

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA 618/97

Monday the 20th day of December, 1999

CORAM

HON'BLE MR A.M.SIVADAS, JUDICIAL MEMBER
HON'BLE MR G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

T.O.Wilson
S/o T.A.Ouseph
Clerk Grade-II
All India Radio
Trichur.

...Applicant.

(By advocate Mr M.R.Rajendran Nair)

Versus

1. The Director General
All India Radio
New Delhi.
2. The Station Engineer
All India Radio
Trichur.
3. Union of India represented by
Secretary to Government of India
Ministry of Information & Broadcasting
New Delhi. ...Respondents.

(By advocate Mr P.R.Ramachandra Menon)

The application having been heard on 20th December, 1999, the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR A.M.SIVADAS, JUDICIAL MEMBER

Applicant seeks to quash Annexure A-9, to declare that he is entitled to draw increments consequent to his passing the typewriting test conducted by the Department in 1992, that the increments drawn by him are not liable to be withdrawn and to direct the respondents to restore the increments withdrawn.

...2/-

2. Applicant is aggrieved by order No.7/9/95-S.II dated 14.3.97 issued by the Director on behalf of the first respondent informing that he will be entitled to get annual increments only after passing the typewriting test conducted by the Staff Selection Commission and that he will not get any arrears.

3. The applicant commenced his service as a Group D under the second respondent on 5.12.84. He was promoted as clerk Grade II in the scale of pay of Rs. 950-1500 with effect from 13-1-92. He was promoted in the 5% quota of educationally qualified Group D staff on seniority cum fitness basis. In the order of promotion it was stated that he would be on probation for a period of two years with effect from 13.1.92 and that he has to pass a typewriting test at a speed of 30 words per minute in English within 2 years from the respective dates failing which he would not be eligible to draw increments or for confirmation in the grade until he acquires the prescribed period. Thereafter the Department conducted the typewriting test on 15.2.92 and on 4.12.92. He took part in the typewriting test conducted on 4.12.92 and came out successful. On passing the typewriting test, he was granted increments with effect from 1.1.93. He successfully completed his probation. The second respondent issued a memorandum dated 31.1.94 saying that the internal check organisation South Zone has pointed out that the applicant who got promotion against 5% quota through departmental examination has not passed typewriting test conducted by Staff Selection Commission and hence it was decided to withdraw the annual

increments sanctioned to him in the grade of clerk Grade II and that he would draw minimum of the scale of clerk Grade II till such time he passes the requisite typewriting test. Subsequently the applicant was informed that annual increments drawn by him would be recovered in instalments. Aggrieved by the same, he approached this Bench of the Tribunal by filing OA 676/95. During the pendency of the said OA, the applicant appeared in the typewriting test conducted by the Staff Selection Commission and came out successful. The said OA was disposed of directing the respondents not to make any recovery and permitting the applicant to project his grievance before the first respondent through suitable representation. He accordingly made a representation. The representation was disposed of by A-9 order rejecting his request.

4. Respondents contend that the OA is highly barred by limitation as the basic challenge is against Annexure A4 which aspect has been categorically considered in OA 676/95 filed by the applicant earlier. The OA is barred by res-judicata also. It was provided that the Head of Departments would be authorised to hold typewriting test for the purpose of drawal of increment/quasi permanency and confirmation of LDCs working in their subordinate offices till the Staff Selection Commission could take over the said responsibility. Subsequently the decision was reviewed in consultation with the Staff Selection Commission and orders were issued by the Department of Personnel and Training as per OM dated 23.9.87 making it clear that it is for the Staff Selection Commission to conduct the typewriting test for the purpose of drawal of

increments/quasi permanency and confirmation of LDCs working in the subordinate offices. Due to an inadvertent mistake the Department conducted the typewriting test that resulted in granting increments erroneously with effect from 1.1.93. The applicant did not choose to bring it to the notice of the second respondent or any other authority as to the said mistake, who was only eager to get some unlawful gain. The mistake was brought to light during the course of audit inspection. As per the relevant provisions of law the eligibility can accrue only on passing the typewriting test conducted by the Staff Selection Commission. Recovery ordered by the Department as per Annexure A-4 order has been cancelled. Result of the test was declared by the Commission only on 6.10.95 as per which the applicant came out successful.

5. Learned counsel appearing for the respondents argued that this OA is barred by limitation, for, the basic challenge is against A4. It is the admitted case of the respondents that the recovery ordered by the respondents as per A4 order has been cancelled. So the plea of limitation is now raised on the basis of an order which is cancelled. Learned counsel appearing for the respondents submitted that A4 is not only an order to recover the amount paid in excess but also with regard to completion of probation of the applicant. As far as the plea of limitation is concerned, when the cause of action is recurring the respondents cannot say that in this matter the claim is barred. Here it is a case of recurring cause of action. Respondents have also raised the plea of res-judicata. It is based on A-7 the order passed by this Bench of the Tribunal in OA 676/95. The question or

res-judicata comes only when the issue has been finally decided. From a reading of A-7 and from the pleadings herein, it is clear that the question involved herein has not been finally decided in A-7. That being so there is no bar of res-judicata.

