

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

JAIPUR BENCH, JAIPUR

Date of order: 18-4-1995

OA No.274/95

Prem Prakash Sharma

.. Applicant

Versus

Union of India and other .. Respondents

Mr. R.N.Mathur, Counsel for the Applicant

Mr. U.D.Sharma, Counsel for the Respondents

CORAM:

HON'BLE MR. GOPAL KRISHNA, VICE CHAIRMAN

HON'BLE MR. O.P.SHAHMA, ADMINISTRATIVE MEMBER

ORDER

PER HON'BLE MR. O.P.SHAHMA, ADMINISTRATIVE MEMBER

In this application under Section 19 of the Administrative Tribunals Act, 1985, Shri Prem Prakash Sharma has sought a declaration to the effect that he possesses the necessary qualification of speed of 100 Word Per Minute (WPM) in Hindi Stenography for the post of Confidential Assistant scale Rs. 1400-2600, as he had passed on 13-11-1991 the Hindi Stenography Test with speed 100 WPM conducted by the Department of Official Language, Ministry of Home Affairs, New Delhi and, therefore, he was not required to appear in the Hindi Stenography Suitability Test with 100 WPM speed conducted on 6-4-1995 by the respondents in pursuance of the Circular/Notification dated 8-3-1995. He has further prayed that the result of the said test whereby the applicant was declared as failed may be declared null and void and may be set-aside. He has sought a further declaration to the effect that Hindi Stenography Suitability Test conducted by the

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respondents on 6-4-1995 in pursuance of the Notification dated 8-3-1995 was held in violation of the provisions of Rule 176 of the Indian Railway Establishment Manual Vol.I, because the transcription time given to the applicant was only 35 minutes instead of 40 minutes. He has sought yet another declaration to the effect that he is entitled to be promoted on regular basis to the post of Confidential Assistant from 13-11-1991 on which date he passed the Hindi Stenography Test with 100 WFM speed conducted by the Department of Official Language, Ministry of Home Affairs, with consequential benefits of seniority. Finally, he has sought a direction to the respondents not to revert him from the post of Confidential Assistant scale Rs. 1400-2600 on the basis of the result of the Stenography Suitability Test held on 6-4-1995.

2. On 30-6-1995, the Tribunal had issued an interim direction to the effect that the respondents shall not revert the applicant to the lower post till the next date and this direction is still continuing.

3. The case of the applicant is that he was appointed to the post of Hindi Stenographer, old scale Rs. 330-560, on being recruited through the Railway Service Commission, Bombay and he joined duty at Kota on 2-8-83. Subsequently, on his request, he was transferred to Jaipur. Thereafter, the applicant was promoted to the post of Confidential Assistant scale Rs. 1400-2300 (now Rs. 1400-2600) on adhoc basis vide order dated 27-6-1990 (Annexure-A3).

4. For regular promotion to the post of



Confidential Assistant scale Rs. 1400-2300 (now Rs. 1400-2600), a candidate must possess speed of 100 WPM in Hindi Stenography, if he is a Hindi Stenographer, which the applicant is. The applicant chose to appear in the Hindi Stenography Test conducted by the Rajbhasha Adhikari/Hindi Officer attached to the office of the Divisional Railway Manager, Jaipur and vide Annexure-A7 dated 28-6-1991 he was allowed to appear in the said test. Vide Annexure-A8 dated 13-11-1991, he was declared by the Hindi Officer to have passed the Stenography Test in Hindi with speed of 100 WPM.

5. As per Annexure-A4 dated 20-12-90 by which an opportunity was given to him to appear in the Stenography Test for regular appointment on the post of Confidential Assistant scale Rs. 1400-2300, it was stated that if a candidate already possesses qualification in Stenography with speed of 100 WPM, he should present necessary proof for the same. This concession was repeated in Annexure-A5 dated 21-5-93 by which he was again called to appear in the Stenography Test. Vide Annexure-A6 dated 29-2-1975, which is a circular letter issued by the Chief Personnel Officer, Western Railway, Bombay, it was stated that candidates who have qualified with speed of 100 WPM or with speed of 120 WPM in the Incentive Test and those who have passed E.P. Test with higher than 100 WPM speed are exempted from the speed test. The applicant's case is that since he had passed the Hindi Stenography Test conducted by the Rajbhasha Adhikari/Hindi Officer attached to the office of Divisional Railway Manager with speed of 100 WPM in Hindi Stenography, as seen

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from Annexure-A8 dated 13-11-1991, he was not required to appear in the Hindi Stenography Test once again.

