

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO. : 706/97 & 707/97

Date of Decision : 13th December 2001

J.J.D'Mello & Anr. Applicant

Shri P.A.Prabhakaran Advocate for the
Applicant.

VERSUS

Union of India & Ors. Respondents

Shri V.D.Vadhavkar for Advocate for the
Shri M.I.Sethna for R.1 to 3 Respondents
& Shri V.S.Masurkar for R.4.

CORAM :

The Hon'ble Shri S.L.Jain, Member (J)

The Hon'ble Smt.Shanta Shastri, Member (A)

- (i) To be referred to the reporter or not ? *yes*
- (ii) Whether it needs to be circulated to other *no*
Benches of the Tribunal ?
- (iii) Library *yes*

S.L.Jain
(S.L.JAIN)
MEMBER (J)

mrj.

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NOs.706/97 & 707/97

Dated this the day of *December* 2001.

CORAM : Hon'ble Shri S.L.Jain, Member (J)

Hon'ble Smt.Shanta Shastri, Member (A)

Joseph John D'Mello,
Telephone Operator,
O/O the Commissioner of
Income-Tax, City IX,
Mumbai, Piramal Chambers,
Parel, Mumbai.

(Applicant in OA.706/97)

Balram Ramavadh Pandey,
working in the O/O.the
Dy.Commr.of Income-Tax,
Range 10, Pratyaksha Kar Bhavan,
Bandra Kurla Complex, Mumbai.

(Applicant in OA.707/97)

By Advocate Shri P.A.Prabhakaran

vs.

1. Union of India
through the Secretary,
Deptt. of Personnel & Training,
North Block, New Delhi.

2. The Chief Commissioner of
Income Tax, 3rd Floor,
Aayakar Bhavan, M.K.Road,
Mumbai.

3. The Commissioner of Income-Tax,
City IX, Piramal Chambers,
Parel, Mumbai.

3(a). Dy.Commr.of Income-Tax,
Range-10, Pratyaksha Kar Bhavan,
Bandra Kurla Complex,
Bandra (E), Mumbai.

4. The Regional Director,
Staff Selection Commission,
148 M.G.Road,
Mumbai.

...Respondents

By Advocate Shri V.D.Vadhavkar
for Shri M.I.Sethna for Respon-
dents No.1 to 3 and Shri V.S.
Masurkar for Respondent No.4.

P.C. Jais

...2/-

O R D E R

{Per : Shri S.L.Jain, Member (J)}

These are applications under Section 19 of the Administrative Tribunals Act, 1985 for the direction to the respondents to withdraw and cancel the O.M. dated 21.5.1997 and 17.5.1995, exempt the applicants from qualifying in the Typing Test, in case the above reliefs are not granted, the respondents be directed to provide adequate time and chances to qualify in the test.

2. The applicants who are visually handicapped, Applicant in OA.No.706/97 claims that he is totally blind, however, after qualifying in the M.A. & B.A. examination respectively competed in the Special Recruitment Drive, 1990 for Visually Handicapped. On qualifying, the Applicant in OA.No.706/97 claims that he was appointed as a Telephone Operator and Applicant in OA.No.707/97 was appointed as LDC by Respondent No.2 - The Chief C.I.T., Mumbai. On receipt of letter No.A/Est.G.B./SSC/LDC/90 dated 20.6.1990 appointing the applicants as LDC, Applicant in OA.No.706/97 ^{was} posted as Telephone Operator w.e.f. 28.6.1990, and Applicant in OA.No.707/97 joined as LDC w.e.f. 5.3.1990, confirmed as LDC by order No.A/62-11/93 dated 17.12.1993. They were allowed annual increments. The applicants received a letter from the office of Respondent No.2 raising a query about ^{their} qualifying in the typing test in terms of para 4(i) of the office

P. Jain

..3/-

order No.A-Estt. G.B./S.S.C.-LDC/93 dated 14.5.1992. In terms of the said letter, the applicants were given time of 9 months to acquire the speed of typing to meet the required standard of 30 w.p.m. in English.

