

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW BOMBAY BENCH, NEW BOMBAY.

Transferred Application No.152/86.

Shri V.D. Wisave,  
M-23 Sector 7,  
RH-1 Type, Vashi,  
New Bombay.

... Applicant  
(Original Petitioner)

V/s.

1. Union of India.
2. Inspecting Assistant Commissioner  
of Income Tax, Administration I,  
Aayakar Bhavan, Maharshi Karve  
Road, Bombay 400 020.
3. Regional Director (W.R.), Staff  
Selection Commission,  
Armay Navy Building, 2nd floor,  
M.G. Road, Bombay 400 001

... Respondents.

Coram: Member(A), S.P. Mukerji,  
Member(J), M.B. Mujumdar.

Appearances:

- 1) Shri M.I. Sethna, Advocate for the Respondents.
- 2) Shri Mahalle, Advocate for the Applicant.

Tribunal's Order:

(Per Member(A) S.P. Mukerji)

Dated: 21.10.1986.

The Petitioner, who is working as Lower Division Clerk in the office of the Inspecting Assistant Commissioner of Income-tax, Administration I in Bombay, moved the High Court of Judicature at Bombay under Art.226 of the Constitution of India with a Writ Petition No.2550 of 1983 that the results of the Selection Examination held on 20.3.1983 by the Staff Selection Commission and the impugned order dated 7.11.1983 terminating his services may be set aside with all consequential benefits. The High Court, vide its order dated 10.11.1983, stayed the termination of service of the petitioner. The petition stood

transferred to the Tribunal under Section 29 of the Administrative Tribunals Act, 1985.

2. The brief matrix of the case and the facts relating to the adjudication of the case may be summarised as follows. On the recommendation of the Staff Selection Commission, the Inspecting Assistant Commissioner at Bombay issued an offer of appointment dated 16.12.1979 to the petitioner for the temporary appointment as L.D.C. subject to the conditions of service detailed in the offer. One of the conditions germane to the case may be quoted from the offer of appointment as follows :-

"He should note that he will have to pass the typing test with a speed of 30 w.p.m. within a period of two years from the date of his appointment, failing which his services shall be terminated. He should, further note that during this period of two years, he will not be allowed any annual increments nor declared quasi-permanent or made permanent unless he passed the typing test by the prescribed standard"

The petitioner took over as L.D.C. on 28.12.79 accepting the offer of appointment on 16.12.1979.

3. It may be noted that the Staff Selection Commission had recommended the applicant along with others conditional appointment as they did not pass the prescribed typing test which was essential for regular appointment as L.D.C. As a special case, the conditional offer of appointment was made subject to the applicant passing the typing test within a prescribed period.

4. The applicant was called upon to appear at the typing test which was held on 25.5.1980 by

the Staff Selection Commission, but the applicant did not qualify in the typing test. The Staff Selection Commission (S.S.C.) however recommended that he should be given one more chance and accordingly, the applicant was allowed to appear in the second typing test held on 30.11.1980 wherein also the applicant failed to qualify. The S.S.C. in February, 1981 directed the Respondent's office that having failed to qualify in the typing test, the applicant was not eligible to continue in the employment in terms of appointment letter. The Respondent, however, on humanitarian and compassionate grounds, suggested to the S.S.C. that one more opportunity should be given to qualify in the typing test. This was accepted by the S.S.C. and the applicant was allowed to appear for the third time in the typing test held on 20.3.1983 and unfortunately, he again failed to qualify in the test.


5. The applicant again approached the S.S.C. and the Department for another chance to appear in the typing test but on 9.11.1983 a notice dated 7.11.1983 was served on the applicant terminating his services with effect from 10.11.1983. The petitioner went to the High Court on 10.11.1983 and as mentioned earlier got the stay order.


6. We have heard that the arguments of the learned Counsel of both the parties and gone through the documents carefully. The main thrust of the arguments of the learned Counsel for the petitioner is that having entered Government service, the terms of appointment indicated in the offer of appointment dated 16.12.1979 will stand superseded by statutory rules and service conditions applicable to a Government Servants of the petitioner's category. It has also been

averred that, though in a feeble form, that it is likely that the applicant's answer papers might not have been considered by the S.S.C. as his name did not appear in the list of candidates allowed to take the typing test and even if though the answer papers might have been considered, they might not have been evaluated correctly. The learned Counsel also has referred to a few rulings to urge that since the petitioner has been rendering satisfactory service for about seven years, the prescribed requisite of typing test should be waived by the respondents by the doctrine of acquiescence. The learned Counsel has finally urged that a compassionate and humanitarian approach should be adopted on the grounds that the petitioner is a young man of 30 years, has a family to support, and is a Member of Scheduled Caste (Chambhar) with rural background. On this plea, the learned Counsel for the petitioner has pleaded that the petitioner should be given only one more chance to take the typing test.

7. So far as the appointment letter is concerned, we are satisfied that the petitioner has to be bound by the conditions of appointment in accordance with the O.M. of 16.12.1979 offering him conditional appointment as L.D.C. Even assuming that the petitioner is to acquire the status of a Government Servant, the offer of conditional appointment implies that even the assumption of status of a full fledged Government Servant is conditional upon his passing typing test within two years of his appointment. If that was not so, the petitioner could as well claim increments during the period of seven year's service which he has obviously not. Therefore, the Tribunal is satisfied that he accepted even after his appointment as L.D.C. the conditions prescribed in the offer of appointment. He accepted the offer with his eyes and ears open and we do not find anything unconstitutional or wrong in the conditions of his appointment and he cannot be allowed to liquidate the conditions of appointment by the mere fact that the Respondents had been kind and humanitarian enough to extend his conditional appointment beyond two years. There is nothing to indicate that the Respondents had at any time orally or in writing given an impression to the petitioner that he would be allowed to continue in service as L.D.C. indefinitely even though he did not pass the typing test. Accordingly, the principle of promissory or equitable estoppel does not apply at all in his case. The provision of 311(2) of the Constitution of India also does not apply in his case insofar as the applicant's obligation of passing the typing test for being retained in service is concerned.

8. In view of the facts and circumstances, we do not find any merit in the petition and reject the same. However, in consideration of the facts that the petitioner has been continued in service for more than 4 years, even before he obtained the stay order from the High Court, that he is an young man belonging to a Scheduled Caste and has a family to support, we recommend that the Respondents should consider giving to the petitioner one last and final chance to appear in the next typing test to be held by the S.S.C and if he qualifies in the test, he may be given all consequential benefits. Till then, the petitioner should be continued in service but will not be allowed to earn increments nor declared quasi-permanent or permanent. There will be no orders as to costs.

  
(S.P. MUKERJI)  
Member(A) 21. 8. 86

  
(M.B. MUJUMDAR)  
Member(J) 21-10-86