

- 17 - (B)

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
CIRCUIT BENCH, LUCKNOW

(1) T.A. No. 1214/87
(W.P. No. 5325/83)

Smt. Indira Kumari

Petitioners.

vs.

Union of India & others

Respondents.

(2) T.A. No. 1179/87
(W.P. No. 4298/83)

R.B. Pandey

Petitioners.

vs.

Union of India & ots.

Respondents.

(3) T.A. 1158/87
(W.P. No. 2534/83)

Bhupendra Bisen

Petitioners.

vs.

Union of India & others

Respondents.

(4) T.A. No. 1216/87
(W.P. No. 229/84)

Ram Tej

Petitioners.

vs

Union of India & otrs.

Respondents.

Hon. Mr. Justice U.C. Srivastava, V.C.
Hon. Mr. A.B. Gorhti, Adm. Member.

(Hon. Mr. Justice U.C.S., V.C.)

In this bunch of cases common questions of law and facts arise and the petitioners are the employees of the same Department, the case is being decided by one common judgment.

2. The dispute is in respect of recruitment of Telegraphist in various offices under the respondents. For filling up the posts, an advertisement was issued on 22.10.82 in the Employment notice. Thus, the applicants offered themselves for the same. On the basis of marks as provided in the

advertisement, they were allowed to appear in the examination. The qualifying test in the English dictation and type was held on 25.12.82. The selection was to be made on the basis of marks obtained in the High School plus bonus marks for higher qualification and preference being given to those having typing speed of 40 words per minute. Some 200 candidates appeared in the same. Thereafter, a list of successful candidates was prepared and the name of applicants perhaps appeared. After inclusion of their names in the list they were served with a letter mentioning therein requiring that their names have been included in the select list. It appears that the applicants produced the documents and also deposited the security amount. After completion of the formalities, when they were waiting for job, a notice was issued requiring the 200 candidates to appear on 10.10.83 for a dictation/handwriting test. According to the applicants, they were candidates who had acquired lesser marks earlier. After holding qualifying test the candidates found suitable in selection and reserved for 1982, But vide letter dated 24.9.83 their panel was cancelled. The writ petition was filed by one Shri Bhupinder Singh whose case is one before us. The said Bhupinder Singh secured only 40% marks but his name was not included, the petitioners name could not also find place and they have filed the writ petition which has now, by virtue of operation of law, has come to this Tribunal on transfer.

3. According to the respondents the examination of the applicants was cancelled because of a complaint

received and re-evaluation was done and the re-evaluation of all the applicants ^{were} not found upto the mark and they were not appointed. There is no denial of the applicants' contention that before cancelling the panel a notice should have been issued. Applicants were not given any notice and their version was not taken. After receipt of the complaint a direction was issued on the following words:

"As will be seen only 12 candidates have qualified keeping in view the minimum speed of 40 W.P.M., subject to maximum of 5% mistakes. In this connection I would like to remark that both the passages of English and Hindi contained less than 400 words to be typed in 10 minutes. In absence of any written instructions to re-type the passage, after completing once, and in the absence of any indication of the total number of words at the end of the passage there may have been some misunderstanding in the minds of the candidates whether they have to retype the passage to attain, at least the minimum speed of 40 W.P.M. I would like to point out that whereas some candidates have retyped it only once, within the permissible number of mistakes, but have 'failed' because of the minimum speed of 40 W.P.M. In all fairness, the passage should have contained words much more than 400 words and the number of words should have been indicated at the end. In the circumstances, it is for consideration whether the candidates should be re-examined in this paper."

4. The result was cancelled and no examination took place, in pursuance of the interim order passed by this Court. Some of the applicants, not all, got appointment. The contention is that if there was any fault in the examination or instructions which were issued, the instructions/ terms ~~which were issued~~ of the advertisement were

complete and when all the passages were typed out there was no machinery to judge the speeds per minute and the applicants cannot be penalised for any shortcomings or lacuna in the advertisement and instructions in this behalf. Even otherwise when once their name was included and they were apprised of the same, they were called to complete formalities, they cannot claim any right to the post as such but that cancellation could not have taken place without giving them any opportunity. Moreover, if the justification was for re-examination, but instead of re-examination, re-evaluation took place. How this re-evaluation has been done and on what basis, this mystery has not been clarified in the counter. Cancellation and then re-evaluation was not legal and not justified by any principle of justice.

5. Accordingly it deserves to be cancelled. The applicants undoubtedly having been given posting obviously in pursuance of the interim order passed by the Court, they were entitled on the basis of examination in which they appeared. As such, the only question which now remains for consideration is whether the appointment is to date back since their names were included in the select list or within reasonable time by which re-examination should have taken place. Even if we fix the reasonable time of three months, by that time no examination could take place when in subsequent test for typing etc. will not be a substitute for the examination which was provided in the advertisement or re-examination which took place. In case the cancellation of the panel the applicants are entitled to get the

-5-

a pointment on the basis of select list. We accordingly allow writ petition and set aside the cancellation of panel and re-evaluation and direct that those whose names found place should be deemed to have been appointed appointed in the list who were subsequently appointed. However, we are making clear that what we are directing will not apply to those whose names did not appear in the select list or could not be appointed in pursuance of the interim order granted by the High Court. The Department will decide the question of seniority and placement in the gradation list and other consequential benefits in pursuance thereof.

6. Petitions are disposed of accordingly. Parties to bear their own costs.

Manager
A.M.

Lin
V.C.

Shakeel/ Lucknow Dated:10.5.91