

**CENTRAL ADMINISTRATIVE TRIBUNAL,  
ALLAHABAD BENCH,  
ALLAHABAD**

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Orders reserved on : 9.3.2018

Orders pronounced on : 16.03.2018

**Hon'ble Mr. Justice Dinesh Gupta, Member (J)**

**Hon'ble Mr. Gokul Chandra Pati, Member (A)**

**MA NO.330/373/2017 (Stay Vacation Application)**

**IN**

**O.A. No.330/1590/2016**

*Nathuram Sarsaiya*

*..... Applicant*

(By Advocate : Shri Vinod Kumar)

***Versus***

*Union of India and others*

*..... Respondents*

(By Advocate : Shri Bashisht Tiwari, Shri P.K. Mishra and  
Shri Ashish Srivastava)

**O R D E R**

**Delivered by Hon'ble Mr. Justice Dinesh Gupta, J. M.:**

Heard Shri Vinod Kumar, learned counsel for the applicant, and Shri Bashisht Tiwari, Shri P.K. Mishra and Shri Ashish Srivastava, learned counsel for the respondents.

2. The applicant has filed the said OA under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

- "A. issue an order or direction in the suitable nature quashing the impugned order dated 20.12.2016 passed by Respondents department. (annexure No.A-1 to this Original Application with compilation No.1).

- B. issue an order or direction in the suitable nature directing the respondents department not to interfere in the peaceful functioning of the applicant on the post of Group C i.e. Account Clerk and also pay the regular salary to the applicant as and when it may due.
- C. To issue any, order or direction which this Hon'ble Court deem fit and proper in view of the facts and circumstances of the case, may be granted in favour of the applicant.
- D. To award costs of the application in favour of the applicant."

3. Besides the aforesaid main reliefs, the applicant has also prayed for the following interim relief:-

"It is expedient in the interest of justice that this Hon'ble Tribunal may be pleased to stay the effect and operation of the impugned order dated 20.12.2016 passed by the respondents departments. (annexure No.A-1 to this Original Application with compilation NO.1.)"

4. This Tribunal while hearing the OA at the admission stage on 27.12.2016, stayed the operation of impugned order dated 20.12.2016. Since the said Order was passed by the Vacation Bench of single Judge Member, the respondents were also directed to file their counter affidavit and notices were also issued to the respondents. Later on, respondent no.4 has filed the instant Stay Vacation Application and respondents no.1 to 3 their counter affidavit.

5. In the Stay Vacation Application, the respondent no.4 stated the facts of the case that in the year 2012, departmental examination was held on 13.9.2012 for promotion to Group-C from amongst Group-D employees in

which the applicant was declared failed on 14.9.2012 in written test but as per rule on the basis of "Best Amongst Failure" candidate being SC candidate, the applicant was promoted on 15.9.2012 provisionally with the stipulation that he will have to qualify typing test within a period of two years by affording 3 chances. In the event of failure in typing test, the respondent is at liberty to reject the applicant and no question arises to give prior notice of reversion of the applicant.

5.1 For the first time, applicant was called for appearing in typing test on 26.4.2014 in which he appeared but failed. Thereafter the applicant given second change for appearing in the typing test on 20.12.2014 in which the applicant appeared but again declared failed. The applicant was called to appear in typing test again on 18.6.2015 but he could not attend the same due to illness w.e.f. 19.6.2015 to 22.6.2015. Further typing test was held on 12.12.2015 in which again he could not appear due to illness w.e.f. 11.12.2015 to 14.12.2015. Lastly the applicant was called for appearing in typing test on 9.7.2016 in which the applicant has appeared but his result was withheld for the reasons best known to the administration and result of other candidate was declared.

5.2 The applicant has been given sufficient chances but he was not competent in getting through the typing test held by the department on so many occasions to ensure to

continuance on the promotion post. The applicant has been reverted to his substantive post as per Rules.

5.3 The instant Stay Vacation Application has been moved by the respondent no.4 on 23.1.2017 and contended that the applicant cannot be allowed to take benefit of any Memorandum issued by the Department of Personnel and Training as the same are not applicable in the case of Railway employees.

5.4 Counsel for the respondent no.4 submitted that so far as respondent no.4 is concerned, he is the senior most in the Group-D category and he is high school pass and also belongs to SC community, the post on which the applicant has been reverted is of one of the reserved quota to which he becomes eligible.

6. Official respondents no.1 to 3 have also filed their counter affidavit and denied the allegations made by the applicant in the OA and also stated that the applicant was posted on the post of Accounts Clerk and there was a condition of passing typing test. Since reasonable opportunity has been given prior for passing typing test and applicant has not passed typing test, the applicant was liable to be reverted on Group-D post from which he had been promoted as Accounts Officer and consequently the letter dated 20.12.2016 was issued by the competent authority reverting the applicant from the Group-C post to Group-D post.

7. After hearing the counsel for the parties and perusal of the records of the case, this Court is not inclined to vacate the stay order passed by this Tribunal at present as from the facts emerges from the OA as well as counter affidavit filed by the official respondents as well as stay vacation application, it is clear that applicant was promoted to the post of Group-C being SC category candidate as "Best Amongst Failure". The applicant was subjected to clear the typing test within two years in three chances. From perusal of the records, it is clear that last opportunity was afforded to the applicant for passing the said typing test on 9.7.2016 and the applicant has also appeared in the said test. However, the applicant's result was temporarily withheld. Thereafter neither the result of the applicant was declared nor was the applicant declared as failed or pass, surprisingly by impugned order dated 20.12.2016, the applicant was reverted to Group-D post on the ground of failure to pass the typing test.

8. It is also not out of place to mention here that as per the contention of respondent no.4, the applicant was given first chance for the first time in 26.4.2014, i.e., after lapse of more than one and a half year and second chance was given on 20.12.2014, i.e., after more than two years. The applicant was though called for typing test again but he could not appear due to illness and finally he appeared in the test for third time on 9.7.2016, the result of which was neither declared till today nor was the applicant declared as fail or pass. Hence,

without declaring the result of the said typing test held on 9.7.2016, it cannot be said that the applicant was failed to clear the typing test in three chances. So far as limitation of two years for passing the said typing test is concerned, the respondents alleged that the applicant appeared in the second typing test after lapse of more than two years. Hence, until and unless the respondents declare the result of the typing test which was held on 9.7.2016, there is no question of reversion of the applicant to Group-D post from Group-C post. Hence, in view of the above discussion, we do not find any sufficient ground to vacate the interim order granted by this Tribunal vide Order dated 27.12.2016, staying the operation of the impugned order dated 20.12.2016. Accordingly, the present MA 373/2017 (Stay Vacation Application) is dismissed.

9. Since pleadings have already been exchanged and the matter is ripped up for hearing, list this matter for hearing on 24.4.2018.

**(Gokul Chandra Pati)**  
Member (A)

**(Justice Dinesh Gupta)**  
Member (J)

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