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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH AT HYDERABAD

O.A.NO. 837/94

Date of Order: 25-1-96

Between:

1. N.S.R.Murthy.
2. S.W.Hussaini.
3. M.D.Yaseen.
4. P.Narasinga Rao.
5. C.Babu.
6. K.Narasimha.

... Applicants

and

1. Union of India, rep. by its Secretary, Ministry of Communications, (Dept.of Posts) Dak Bhavan, Parliament Street, New Delhi-1.
2. Chief Postmaster General, A.P.Circle, D.A.K.Sadan, Abids, Hyderabad-1.
3. Director of Accounts (Postal) Andhra Circle, Abids, Hyderabad-1.

Respondents.

For the Applicant :- Mr. P.B.Vijayakumar, Advocate.

For the Respondents: Mr. V.Bheemanna,
xxx/Add.CGSC

CORAM:

THE HON'BLE MR.JUSTICE V.NEELADRI RAO : VICE-CHAIRMAN

THE HON'BLE MR.RARANGARAJAN : MEMBER(ADMN)

JUDGMENT

X as per Hon'ble Mr.Justice V.Neeladri Rao, Vice-Chairman

tants, Stenographers, Lower Division Clerks and Sorters) Recruitment Rules, 1985 (for short 1985 rules) came into force on 25.5.1985. Col.11 to the schedule in regard to LDCs is in regard to method of recruitment while col.12 therein is in regard to grades from which promotion/deputation/transfer to be made in case of recruitment on promotion/deputation/transfer.

Sub-Clause (3) in Col.11 in regard to LDC as per 1985 rules refers to promotion of selection grade

... 12/61 in regard to LDCs was amended in 1989. It lays down that the Sorters with 5 years of service are eligible for promotion on seniority-cum-fitness to the extent of 20%. Thereafter these 6 applicants were promoted under the said quota between 12.4.1989 and 9.7.1992 (the date of promotion of each of them as LDC was referred to in para-2 of the ~~realy~~ statement that was filed in this OA). Their promotions were from the post of ... the post of LDC in regard to 20% quota on seniority-cum-fitness basis. Their increments were not released in the cadre of Lower Division Clerk by alleging that they had not passed the Typewriting test.

and in support of the same, the letter dt. 7.9.1989 bearing No.13-1/86-PA/Admn.I/337 is relied upon for the respondents. Being aggrieved, this OA was filed praying for a direction to the respondents to release the increments to the applicants consequent upon their promotion as LDC and to grant monetary benefits with interest @ 12% p.a.

2. The main contention for the applicants is that there is neither statutory provision nor any executive instruction to the effect that Sorters who are promoted as LDCs in the seniority-cum-fitness quota have to pass the Typewriting Test with a minimum speed of 30 w.p.m. for being eligible from ~~second~~ increments in the cadre of LDC and hence the stand taken as per letter dt. 7.9.1989 referred to herein above of the respondents is not tenable.

3. To appreciate the above contention for the applicants, it will be convenient to read paras-1 and 2 of the letter dt. 7.9.1989 which are as under:-

"Some Postal Accounts Offices have raised a doubt whether the sorters promoted as LDCs on seniority-cum-fitness basis under the amended recruitment rules for Jr.Accountants, Stenos, LDCs and Sorters published in Govt. of India Gazette dt. 18.2.89 will have to pass the type test? Under the those promoted after passing the departmental examination are required to pass the Typewriting test within a period of one year from the date of their appointment as LDC, failing which, their increment(s) are withheld and in the case of direct recruits they are not considered for confirmation also in the cadre. Later on some relaxation was made in respect of Departmental Examination promotees to the cadre exempting them from passing the type test after 5 years subject, to restrictions in the drawal of arrears of withheld increment(s).

I am directed to state that the above provisions will also cover the Sorters who, under the amended rules are promoted as Lower Division Clerks on seniority-cum-fitness basis. Such Sorters promoted as Lower Division Clerk's seniority-cum-fitness basis will, however be exempted from passing the typewriting test on their completion of five years of service as Lower Division Clerk provided that they have made at least two genuine attempts during the five years to appear in typewriting test. In such cases the withheld increment(s) will be given on passing the type-test or on completion of 5 years whichever is earlier, but they will not be eligible for any arrears of increment."

(Emphasis supplied)

4. The existing rules referred to in para-1 of the letter referred-to above make it clear that typewriting test has to be passed by direct recruits and those who are promoted after passing the departmental examination. Even therein, it is not mentioned that the existing rules laid down that Sorters who are promoted as LDCs in seniority-cum-fitness quota also have to pass the typewriting test. Of-course in para-2 of the letter referred to above, it is stated that the existing provisions in regard to passing the typewriting test will also cover Sorters who under the amended rules are promoted as LDCs on seniority-cum-fitness basis. But, it may be noted that Col.12 of 1985 rules in regard to LDC makes it clear that promotions to 30% of vacancies are on the basis of departmental examination while 20% of vacancies are to be filled on seniority quota. Hence, the promotions on passing the departmental examination are distinct and different from promotions on the basis of seniority-cum-fitness. When the executive instructions clearly state that typewriting test has to be passed by the promotees in case of promotion on passing the departmental examination

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and when there is no ambiguity in regard to the same it is not just and proper to hold that thereby it has to be inferred that the promotees who are promoted on the basis of seniority-cum-fitness quota also has to pass the typewriting test for being eligible for increments. Hence, we are constrained to hold that the clarification as per letter dt. 7.9.1989 to the effect that the Sorters who are promoted as LDCs in seniority-cum-fitness quota also ^{has} to pass the typewriting test to have the increments in the category of LDCs is not in consonance with rules in vogue.