6. On being called, vide Annexure-A4 dated 20-12-1990, to appear in the English Stenography Test, he had appeared therein but had failed. He was again called upon to appear in the Stenography Test vide Annexure-A5 dated 21-5-1993 but did not take part therein. Vide Annexure-A12 dated 4-1-1994, he was called upon to appear in the test but did not appear therein. Finally, vide Annexure-A14 dated 8-3-1995, the applicant was again called upon to appear in the Stenography Test, he appeared therein but was declared as failed vide Annexure-A16 dated 30-5-1995.

7. When he was called upon to appear in the Stenography Test vide letter dated 21-5-1993 (Annexure-A5), he represented vide Annexure-A9 that since he had already passed the required speed test conducted by the Hindi Officer, there was no need for him to appear in the test again. His representation was rejected vide Annexure-A10 dated 23-6-93 by which he was informed that in view of the provisions of para 176 of Indian Railways Establishment Manual, it was necessary for him to pass the Speed Test. When he was called upon to appear in the Speed Test vide Annexure -A14 dated 8-3-1995, he again submitted a representation vide Annexure-A15 dated 8-4-1995 stating that he was not required to appear in the test as he has already passed the one conducted by the Hindi Officer, but nevertheless appeared in the said, the test result whereof was declared as per Annexure-A16 dated 30-5-1995 by which he was declared to have failed.

8. One of the applicant's grievances is that since



he has already passed the Hindi Stenography Test with speed of 100 WPM conducted by the Hindi Officer attached to the office of DRM, he was not required to appear in the speed test again. His another grievance is that while under para 176 of IREM, he was to be given 40 minutes time for transcribing the shorthand dictation, he was given only 35 minutes and thus the test was not properly conducted. He had appeared, under protest, in the test of which result was declared vide Annexure-A16 dated 30-5-1995.

9. The respondents in their reply have stated, inter alia, that for regular promotion to the post of Confidential Assistant scale Rs. 1400-2300, passing the speed test with 100 WPM in Hindi/English Stenography is a pre-requisite and only those employees are exempted from taking the speed test who have already been possessing the said speed in stenography. This has been stated in Annexure-R3 dated 22-4-1994 which is a reply from the General Manager, Western Railway to a communication from the Divisional Railway Manager, Jaipur. In this communication it is further stated that there are no instructions of the Railway Board for regularisation of Hindi Stenographers who have qualified in speed of 100 WPM in examinations conducted by the Rajbhasha Vibhag, Ministry of Home Affairs, New Delhi and that the test conducted by the Rajbhasha Vibhag does not stand at par with the departmental examination for the purpose of regular promotion to the post of Confidential Assistant. The applicant had secured Zero marks out of 100 in the Stenography Test conducted on 31-1-1991 in pursuance of Notification Annexure-A4 dated 20-12-1990. The applicant's averments

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regarding his representations etc. in response to the subsequent notifications issued for holding the examination have not been denied by the respondents but they have added that his prayers for exemption, were rejected and by Annexure-A10 dated 26-3-1993, he was categorically informed that he had to pass the speed test conducted by the Department and that the one conducted by the Rajbhasha Adhikari was not recognised for the purpose of regular promotion. They have added that Annexure-A6 dated 29-7-1975 on which much reliance has been placed by the applicant does not provide that those who have passed the test conducted by the Rajbhasha Adhikari are also exempted from the said test. As regards the applicant's reliance on provisions of para 176 of IREM, they have stated that the provision of transcription time of 40 minutes is for filling up the post of Stenographer for scale Rs. 1200-2040 and that the terms and conditions for passing the Speed Test for the post in scale Rs. 1400-2300 are as laid down in the Railway Board's letter dated 28-7-1971 (Annexure-F III) (page 82 of the paper book) to which a reference has been made in sub-para (3) of para 176 of IREM. As per Annexure-F III, the period prescribed for taking dictation is 7 minutes and the time given for transcription is 35 minutes. Therefore, the test was conducted properly in accordance with the provisions of para 176(3) of IREM.