3. The Applicant in OA.No.706/97 approached the Staff Selection Commission with a letter dated -11-1995 requesting to exempt in typing test. The applicants were later informed that in case of failure to pass the typing test, they may lose the job. Therefore, they appeared in the typing test on 8.10.1996. The applicant in OA.No.707/97 also appeared in typing test held on 27.9.1990. They also requested the Respondent No.2 to allow a reader/Assistant and Applicant in OA.No.706/97 also requested Respondent No.2 to carry his own typewriter. They could not pass the said test. The applicants in OA.No.706/97 and in OA.No.707/97 on 8.1.1997, 14.12.1995 submitted the appeals separately to Respondent No.1 from exempting them from typing test. The Applicant in OA.No.706/97 also stated that he is only a Telephone Operator. No response from Respondent No.1. Hence, this OA. for the above said reliefs.

4. The applicants have challenged the requirement of passing typing test on the ground that there was no such stipulation in the appointment order. DOP's O.M. speaks ^{of} several tests/opportunities and final opportunity for passing the typing test.

S. Y. M. -

..4/-

5. The Applicant in OA.No.706/97 claims that in fact the Staff Selection Commission actually held only one test on 8.10.1996 since the appointment of the applicant in June,1990. The Applicant in OA.No.706/97 claims that he has been trained as a Telephone Operator, all along working as a Telephone Operator and never been trained as a Typist. The Respondent No.2 did not allow the applicant to appear in the UDC examination on the ground that he had not been selected as LDC but only as a Telephone Operator. The respondents are comparing the unequals with equals amongst the LDCs.

6. The claim of the applicants is being resisted by the respondents. The Respondent No.1 stated that special examination for visually handicapped candidates for the post of Clerks was conducted by the Staff Selection Commission under Special Recruitment Drive,1990 examination as per the advice of the Ministry of Welfare for nominating them as Clerks. ^{By} O.M.No.39020/7/95 dated 17.7.1995 received from Department of Personnel & Training, the details of such visually handicapped candidates of Special Recruitment Drive,1990 who were yet to pass the typing test were called from Ministry of Welfare and Central Government offices located in Western Region for fixing the date for the Typewriting Test. While calling the applications from the visually handicapped candidates for Typing Test, it was clearly mentioned that the Typewriting Test which will be conducted by SSC, will be treated as final. In pursuance thereof, the test was held on 8.10.1996 for 3 candidates including the applicants.

J.V. /

..5/-

The result was declared by the Staff Selection Commission on 11.12.1996 and the same was communicated to the applicants through their departments. The applicants were not successful in the said examination.

7. The Staff Selection Commission had conducted Typewriting Test on ^{27.9.90, Y} 29.7.1992 and 28.10.1992 for visually handicapped candidates who were recruited under Special Recruitment Drive, 1990 for the candidates outside Delhi vide Circular No.1/68 /91-P&P dated 13.4.1992 addressed to all Ministries/Departments regarding holding of Typewriting test as a special examination. However, the Applicant in OA.No.706/97 had appeared only on 8.10.1996 and Applicant in OA.No.707/97 had appeared on 27.9.1990 and 8.10.1996 and did not qualify in the said tests.

8. The respondents pleaded that there is no post of Telephone Operator as such. Clerical staff members who have the knowledge of telephone operation are allowed to serve as Telephone Operator, but they have to pass the typing test. The applicants were wrongly confirmed and ^{by} allowed increments, necessary modification will have to be carried out as the applicants failed to clear the typing test. The mention of this condition of passing typing test has been made in the order of appointment No.A/Est.G. B./SSC-LDC/92 dated 14.5.1992 as per Condition No.4 at page 4 thereof (Exhibit-1). Qualifying in the typing test is a prerequisite for the appointment to the post of

P. S. -

..6/-

LDC in the Central Government. In view of the Special Recruitment Drive for the visually handicapped candidates, they were appointed with the condition that they have to qualify the typing test at the prescribed speed within 9 months. Vide appointment order No.A.Est.GB/SSC-LDC/93 dated 14.5.1992 the applicants have been duly informed about the qualifying in the typing test as per para 4 of the same. The applicants had to clear the typing test at one sitting as there is no stipulation that the typing test would be held more than once. Taking a lenient view, the persons appointed were allowed to continue in service and it was in 1995 ~~informed~~ decided that those who had not qualified the typing test may be asked to appear as a final opportunity to be given by the Staff Selection Commission. This decision was conveyed to all the Ministries/Departments vide O.M. dated 17.7.1995. Ministries also issued necessary instructions in October, 1996. Subsequently, O.M. dated 21.5.1997 was issued. Hence, prayed for dismissal of the OA. along with costs.

