

(RESERVED)

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD**

This is the 11th day of October **2018**.

ORIGINAL APPLICATION NO. 330/00806/2015

PRESENT

HON'BLE MR RAKESH SAGAR JAIN, MEMBER (J)

HON'BLE MR. MOHD. JAMSHED, MEMBER (A)

Smt. Nirmala Kumari, W/o Late Balwant Singh, aged about 49 years, R/o Railway Quarter No. RB-2nd, 95-A, Uppar Story, East Railway Colony, Mathura Junction.

.....Applicant.

By Advocate: Shri S.S. Sharma/Shri Ravi Sharma

VERSUS

1. Union of India through the General Manager, North Central Railway, Headquarters Office, Subedarganj, Allahabad.
2. The Secretary, Railway Board, Rail Bhawan, New Delhi.
3. The General Manager, North Central Railway, Headquarters Office, Subedarganj, Allahabad.
4. The Divisional Railway Manager, North Central Railway, DRM Office, Agra.

.....Respondents

By Advocate : Shri R.K. Rai

ORDER

BY HON'BLE MR RAKESH SAGAR JAIN, MEMBER (J)

1. The present O.A. has been filed by applicant Nirmala Kumari challenging the impugned order dated 30.3.2012 issued by responding No. 4 by which respondents have

stopped annual increment of the applicant permanently under the pretext of not passing the typing test in three attempts and order dated 26.2.2015 issued by respondent No. 4 rejecting the request of the applicant for exemption from typing test on attaining the age of 45 years and direct the respondents to restore the annual increment of the applicant with payment of arrear. She is also requested to direct the respondent No.2 to exempt the applicant of passing the typing test on attaining the age of 45 years in the light of instructions issued by the DOPT and the Ministry of Finance. She is also prayed to direct the respondents not to treat the appointment of applicant as provisional after expiry of 18 months period. She is also prayed to direct the respondents to allow the applicant the benefit of MACP on completion of 10 years of service on the post of Clerk w.e.f. 4.9.2008 with all consequential benefits and also direct the respondents to consider the case of applicant for promotion on the post of Sr. Clerk since the year 2013.

2. The brief facts as narrated by the applicant in this O.A are that applicant was appointed provisionally on the post of Junior Clerk under the Traction Foreman/TRD, Central Railway, Jhansi on 4.9.1998 on compassionate ground with the condition that she ought to have been passed typing test within 18 months of her appointment. At present she has been working on the post of Junior Clerk under the D.R.M, N.C.R. Agra.
3. At the time of her appointment, she was 33 years of age. applicant appeared in the typing test on 1.11.1999 but result was not made known to her or declared within the

knowledge of applicant. She also tried to get this information through RTI Act about the typing test result of applicant but no information was given to the applicant. Respondents again conducted the next typing test on 4.2.2009, applicant again appeared in the typing test but she was not successful. Respondents conducted next typing test of clerks on 2.4.2011 in which she appeared but due to administrative reason it was cancelled. This test was conducted after a period of 11 years 6 months 27 days of her appointment and also at the age of more than 45 years of applicant. On 2.7.2011, respondents conducted the next typing test of clerk. In this test applicant appeared but she could not be succeeded. Applicant pleaded in the OA that on attaining the age of 45 years as on 15.12.2010, the applicant was entitled for grant of exemption from passing typing test as per rule.

4. By order dated 30.3.2012, applicant reverted from Group 'C' to Group 'D' because she has failed to possess the required typing qualification even after availing three chances within a period of two years. Against this order, applicant has filed appeal, which too was rejected by order dated 26.2.2015.
5. In this O.A., applicant also claimed that she may be given M.A.C.P after completion of 10 years of regular service.
6. In the counter reply, respondents have submitted that with regard to recruitment and promotion of Junior/Senior Clerk typing test is required to be mandatory to the Ministerial staff as per Railway Board Order No. 28/94 dated 7.4.1994. In this context, some of the Railways have

