

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD**

Original Application No.330/00671 of 2017.

This them 29th day of October, 2018

HON'BLE MR. RAKESH SAGAR JAIN, JUDICIAL MEMBER
HON'BLE MR. MOHD. JAMSHED, ADMINISTRATIVE MEMBER

Smt. Vimlesh Chandra, W/o Late Satish Chandra, aged about 50 years,
R/o Rooyee Ki Mandi, Shahganj, Agra.

-Applicant

(By Advocate – Mr. S.S. Sharma/Mr. Ravi Sharma)

V e r s u s

1. Union of India, through the General Manager, North Central Railway, Headquarters Office, Subedarganj, Allahabad.
2. The General Manager, North Central Railway, Headquarters Office, Subedarganj, Allahabad.
3. The Divisional Railway Manager, North Central Railway, DRM Office, Agra..

-Respondents

(By Advocate – Shri C.K. Rai)

O R D E R

BY HON'BLE MR. RAKESH SAGAR JAIN, JUDICIAL MEMBER

1. The present O.A. has been filed by applicant Smt. Vimlesh Chandra under section 19 of Administrative Tribunals Act, 1985 seeking following reliefs:-

"(a) to set aside/quash the *impugned speaking order* dated 21.3.2017 issued by the DRM/NCR/Agra respondent No.3, in compliance of Hon'ble CAT order dated 1.8.2016 in OA No. 766 of 2016, rejecting the representation of applicant dated 15.7.2015 in gross violation to Hon'ble CAT order

dated 1.8.2016 under the pretext of Railway Board Orders dated 29.4.2014 which is not applicable in the matter of applicant and in violation of FR 26 (14) and Railway Board order dated 16.1.2017. Further the DRM, NCR, Agra has no power and authority to change the category and post of the applicant from the post of Sr. Clerk in Ministerial Cadre to Non-Ministerial Cadre and Non-Commercial Cadre. The impugned order is in violation of Articles 14 and 16 of the Constitution of India.

- (b) to direct the DRM, NCR, Agra respondent No.3 not to change the category and post of the applicant from the post of Sr. Clerk in Ministerial Cadre to Non-Ministerial Cadre and Non-Commercial Cadre under the pretext of Railway Board order dated 29.4.2014 being in violation to the orders of DOPT and Railway Board as cited above and the DRM, Agra is not competent to change the category and post of the applicant and to allow the applicant to work on the post of Sr. Clerk in which she was appointed on compassionate ground on 17.8.1999 with all consequential benefits to the applicant in this respect.
- (c) to direct the DRM/NCR/Agra to promote the applicant on the post of Head Clerk in Gr. Rs.5000-8000 w.e.f. 1.11.2003 against restructuring of cadre as per Railway Board orders on which she was promoted vide order dated 11.7.2008 and was reverted on 6.1.2010 under the pretext of not passing the typewriting test within the stipulated period. The reversion order dated 11.7.2008 is in violation of FR 26 (14) DROPT OMs dated 22.4.2015 and Railway Board orders dated 16.1.2017 and illegal and void ab initio.
- (d) to direct the DRM/NCR/Agra to make payment of Rs.62751 as recovered from the salary of the applicant after reversion from the post of Head Clerk to Sr. Clerk vide order dated 6.1.2010 though she worked on the post of Head Clerk and shouldered the higher responsibility and also

work satisfactorily on the post of Head Clerk during that period, with interest @ 18% per annum.

- (e) *to direct the DRM/NCR/Agra to allow benefit of MACP to the applicant w.e.f. 17.8.2009 with payment of arrear thereof.*
- (f) *to allow heavy cost in favour of the applicant.*
- (g) *to pass any other order or direction as may deem fit and proper in the facts and circumstances of the case".*

2. During the argument, learned counsel for the applicant confined the relief for exemption of typewriting test on attaining the age of 45 years in the light of instructions issued by the DOPT and implemented by Railway Board.
3. The brief facts as narrated by the applicant in this O.A are that applicant was appointed provisionally on the post of Senior Clerk under the Divisional Mechanical Engineer/Diesel, Central Railway, Agra on 17.8.1999 on compassionate ground with the condition that she ought to have passed typing test within 2 years of her appointment. At present, she is working on the post of Senior Clerk under the Divisional Mechanical Engineer/Diesel, North Central Railway, Agra.
4. At the time of her appointment, applicant was 33 years of age. Applicant appeared first time in the typing test on 14.9.2009 after a period of more than 9 years from the date of her appointment and in violation of conditions of appointment letter dated 17.8.1999. 2nd typewriting test of the applicant was conducted by the respondents on 2.7.2011 in which she was appeared at the age of more than 12 years of her appointment. Applicant appeared 3rd Typewriting test, which was conducted on 9.8.2014 after a period of 15 years from her appointment. The applicant was declared unsuccessful in the aforesaid typewriting tests due

to various corrupt and malpractices being adopted in Agra Division.

