

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. NO. 456 of 1993.
~~XXXXXX~~

DATE OF DECISION 21-12-1995.

Smt. Sitaben Arunkumar Mehta Petitioner

Mr. S.S. Patel and Mr. M.S. Trivedi Advocate for the Petitioner (s)

Versus

Union of India and ors. Respondent

Mrs. P. Safaya Advocate for the Respondent (s)

CORAM

The Hon'ble Mr. K. Ramamoorthy : Member (A)

The Hon'ble Mr.

JUDGMENT

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

No

Date

Office Report

ORDER

29.11.95

At the joint request of the learned advocates,
the matter is adjourned to 6th December, 1995.

L

(K. Ramamoorthy)

Member (A)

npm

6.12.95

At the joint request of the learned advocates,
the matter is adjourned to 7th December, 1995.

L

(K. Ramamoorthy)

Member (A)

npm

7.12.95

At the joint request of the learned advocates,
the matter is adjourned to 14.12.1995.

L

(K. Ramamoorthy)

Member (A)

npm

HEARD LEARNED ADVOCATE FOR
THE APPLICANT & RESPONDENTS
JUDGEMENT RESERVED

L
(K. Ramamoorthy)
Member (A)

14-12-95

Judgement pronounced in open
Court.

L
(K. Ramamoorthy)
Member

Date	Office Report	ORDER
28.9.95		<p>Note No:18/95 for early hearing allowe.</p> <p>May be fixed for final hearing on 1st November,1995.</p> <p style="text-align: right;">(K.Ramamoorthy) Member(A)</p> <p>npm</p>
1.11.95		<p>At the joint request of the learned advocates, the matter is adjourned to 6th November,1995.</p> <p style="text-align: right;">(K.Ramamoorthy) Member(A)</p> <p>npm</p>
06-11-95.		<p>At the request of Mr.Akil Kureshi, adjourned to 21-11-1995.</p> <p style="text-align: right;">(K.Ramamoorthy) Member(A)</p> <p>ait.</p>
11,85		<p>At the request of Mrs.P.Safaya, the matter is adjourned to 27th November,1995.</p> <p style="text-align: right;">(K.Ramamoorthy) Member(A)</p> <p>npm</p>
11.95		<p>At the request of Mrs.P.Safaya, the matter is adjourned to 29th November,1995.</p> <p style="text-align: right;">(K.Ramamoorthy) Member(A)</p> <p>npm</p>

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Smt. Citaben Arunkumar Mehta Petitioner

Mr. S.S. Patel and Mr. M.S. Trivedi Advocate for the Petitioner (s)

Versus

Union of India and ors. Respondent

Mrs. P. Safaya Advocate for the Respondent (s)

CORAM

The Hon'ble Mr. K. Ramamoorthy : Member (A)

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JUDGMENT

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4. Whether it needs to be circulated to other Benches of the Tribunal ?

No

Smt.Gitaben Arunkumar Mehta,
8-A, Navrang Society,
Opposite, Bhairavnath Temple,
Maninagar,
Ahmedabad - 380 008.

..Applicant.

(Advocate : Mr.S.S.Patel and
Mr.M.S.Trivedi)

Versus

1. Union of India,
notice to be served through
Chief General Manager,
Telecom (Gujarat Circle),
Khanpur, Ahmedabad.

..Respondent.

(Advocate : Mrs.P.Safaya)

JUDGMENT

O.A.NO. 456 OF 1993.

Date : 21-12-1995.

Per : Hon'ble Mr.K.Ramamoorthy : Member (A)

The issue raised in this application relates to the entitlement of two advance increments as mentioned in the appointment letter on the candidate's passing the departmental confirmation test (aptitude test). The applicant has been appointed as a time scale clerk with the respondent and in the letter of appointment dated 20th February, 1982, it was stated as under :

"After appointment she is required to pass the departmental confirmation test (Aptitude test) within 4 years in six chances from the date of appointment. On passing the above test, she will be entitled for two advance increments, she will not be eligible for quasi permanency or confirmation till she passes the test. In case, the official/s fails to pass the above test within prescribed chances mentioned, her services will not be terminated but her future increment may be stopped as per D.G.'s commn.no. 69/9/80-SPB.I dated 30th August, 1980."

There was a second condition and this condition is also reproduced below as it has bearing on the contentions raised by the respondents.

