

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

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O.A. No. 482 of 1987
~~KAXXN6.~~

DATE OF DECISION 27-8-1993

Mrs. Omana. T. Varghese Petitioner

Shri Girish Patel Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

Shri Akil Kureshi Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. N.B. Patel

Vice-Chairman

The Hon'ble Mr. V. Radhakrishnan

Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

No

(12)

Mrs. Omana. T. Varghese,
Jr. Stenographer,
Space Applications Centre,
Ahmedabad - 380 053

..... Applicant

Shri Girish Patel

..... Advocate

Versus

1. Union of India through
The Secretary,
Deptt. of Space, ISRO,
F- Block, Cauvery Bhavan,
Bangalore - 560 009.
 2. Director,
Space Applications Centre,
Ahmedabad - 380 053.
 3. Smt. Santha. S. Rajan,
 4. Shri C.U. Chauhan,
 5. Shri N.G. Nair,
 6. Smt. T. Sabastian,
 7. Smt. Rama Sreenivasan,
- No. 3 to 7
C/o Space Applications Centre,
Ahmedabad - 380 053.

..... Respondents

Shri Akil Kureshi

..... Advocate

J U D G M E N T

IN

O.A. 482 of 1987

Date:- 27-8-1993

Per Hon'ble

Mr. N.B. Patel

Vice-Chairman.

The applicant is an employee of the Space Applications Centre, Ahmedabad, having joined service in the said organisation as a typist in 1973. She was

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promoted to the post of Junior Stenographer and had been working as such till the date of the filing of the application on 6-10-1987. The next promotional post for the applicant from the post of Junior Stenographer is the post of Stenographer and the post of Stenographer is filled-in, in the ratio of 3:1, three posts being earmarked for promotion from among Junior Stenographers on the basis of seniority, subject to rejection of those who are found unfit, and one post is filled-in on the basis of merit by taking a competitive examination of all those Junior Stenographers who offer themselves for that such examination. It is said on the basis of seniority, Junior Stenographers become eligible for consideration for promotion after completion of 3 years of service as such. The applicant, therefore, became eligible for consideration for promotion, on the basis of seniority, in 1980. Even for promotion on seniority basis, one is required to appear at a typing test which is held just to ascertain whether the concerned person has attained a speed of 50 w.p.m. in typing. Those who are found not to have attained 50 w.p.m. speed in typing, are treated as unfit for promotion and hence such persons, even though they may be senior to others who are found to have attained 50 w.p.m. speed in typing, are not promoted to the post of Stenographers. The applicant states, and there is no dispute about it, that she had appeared at the typing test in the year 1984 but she had failed to clear the test and, therefore, she was not promoted to the post of Stenographer pursuant to the test held in 1984. In other words, in the test held in 1984, the applicant was found to have less than 50 w.p.m.

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speed in typing. After 1984, typing tests were held in 1985 and 1987. The applicant's case is that she was not informed about the holding of the tests, both in 1985 (September, 1985) and 1987 (31-1-1987), and she did not know about the holding of the tests in the said two years and, therefore, she could not appear at the test. The applicant has not disclosed in her application as to when she had come to know about the test held in September, 1985. However, she has asserted that she had come to know about the test, held on 31-1-87, for the first time after a panel of candidates selected for promotion to the post of Stenographers on the basis of seniority-cum-suitability test was published in June, 1987. According to the applicant, she then made enquiries in the matter and learnt that the stand of the respondent No.2 Office was that the Department was not bound to inform the candidates individually of the date, on which the test was scheduled to take place, and a general notice on the notice board of the office was duly placed and there was nothing wrong in informing the candidates of the date of the holding of the test by a general notice. The applicant states that she was not aware of any general notice and it was, therefore, that she could not appear at the test held on 31-1-87. The applicant's version is that, till 1984, all eligible candidates were informed about the date of the holding of the test by individual notices and, if a change in this procedure was introduced in 1985 and issuance of individual notices was dispensed with, it was illegal. The applicant's case is that by introducing the practice of notifying the date of the

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test only by a notice displayed on the notice board, her being considered for the applicant was deprived of / right of / promotion.