6. Respondents are relying on R1(a) OM dated 23-9-87 in support of their case. It says that the Staff Selection Commission is in a position to conduct the typewriting test for LDCs and Assistants. Learned counsel appearing for the applicant submitted that though the applicant is designated as clerk Grade II, it is equivalent to LDC. The applicant has been referred to as LDC in R1(b). According to the respondents, the Department conducted the typewriting test by mistake in which the applicant appeared and came out successful. The applicant came out successful in the typewriting test conducted by the Department on 4.12.92. Since R1(a) is dated 23-9-87 what made the Department to conduct the typewriting test in 1992 is not made clear. It is simply stated that by mistake it was so done. It is not that they conducted only one test by mistake but they conducted two tests both in the year 1992. It is very easy to say that it was so done by mistake. But how it happened to be done by mistake is for the respondents to explain in unmistakable terms which the respondents have failed most miserably. It is interesting to note that the respondents say thus in the reply statement. "It is relevant to note that the applicant also did not choose to bring it to the notice of the second respondent or any other authority as to the said mistake who

was only eager to get some unlawful gain." So it appears that according to the respondents it is for a person working in the cadre of clerk Grade II to bring to the notice of the superior officers of the mistake they have committed and to get those mistakes rectified.

7. There is no case for the respondents that typewriting tests conducted by the Department on 15.2.92 and 4.12.92 were declared as invalid. Nowhere in the reply statement it has been stated after R1(a) when was the first typewriting test conducted by the Staff Selection Commission. As per A-1, the applicant will have to qualify in the typewriting test and if he fails to qualify he will not be entitled to draw his annual. We asked the learned counsel for the respondents whether any typewriting test was conducted within a reasonable period from the date of appointment of the applicant as clerk Grade-II. He would not enlighten us.

8. Nowhere in the reply statement it is stated that inspite of Staff Selection Commission having conducted the typewriting test immediately after issuance of A-1, the applicant did not appear in that typewriting test and he preferred to appear only in the test conducted by the Department. It cannot be a case of two agencies conducting the typewriting test simultaneously. When a typewriting test is conducted by Staff Selection Commission, a list will be forwarded by the Department of those who have to appear. In such case, if there was a test conducted by the Staff Selection Commission the department would have forwarded the

name of the applicant also. If that is so, he would not have been allowed to appear for the test conducted by the Department.

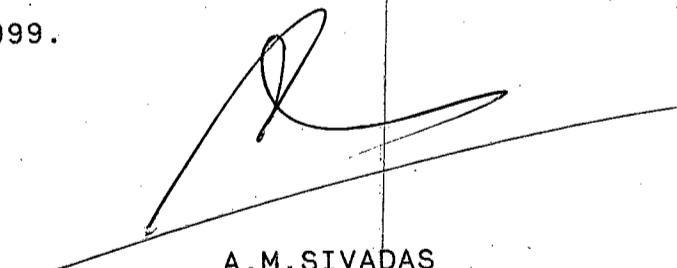
8. Even if the test was conducted by the Department by mistake which is not very easy to accept, the applicant cannot be held in any way responsible for the same. That being so, A-9 is liable to be quashed.

9. Accordingly A-9 is quashed. It is declared that the applicant is entitled to draw increments consequent on his passing the typewriting test conducted by the Department in December 1992 and that increments drawn by him are not liable to be withdrawn. We direct the respondents to restore the increments withdrawn, due to the applicant and pay the arrears due to him within a period of two months from the date of receipt of a copy of this order. No order as to costs.

Dated 20th December 1999.



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER



A.M. SIVADAS
JUDICIAL MEMBER

aa.

Annexures referred to in this order:

A-9: True copy of the order No.7/9/95-S.II dated 14.3.97 issued by the 1st respondent to the applicant.

A-4: True copy of the order No.TRC-10(2)/94-S 5/95 dated 31.1.94 issued by the 2nd respondent.

A-7: True copy of the order in OA 676/95 issued by this Tribunal.

R1(a) True copy of the memo No.14020/3/87-Est(D) dated 23.9.87 issued by Deptt. of Personnel & Training.

R1(b) True copy of the memo No.TRC.21(TOW)97-S/1939 dated 24.3.97 issued by Station Director, AIR, Trichur.

A-1: True copy of the order No.TRC.1(12)92-S/1026 dated 13.1.92 issued by the 2nd respondent to applicant.