

CENTRAL ADMINISTRATIVE TRIBUNAL,**JAIPUR BENCH**

Orders pronounced on: 29.7.2016
(Orders reserved on: 26.07.2016)

**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J) &
HON'BLE MRS. MEENAKSHI HOOJA, MEMBER (A)**

(I) O.A.NO.291/00343/2014

Vijendra Singh S/o Late Shri Mool Singh, aged about 43 years, working as L.D.C. Scale 5200-20200 (Grade pay 2000) under Division Store Depot, W. C. Railway Kota, R/o Plot No. 9, Gurukripa Colony, Sovaria Road, Kota Junction.

Applicant

Versus

1. Union of India through General Manager, West Central Railway, Jabalpur.
2. Dy. Chief Store Manager, West Central Railway, Kota.

Respondents

(II) O.A.NO.291/000545/2014

1. Narendra Kumar S/o Late Shri Dal Chand Rajak, aged about 42 years, working as Clerk Scale 5200-20200 (Grade Pay 2000) under Sr. Material Manager, Electric Loco Shed, W.C. Railway Tuglakabad, New Delhi R/o 21/20 Bhuliyaganj, Agra.
2. Tej Singh S/o Late Shri Samander Singh aged about 51 years, working as Clerk Scale 5200-20200 (Grade pay 2000) under Sr. Material Manager, Electric Loco Shed, W.C. Railway Tuglakabad, New Delhi R/o Village Nangla (Sil Nagar) Bharathur, District Bharatpur.

Applicants

Versus

1. Union of India through General Manager, West Contrail Railway, Jabalpur.
2. Dy. Chief Material Manager, West Central Railway, Kota.

Respondents

Present: Mr. Nand Kishore, Advocate, for the applicant.
Mr. M.K. Meena, Advocate, for Respondents.

(O.A.No.291/00343&545 of 2014-
(Vijendra Singh & Another Vs. UOI etc.)

ORDER
HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)

1. The facts and the questions of law raised by the applicants in both these cases are identical and as such these are being disposed of by a common order. The facts are being taken from O.A. No. 291/00343/14 - **Vijendra Singh Vs. UOI etc.**
2. The applicant has filed this Original Application for issuance of direction to the respondents to treat him regularly selected and pass typing test as per certificate issued by Govt. of India, Ministry of Home Affairs, Department of Official Language, Central Hindi Training Institute, New Delhi or in alternative he may be allowed a fourth chance to clear the typing test as same has been provided to other similarly situated candidates in the light of the orders of the Tribunal as well as High Court of Rajasthan etc.
3. The facts of the case which lead to filing of O.A. are that the applicant was appointed as a Khalasi (Store) under Divisional Store Depot at Kota in scale of Rs.5200-20200 GP Rs.1800 on 14.8.1996. The applicant appeared for appointment to the post of LDC under 33-1/3% quota and passed the same vide letter dated 29.1.2004 (Annexure A-1) with a rider that he will have to clear type test within two years. He was posted under Controller of HQ Jabalpur. Two type tests were conducted in which he could not get through. The applicant, on transfer, joined under Divisional Store Manager, W.C.

Railway, Kota on 3.3.2005. A 3rd type test was conducted in which applicant again failed. He states that the machine upon which he gave test was defective. The respondents issued reversion order dated 12.2.2007 (A-3) which was challenged by him (and other two applicants jointly) in O.A. No. 59/2007 which was decided on 4.9.2008 with the following directions :-

"We are of the view that since the Jodhpur and Jabalpur Benches of the Tribunal have taken a consensus view that the applicants have failed to qualify the typing test within two year and also an additional opportunity was granted to them for the third time, as such the action of the respondents in reverting the applicants cannot be defaulted. According to us, this matter can also be disposed of in the light of the judgment rendered by the CAT Jodhpur/Jabalpur Benches. Accordingly, the present O.A. is dismissed. However, we wish to observe here that in case the petitioner before the Hon'ble High Court of Madhya Pradesh ultimately succeeds, we see no reason why the respondents shall not extend the similar benefits to the applicants of this O.A".

4. The applicant continued to work as LDC. The applicant submitted representations for regularization of his services but to no avail. The applicant claims that he could be easily regularized by the respondents as he has passed type test from the Hindi Training Institute of Govt. of India. Due to

non-reversion he could not participate in the selections made by the respondents in meanwhile and other persons have been appointed as LDC. In O.A. No. 435/2010 - **Smt. Kamlesh Kumari Vs. Union of India etc.** decided on 28.4.2010, the applicant was allowed more than 4 chances to clear the test. This order was challenged in **D.B. Civil Writ Petition No. 4911/2012** which was disposed of along with CWP No. 15393/2011 (**Union of India & Another Vs. C.A.T. & Another**) and 15932/2011 (**Union of India & Others Vs. Ram Kishore & Another**) on 9.4.2013, with the following observations :-

"It was argued that as regards respondent Guru Dayal Prajapat, he has appeared in the Hindi typing test conducted by the Government of India, Ministry of Home Affairs, Department of Official Language, Hindi Teaching Scheme, (Exam Wing), New Delhi and therefore he should have been exempted from appearing in typing test and it should be taken as sufficient compliance. The Tribunal has while granting him fourth chance also alternatively directed that his certificate of clearance of typing test conducted by the Government of India, Ministry of Home Affairs, Department of Official Language, Hindi Teaching Scheme (Exam Wing), New Delhi may be considered.

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In view of aforesaid discussion, we are not inclined to interfere with the judgments passed by the Central Administrative Tribunal in the case of all the three respondents. We, however, reiterate that this fourth/additional chance which the respondents shall avail to pass the Typing Test, would be last one and no further chance shall be granted to them."

5. The claim of the applicant is that he lost the chances to appear in the test conducted in the year 2009, 2010 and 2013 and as such he cannot be made to suffer on both sides by denial of regularization. Hence, the Original Application.

6. The respondents have opposed the O.A. by filing reply pleading that as per promotion order dated 6.2.2004, the two years period completed on 5.2.2006 and applicant could not qualify test within stipulated period and as such he was ordered to be reverted back as Group D employee. However, the matter has been kept in abeyance in view of order of this Tribunal in O.A. No. 59/2007 decided on 4.9.2008 ordering that decision is to be taken on the basis of view in Writ Petition No. 1723/2008 (**Ram Lakhan Yadav etc. Vs. UOI etc.**) pending in M.P. High Court at Jabalpur Bench and no orders have been received and as such no further action has been taken.

7. We have heard learned counsel present for the parties and examined the material on the file.

8. A perusal of the pleadings would make it abundantly clear that the case of the applicants in both cases (three in number) on the same cause of action, as involved in this case, had earlier been disposed of on 4.9.2008 (in which all the three were a party) with a specific observation that the issue would be bound by the decision to be taken by the Hon'ble Madhya Pradesh High Court and as such the applicants cannot be allowed to file a second Original Application on the same cause of action on the basis of a decision rendered in some other cases by this Tribunal or by Hon'ble Rajasthan High Court.

9. The cases in hand are held to be barred under the principles of res-judicata and are dismissed accordingly, leaving the parties to bear their own costs.

(SANJEEV KAUSHIK)
MEMBER (J)

(MRS. MEENAKSHI HOOGA)
MEMBER (A)

Place: Jaipur
Dated: 29.7.2016

HC*