10.2003, copy of the relevant extract of DOP&T letter dated 29<sup>th</sup> September 1992 as printed in Swamy's Establishment and Administration Compilation, were annexed, which laid down that the typing test for the purpose of these orders will be type tested conducted by SSC. Subsequently, the applicant submitted a fresh representation dated 22.12.2002 to the Chief Engineer H.R.M. C.W.C. New Delhi for

reconsideration of her case. On 4.12.2003, the Superintending Engineer, sent a communication to the Under Secretary CWC reiterating the position that as per terms and condition of the appointment letter of the applicant, she was required to pass typing test at the speed of 30 wps within one year from the date of her joining in service. There was no specific mention that she should qualify the typing test to be conducted by SSC. As per the terms and conditions of the appointment order, a typing test was conducted by Superintending Engineer (Co-ordination) in the office of Chief Engineer UGBO, where the applicant secured 34 wps and her result was communicated to CWC on 31.07.1996. It was again restated that after passing type test she was given annual increment (Annexure A-7).

4. By letter dated 02.04.2004, Director (M&A) CWC Upper Ganga Basin Organization, New Delhi directed the applicant to appear in type test, which was to be conducted on 29.04.2004 by the SSC. The applicant duly appeared in the type test on 29.04.2004 before SSC Allahabad and passed the test in first attempt. The result was conveyed to the concerned authority on 11.6.2004. Thereafter, the Director issued an office order declaring that the applicant has passed SSC type test.

5. On 7<sup>th</sup> March, 2005, Section Officer, CWC New Delhi, sent a communication requested the Superintending Engineer Lucknow to recover the amount already paid to the applicant on account of annual increment released in an illegal manner as she had not qualified the type test conducted by SSC. In compliance of this order, respondent No.5 issued an Office order directing to recover the amount paid by way of annual increment to the applicant prior to 29.04.2004 which was followed by another order passed by Executive Engineer dated 23.04.2005 stating that the applicant is entitled to receive a salary of only 3050/- w.e.f. 1.8.1996 to 20.4.2004 and the excess amount paid to her over and above

61

Rs.3050/- towards basic salary per month is liable to be recovered. On issuing of office order, the applicant submitted a representation on 08.04.2005 raising her objection against the recovery. In her representation the applicant drew the attention of the respondent No.3 to the fact that in the year 1996, she had cleared type test conducted by the then Superintendent Engineer (Co-ordination) UGBO Lucknow and it is on the basis of her clearing this type test, she was given annual increments. She also stated that in 2004 in the first attempt, she again cleared the type test conducted by SSC. She further stated that if the department had subjected her to the type test by SSC Allahabad at the initial stage itself, she would have cleared that test as she subsequently did in 2004 and therefore, she appealed for reconsideration of the order for recovery. The respondents did not consider her representation and rejected it by order dated 19.5.2006.

6. Shri S.K. Om, counsel for the applicant submitted that at no point of time before letter dated 28<sup>th</sup> October, 2004, the applicant was assigned to appear in a type test conducted by SSC. In fact, the Superintending Engineer, who was competent authority regarding appointment of applicant, himself conducted a test, wherein she was declared pass and the annual increment was released to her. Even the appointment letters issued in favour of the applicant, which mentioned that her appointment was subject to passing the type test at the speed of 30 wps did not anywhere mention that she had to clear a test to be conducted by SSC. In the circumstances, Counsel for the applicant argued that the instruction of the DOP&T requiring clearing of the type test to be conducted by SSC being not followed was totally due to fault of the organization and the applicant cannot be penalized on this account.. In fact, he stated, that the applicant cleared the test both at the departmental level and conducted by SSC goes to establish that she had the requisite qualification of the typing speed as was required under terms and conditions of her appointment. In such

situation, the recovery of the amount given as annual increment to her from 1996 to 2004 is illegal and arbitrary and against the principle of natural justice.

7. Learned counsel for the respondents stated that it is relevant to point out that the applicant was posted as LDC on temporary basis on compassionate ground on regular basis subject to having type test at the rate of 30 wps within one year from the date of joining the appointment. Counsel for the respondents further mentioning that the grievance of the applicant arose after publication of the seniority list, wherein she was shown as temporary employee and having not cleared type test, despite her claim that she had cleared the typing test conducted by Office of Respondent No.5 in 1996. The counsel argued that conducting of the typing test by respondent No.5 was not as per the instruction of DOP&T regarding passing of typing test and it is for this reason that the applicant was directed to appear in a typing test conducted by SSC and this was also the reason for withholding her increment already allowed to her and seeking recovery of the amounts paid as increment to the applicant. As the annual increment granted to the applicant were not as per instruction of the DOP&T regarding type test, the respondents were within the right to grant increment to the applicant only after she cleared the type test conducted by SSC and recover the amount which was wrongly paid to her since 1996 till her clearing the SSC type test.

