

(11)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A No.414/95

Date of order: 24/9/99

Prem Prakash, S/o Shri P.L.Bairwa, R/o New Colony, Plot No.3, Near Bus Stand, Phulera, Distt.Jaipur, presently working on the post of L.D.C (Daily fated) CSD, Jaipur.

...Applicant.

Vs.

1. Union of India, through Secretary, Govt. of India, Ministry of Defence, Deptt. of Canteen, New Delhi.
2. Secretariate - Board of Control, Canteen Services, L-I, Block, New Delhi.
3. Chairman, Canteen Stores Department, 119 N.K.Road, Adalphi, Bombay.
4. Area Manager, PIRU Lines, Behind Military Hospital, Jaipur Cantt. 302006.

...Respondents.

Mr.Shiv Kumar - Counsel for applicant

Mr.M.Rafiq - Counsel for respondents.

CORAM:

HOn'ble Mr.S.K.Agarwal, Judicial Member

Hon'ble Mr.N.P.Nawani, Administrative Member.

PER HON'BLE MR.S.K.AGARWAL, JUDICIAL MEMBER.

In this Original Application, the applicant makes a prayer to direct the respondents not to terminate the services of the applicant on the ground that he has not cleared the type test in 1993 and to allow the applicant to continue on the post of LDC till he clears the type test.

2. Facts of the case as stated by the applicant are that the applicant was initially appointed as LDC in Central Stores Depot, Jaipur on 5.5.1987, since then he is continuing on the post. It is stated that Shri Umesh Kumar and others including the applicant filed O.A No.96/89 to seek the direction to appear in Type Test for regularising his services. Vide order dated 11.5.93, this Tribunal directed the respondents to conduct the Type Test and thereafter regularise the services of the applicant. The respondents conducted a Type Test on 3.7.93 but the applicant was declared failed. Again a type test was held on 24.9.93 but the result has not been declared so far and the applicant is having apprehension that his services may be terminated at any time, therefore, he has filed this O.A for the relief as mentioned above.

*[Signature]*

3. Counter was filed. In the counter it is stated that the applicant is required to clear the type test for regularisation. The applicant has availed two chances but did not clear the type test, therefore, he has no right to continue in service. It is further stated that looking to the long service of the applicant, the respondents also referred this case to the Ministry of Defence, Govt. of India to relax the rule as special case. Therefore, the action of the respondents cannot be held as arbitrary, illegal and in colourable exercise of powers. It is stated that this O.A is devoid of any merit and liable to be dismissed.

4. Rejoinder has been filed by the applicant. In the rejoinder it has been stated that the result of the second type test was not communicated to the applicant. Therefore, non-passing of type test cannot be a ground for his termination.

5. Heard the learned counsel for the parties and also perused the whole record.

6. The learned counsel for the applicant has argued that the applicant may be given further chance to clear the type test, looking to his long service in the department.

7. Admittedly, the applicant is working since 5.5.87 on the post of L.D.C. No rule has been referred which imposes an embargo on the respondents not to give more chances to the applicant for clearing the type test. We, therefore, feel just and proper looking to the long services of the applicant with the respondents' department, the applicant must be allowed a further chance to clear the type test.

8. We, therefore, allow this O.A and direct the respondents to allow the applicant at least one more chance to clear the type test and if necessary the matter may again be referred to the Ministry of Defence, Govt. of India, for relaxing the rule as special case. If the applicant clears the type test, applicant should be considered for regularisation on the post of L.D.C.

9. No order as to costs.



(N.P.Nawani)  
Member (A).



(S.K.Agarwal)  
Member (J).