

CENTRAL ADMINISTRATIVE TRIBUNAL,
CHANDIGARH BENCH

O.A.NO.060/01156/2016

Orders pronounced on: 06.09.2018
 (Orders reserved on: 23.08.2018)

CORAM: **HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J) &
HON'BLE MS. AJANTA DAYALAN, MEMBER (A)**

NIKHIL SHARMA

SON OF SUKHBIR SHARMA

HOUSE NO. 146 WADHAWA NAGAR,
 BALTANA, ZIRAKPUR, MOHALI-140603.

AGED 21 YEARS, GROUP C.

APPLICANT

BY: **MR. AJAY PAUL SINGH, ADVOCATE.**

Versus

1. UNION TERRITORY OF CHANDIGARH
 THROUGH THE SECRETARY-EDUCATION,
 UT SECRETARIAT, SECTOR 9,
 CHANDIGARH-160017.
2. THE DEPARTMENT OF HIGHER EDUCATION OF THE CHANDIGARH
 ADMINISTRATION,
 SECTOR 9, CHANDIGARH,
 THROUGH ITS DIRECTOR
3. THE SOCIETY FOR CENTRALISED RECRUITMENT OF STAFF IN
 SUBORDINATE COURTS,
 PUNJAB & HARYANA HIGH COURT, SECTOR 17, CHANDIGARH
 THROUGH ITS MEMBER SECRETARY

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Respondents

By : **MR. ARVIND MOUDGIL, ADVOCATE.**

O R D E R
HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)

1. The applicant has filed this Original Application under section 19 of the Administrative Tribunals Act, 1985, for quashing the order dated 19.8.2016 (Annexure A-12), wherein a criteria has been provided to check the typing speed of the candidates for selection / appointment to the post of Clerk.

2. The facts leading to the filing of the instant Original Application (OA), that an advertisement was issued by respondents for recruitment to the posts of Clerks/Lower Division Clerks / Steno Typists for Chandigarh Administration. The criteria, inter-alia, provided was that a person should have bachelor degree from a recognized university, proficiency in operation of computer (Word Processing and Spreadsheets) and that a person should have a speed of at least 35 Words Per Minute in English Typing on a computer. Written test was of 200 marks and upon clearance thereof, candidates were to qualify typing test on computer, which according to applicant, was only a qualifying in nature. The advertisement also provided to qualify type test, at a minimum speed of 35 words per minute. The applicant appeared in written test and qualified it by scoring 145.25 marks out of 200 (Annexure A-4). Type test was held on 20th and 21st August, 2016. The candidates were given 10 minutes to type out the given material to test typing skills. He claims that it was only qualifying examination to check only additional skill. Result was declared on 27.8.2016 and only 112 candidates, out of 986 could clear the same. The applicant failed to make a mark. Aggrieved thereby, he filed RTI applications and ultimately was informed the criteria for type contained in order dated 19.8.2016, Annexure A-12. As per this, the total number of mistakes committed by a candidate in a time span of 10 minutes has been

ordered to be deducted out of the total words typed in one minute, which he terms to be not maintainable and without any logic or reason and thus cannot be sustained on the touchstone of golden triangle of Articles 14, 19 and 21 of the Constitution of India, being vague and arbitrary. Hence, this O.A.

2. The respondents have filed a reply. They submit that as per previous practice, typing test on computer @ 35 words per minute being qualifying test (no marks/weightage) was duly mentioned in the advertisement. The criteria to check the Computer Typing Test was duly approved by the competent authority in consonance with the procedure followed by the Chandigarh Administration. The same criteria is also followed in the Central Government Departments, as per letter dated 12.3.2007 (Annexure R-1). Hence, they pray for dismissal of the O.A. The applicant has filed a rejoinder.

3. We have heard the learned counsel for the parties at length and examined the material on file.

4. The learned counsel for the applicant would vehemently argue that the criteria adopted by the respondents for type test is illegal and arbitrary and cannot be sustained in the eyes of law as it has the effect of snatching the advantageous merit of candidates obtained in the main written test in which they have scored higher marks and in that process even a person, who has scored highest marks in written test, if could not qualify the type test, cannot be appointed and if a person at lowest in the written test merit, is able to qualify the type test, can be appointed and as such the criteria of type test does not appeal to reasons and common sense. It is termed to be illegal and arbitrary and deserves to be quashed and set aside in view of law laid down in the case of Writ Petition (Criminal) No. 167 of 2012 titled **SHREYA**

SINGHAL VS. UNION OF INDIA (INFRA), that it has been adopted out of unguided and unfettered discretion of the authority. Reliance is also placed upon **HARAKCHAND RATANCHAND BANTHIA & OTHERS VS. UNION OF INDIA & OTHERS**, 1969 (2) SCC 166 and **THE COLLECTOR OF CUSTOMS, MADRAS V. NATHELLA SAMPATHU CHETTY & ANOTHER** (1962) 3 SCR 786, claiming that a statute which is invalid and unreasonable, cannot be sustained in the eyes of law. On the other hand, learned counsel for the respondents has defended the criteria adopted by the respondents, being reasonable and based on logical considerations.