8. Heard counsel for both the parties. It is seen from the pleadings that the condition upon which the impugned order has been passed by the respondent No.4 effecting recovery of increment given to the applicant from 1996 to 2004 is based upon the fact that the applicant had not cleared the typing test with the required speed as stated in the terms and conditions of her appointment. It is the contention of the respondents that as per the instruction of the DOP&T dated 29.9.1992, the LDCs, in

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order to be confirmed and draw other financial benefit, have to clear a typing test to be conducted by SSC within a prescribed period. In the instant case, the applicant was appointed on compassionate ground on a regular basis subject to her clearing the typing test at the speed of 30 wps. As per the pleadings, she cleared the typing test within one year. The appointment order of the applicant is totally silent with regard to agency/authority authorized to conduct the typing test in such cases. It is felt that since the applicant was required to clear the test within one year of her joining, the respondent No.5 conducted a departmental typing test in which the applicant appeared and passed with speed of 34 wps. As result of her passing the test, the respondent No.5, who was also her appointing authority released annual increment in her favour which was continued to be paid to her till 2004. The fact that the applicant had cleared the typing test conducted by the respondent No.5 was also duly communicated to the Head Quarter, CWC, New Delhi by letter dated 31.7.1996. In the background of the above facts, strangely enough, the seniority list of the LDC, which was brought out of the CWC, Headquarters, the status of the applicant was shown as temporary with specific mention that she had not cleared the type test. It appears that the seniority list was issued without taking cognizance of the communication dated 31.7.1996 sent by Respondent No.5 that the applicant had cleared the type test conducted by him in 1996. The reasons cited by the respondent No.4 for not taking cognizance of this communication is that the respondent No.5 was not competent to conduct the typing test in the light of the DOP&T instruction dated 29.09.1992 under which it was only the Staff Selection Commission, which is ~~the~~ authorised to conduct the type test for these categories of employees. Though, the applicant was made to appear in the test conducted by SSC in 2004, which she cleared in her first attempt, however, the respondents have argued that the fact of clearing the typing test conducted by the department by the applicant in 1996 does not entitle her to the financial benefits granted to her, which is liable for recovery.

82

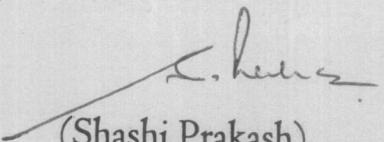
9. From the foregoing the facts, it is seen that issue relating to passing of type test of the applicant has been grossly mishandle by the department itself. The applicant cannot be faulted on this count. She appeared in the typing test which was conducted by the department and passed the same in the first attempt. After clearing the typing test the annual increment was released in her favour by the respondent No.5 and if the aforesaid typing test conducted by the respondent No.5 was in violation of the instruction issued by DOP&T requiring passing of type test conducted by SSC, the blame in this regard squarely lies on the shoulders of the respondent No.5 and the applicant cannot be penalized for that. If the increment was erroneously released to applicant having regard to her not having cleared a type test conducted by SSC, it was totally due to mistake on the part of the respondent No.5 and not due to any short coming/fraud or misrepresentation on the part of the applicant. Therefore, merely relying on this technical ground for effecting recovery in the case appears to be wholly misplaced. In a similar <sup>nature of</sup> case, the Apex Court granting relief "against recovery of excess payment of emoluments/allowances if, the excess amount was not paid on account of any misrepresentation or fraud on the part of the employee, and if such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order, which is subsequently found to be erroneous." (Syed Abdul Qadir and others v. State of Bihar and others 2009(3) Supreme Court Cases 475). In the instant case, the Apex Court also clarified that the 'relief of recovery of excess payment is granted not because an employee has any right but because the Court exercises its equity jurisdiction so as to avoid hardship to an employee who is not at fault.'

10. In the instant case, it is clear that it is the respondents who are to blame for not following the instruction of the DOP&T regarding

61

conducting of typing test for LDC's. The applicant had no role in the matter. Moreover, the error has been detected and acted upon only in the year 2004 i.e. after a lapse of long 7 years.

**11.** Having regard to the foregoing facts and circumstances, I feel that the order of recovery of the amount paid as annual increment to the applicant from 1996 to 2004 is contrary to settled principles, as laid down by the Apex Court in various pronouncements including the citation mention in the previous para in such cases. Accordingly, the impugned order dated 19.05.2006 issued by under Secretary CWC, Government of India by which order for recovery has been made is set aside. No costs.

  
(Shashi Prakash)

Member-A

Sushil