

CENTRAL ADMINISTRATIVE TRIBUNAL
JABALPUR BENCH

CIRCUIT SITTING AT INDORE

TA No.67/99 & TA No.77/99

Indore, this the 18th day of ~~October~~ 2005.

CORAM

HON'BLE MR.M.P.SINGH, VICE CHAIRMAN
HON'BLE MR.MADAN MOHAN, JUDICIAL MEMBER

TA No.67/99

Pratapsingh Damor
S/o Shri Punia Damor
Clerk in E-VI Section
of Divisional Office
Ratlam

Applicant

(By advocate Shri K.C.Raikwar)

Versus

1. Union of India & 2 other
The General Manager
Western Railway
Churchgate, Mumbai.
2. The Divisional Railway Manager
Western Railway, Ratlam.

Respondents.

(By advocate Shri Y.I.Mehta)

TA No.77/99

Arvind Saxena
S/o Rajendraprasad
Pay Bill Clerk
Estt. VI Section
Divisional Office
Western Railway
Ratlam.

Applicant

(By advocate Shri K.C.Raikwar)

Versus

1. Union of India through
The General Manager
Western Railway
Headquarters Office
Churchgate, Mumbai.
2. The Divisional Railway Manager
Western Railway, Divisional Office
Do-Batti, Ratlam.

Respondents

(By advocate Shri Y.I.Mehta)




O R D E R

By Madan Mohan, Judicial Member

The issue involved in both TAs is same and the facts are similar, these TAs are being disposed of by a common order.

TA 67/99

The brief facts of the case are that after due selection by written test and viv-voce for the post of Commercial Clerk in the scale of Rs.975-1540, the applicant was declared successful and was appointed in class III post as Assistant Commercial Clerk and he was deputed for training for 68 days to Regional Railway Training School, Udaipur from 30.8.94 to 21.11.94. After completion of this training, the applicant was deputed for practical training for 28 days at Ratlam Railway Station vide order dated 1.12.94. After completion of this training, respondent No.2 issued a letter dated 20.4.95 informed the applicant the post of Commercial Clerk was not available and asked him to wait. Thereafter, vide order dated 9.5.95, the applicant was appointed as a clerk in the scale of Rs. 950-1500 with directions to learn typing within 6 months and was posted in the office of respondent No.2. However, vide order dated 16.9.98, respondent No.2 called the applicant on 18.9.98 for a personal interview regarding typing test, though for commercial clerk this typing test was not necessary and in reply to this letter, the applicant submitted that he was originally selected after due written examination and viva-voce test for the post of commercial clerk. However, without following any procedure and contrary to law and rules, the applicant was reverted from Class III to Class IV, after 5 years of regular service, which is arbitrary and violative of Article 311 of the Constitution of India. Hence this TA is filed.



TA No.77/99

The facts are similar to the aforesaid TA.

3. Heard learned counsel for both parties. It is argued on behalf of the applicants that the applicants were selected after due selection process, written test and viva-voce for the post of Commercial Clerk in the scale of Rs.975-1540 (Rs.3200-4900 Revised) in the year 1993-94 but the appointment was not given on the post of Commercial Clerk even after training and appointed as Office Clerk in the scale of Rs.950-1500 and imposed a condition to learn typing. The respondents discriminated against the applicants vis-a-vis other employees of same cadre. Once a candidate is selected for the post of Commercial Clerk and departmental training was given on government expenses, the respondents cannot impose the condition of passing the typing test. Initially this condition was not in existence in the offer of appointment. Hence the reversion on the ground of not passing the typing test is contrary to first offer of appointment and therefore, the reversion order has to be quashed.

4. In reply, learned counsel for respondents argued that the applicants had sought compassionate appointment and accordingly they were selected as Assistant Commercial Clerks and sent for requisite training. However, on return from training, it was found that in Ratlam Division, there was no vacancy of A.C.C. and therefore, they were informed that their appointment as Clerk was referred to the Headquarters vide Annexure P9 and were given adhoc appointment as clerks in the year 1995. The applicants had accepted the offer of appointment as clerk instead of A.C.C. and worked for about 4 years in that capacity. The applicants were given two opportunities for clearing the typing test as required under Railway Board's instructions (Annexure R1). Since



the applicants could not clear the typing test on both occasions, they were given appointment in Group-D. Thus having accepted the post of clerk and having failed to clear the typing test, the applicants are estopped from contending that they should be retained in the initial appointment as A.C.C. The learned counsel further argued that as the Tribunal had not considered these facts in the earlier orders passed, the High Court has remitted back the matter to this Tribunal for a fresh consideration and disposal in accordance with law.

5. After hearing learned counsel for both parties and perusing the records, we find that the fact is not denied by respondents that the applicants have succeeded in written test and viva-voce as also the training attended by the applicants. But the applicants have mentioned in the TAs that the respondents had informed them that the post of Commercial Clerk was not available at that time and till the post was available, they should wait and they would be informed as and when the vacancy ^{arose} arose. Accordingly the applicants were appointed on the lower post of clerk with a direction to learn typing within 6 months. We have perused Annexures P-9 and P11 in which it is specifically mentioned by the respondents that the applicants are expected to learn Hindi and English Typing within six months from the date of appointment, otherwise their appointment could be cancelled. The applicants were given opportunity on two occasions to clear the typing test but they could not qualify it on both occasions. Apparently the applicants have accepted the terms and conditions mentioned in the appointment letter in which typing test is mentioned as mandatory. We have also perused the impugned order dated 29.4.99 (Annexure A1) in which the respondents have mentioned that the applicants have to pass Hindi and

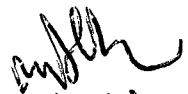


English typing test within six months from the date of appointment. Since they could not qualify the typing test on two occasions, they were ordered to be reverted to Group-D category.

6. Considering all facts and circumstances of the case, we are of the considered opinion that the action of the respondents is perfectly legal and justified and is in accordance with rules and law. These two TAs have no merit and are liable to be dismissed. Accordingly both TAs are dismissed. No costs.



(Madan Mohan)
Judicial Member



(M.P. Singh)
Vice Chairman

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*General
copy reviewed
20/10/05*

*Typed
25/10/05*