

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.94/93

DATE OF DECISION: 28.08.1993

Mrs.Raichel Andrews,
LDC, Chief PMG's Office,
Trivandrum.

.. Applicant

Mr.G.Gopinathan Nair &
Mr Thomas Mathew

.. Adv. for applicant

V/s

1. Chief Post Master General,
Kerala Circle,
Trivandrum-33.

2. Director General,
Department of Posts,
New Delhi.

3. Union of India, rep. by
Secretary, Department
of Posts, new Delhi.

.. Respondents

Mr.K.Karthikeya Panicker, ACGSC .. Adv. for respondents

CORAM:

The Hon'ble Mr.N.Dharmadan, Judicial Member

The Hon'ble Mr.R.Rangarajan, Administrative Member

JUDGEMENT

MR. N.DHARMADAN, JUDICIAL MEMBER

Applicant is a Lower Division Clerk in the Chief PMG's Office, Trivandrum. She was given appointment in relaxation of Recruitment Rules on the death of her mother while in service. She is aggrieved by the denial of exemption from passing the typewriting speed test for getting increments and confirmation as per the impugned order, Annexure-A11, which is extracted below:-

" After careful examination of your representation, the Directorate has intimated that your request for exemption from passing typing test cannot be acceded to since as per Deptt. of Personnel's OM No.14020/2/90 Estt. dated 15.1.81, for exemption from the test you should have completed 8 years of service."

2. Annexure-A1 is the recruitment rules for Lower Division Clerk. A pass in the matriculation or equivalent examination of a recognised University or Board with a minimum speed of 30 words per minute in English typewriting or 25 words per minute in Hindi typewriting are required qualifications. Applicant has passed B.A. Degree examination and has undergone LL.B. course. She was appointed as LDC on compassionate ground in the PMG's office with effect from 3.7.1987. She passed K.G.T. ~~lower~~ grade examination in typewriting conducted by the Board of Technical Examination, Government of Kerala, with second class in July 1990. Annexure-A2 is the Certificate. Smt. Padmaja and Smt. Kalaiselvi were appointed as LDCs in the Chief PMG's Office accepting their qualification of pass in the KGT lower grade examination. Since the KGT lower grade examination is treated as equivalent to typewriting qualification mentioned in the Recruitment Rules, applicant filed Annexure-A3 representation for getting increment and confirmation by treating her case on par with the case of Smt. Padmaja and Smt. Kalaiselvi. Her representation was rejected by Annexure-A4 order of Assistant PMG (Staff) dated 15.11.90. After the marriage of the applicant in August 1990, she fell ill and had undergone a major surgical operation. Thereafter, she is handicaped and she was advised to avoid strenuous work such as typing for a long period. Annexure-A5 is a Certificate issued by the Surgeon. Applicant also pointed out a case of one Shri Janardhanan who was also appointed as LDC in the Chief PMG's Office after transfer from Postal Operative Wing accepting his

KGT lower grade typewriting examination for grant of increments and confirmation. Since the action of the respondents was discriminatory and the applicant is in a disadvantaged position after the surgical operation, she again submitted representations for granting exemption. Ultimately, by the impugned order, Annexure-A11, her request was turned down. Under these circumstances she filed the application on 13.1.93 under Section 19 of the Administrative Tribunals Act for quashing Annexure-A11 and also for a direction to the respondents to grant her the annual increments and confirmation treating her case similar to the cases cited by the applicant.

3. According to the applicant, KGT examination (lower grade) conducted by the Board of Technical Examinations, Government of Kerala is a higher qualification than the departmental typing test which consists of typing of a passage at a speed of 30 words per minute only while the KGT lower grade examination consists of:-

- (i) Typing at a speed of 30 words per minute,
- (ii) Typing four manuscript letters, and
- (iii) Practical and oral tests.

Since the applicant has passed the above KGT Examination in July 1990 with second class, and she has acquired proficiency in typewriting, she is fully qualified for getting increments and confirmation under the recruitment rules. In three other cases the department has granted the benefit of increments and confirmation accepting the qualification of pass in the KGT lower grade examination. The denial of similar benefit to the applicant is discriminatory, unjust and arbitrary. The applicant further submitted that even though the applicant was not physically

well after the operation, she worked for the period from 14.11.90 to 7.12.90 in the typing seat typing 450 to 750 lines a day. According to the applicant, the reason given in Annexure-A4 for supporting the case of Smt. R.Padmaja and Smt. Kalaiselvi are not correct and there is suppression of fact. She asserted that they were appointed as LDCs in the Chief PMG's office from one arm of the department to the other arm after accepting the Certificate of pass in KGT lower grade examination. They were permitted to draw increments without passing the departmental typewriting test. Since the second respondent has admitted pass in the KGT examination, equivalent to departmental typewriting test for earning increments, the applicant is eligible for the same treatment. Under the above circumstances, her case cannot be differently treated in the matter of granting increments particularly when the respondents have granted the benefit of increments for other LDCs possessing the very same typewriting qualification as in the case of the applicant. The respondents cannot insist that the applicant should pass departmental typewriting test to earn annual increment under the above circumstance. The OM No.1420/2/90-Estt. dated 15.1.81 referred to in Annexure-A11 has no application to the case of the applicant since she possesses KGT lower grade examination certificate which is sufficient for getting appointment as LDC in the Chief PMG's Office.