asked for a clarification, if the above typing test will also be insisted upon in the case of promotion of Group 'D' employees to Group 'C' posts. The matter has since been considered by the Board and it has been decided vide RBE No. 28/94 dated 7.4.1994 (Annexure R-1) that in case of promotion from Group 'D' to Group 'C' in the Ministerial cadre, the employees will henceforth be required to acquire the typing skill within a period of 2 years and their promotion will be provisional subject to acquiring the prescribed typing qualification within the stipulated period. With regard to grant of upgradation under the M.A.C.P scheme to those clerks appointed after 7.4.1994 and not qualified the typing test, the office of General Manager, N.C, Railway, Allahabad vide its notification dated 14.10.2010 (Annexure R-2) has clarified vide notification dated 14.10.2010 that the benefit under MACP scheme are to be extended to regularly appointed Group 'A', 'B', and 'C' railway employees, therefore, the benefit under M.A.C.P scheme can only be extended to those clerk/Senior Clerks who have acquired the typing skill.

7. In response to the counter reply filed by the respondents, Rejoinder has been filed by the applicant reiterating the same facts as have been alleged in the O.A.
8. We have heard counsels for the parties and considered the arguments advanced and also perused the pleadings on record.
9. Learned counsel for the applicant submitted that applicant was eligible for exemption from the age bar in

the light of the instructions of the Department of Personnel in the matter.

10. Learned counsel for the respondents argued that the applicant was not eligible for exemption from age bar under the existing instructions of the Deptt. of Personnel and further that the applicant was rightly reverted from the post of Group 'C' to Group 'C' as she had failed to qualify in the typing test within the specified period of two years.
11. The undisputed facts are that the applicant was appointed by the respondents on compassionate grounds under the dying and harness rules. At the time of his appointment, the age of the applicant was 33 years. It is also not in dispute that the appointment order issued to the applicant contained a recital that the appointment of the applicant was temporary for a period of 2 years and within the said period he had to qualify the typing test. It is also not disputed that the applicant failed to qualify the typing test within the specified period of two years and within the extensions allowed to him from time to time. Pleadings on record show that the applicant was granted a number of attempts even after the expiry of two years to qualify the typing test.
12. The issues to be examined are whether the applicant was entitled to any age relaxation in terms of the instructions of the Department of Personnel, Government of India and whether he could have been having regard to the fact that his appointment was made under the dying in harness rules on compassionate grounds.
13. In the present case also the appointment of the applicant was provisional with the condition that she has to pass typing test in Hindi or English within a period of 18 months.

14. Through Misc. Application No. 330/00959 of 2018, the applicant has annexed copy of D.O.P.T letter No. 14020/1/2014-Estt. (D) dated 22.4.2015 by which it has been provided to LDCs for grant of exemption from passing the typing test for drawal of increments and confirmation. In para 2 (i) (c) of the aforesaid letter, it has been provided that –

"If below 35 years of age on the date of appointment, such persons may be given exemption after 10 years of service as LDC provided they have made two genuine attempts to pass the typing test; otherwise they may be granted exemption after attaining the age of 45 years".

15. Through another Misc. Application No. 330/01434/2017, the applicant has enclosed Railway Board letter No. E(NG)1-2015/CFP/7 dated 16.01.2017 in which Railway Board implemented the instruction of DOPT issued vide their letter dated 22.4.2015 regarding exemption from passing the typewriting test after attaining the age of 45 years.
16. In view of Railway Board letter dated 16.01.2017 regarding exemption from passing the typewriting test after attaining the age of 45 years, we are of the opinion that applicant is entitled to the benefit of exemption of typewriting test after attaining the age of 45 years as according to the applicant at the time of her appointment, she was 33 years of age.
17. Accordingly, O.A. is allowed and impugned orders dated 26.2.2015 (Annexure 1), 30.3.2012 (Annexure 2) and 15.3.2012 (Annexure 3) are quashed and set aside.

Respondents are directed to consider the case of the applicant in the light of Railway Board letter dated 16.01.2017 regarding exemption from passing the typewriting test after attaining the age of 45 years and pass reasoned and speaking order within a period of 2 months from the date of receipt of a certified copy of the order. There is no order as to costs.

(Mohd Jamshed)

(Rakesh Sagar Jain)

Member (A)

Member (J)

Manish/-