5. Applicant pleaded in the OA that on attaining the age of 45 years in the year 2011, the applicant was entitled for grant of exemption from passing typing test as per rule.
6. By show cause notice dated 19.5.2016 applicant was changed the category of from Sr. Clerk in Ministerial Cadre to Non-Ministerial Cadre and Non-Commercial Cadre 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. Aggrieved against the show cause notice dated 19.5.2016, applicant filed OA No. 766 of 2016 in this Tribunal, which was disposed of with the specific direction. The operative part of the order reads as under:-

"6. Counsel for the applicant presses hard for interim relief. I am of the view that *prima facie* the applicant has made out a case for granting the interim relief as she crossed the age of 45 years in the year 2011 itself and she is entitled for exemption from typing test. Accordingly, the respondents are directed to take a decision on the representations of the applicant within a period of one month from the date of receipt of a certified copy of this order and till that time the show cause notice dated 19.5.2016 shall be kept in abeyance. With these directions, OA stands disposed of. No cost".

7. No counter affidavit has been filed by the respondents though several opportunity was given to the applicant to file counter affidavit.

8. We have heard counsels for the parties and considered the arguments advanced by the counsels for the parties and also perused the pleadings on record.
9. Through Misc. Application No. 330/01642 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) (b) & (c) of the aforesaid letter, it has been provided that –

"2 (i) (b) If between the age of 35 years and 45 years at the time of their appointment, such persons may be granted exemption on attaining the age of 45 years.

2 (i) (c) 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".

10. The applicant has also enclosed Railway Board letter No. E(NG)1-2015/CFP/7 dated 16.01.2017 in which Railway Board have 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. The relevant portion of aforesaid instruction reads as under –

"Ministry of Personnel, Public Grievances and Pensions, Department of Personnel & Training in their OM No.1020/91-Estt. (D) dated 29.09.1992 had issued certain instructions/guidelines regarding exemption from passing the typewriting test. The same has been reiterated vide their OM No. 14020/1/2014-Estt. (D) dated 22.4.2015.

2. Both the Federations viz AIRF and NFIR also raised this demand in the PNM forum. Accordingly, matter has been deliberated in consultation with concerned directorates and it has been decided by the Board to adopt the stipulation made in DOP&Ts OMs *ibid* (copies enclosed) *mutatis mutandis* to persons appointed/promoted as Junior Clerks, Accounts Clerks against promotion quota, sports person recruited against sport quota, those appointed on compassionate ground under Scouts & Guide and Cultural quota, re-deployed medically unfit Railway Servants on alternative posts re-deployed surplus staff and also physically handicapped Railway Servants as per prevailing rules. The procedure of conducting of the typing test whether it is on manual type writer or on personal computer as contained in Board's letter No. E (NG)1-2004/CFP/8 dated 04.02.2011 will remain unaltered".

11. Learned counsel for the applicant submitted that applicant was eligible for exemption from the age bar in the light of the instructions of the D.O.P.T.

12. Learned counsel for the respondents has argued that as per Railway Board Order No. 28/94 dated 7.4.1994 with regard to recruitment and promotion of Junior/Senior Clerk, typing test is required to be mandatory to the Ministerial staff.

13. Learned counsel for the respondents has further argued that 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 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.

14. Learned counsel for the respondents argued that the applicant was not eligible for exemption from age bar under the existing instructions of the DOPT and further that the applicant was rightly changed the cadre from Sr. Clerk in Ministerial Cadre to Non-Ministerial Cadre and Non-Commercial Cadre as she had failed to qualify in the typing test within the specified period of two years.
15. 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 her 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, she had to qualify 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.
16. 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.
17. 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 of her appointment. Admittedly, as per D.O.P.T letter No. 14020/1/2014-Estt. (D) dated 22.4.2015 whereby exemption from passing the typing test for

drawal of increments and confirmation would be granted to those who have completed 45 years of age. The above DOPT letter have been implemented by the Railway Board vide letter No. E(NG)1-2015/CFP/7 dated 16.01.2017.

18. In view of DOPT letter as well as Railway Board letter 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.
19. Accordingly, O.A. is allowed and the impugned order dated 21.3.2017 (Annexure A-1) is quashed and set aside. Respondents are directed to reconsider 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. In case, on reconsideration, the applicant is found entitled to exemption from passing the typewriting test as above, she would be entitled to all consequential benefits as per rules. There is no order as to costs.

(Mohd Jamshed)

Member (A)

(Rakesh Sagar Jain)

Member (J)

Manish/-