10. The applicant has filed a rejoinder in which he has stated, amongst others, that the Speed Test for which he was asked to appear on 31-1-1991 in pursuance of the Notification (Annexure-A4) dated 20-12-1990, was

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in English Stenography and he was declared as failed because of the obvious reason that he was a Hindi Stenographer and was not required to appear in the English Stenography Test. Later on he passed the Hindi Stenography Test with speed of 100 WPM conducted by the Hindi Officer of Ministry of Home Affairs in July, 1991 vide the result declared by Annexure-A8 dated 13-11-1991. The applicant has maintained that the circular letter dated 29-2-1975 (Annexure-A6) is still in force and therefore, the only question that remains to be decided is whether the applicant is governed by the instructions contained in Annexure-A6 dated 29-2-1975. Since he has passed the Suitability Test conducted by the Rajbhasha Adhikari, he is not required to pass the test again.

11. During the arguments, the learned counsel for the applicant stated that it was most improper for the respondents to subject the applicant to speed test in English Stenography vide Annexure-A4 dated 20-12-1990 whereas the applicant was a Hindi Stenographer. He relied upon the provisions in circular letter Annexure-A6 to the effect that Stenographers who have qualified in 100 WPM or 120 WPM in the Incentive Test and those who have passed the E.B. Test with higher than 100 WPM are exempted from the Speed Test. According to him, the applicant had passed the test conducted by the Rajbhasha Adhikari which was an Incentive Test. The communication Annexure-A6 itself recognizes that a person who had passed an equivalent Incentive Test is exempted from the Speed Test. In a subsequent notification Annexure-A5 dated 21-5-1993, it was once again stated that if any candidate possesses



qualification in Speed Test with 100 WPM, he should offer proof of that effect. Thus the department itself recognised that a candidate can be granted exemption for appearing in the Departmental Stenography Test of requisite speed if he had passed the examination conducted by the Rajbhasha Adhikari with the same speed. Therefore, the applicant was not required to appear in the Speed Test conducted by the Department, once again.

12. The learned counsel for the respondents stated that the applicant had not challenged Annexure-A10 dated 23-6-1993 by which his representation dated 25-5-1993 seeking exemption from appearing in the test (Annexure-A9) had been rejected. Also the applicant had not challenged Annexure-B1 dated 22-4-1994 being the communication from the General Manager, Western Railway to the DRM, Jaipur by which it was stated that there are no instructions from the Railway Board for regularisation of Hindi Stenographers who have qualified in the Speed Test of 100 WPM in the examination conducted by the Rajbhasha Vibhag, Ministry of Home Affairs. That apart, in the last communication Annexure-A14 dated 8-3-1995, there was no mention that any exemption would be granted if a test of equivalent speed etc. has already been passed by the applicant. Annexure-A6 dated 29-2-1975 did not provide that the test conducted by the Rajbhasha Adhikari will be treated as equivalent to that conducted by the Department even if both tests are of speed of 100 WPM in Stenography. Unless the applicant passed the test conducted by the Department, he would not be entitled to regularisation on the post of Confidential Assistant

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scale Rs. 1400-2300/1400-2600.

13. We have heard the learned counsel for the parties and have gone through the records.

14. We accept as correct the averment of the respondents to the effect that the test prescribed for the post carrying scale Rs. 1400-2300 on which the applicant is seeking regularisation required that the candidate should be given transcription time of only 35 minutes and not 40 minutes. This is a issue relates to the conduct of examination by the Department. Primary question before us, however, is whether the test conducted by the Hindi Officer/Rajbhasha Adhikari of Ministry of Home Affairs can be treated as equivalent to that conducted by the Department and, therefore, whether the applicant can be granted exemption from appearing in the Departmental Test. Although the Hindi Officer/Rajbhasha Adhikari is an official of the Ministry of Home Affairs, he is attached to the office of the Divisional Railways Manager, as is apparent from Annexure-A6 dated 13-11-1991 by which the result of the applicant was declared. Annexure-A6 exempts those who have already passed the Incentive Test with speed of 100 WPM. Question is, which is this Incentive Test ? We asked the learned counsel for the respondents to clarify whether there was any Incentive Test apart from that conducted by the Rajbhasha Adhikari and which the applicant could have passed. He could not offer us any clarification in this regard. He, however, emphasized that Annexure-A6 is of 1975 whereas in the communication Annexure-A14 dated 8-3-95 by which the applicant was again asked to appear in the test and in which he failed, there is no mentioned about the