5. We have considered the submissions made on both sides carefully.

6. Impugned order dated 19.8.2016, Annexure A-12, was issued by the Education Secretary, Chandigarh Administration, addressed to the Member Secretary, Society for Centralized Recruitment of Staff in Subordinate Courts (S.S.S.C), Sector-17, Chandigarh, as per which a request was made to check the typing test papers for filling up of posts of Clerks and Lower Division Clerks manually by calculating the speed as per formula as under :-

No. of strokes	2400 in 10 minutes
Gross Speed	48 (Strokes divided by 50 (5 strokes x 10 minutes))
Mistakes	15
Accurate Speed	33

The aforesaid criteria of checking the type speed has been adopted by the respondents in this case and the same is also followed by the Central Government also, as is apparent from the letter dated 12.3.2007 (Annexure R-1). It appears that the applicant, having taken

a calculated chance appeared in the type test and failed and then chosen to challenge the very criteria of type test, which according to him is arbitrary. Had he qualified, perhaps situation would have been different. It is not that the criterion has been adopted by the respondents for few individuals or it has been followed in an arbitrary or selective manner. It has been adopted across the board for all candidates. Those who qualified the written test + type test, have been put on panel and those who failed in type test, though higher in written test, have not been empanelled. We fail to understand as to what kind of defect, the applicant is referring to in the criteria adopted by the respondents. The criterion does not appear to be illegal, arbitrary or unreasonable. He has failed to make out any case for quashing of the impugned order, Annexure A-12.

7. In the case of **MARRIPATI NAGARAJA VS. THE GOVERNMENT OF ANDHRA PRADESH** (2007) 11 SCR 506, it has been held that the appellants had appeared at the examination without any demur. They did not question the validity of fixing the date before the appropriate authority. They are, therefore, stopped and precluded from questioning the selection process.

8. In the case of **DHANANJAY MALIK & ORS VS. STATE OF UTTARANCHAL & ORS**, (2008) 4 SCC 171 it was held as under:-

"7. It is not disputed that the respondents-writ petitioners herein participated in the process of selection knowing fully well that the educational qualification was clearly indicated in the advertisement itself as BPE or graduate with diploma in Physical Education. Having unsuccessfully participated in the process of selection without any demur they are estopped from challenging the selection criterion inter alia that the advertisement and selection with regard to requisite educational qualifications were contrary to the Rules.

9. In the case of **MADAN LAL V. STATE OF J & K**, this Court pointed out that when the petitioners appeared at the oral interview conducted by the members concerned of the Commission who

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interviewed the petitioners as well as the contesting respondents concerned, the petitioners took a chance to get themselves selected at the said oral interview. Therefore, only because they did not find themselves to have emerged successful as a result of their combined performance both at written test and oral interview, they have filed writ petitions. This Court further pointed out that if a candidate takes a calculated chance and appears at the interview, then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or the Selection Committee was not properly constituted.

10. In the present case also, the applicant participated in the selection process without any demur and declared unsuccessful, therefore, now at this stage, when process of selection is complete the prayer for incorporating the moderation system in the rules cannot be accepted.

11. Not only that, in the case of **PRASHANT RAMESH CHAKKARWAR VS. UNION PUBLIC SERVICE COMMISSION & ORS**, (2013) 12 SCC 489 the Hon'ble Supreme Court held that to quash the entire selection, the selected candidates are required to be impleaded as party and without impleading them as a party, the process cannot be quashed. In this case also, the applicant has failed to impleaded any person by name and as such the O.A. cannot be entertained. The relevant part reads as under:-

"13. We have considered the respective arguments and scanned the voluminous papers produced by the petitioners. In our view, the High Court did not commit any error by non-suiting the petitioners on the ground of non-impleadment of the selected candidates as parties to the original applications and the writ petitions. If the methodology of moderation adopted by the Commission is faulted, the entire selection will have to be quashed and that is not possible without giving opportunity of hearing to those who have been selected and appointed in different cadres."

12. It has been held in **UNION OF INDIA V. S.L. DUTTA** AIR 1991 SC 363 and **STATE OF ANDHRA PRADESH V. V. SADANANDAM** AIR 1989 SC 2060 that the manner in which posts are to be filled up including the methodology and the modalities thereof is the prerogative of the employer and that once a policy decision based on expert advice is taken and all the aspects are thrashed out, it cannot be treated as without application of mind or arbitrary and such functions are best left to the Executive and the Courts should not interfere with the same.

13. In view of the aforesaid discussion and position under law, we find that the O.A. lacks any merit and is dismissed accordingly. The parties are, however, left to bear their own costs.

(SANJEEV KAUSHIK)
MEMBER (J)

(AJANTA DAYALAN)
MEMBER (A)

Place: Chandigarh.
Dated: 06.09.2018

HC*