9. The learned counsel for the applicant relied on O.M.No. 15/8/61-Estt(D) dated 28.12.1961 particularly on para 2 of the said O.M. which is as under :-

"2. After careful consideration of the matter, it has been decided that such of the physically handicapped persons who are otherwise qualifies to hold clerical posts and who are certified as being unable to type by the Medical Board attached to Special Employment Exchanges for the Handicapped (or by a Civil Surgeon where there is no such Board) should be exempted from the typing

8.8.7/-

qualifications. Accordingly, while retaining the typing qualification in the recruitment rules for the posts of Lower Division Clerks a provision should be made therein that this qualification will not apply in the case of such of the handicapped persons as mentioned above. The Ministry of Finance etc., are requested to take steps for modification of the recruitment rules on the above lines."

Perusal of the same makes it clear that typing qualification in the recruitment rules for the post of Lower Division Clerk was retained but a provision was decided to be made therein that this qualification will not apply in ^{case} ~~case~~ of the handicapped persons as mentioned above, i.e. physically handicapped persons.

10. The applicants were appointed vide order dated 14.5.1992. Para 4(i) is worth mentioning which is as under :-

" 4 (i) The candidates at Sr.No.22 and 30 have not qualified the typewriting test in English as per the standards prescribed for the examination. It has been decided by the Board that the above candidates at Sr.No.22 and 30 may be given a time to 9 months to acquire the skill of typing to meet the standard of 30 w.p.m. (English). The candidate at S.No.46 is exempted from appearing the Typing Test by S.S.C."

The applicant in OA.No.706/97 & 707/97 are at Sr.No.30 and 22 respectively. Thus, it is clear that the applicants were given a time of 9 months to acquire the skill of typing to meet the standard of 30 w.p.m.(English). Thus, the contention of the

P. G. -

..8/-

learned counsel for the applicants that in the appointment order there was no mention that the applicant has to pass the typing test cannot be accepted which is based on Exhibit 'A-1' (OA. page 10) dated 20.6.1990 the appointment order to the post of LDC. Though the said term of Typing test has not been mentioned in it but it is clear that the applicant was not appointed as Telephone Operator but appointed only as a Lower Division Clerk and the actual appointment order is dated 14.5.1992 and only by this order the applicant was communicated his appointment.

11. The contention of the applicant that no typing test was held by Staff Selection Commission prior to 8.10.1996 is not well founded as stated by the respondents in para 11 of the written statement that it was held on ^{27.9.90, ✓} 29.7.1992 and 28.10.1992. The applicant ^{in OA 706/97 ✓} has not chosen to appear in the said typing tests.

12. The respondents have stated that the confirmation and allowing the increments to the applicants was an error and steps are being taken to correct the same. In such situation, if he has been confirmed or allowed increments, he is not absolved from passing the typing test. It has no relation with allowing the increments or confirmation.

13. The reliance of the applicant on O.M. dated 28.12.1961 which is for physically handicapped persons while the applicant's appointment is ^{as ✓} visually handicapped persons and the subsequent O.M. which is especially for visually handicapped candidates [✓] applies and not the O.M. dated 28.12.1961. [✓]
~~excludes the same O.M.~~

S.L.M. /

..9/-

14. In the result, we do not find any merit in both the OAs. They are liable to be dismissed and are dismissed accordingly. No order as to costs.

Shanta 9-

(SHANTA SHASTRY)
MEMBER (A)

S.L.Jain 9-

(S.L.JAIN)
MEMBER (J)

B.