The applicant has averred that, after the publication of the panel in June, 1987, she had represented to the authorities by letters dated 13-8-87 and 24-8-87 and requested them to give her chance for appearing at the test and to promote her to the post of Stenographer, if she cleared the test. The applicant says that, despite this demand made by her, she was not given an opportunity to appear at the test and hence she was constrained to approach the Tribunal by filing the present application. The first relief which is claimed by the applicant is that the panel dated 23-6-87 (Annexure A-9) be quashed and set aside and the respondents be restrained from acting upon the said panel. The applicant has then asked for a direction to the respondents to hold the test afresh after informing each and every eligible candidate and to prepare a fresh panel for promotion to the post of Stenographers based on the result of the fresh test.

2. The applicant has also asked for a direction to the respondents to promote her to the post of Stenographer w.e.f. 1983 and, if not from 1983, from any subsequent date as and when vacancies to the post of Stenographers were filled-up. The applicant has branded the act of the respondents in not individually informing her about the test held on 31-1-87 and thereby of / considering her for promotion on the basis of / seniority as arbitrary, illegal and void. It may be noted that the applicant has subsequently amended her application, pointing out as to why, according to her, it was at least advisable for the

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Department to give individual intimation to all eligible candidates of the date of the holding of the test. It is also said by way of amendment that the other candidates were in fact informed individually while the applicant was not informed individually. It is also mentioned by way of amendment in the application that individual notices were given to all candidates including the applicant prior to 1985 and also after 1987. In other words, the applicant has pointed out that individual notices were given for the test held in 1984 and again that practice was resumed for the tests held after 31-1-87.

3. It may be noted that the learned advocates, appearing for the parties in this case, brought to the notice of the Tribunal that during the pendency of this application the next test, after the test held on 31-1-87, was held on 6-4-88 and the applicant was declared to have cleared the test on 12-4-88 and pursuant to that she has been regularly promoted to the post of Stenographer w.e.f. 13-7-1988.

4. It is not clear as to why in the application the applicant has claimed a relief directing the respondents to promote the applicant to the post of Stenographer w.e.f. 1983. It may be noted that the applicant had not made any grievance about the test held in September, 1985 even though it would be legitimate to presume that she must have come to know about the non-inclusion of her name in the panel, prepared on the basis of the test held in September, 1985. The applicant must, therefore, be confined to ^{her} claim to be promoted to the post of Stenographer after the test held on 31-1-1987. It also requires to be noted here that during the pendency of the application

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the applicant has impleaded her five colleagues as respondents No. 3 to 7 who seem to have appeared at the test held on 31-1-87 and to have passed at ^{the} said test and consequently to have been promoted to the post of Stenographers even though the said respondents were junior to the applicant as Junior Stenographers.

5. The main contention of the contesting respondents i.e. U.O.I. and the Director, Space Applications Centre, Ahmedabad, against the application of the applicant is that, the respondents were not legally bound to give individual intimations to the eligible candidates about the date of the holding of the test in January, 1987. These respondents have contended that they had informed all the eligible candidates about the date of the holding of the test by displaying a notice on the ~~general~~ notice board and their act of announcing the date of test by general notice cannot be held to be illegal. In the reply it is stated that, the respondent organisation has its office in different buildings spread over an area of about 90 acres and notice boards are provided in the buildings/area, wherever required, for display of general circulars for the information of the staff members. It is also stated that in the building where the applicant was working at the relevant time, there was a notice board and that a general notice about the test held in January, 1987 was displayed on this notice board also. The respondents have stated that at the test held in September, 1985 a total number of 19 candidates were required to be considered and only 3 out of them, including the applicant, had remained absent at the test. So far as the 1987 test is concerned, it is said that the same

