

क.प्र. (प्रक्रिया) नियमावली के नियम 22 के अन्तर्गत नि: शुल्क प्रक्रिया

2/11

2/8

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR**

Original Application Nos.1 & 2 /2006

Date of decision: 04.07.2007

Hon'ble Mr. Kuldip Singh, Vice Chairman,

Hon'ble Mr. R.R. Bhandari, Administrative Member.

Bhagwan Singh S/o Shri Prathvi Singh, aged 21 years, Clerk in the office of Assistant Material Manager, North Western Railway, Abu Road, r/o No. 512 F Railway Colony, Abu Road, District Sirohi.

: Applicant in O.A. No.1/2006

Vijay Shankar, S/o Shri Bhera Ji aged 48 years, Clerk in the office of Assistant Material Manager, North Western Railway, Abu Road, r/o Railway Colony, Abu Road, District Sirohi.

: Applicant in O.A. No.2/2006

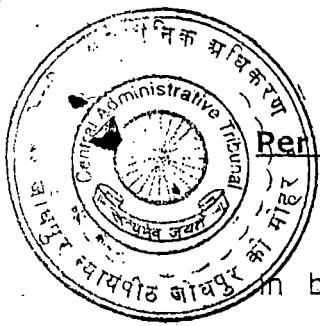
Rep. by Mr. Vijay Mehta : Counsel for the applicants in both OAs

Versus

1. Union of India, through the General Manager, North Western Railway, Jaipur.
2. Deputy Chief Material Manager, North Western Railway, Ajmer.
3. Assistant Material Manager, North Western Railway, Abu Road, District Sirohi.

: Respondents in both the OAs.

Rep. By Mr. Salil Trivedi : Counsel for the respondents in Both the OAs.



ORDER

Per Mr. Kuldip Singh, Vice Chairman.

Since the facts involved and the relief claimed are identical

in both these OAs they were heard together and are being disposed of by this common order.

**COMPARED &
CHECKED**

2/1

2. The facts are taken from O.A. No. 2/2006.

The applicant has filed this O.A seeking the following reliefs:

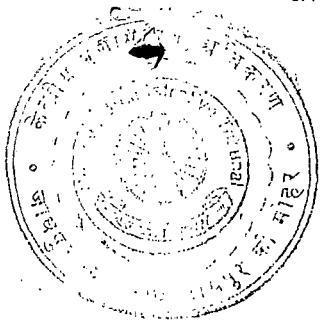
" that the impugned orders Annex. A/1 and Annex A/2 may kindly be quashed and the reversion of the applicant contained in Annex. A/1 be quashed. The respondents may kindly be restrained from reverting the applicant from Group C post of Clerk. In the meanwhile if the applicant is relieved, he may be kindly be ordered to be posted on Group C post with all consequential relief. Annex. A/2 may kindly be quashed. The respondents may kindly be directed to given more chance to appear in computer test and /or type test. Any other order, as deemed fit giving relief to the applicant may kindly be passed. Costs may also be awarded to the applicant."

The applicant was initially appointed to the post of Khalasi vide order dated 08/09/1980. Thereafter, he was provisionally promoted to the post of Clerk vide order dated 17.4.2003. He was required to pass type test within a period of two years in three attempts. As per the circulars issued by the respondents the applicant has to pass 25 words per minute in Hindi and 30 words per minute in English typewriting. The applicant had joined duties of the promoted post but could not qualify in the typing tests and hence he was reverted to Group D post. The applicant now submits that in similar circumstances, the respondents themselves relaxed the rules from time to time and gave one more opportunity to the individuals. The learned counsel for the applicant has also submitted that the Hon'ble High Court of Rajasthan at Jodhpur in one of the cases, while granting stay of reversion of the writ petitioner in D.B civil W.P No.5208/2003, directed the respondents to give further opportunity to pass type test. The learned counsel for the applicant has, therefore, prayed that this Tribunal can issue similar direction to the respondents to grant one more chance to the applicant. The learned counsel has also stated that in the past this Tribunal had also granted such relief.



3. The respondents are contesting the OA by filing a detailed reply. The learned counsel for the respondents submitted that the Hon'ble High Court while exercising its inherent powers directed the respondents to grant an opportunity to the petitioner before it and the Hon'ble High Court has not laid down any law to the effect that in such type of cases opportunity must be granted to the individuals. It is submitted that the authorities have conducted three tests in a span of two years and both the applicants have failed in all the three attempts. Therefore, he prayed that keeping in view the facts and circumstances of this case, no further opportunity need be granted to the applicants.

4. We have heard the learned counsel for both sides and carefully considered the rival contentions. We have also perused the interim order passed by the Hon'ble High Court of Rajasthan at Jodhpur in D.B civil W.P No.5208/2003, dated 16.09.2003. From the interim order it is clear that the same had been passed in the facts and circumstances of that case and the one more opportunity given was not by way of general rule. The learned counsel for the respondents brought to our notice the order dated 14.01.2004, of the Hon'ble High Court of Rajasthan in the above Writ Petition and the relevant portion reads as under:



" By considering the contentions and facts and circumstances of the case particularly keeping in view the fact that the petitioner (sic-respondent) was appointed on compassionate ground on death of her father, while in service and by the respondent's action she is sought to be reverted to a post lower than to one which she was employed, we deem it just and proper to dispose off this petition with the direction that the respondent shall hold the type test for the purpose of finding the eligibility of the petitioner to continue on the post as she has been appointed on compassionate ground by the respondents. If the petitioner passes the type-test. She would be continued on the original post, failing which she may be reverted back to class IV as per the orders passed by the respondents on 04.08.2002 and until actual reversion of the petitioner no recovery shall be made from her. "

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5. Admittedly, in this case, three opportunities have been given to the applicants in a period of two years and both the applicants have failed in all the three attempts. Hence no interference is called from this Tribunal with regard to the action of the respondents.

6. Before parting with these cases we may mention that as the Railway Board itself has earlier gave an opportunity to certain category of employees, we feel that in the interest of justice, it would be appropriate to direct the respondents to consider the case of the applicants if they make a representation and to decide the representation of the applicant for granting one more last opportunity to the applicants to pass the type test.

7. In view of the above, we direct both the applicants to make a comprehensive representation within a period of 15 days from today to the competent authority seeking one more last opportunity to qualify in the type test. The competent authority on receipt of such a representation shall consider the same and pass appropriate orders by taking into account the order passed by the Hon'ble High Court of Rajasthan at Jodhpur in DB Civil Writ Petition No. 5208/2003 dated 14/1/2004. However, we make it clear that the decision taken by the competent authority shall be binding on the applicants. OAs are ordered in the above terms.

Part II and III destroyed
in my presence on 26/12/2004
under the supervision of
Section Officer as per
recorded

Sd/-
[R.R.Bhandari]
Member(A)

CERTIFIED TRUE COPY

Dated 26/12/2004

Sd/-

[KULDIP SINGH]
VICE CHAIRMAN

Section Officer (Judicial)
Central Administrative Tribunal
Jodhpur Bench Jodhpur