

**CENTRAL ADMINISTRATIVE TRIBUNAL,
LUCKNOW BENCH,
LUCKNOW.**

Original Application No. 506 of 2010

Reserved on 11.9.2014
Pronounced on 13th October, 2014

**Hon'ble Mr. Navneet Kumar, Member-J
Hon'ble Ms. Jayati Chandra, Member-A**

Uma Shanker Srivastava, aged about 40 years, S/o late Ashbhuja Prasad Srivastava, R/o 224, Baragaon Near Trans Railway School, P.O. Gonda, District Gonda, U.P.

.....Applicant

By Advocate : Sri M.A. Siddiqui

Versus.

1. Union of India through the GM, NER, Gorakhpur.
2. The DRM, NER, Ashok Marg, Lucknow.
3. The DRM (Commercial), NER, Ashok Marg, Lucknow.
4. The DRM (Personnel), NER, Ashok Marg, Lucknow.

.....Respondents.

By Advocate : Sri Rajendra Singh .

O R D E R

Per Ms. Jayati Chandra, Member (A)

This O.A. has been filed by the applicant under Section 19 of Administrative Tribunals Act, 1985 seeking the following relief(s):-

- "(i) *The Hon'ble Tribunal be graciously pleased to quash the impugned order as contained in Annexure no. A-1 to this Original Application.*

(ii) *After quashing Annexure no. A-1, the applicant be permanently absorbed in Group 'C' like Commercial Clerk, TC which are existing or any other Group 'C' category.*

(iii)

(iv)"
2. The facts of the case are that the applicant was appointed as Clerk in the pay scale of Rs. 950-1500/- on compassionate ground vide O.M. dated 18.9.1997. The said O.M. provided that within two years the applicant would be required to qualify the typing test @ 25 W.P.M. in Hindi and 30 W.P.M. in English from

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the date of joining of the applicant, but no typing test was held during this period. After three years, one test was held and unfortunately the applicant could not qualify. The next test was fixed on 13.1.2007 by letter dated 10.1.2007. However, this letter was received by his controlling officer at Gonda after the prescribed date of test i.e. on 13.2.2007; hence the applicant was denied an opportunity to appear in the typing test so organized on 13.1.2007. The GM (P), Gorakhpur had issued letter dated 3.7.2000, which provides as under:-

“अनुकम्पा के आधार पर नियुक्त कर्मचारी यदि २ साल की नियारित अवधि में टक्कण प्रशिक्षण न कर पाया हो तो उसे वर्ग “ग” के किसी अन्य पद पर बैकाटिपक देने का किया जाना चाहिए। यदि अभ्यर्थी अन्य वर्ग “ग” के पद पर श्री उपयुक्त नहीं पाया जाता है तो उसे वर्ग “घ” में बैक.....जाना चाहिए।”

When the sufficient time passed and a number of compassionate appointees were promoted to the higher scale and the applicant was left out, he gave various representations to various authorities for absorption in other category as had been done in the case of Nand Kishore Gupta, Sri Jamuna Prasad, Sri Brahma Nand, Sheo Nath etc., but without any consideration on his representation, by impugned order dated 12/16.11.2010 he was reverted from Group 'C' to Group 'D' post on the ground of his inability to clear the typing test within the stipulated time; hence this O.A.

3. The respondents have filed their Counter Reply whereby they have raised preliminary objection regarding maintainability of this O.A. being pre-mature as the applicant has not exhausted all the departmental remedies available to him as provided under the A.T. Act, 1985.

4. Coming to merits of the case, the respondents have stated that the applicant alongwith other candidates were called for evaluation in the typing test in the year 1998, but the applicant did not appear. He was again called to appear in 1999, but he failed to clear the same. In the year 2000, 2001, 2003, 2005 and 2007 the typing tests were held, but he did not appear. The applicant was required to give three opportunities to pass the typing test, but he failed to avail all of them. More-over before

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reverting him to Group 'D' post, the applicant was given an opportunity to state his case by letter dated 31.7.2002 even though the applicant was well aware of the fact that his appointment on compassionate ground to a Group 'C' post is subject to the passing of the typing test.

5. Rejoinder has been filed by the applicant denying the contentions of the respondents made in the Counter Reply and reiterating the averments made in the Original Application.

6. We have heard the learned counsel for the parties and have also perused the documents available on record.

7. The case of the applicant is simple that he was required to clear the typing test within a maximum attempt of three times within a period of two years. According to him, he did not pass in one and could not appear in second one as he received the intimation late. Further, he has taken the recourse of the letter dated 3.7.2000 which provides that if the applicant is appointed on Group 'C' post on compassionate ground, cannot clear typing test within a period of two years, he should be considered for adjustment against other group 'C' post, which does not require typing ability, failing which he may be reverted to Group 'D' post. The respondents have stated that the typing test was organized in the year 2000, 2001, 2003, 2005 and 2007, but they have not produced any letter to show that the applicant was informed about the same and he deliberately did not appear. More-over, the applicant's initial appointment was made in the year 1997. If the respondents had organized the typing test annually as claimed and the applicant knowingly failed to appear or clear the same, the reversion order could have been passed much earlier. The applicant could have been reverted much earlier. We fail to understand why did the respondents waited for more than 12 years. More-over, they have not made it clear if in terms of letter E/255/2/Bhag-3/II dated 3.7.2000 any attempt was made to adjust the applicant on the post where typing test is not required.

8. In view of the aforesaid, we are inclined to interfere in the impugned order. Accordingly, impugned order dated 12/16.11.2010 is quashed. The matter is remitted back to the

respondents to take a fresh decision in the light of the observations made in the body of the judgment by passing a reasoned and speaking order. The aforesaid exercise shall be completed within a period of four months from the date of receipt of copy of this order.

9. The O.A. stands disposed of in the aforesaid terms with no order as to costs.

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(Ms. Jayati Chandra)
Member (A)

VR.Grawal'
(Navneet Kumar)
Member (J)

Girish/-