"She is required to pass the typing test within two years as per rule, failing which she will not be allowed the annual increment as T.A. Clerk".

The fact that the applicant had not passed the test in six chances within 4 years is not in dispute. The applicant's case rests on the ground that the department had itself subsequently liberalised the conditions of the aptitude test and it has clarified in 1988 as under :

"Officials who failed to pass the confirmation examination within the stipulated period are required to pass the confirmation examination in paper 3 only in the 4th year and onwards".

It is the contention of the applicant that she had passed the examination in the 5th year by passing in the paper 3 examination and therefore, was entitled to the two advance increments referred to above. Her claim is also based on the fact that these two advance increments have also been given to other colleagues of her viz. J.T. Shah and Mrs. Pandya who had also failed to clear examination within first 4 years as mentioned in the appointment letter. While Mrs. Pandya had passed all the papers in the sixth year, at the 11th chance, Ms. J.T. Shah had cleared only paper 3. The respondents on ^{the} other hand have contended that the applicant had not cleared all the papers of the aptitude test therefore, was not entitled to the two advance increments. In her case, the matter was further aggravated by the fact that she has not cleared typing test also inspite of a number of chances given to her. Since, the non-clear of typing test, clearly meant that she was not even entitled to her normal increments, on that ground also, the respondents have stated that she is not entitled for any special increments.

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The counsel for the applicant and respondents were heard at length.

The facts about the applicant having cleared only paper 3 and that too in the 5th year and the fact that she has not cleared typing test are not in dispute. However, the applicant has also stated that the department themselves have allowed exemption from passing the typing test having completed 10 years as Telecom Clerk (vide Annexure-R/4). On that ground the present applicant of not having passed the typing test can no more be held against her.

The point which were have to be resolved in this particular case is the question as to whether the aptitude test and the typing test are to be considered as two separate issues.

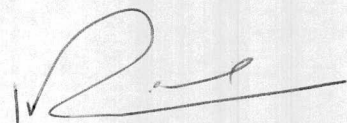
From a reading of the conditions as mentioned in the appointment letter in Annexure-A/1 (reproduced above), it is clear that these two events are separate. The two advanced increments are given on the clearance of aptitude test which the applicant could theoretically have deemed even at the very first attempt. Therefore, it has nothing to do with the normal increments. In this light the respondents have confused the issue by linking it with the applicant's passing the typing test. This linkage is not called for as per the wording of the appointment letter.

It is also clear that by virtue of the 1988 letter referred to earlier, the passing of paper 3 alone is insisted upon after a passage of 4 years for determining the question of passing aptitude test. This paper 3 has been admittedly cleared by the applicant. The fact also remains that another employee viz. J.T.Shah has also been given advanced increments on the basis of passing paper 3 only. On this ground, therefore, the claim of the applicant for grant of

2 increments on her passing the aptitude test in 1986 itself by clearing paper 3 is upheld. It is also to be noted that the applicant had passed all the other papers subsequently, while the other employee viz. Mr. Shah has not cleared paper 3 till 1988 and has not even appeared in the subsequent examination. It is also ruled that earning of this increment has nothing to do with the normal increments which becomes due only when the applicant passed the typing examination at that time. The question as to whether the applicant is entitled to exemption in view of her having completed 10 years is not the point involved in this application. Therefore, the Tribunal has nothing to say about that aspect of the matter in this case. In view of what is stated above, the application succeeds and it is noted that the applicant is entitled to two advanced increments in the year 1986 and onwards from the year she had cleared the paper 3 of the aptitude test.


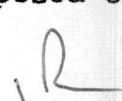
The application stands disposed of.

No order as to costs.



(K. Ramamoorthy)
Member(A)

ait.

Date	Office Report	ORDER
16.7.96		<p>Mr.M.S.Trivedi states that this matter is alike to CA/38/96. CA/38/96 is fixed on 26.7.96. This matter may be fixed for hearing on 26.7.96 so that both the matters can be heard together.</p> <p style="text-align: right;"> (K.Ramamoorthy) Member(A)</p> <p>npm</p>
26.7.96.		<p><u>M.A./465/93.</u></p> <p>M.A./465/93 is allowed. This will be the last extension of time. No more extension will be granted. M.A./465/93 stands disposed of.</p> <p style="text-align: right;"> (K.Ramamoorthy) Member(A)</p> <p>ait.</p>