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procedure of displaying a general notice on the notice board was followed and several candidates had appeared at the said test. The respondents have admitted that till 1984 they were following the practice of giving individual notices. The departure from this practice in 1985 and for the test held in January, 1987, is explained by the respondents on the ground that, prior to 1985 the test was not held every year but it was held only when there were vacancies to be filled-up but by the Office Memorandum dated 5-6-84 it was decided to hold the test every year irrespective of the existence or non-existence of vacancies and since it was decided to hold the test every year, the practice of giving individual intimations was dispensed with and the practice of putting up a general notice on the notice board was introduced. The respondents have explained as to why the practice of giving individual notices was resumed from 1988 on the ground that again there was a change in the decision ~~at~~ by O.M. dated 24-12-87 to the effect that tests would be held not every year but only when it was necessary to hold the same in view of the arising of the vacancies. It is said that when tests were decided to be held every year, there was no need for giving individual notices to the candidates. So far as the test held in September, 1985 is concerned, it is stated that originally that test was scheduled to be held in July, 1985 but was postponed to September, 1985 at the request of the staff members themselves. Similarly it is said that the next test (after the September, 1985 test) was scheduled to take place in December, 1986 but it was ultimately postponed to 31-1-87 at the request of the

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staff members themselves. So far as this test is concerned, general notices were issued on 27-10-86, 24-11-86 and 13-1-87 as the dates of the test, were changed from time to time at the request of the staff members and ultimately it was held on 31-1-87. The respondents have argued that in these circumstances it was not possible to believe that the applicant was not aware of the date of the test held in January, 1987 but have attributed the applicant's non-appearance at the said test to her wilful absence. The respondents have prayed that the application be dismissed with costs.

6. Since the applicant had not made any timely grievance about the test held in September, 1985, we may confine ourselves only to the test held on 31-1-87. The contention of the applicant is that it was necessary for the Department to inform all eligible candidates individually about the date on which the test was scheduled to be held. The question is whether there was any legal obligation on the part of the Department to give individual intimations about the date of the test to all eligible candidates. We do not find any authority for holding that there was any legal obligation on the part of the Department to give individual intimation to all eligible candidates. Whether to give individual intimations or to give a general notice to be displayed on the notice boards is, in our opinion, purely an administrative matter to be decided by the Department bearing in mind several factors such as the number of candidates eligible to appear at the test, the efficacy of the method of notifying dates on the notice board, looking to the past practices of the Department etc.

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At one stage the applicant has expressed a doubt, whether even a general notice was displayed on the ^{the} notice board kept in / building where she was working. However, in this connection we prefer to rely on the reply-affidavit filed on behalf of the Department to the effect that a general notice was displayed on all notice boards. This is so because we find from Annexure A-9 which is the panel dated 23-6-87 of the candidates for promotion to the post of Stenographers ~~This panel shows~~ that 12 persons were put on the panel and it is un-believable that even a general notice might not have been displayed on the notice board and yet at least 12 persons had appeared at the test. It is also found from Annexure A-8 which is the reply dated 28-8-87 to the applicant's representation, Annexure A-6 which is dated 13-8-87 that, so far as the test held on 31-1-87 is concerned, general circulars about the date of the test were issued thrice on 27-10-86, 24-11-86 and lastly on 13-1-87 as there were demands from the staff members themselves, through their union, to change the date of the examination. It was ultimately by the circular dated 13-1-87 that the date 31-1-87 was notified as the date for holding the test. In the circumstances it is just not believable that even a general notice was not issued about the test to be held on 31-1-87 as suggested by the applicant in a half-hearted manner at some stage during these proceedings. The applicant has also tried to challenge by producing a copy of the circular dated 13-1-87 that, even for the test held on 31-1-87, individual notices were given to candidates other than herself. In this connection the applicant has produced

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at page 11 a copy of the general circular, at the bottom of which it is stated "To all concerned (through notice boards)". Below these words, the words "Mrs. Suresh Ramani" are written and the suggestion is that this notice was individually also given to one Mrs. Suresh Ramani.

