

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No.
~~TX~~XXXNo.

146/91

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DATE OF DECISION 28.2.1992

P.G.Harding and another Applicant (s)

Shri M.R.Rajendran Nair Advocate for the Applicant (s)

Versus

The Collector of Customs, Customs House,
Kochi-9 and 20 others. Respondent (s)

Mr.N.N.Sugunapalan,SCGSC

Mr.P.Sukumaran Nair Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. S.P.MUKERJI, VICE CHAIRMAN

The Hon'ble Mr. A.V.HARIDASAN, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? No
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. To be circulated to all Benches of the Tribunal? No

JUDGEMENT

(Hon'ble Shri S.P.Mukerji, Vice Chairman)

In this application dated 11th January 1991 the two applicants who have been working as Lower Division Clerks in the Customs House, Cochin have challenged the impugned order dated 1.11.90(Annexure-IX) by which they were confirmed as L.D.C. with effect from 22.10.1990 and prayed that respondent 1 be directed to confirm them with effect from the date prior to the date of confirmation of those LDCs who were appointed later than the applicants. They have also prayed that the applicants be declared to be senior to respondents 3 to 21 and 6 to 21 and to recast the seniority list of LDCs at Annexure-VI. Their further prayer is that on the basis of their revised seniority they should be declared to be entitled to be promoted as UDCs in preference to any of their juniors and to that extent set aside the impugned order of promotion of his juniors at Annexure-VIII. The brief facts of the case are as follows.

2. The first and second applicants were appointed as L.D.C. on compassionate ground with effect from 17.4.1986 and ^{retroactively} 1.7.86 on the death of

father of the first applicant and invalidation on medical ground of the father of the second applicant. The minimum qualification prescribed for direct recruitment to LDCs is Matriculation or equivalent qualification and a minimum speed of 30 words per minute in English Typewriting. According to the applicants they were appointed in relaxation of the rules and in the offer of appointment it was stated that they should pass the prescribed typing test (30 words per minute) for drawal of periodical increment in the pay scale. According to them it was nowhere mentioned that they should pass the typing test for confirmation. The applicants passed the typing test on 22.2.90 and thereafter were given increments. In the seniority list of LDCs as on 1.6.90(Annexure-VI) the respondents 3 to 21 who had been appointed as LDCs later than applicants were shown as senior to the applicants who had joined earlier, on the ground that while the respondents had been confirmed on 20.11.89, the applicants had not been. The applicants represented that they should also have been confirmed earlier as there was no requirement of passing the typing test for confirmation. Shortly thereafter the respondents issued identical orders at Annexure I and I(A) stating that passing of typing test by LDCs is one of the essential conditions for confirmation and as they did not pass the typing test during the period of probation they could not be held to have successfully completed the probation. Accordingly the DPC which met on 20.11.89 when the applicants did not clear the typing test, did not consider them to be eligible for confirmation. It was also indicated that where persons are confirmed in an order different from the order of merit, seniority shall follow the order of confirmation and not the original order of merit. The applicants were confirmed by an order dated 1.11.1990 with effect from 22.10.1990 in the impugned order at Annexure-IX which they have challenged on the ground that typing test has nothing to do with confirmation so far as they are concerned as their appointment was in relaxation of educational qualifications including the typing test. R

They have argued that there is no such condition of passing of typing test for confirmation in any rule or order. Their further argument is that since there was no time limit for passing the typing test, they should have been confirmed in their own turn. They have referred to the case of one Shri Dineshan who was granted restoration of seniority in identical circumstances.

3. In the counter affidavit the respondents 1 and 2 have stated that the applicants were appointed by the orders at Annexures R1 and R2 on compassionate ground temporarily and on probation. They have referred to the orders of the Ministry of Home Affairs dated 13.7.64 at Annexure R3 wherein it was stated that passing of typing test should not be insisted upon at the time of entry as LDC but it should be made clear to them that they will not be eligible to draw increments or confirmation till they acquire the prescribed speed of 30 words per minute. They have stated that in the terms of their appointment (Annexure-III) it was made clear to them that they have to pass "the prescribed departmental examinations and any other test prescribed under the Rules before his confirmation is considered". Since the applicants did not qualify in the typing test prescribed under the Recruitment Rules, ~~and~~ in terms of the Ministry of Home Affairs letter of 13.7.1964 the DPC did not recommend them for confirmation. When the seniority list of LDCs as on 1.6.1990 was issued the applicants did not represent against it within the prescribed period of 15 days but requested for re-fixation of their seniority. Even though the original appointment on compassionate ground was in relaxation of the qualifications prescribed in the Recruitment Rules it had been made clear to them that they must pass the typing test. Relaxation at the time of initial appointment on compassionate ground cannot be claimed to be a perpetual relaxation. Relaxation is also otherwise permitted for a period of two years as prescribed in the Department of Personnel's O.M. of 25.11.1978. As regards the case of Shri Dineshan they have stated that he was restored his seniority not on the basis of passing the typing test but on the basis of the gradation given to him by the DPC. When the DPC met he had already passed the typing test. They have also

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(Annexure R-9) ^h
referred to the Ministry of Home Affairs letter of 16.7.75 ^h which debars
date of confirmation preceeding the date of passing the typing test or
completion of the period of probation.

4. Some of the contesting respondents in the counter affidavit have stated that the applicants did not qualify as per the Recruitment Rules within a period of two years of their appointment, which had been relaxed in their favour. As such their services could have been terminated in 1988 itself. They have also referred to the Ministry of Home Affairs letter^h at Annexure R3 in which it has been mentioned that possession of speed in typing at 30 words per minute is a pre-requisite for appointment as an LDC and for confirmation.

