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

Review Application No. 37 of 2015

In re.

Original Application No. 299 of 2010

This the 30th day of November, 2015

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

Nand Kishore Gupta

Review Applicant

By Advocate: Sri A. Moin.

Versus.

Union of India & Others

Respondents

O R D E R

By Ms. Jayati Chandra, Member-A

This Review Application has been filed by the Review applicant under Rule 17 of Central Administrative Tribunals (Procedure) Rules, 1987 praying for review of the judgment and order dated 15.9.2015 passed in O.A. no. 299 of 2010.

2. The O.A. filed by the review applicant was disposed of. The operative portion of the order reads as under:-

“.....However, in view of the fact that there is a provision for considering the applicant for alternative appointment and the passage of time, the matter is remanded back to the respondents with a direction to reconsider his case for adjustment against other Group 'C' post not requiring qualification of typing test and commensurate with the medical category C-1 within a period of four months from the date of receipt of copy of this order.”

3. We have gone through the judgment and order under review and have also looked into the grounds taken for review. The grounds so raised by the applicant in his Review Application have already been raised in the O.A. and the same have also been considered and dealt with, in detail, while passing the order under review. It is noteworthy that the order of the Tribunal was passed after hearing the both sides. In view of the law settled by the Apex Court, if the plea or ground taken in the Review Application is

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test within a period of two years. The applicant failed to pass the typing test. However, there is a provision in the Railway Board's circular dated 3.7.2000 (Annexure-2) that such compassionate appointee who fails to pass typing test would be adjusted against other Group 'C' post where typing qualification is not a prerequisite. The applicant gave an application dated 15.12.2009 for adjustment against the vacant post of Ticket Collector (T.C.) as certain others similarly situated persons such as Sri Hari Singh and seven others had been adjusted against the post of T.C. In the event of respondents' failure to dispose of applicant's representation, he filed O.A. no. 40/2010 before this Tribunal, which was disposed of vide judgment and order dated 2.2.2010 with a direction to the respondents to take a decision on his representation. The respondents by means of impugned order have reverted the applicant to Group 'D' post on the ground that he has been medically examined and has been found fit for C-1 medical category only. The Group 'C' posts in the said medical category are that of Telephone Operator for which no vacancy exists and that Commercial Clerk for which by virtue of his failure to pass typing test, he cannot be continued. The applicant has challenged the said decision of the respondents on the ground that there are several other posts of Group 'C' which are open and available to the medical category C-1. More-over, the Hon'ble Supreme Court in the case of S.K.M. Haider Vs. Union of India & Others reported in JT 2014 (2) SC 110 has held that the post of T.C. cannot be denied to a person having other than B-2 medical category. He has further placed reliance on RBE no. 1301 which provides for adjustment of a railway employee against a post having similar pay scales (as in this case that of Commercial Clerk) if he acquires disability during the course of his employment.

3. The respondents have not denied the facts of the case. Their contention is that the applicant cannot be given the benefit of Railway Board's circular RBE No. 1301 as it applies to those persons who are in employment of the Railways. The applicant's appointment as Commercial Clerk vide order dated 18.9.1997 was conditional. He has failed to fulfill the conditions of his appointment that in passing the typing test. More-over, as per his

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medical category, he could not be considered against the post of Ticket Collector where the medical category required is B-2. As per RBE order dated 20.2.1994 read with order dated 3.7.2000, the applicant having been found unsuitable for a Group 'C' post has been adjusted against a Group 'D' post.

4. The applicant has filed Rejoinder Reply refuting the contentions of the applicant and reiterated the averments already made in Original Application.

5. We have heard the learned counsel for the parties and have also perused the pleadings available on record.

6. The facts of the case are not in dispute. The issue to be examined whether the applicant can be given the benefit of RBE No.1301 or not. This benefit is given to employee who are in permanent employment. The conditions of appointment of the applicant are different. Further, the ratio laid down by Hon'ble Supreme Court in the case of S.K.M. Haider *supra*) are inapplicable as the facts and circumstances with the cited cases and that of the present case are quite different.

7. The case of the applicant is, therefore, examined in the light of facts of the case. The initial appointment order dated 18.9.1997 is not on record, but the same is covered under the provision 4 of RBE dated 3.7.2000 which reads as follows:-

“अनुकम्पा के आधार पर नियुक्ति रेलवे बोर्ड के दिनांक 20.05.94 के पत्र द्वारा निर्देश जारी किया गया था कि अनुकम्पा के आधार पर भर्ती किये गये लिपिकीय कर्मचारियों (लिपिक/वरिष्ठ लिपिक) की नियुक्ति की तिथि से 2 वर्ष के अन्दर टंकण दक्षता प्राप्त कर लेनी होगी परन्तु यह प्रावधान अगले 2 वर्ष में नियुक्ति किए गये उम्मीदवारों पर लागू होगी तथा उस अवधि में उनकी सेवायें अस्थाई मानी जाएगी। 2 साल के बाद अनुकम्पा आधार पर नियुक्ति होने वाले अभ्यर्थियों के लिए टंकण प्रवीणता पूर्वापेक्षित शर्त होगी। बोर्ड द्वारा दिनांक 12.05.97 के पत्र के माध्यम से 2 साल के अन्दर प्रवीणता की अर्हता प्राप्त करने की छूट पुनः प्रदान कर दी गयी तथा उक्त अवधि की नियुक्ति अन्तिम मानी गयी।

अनुकम्पा के आधार पर नियुक्ति कर्मचारी यदि 2 साल की निर्धारित अवधि में टंकण में प्रवीणता प्राप्त नहीं कर पाता है तो इसे वर्ग 'ग' के किसी अन्य पद पर वैकल्पिक नियुक्ति देने का विचार किया जाना चाहिए। यदि अभ्यर्थी अन्य वर्ग 'ग' के पद हेतु भी उपयुक्त नहीं पाया जाता है तो उसे वर्ग 'घ' में वैकल्पिक नियुक्ति देने पर विचार किया जाना चाहिए।

प्राधिकार: (1)(ई) (एन.जी) 11/94/आर.सी-1/35 दिनांक 20.05.97
एवं 12.05.97

(1)(ई)/239/0/भाग-1/1/ दिनांक 01.09.97 एवं दिनांक 04.02.
2000

The applicant by his own admission did not pass the typing test within the stipulated period i.e. by September, 1999. The respondents allowed him to continue on the various Group 'C' posts and was also shifted from place to place. He was allowed the benefit of appearing in typing test held in 1999, 2000, 2001 and 2005 and 2007. The decision to revert him to Group 'D' post has been taken on 7.7.2010 i.e. after a period of nearly 13 years. The applicant has given a list of posts requiring medical category C-1, although it is not clear from the list enclosed as Annexure -10 as to which are still available with the department. However, in view of the fact that there is a provision for considering the applicant for alternative appointment and the passage of time, the matter is remanded back to the respondents with a direction to reconsider his case for adjustment against other Group 'C' post not requiring qualification of typing test and commensurate with the medical category C-1 within a period of four months from the date of receipt of copy of this order.

8. The O.A. stands disposed of in the aforesaid terms. No order as to costs.

J.Chandra

(Ms. Jayati Chandra)
Member (A)

Navneet Kumar

(Navneet Kumar)
Member (J)

Girish/-