However, no affidavit of Mrs. Suresh Ramani is filed by the applicant to show that she was given an individual notice. At page 20 the applicant has filed an affidavit of one Mrs. S. Francis on 28-2-91, wherein Mrs. Francis has referred to the practice of issuance of individual call letters prior to 1985 (which is an admitted fact) and has then said that this practice was continued after 1985 also. However, this averment in the affidavit runs counter to the case of the applicant as pleaded in the application wherein she has posed a challenge^{only} to the non-issuance of individual notices to candidates for the two tests held in September, 1985 and January, 1987. Mrs. Francis has also stated in her affidavit that she was eligible to appear at the September, 1985 test but had not received any individual call letter in that behalf. However, she has then added that, on the day previous to the date of the test held in September, 1985, she was orally informed by "Establishment Department" about the test to be held on the next day and she had appeared in the test and passed it. Mr. Patel on behalf of the applicant argued^{that,} even for the 1985 test individual intimations, albeit oral, were given to candidates other than the applicant and thus she was discriminated against. The affidavit of Mrs. Francis on the point is too vague to be accepted because she does not say as to which person had informed her of the date of the test but states only in a general

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manner that she was informed by the Establishment Department "on previous date". It is not clear whether, according to her, she was officially informed orally by the Establishment Department. Then at page 22 we have the affidavit of one Mr. N.S. Pillai which is practically on the same lines as the affidavit of Mrs. S. Francis. It is pertinent to note that he does not say whether individual notices were given about the date of the test held in January, 1987. The applicant has filed an additional affidavit on 19-4-93 stating that, Mrs. Suresh Ramani and Mr. N.S. Pillai were individually informed about the 1987 test. It is seen that Mr. Pillai himself does not specifically so state and there is no affidavit of Mrs. Suresh Ramani to say that she was individually informed about 31-1-87 being the date of the test. The possibility that the name of Mrs. Suresh Ramani was unauthorisedly written on the copy of the circular dated 13-1-87 (page 11) cannot be ruled out. On the whole, we find that the date of the test held in January, 1987 was notified only on the notice board and not individually. However, we find that the mere fact that individual notices were not given, cannot have the result of vitiating the entire test as contended by the applicant in her application. We find that there is no illegality per se in informing the candidates about the date of the test by general notice displayed on the notice board if such general notice has reached all eligible persons.

7. At the same time we feel that it is advisable, especially in the circumstances of a case like the present one, to inform all eligible candidates individually about the date of the test and to call upon them to appear at the test with a rider that if they do not appear at the



test, they would be deemed to be unfit for promotion. This need not necessarily be done by sending a separate, individual call letter to each and every eligible candidate. Even if a general notice is issued, it has to be ensured that it comes to the notice of every eligible person. If signatures of all eligible persons are obtained on such a general notice or circular in token of their having noted its contents, no controversy of the type which has arisen in this case, would arise.

8. The question involved in the matter is a question of an important and valuable right of being considered for promotion on the basis of seniority subject to rejection of unfit persons. The promotion to the post of Stenographer from the post of Junior Stenographer, in the quota claimed by the applicant, is mainly based on seniority and a senior person, vis-a-vis his junior person, is liable to be rejected only if he is found to be unfit. In the present case the test of 50 w.p.m. in typing was devised only to weed out unfit persons. If any person was within the zone of consideration on the basis of his seniority, he could be rejected only on the ground of his being unfit for promotion. Not considering the case of a senior person, while considering persons junior to him, will result in the deprivation of the important right of the senior person to be considered for promotion. This right of a senior person creates a corresponding duty in the employer to consider the case of all eligible senior persons. In the facts of the present case where a typing test was held as a part of the consideration process, it was the duty of (actually and not merely constructively or inferentially) the department to inform all eligible persons/about the date and venue of the test so as to discharge the duty of considering all eligible persons except those who abstain



from the test deliberately.