5. In the rejoinder the applicants have stated that when the Recruitment Rules were relaxed the applicants should have been automatically confirmed on the expiry of the period of probation. They have referred to the Ministry of Home Affairs O.M of 11.7.1949 which allows quasi-permanency where educational qualifications have been relaxed at the time of initial entry. They have argued that they completed the period of probation in July 1988 and the respondents should have confirmed them immediately thereafter as the period of probation was not extended.

6. The respondents have produced at Annexure R9 a copy of the Central Board of Excise and Customs circular dated 16.7.1975 in which it has been stated that if the typing test is passed within the period of probation of two years the date of confirmation will take effect from the date of completion of probation, but where the typing test is not passed within the period of two years of probation, confirmation takes effect from a date subsequent to the date of passing the typing test. They have also produced the Department of Personnel's O.M. of 19th May 1983 at Annexure R12 which states that as long as no specific order of confirmation or satisfactory completion of probation are issued, such probationer shall be deemed to have continued on probation.

7. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. The point to be decided ^{upon} is whether the applicants can claim confirmation before passing

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the qualifying test in typing ~~however~~^{which} which is prescribed as an essential qualification in the statutory Recruitment Rules for the post of LDC. The offer of appointment at Annexure-III and IIIA states that the applicants "will be required to pass the prescribed departmental examinations and any other test prescribed under the Rule before their confirmation is considered". It can be stated that the Recruitment Rules merely prescribe a minimum typing speed of 30 words per minute but it does not prescribe any test as such. However the Ministry of Home Affairs letter dated 13.7.64 at Annexure-R3 reads as follows:-

" Though it is considered essential that Lower Division Clerks should possess typing qualification, it has now been decided that, in future, for entry into service under the Government of India, possession of typing qualification need not be insisted upon in the case of Lower Division Clerks, but the persons so appointed will neither be eligible to draw increments in the pay scale nor will they be entitled to confirmation in the grade till they acquire the prescribed speed of 30 words per minute in typing. In all offers of appointments the above condition should be brought to the notice of the candidates concerned. The relevant recruitment rules may also be amended suitably."

Since the aforesaid instructions were issued in relaxation of the Recruitment Rules these instructions can well be deemed to be prescribing a test under the rules. These instructions simply say that testing the typing speed need not be insisted upon at the time of initial recruitment of LDCs but passing the qualifying typing test should be a pre-condition for confirmation. It may be true that in the terms of appointment at Annexure-IV while passing the prescribed typing test was mentioned as a pre-condition for drawal of increments (para 5 of Annexure-III) , passing "any other tests prescribed under the rules before his confirmation is considered" is also mentioned in para 3 of the offer of appointment at Annexure-III. The Ministry of Home Affairs letter of 16.7.75 at Annexure R9 also clearly lays down that "in no case, an officer should be confirmed with effect from a date prior to the date of his passing the typing test or the date of his successfully completing the period of probation."

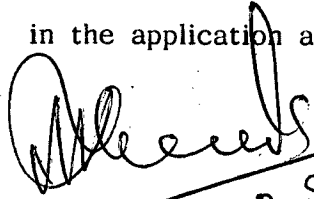
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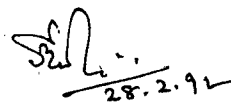
The argument of the learned counsel for the applicants that the relaxation of the Recruitment Rules on compassionate grounds exempts them from passing the typing test for confirmation is not convincing. The relaxation was given for ^{their} induction as LDC and as the offer of appointment shows, the induction was on probation and on a temporary basis. The relaxation of the Recruitment Rules, therefore, cannot be extended to the relaxation of the rules and instructions meant for probation and confirmation. The applicants' contention that they would be deemed to have completed the probation of two years as the same was not extended is also not convincing. It is now established law as handed down by the Hon'ble Supreme Court since their judgment in Kedar Nath Bahl vs. State of Punjab, AIR 1972 SC 873 that "where a person is appointed as a probationer in any post and the period of probation is specified, it does not follow that at the end of specified period of probation he obtains confirmation automatically even if no order is passed in that behalf. Unless the terms of appointment clearly indicate that confirmation would automatically follow at the end of the specified period, or there is specific Service Rule to that effect, the expiration of the probationary period does not necessarily lead to confirmation." This view has been clearly indicated in the Department of Personnel's O.M of 19th May 1983 at Annexure R12 wherein it ^{is} ~~was~~ stated that "as long as no specific orders of confirmation or satisfactory completion of probation are issued to a probationer, such probationer shall be deemed to have continued on probation". The contention of the applicants that relaxation of educational qualification entitles one to be considered for quasi-permanency (vide Annexure-X) cannot be invoked for grant of confirmation. After all is said and done even if we accept the contention of the applicants that typing test cannot be insisted upon for grant of confirmation, it can still be said that the respondents are always at liberty not to certify satisfactory completion of probation till one passes the typing test. Since no one can be confirmed before completing the probation satisfactorily, the respondents are wholly within their power and justified in confirming the applicants only after they

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satisfactorily complete the probation by passing the typing test. Accordingly we see nothing wrong in the impugned order of confirmation of the applicants with effect from 22.10.90 at Annexure-IX. Since inter-se seniority and promotion as UDCs are based on dates of confirmation the other reliefs claimed by the applicants also fall through.

8. In the conspectus of facts and circumstances we see no merit in the application and dismiss the same without any order as to costs.


(A.V. Haridasan)
Judicial Member


(S.P. Mukerji)
Vice Chairman

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