4. The only reason mentioned in the impugned order for denying the benefit of increments is that the requirement in OM dated 15.1.81 has not been satisfied. The same OM has been produced by the respondents as Annexure-R1D. It says that the LDCs appointed through Employment Exchange and on compassionate grounds at the age below 35 years on the date

of appointment can be exempted from passing typewriting test on completion of eight years of service provided they had made two genuine attempts to pass the test.

5. As submitted by the applicant, this OM has no relevance and the reliance of the same in the impugned order shows that there is no due application of mind and careful consideration of the grievance of the applicant.

6. Annexure-A4 is also an earlier order passed by the Asst. PMG (Staff) rejecting the request of the applicant when she has pointed out the comparable two cases of Smt. Padmaja and Kalaiselvi. He has attempted to distinguish the cases of the above two persons on the ground that they were transferred as LDCs to Circle Office from the cadre of T/S Postal Assistants in Postal Division under Rule 38 of P&T Manual Volume-IV "as a special case with the approval of Directorate". Admittedly they were not required to pass the typewriting test under the Recruitment Rules. They possessed only KGT lower grade examination certificates.

7. Applicant asserted that the statement in the order that they were transferred as LDCs to Circle Office from the cadre of T/S Postal Assistants is not correct and there is suppression of facts. According to the applicant, they were appointed as LDCs from one arm of the department to the another arm after accepting the typewriting qualification of KGT lower grade examination. In order to establish the claim of the applicant, she filed M.P.960/93 with a prayer to direct the respondents to produce the following documents:-

" (i) Copy of representation dated 20.8.1983 submitted by Smt. R.Padmaja for permanent absorption as LDC,

(ii) Copy of report/recommendation on the above application made to the 2nd respondent by the Circle Office,

(iii) -P.F. of Smt.R.Padmaja & Smt. Kalai Selvi,

(iv) File ST/12-TR/86 beginning with representation dated 26.5.1987 of Sri S. Janardanan leading to final orders absorbing him as LDC, and

(v) PF of Sri S.Janardanan. "

She moved the M.P. on 18.6.93. After hearing the learned ~~counsel of both sides~~, we allowed the M.P. and directed the learned counsel for the respondents to produce the documents referred to in the M.P. on the next date of hearing. The direction in the order was not complied with during the next posting i.e. on 23.7.93. We heard the counsel on both sides on 6.8.93 and taken the case for orders giving time for the learned counsel for the respondents to produce the documents referred to in the M.P. before 12.8.93. When the Court Officer contacted the learned counsel for the respondents on 18.8.93 he expressed his inability to produce the documents.

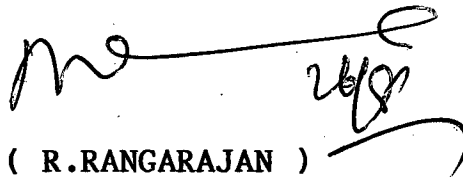
8. Under these circumstances, it is to be presumed that the documents referred to in the M.P. are either not available or the respondents are reluctant to produce the documents for verification. So, there is some force in the assertion of the applicant that there is suppression of facts. The reasons given by the respondents for distinguishing the comparable cases ~~by~~ cannot be sustained on the facts and circumstances of the case.

9. Since the respondents have already accepted KGT lower grade examination as equivalent to typewriting speed test provided under the Recruitment Rules, as a special case to the three cases referred to by the applicant, the case of the applicant can also be considered to be a special case in the light of Annexure-A5 Certificate and the fact that she has undergone a major operation in the year 1990.

10. Even in case of a transfer of an official from one arm of service to another arm with the approval of the Head of circle concerned, the candidate will have to satisfy the conditions regarding the mode of recruitment to the post and additional qualifications as prescribed, as provided in Clause (5) of Rule 38 of P&T Manual, Volume-IV. So, the case of the respondents that Smt. R.Padmaja and Smt.Kalaiselvi were originally recruited as Postal Assistants and they were granted exemption from passing departmental typewriting test while appointing them as LDCs in Circle Office cannot be sustained in view of the clear provisions in Rule 38(5) of the P&T Manual. Typewriting qualification prescribed for the post of LDC as per the Recruitment Rules is a requirement to be insisted on for the appointment and they cannot be dispensed with under executive order unless there is compelling circumstances. Of course, it can be equated with a pass in KGT lower grade examination which the applicant, Smt. Padmaja and Smt. Kalaiselvi are holding. Since the persons pointed out by the applicant have already been given increments and confirmation by virtue of their pass in KGT typewriting examination without insisting a pass in the departmental typewriting test under the Recruitment Rules, Annexure-A1, the applicant is also eligible for same treatment.

11. In the result, having regard to the facts and circumstances of the case, we are unable to sustain Annexure-A11 order. Accordingly, we quash the same and direct the first respondent to treat the case of the applicant for increment as a special case on par with the cases of Smt. Padmaja, Smt. Kalaiselvi and Shri Janardhanan, as pointed out in the application and grant her all consequential benefits legally due to her. The direction shall be complied with within a period of four months from the date of receipt of a copy of the judgment.

12. The application is allowed as above. No costs.


(R.RANGARAJAN)
ADMINISTRATIVE MEMBER


(N.DHARMADAN)
JUDICIAL MEMBER

v/-