9. There is no positive proof with the department to actually show that the applicant was aware of the date and did not deliberately appear at it. Furthermore, it is an undisputed position that after the declaration of the panel in June, 1987 (Annexure A-9), the applicant applied (Annexure A-6) on 13-8-87 for being given a chance to appear at the test to prove her fitness. In this application/representation the applicant stated that she had learnt about the holding of the test only after the declaration of the panel dated 23-6-87. She again reiterated her demand by another representation, being Annexure A-7 dated 24-8-87. The reply to this was given to the applicant by Annexure A-8 dated 28-8-87 stating that, since tests are held every year after the circular dated 5-6-84 (Annexure A-4), no individual notices are given and as the applicant had not appeared and cleared the test, her name could not be included in the panel. We find, in the circumstances of the case, that this was a highly legalistic and unduly bureaucratic way of dealing with the case of the applicant. It is possible that the applicant had not come across the general circular and had, therefore, not appeared at the test. The Administration would have lost nothing if the applicant was given a chance by holding a test for her to find out whether she possessed at least 50 w.p.m. speed in typing. This was not a case of a uniform question paper having been prepared for a large number of candidates so that if somebody was subsequently tested, others who had earlier appeared at the examination might be prejudiced.

10. However, though we find that, the department should have accepted the applicant's request made in Annexure A-6 and A-7, it is not possible to give any relief to the

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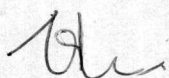
applicant in this case. The applicant has to blame herself for this unfortunate situation. In her application which was presented on 6-10-87, the applicant has nowhere asked for a final or interim relief requiring the concerned respondents to hold a test for her and to promote her to the post of Stenographer, if she was found to have a speed of at least 50 w.p.m. in typing. If the applicant had asked for an interim relief in such terms, the granting of such an interim relief would have been totally innocuous if the panel was not still started to be operated at that stage as appears to be the case. The applicant has straight away asked for promotion w.e.f. 1983 or thereafter, as if she was entitled to claim promotion without subjecting herself to any test. As already stated, the applicant appeared at the test held in 1988 and she has been promoted w.e.f. 13-7-88. There is no way to grant any relief to the applicant in the circumstances of this case where the applicant did not appear at the test till 6-4-88 and cleared it on 12-4-88. On the basis of her having cleared the test on 12-4-88, she is already promoted to the post of Stenographer and confirmed thereon w.e.f. 13-7-88. We have no means to find that in 1987 she possessed the required typing-speed which was, sine qua non for her promotion w.e.f. 1987.


11. In the result of the above discussion, the application must fail. Normally, the award of costs must abide ~~by~~ the result of the proceedings. However, we are constrained to observe that the facts and circumstances of this case call for a departure from this normal rule. As already observed, it was the duty of the department to see that intimation about the date of the holding of

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the test : reaches each eligible candidate, whether it be by a notice circulated individually to such persons or by issuance of individual call letters. There is no proof to show positively that the applicant was aware of the date of holding of the test and had deliberately abstained from appearing at it. She made two representations asking for arrangement being made for testing whether she possessed at least 50 w.p.m. in typing. It was unjust of the department not to accede to her request in view of the fact that the test to be held was not like a competitive test but a mere typing test to assess the speed of the concerned persons. The department was not to lose anything by arranging for a separate test for the applicant, whereas the applicant was likely to lose her important right of being considered for promotion. These being the circumstances of the case, we feel that the applicant must be awarded ^{costs} even though her application is being dismissed. We, therefore, dismiss the application but order the respondents to pay the applicant's costs which are quantified at Rs.750/-.

The respondents to bear their own costs.


(V. Radhakrishnan)
Member (A)


(N.B. Patel)
Vice-Chairman.