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exemption being granted on his having passed any other test. Fact, however, remains that in one of the earlier communications i.e. Annexure-A5 dated 21-5-1993 by which also candidates were asked to appear in the Departmental Examination, there is clear mention that if candidates have already passed Speed Test in stenography with 100 WPM, they should produce proof to this effect. Thus, it appears that as late as 21-5-1993, the earlier instructions were still operative. The respondents have not shown that the instructions at Annexure-A6 dated 29-2-1975 stood withdrawn or cancelled at any time thereafter. Annexure-E1 dated 22-4-1994 in which it is stated that there are no instruction that a candidate passing the examination conducted by the Rajbhasha Adhikari can be granted exemption does not make any mention about the withdrawal or cancellation of the instructions dated 29-2-1975 (Annexure-A6). Thus in our view, the instructions dated 29-2-1975 (Annexure-A6) were still in force. Since the applicant had already passed the Speed Test conducted by the Rajbhasha Adhikari with 100 WPM, he was, in our view, not required to appear in the Speed Test conducted by the Department because the test passed by the applicant was apparently the Incentive Test referred to in Annexure-A6.

15. Rajbhasha Adhikari, though an official of the Ministry of Home Affairs, Department of Official Language, was attached to the office of the Divisional Railway Manager. We do not see how the test conducted by him could in any way be considered to be inferior to the one conducted by the Department. And since it appears from various communications on record including

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Annexure-A6 dated 29-2-1975 that this test can be treated as equivalent to the Departmental Test, we do not see any reasons why the applicant should be forced to appear in the Departmental Test again when he has already passed the test conducted by the Rajbhasha Adhikari. The policy adopted by the Railway Authorities in insisting upon such candidates to again appear in and pass the Departmental Test flies in the face of the policy of the Government to encourage and propagate the use of Hindi and Hindi Stenography through the Department of Official Language, Ministry of Home Affairs.

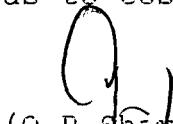
16. It is unfortunate that by Annexure-A4 dated 20-12-90, the applicant was asked to appear in the Speed Test in English Stenography whereas he was in fact a Hindi Stenographer. Therefore, to say that the applicant had secured Zero marks out of 100 in the test conducted in English Stenography cannot be held against the applicant. In the test last conducted of which result was declared vide Annexure-A16 dated 30-5-1995, the applicant was declared to have failed but it is not shown how many marks he secured. The applicant seems to have been performing well in the matter of work in Hindi as seen from various testimonials such as Annexures- A18,A19,A20,A21 and A23. No doubt, the applicant has not sought quashing of Annexure-A10 by which his representation at Annexure-A9 was rejected. However, he has sought appropriate declarations from the Tribunal. In our view, the application cannot be rejected on the technical ground that he has not specifically sought quashing of Annexure-A10. As regards failure to seek quashing of Annexure-A1 dated

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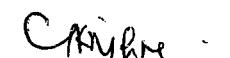
22-4-1994 by suitably amending the OA, suffice it to say that this is a communication from the General Manager, Western Railway to the D.P.M., Jaipur and the respondents have not shown that a copy of this communication was served on the applicant, even though there is a mention that the contents should be communicated to the applicant. Even otherwise, the mere failure to challenge this communication would not render the application as not maintainable because the applicant has sought an appropriate declaration which are comprehensive enough to secure all necessary reliefs to him.

17. Considering all the above circumstances, we hold that since the applicant has passed the speed test in Hindi Stenography conducted by the Rajbhasha Adhikari, exemption was available to him and, therefore, he was not required to appear in and pass the Departmental Test in Hindi Stenography for the purpose of his regularisation on the post of Confidential Assistant. The respondents shall now judge the applicant's suitability for regularisation on the post of Confidential Assistant on the assumption that he has already passed the required Speed Test in Stenography in Hindi with 100 WPM speed and take further suitable action accordingly.

18. The OA is disposed of accordingly with no order as to costs.


(O.P. Sharma)

Administrative Member


(Gopal Krishna)

Vice Chairman