5. Sri V.Bhimanna, learned Standing Counsel for the respondents urges that on comparison of Cols.8 & 9 in regard to LDCs, it has to be held that even promotees as LDCs promoted/under seniority-cum-fitness from Sorters category have to pass the typewriting test. It is necessary to read the headings of Cols.8 & 9 of 1985 rules to advert to the above contention for the respondents and they are as under:-

*** Headings under Col.8 & 9:**

8. Educational and other qualifications required for direct recruits.
9. Whether age and educational qualifications prescribed for direct recruits will apply in the case of promotees.

It is stated as under in regard to LDCs under Cols.8 & 9 respectively:-

8. Matriculation or equivalent and knowledge of Typewriting with a minimum speed of 30 words per minute in English or 25 words per minute in Hindi..
9. No.

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6. The arguments for the respondents are that 'No' in col.9 signifies that promotees need not satisfy the age and the educational qualifications referred to for direct recruits in col.9. --- special qualification i.e. typewriting with a minimum speed of 30 w.p.m. in English or 25 w.p.m. in Hindi which comes under other qualifications, is equally applicable for promotees including the promotees under seniority quota. But, we are unable to accede to the said contention. If any special qualification required for direct recruit is also applicable to promotees, then it has to be specifically mentioned in the recruitment rules. When it is not so mentioned it has to be inferred that the special qualification required for direct recruits is not applicable in regard to promotees. Hence, the above contention for the respondents cannot be held as tenable.

7. When there is no provision whereby the Sorters promoted as LDCs in seniority quota have to pass the typewriting test for having the increments in the cadre of LDCs, the question of exemption does not arise. As such there is no need to refer to O.M.No.14020/2/91/Estt.(D) dt. 29.9.1992 relied upon by the respondents in para-2 of reply statement. The question of relaxation from passing the typewriting test arises if one has to pass the said test either as per statutory provisions or as per executive instructions. But, the learned counsel for the respondents has not brought to our notice any such provision in regard to Sorters promoted as LDCs under seniority quota. It is implicit in the letter dt. 7.9.1989 referred to herein

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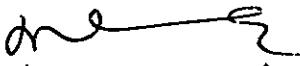
before that there is no such specific provision in regard to Sorters promoted as LDCs on seniority-cum-fitness quota.

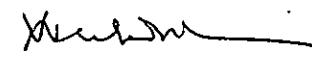
8. ^{hence} We find that there are no grounds for not releasing the increments for the applicants who are promoted from the category of Sorters to the category of LDCs under seniority-cum-fitness quota and as such a direction has to be given to the respondents to release all the increments to the applicants in the category of LDCs and the arrears have to be paid. But, we feel ~~it is~~ it is not a case where the interest has to be ordered for the concerned authorities acted in pursuance of the clarification dt. 7.9.1989 issued by the Department of Posts, Ministry of Communications, New Delhi.

9. In the result, the OA is ordered as under:-

The increments due to the applicants herein in the category of LDC ^{have} has to be released and the arrears have to be paid. Time for compliance is 30.4.1996.

No costs.//


(R. Rangarajan)
Member (Admn.)


(V. Neeladri Rao)
Vice Chairman

Dated 25.1.1996.
Open court dictation.

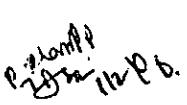

Deputy Registrar (J) CC

G.R.

To

1. The Secretary, Ministry of Communications,
Union of India, (Dept of Posts)
Dak Bhavan, Parliament Street, New Delhi-1.
2. The Chief Postmaster General, A.P.Circle,
Dak Sadan, Abids, Hyderabad-1.
3. The Director of Accounts (Postal) Andhra Circle, Abids, Hyd-
4. One copy to Mr. P. B. Vijayakumar, Advocate, CAT. Hyd.
5. One copy to Mr. V. Bheemanna, Addl. CGSC CAT. Hyd.
6. One copy to Library, CAT. Hyd.
7. One spare copy.

p.v.m.


P. B. Vijayakumar

8/9/96
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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD.

THE MR. JUSTICE V. NEELADRI, RAO
VICE-CHAIRMAN

and

MR. R. RANGARAJAN : M(ADMN)

DATED: - 25 - 1 - 1996.

~~OR~~

M.A./R.A/C.A.NO.

in

O.A.No. 837/94.

T.A.No. (W.P.)

Admitted and Interim Directions
Issued.

Allowed

Disposed of with directions.

Dismissed.

Dismissed as withdrawn

Dismissed for default

Ordered/Rejected.

No order as to costs.

NO Full Copy

केन्द्रीय प्रशासनिक अधिकारण
Central Administrative Tribunal
DEPT/DESPATCH
- 5 FEB 1996 *NSP*
हैदराबाद यादवीठ
HYDERABAD BENCH