

**CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH
REGN. No.:OA/050/00376/2018**

Date of Order: 20.07.2018

C O R A M

**HON'BLE MR. K.N.SHRIVASTAVA, MEMBER (ADMN.)
HON'BLE MR. JAYESH V.BHAIRAVIA, MEMBER (JUDL.)**

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Manisha Kumari, daughter of Banarsi Paswan, resident of Qr. No.458 "J", Road No.5, Railway Medical Colony, PS-Samastipur, District-Samastipur-848 101.

..... Applicant.

- By Advocate: - Mr. S.K.Bariar;
Mr. R.K.Bariar.

-Versus-

1. The Union of India through the General Manager, East Central Railway, Hajipur-844 101.
2. The Divisional Railway Manager, East Central Railway, Samastipur-848 101.
3. The Divisional Railway Manager (Personnel), East Central Railway, Samastipur-848 101.
4. The Sr. Divisional Personnel Officer, East Central Railway, Samastipur-848 101.
5. The Divisional Personnel Officer, East Central Railway, Samastipur-848 101.
6. The Assistant Personnel Officer,-III, East Central Railway, Samastipur-848 101.

..... Respondents.

By Advocate: - Mr. B.K.Choudhary, Sr. Panel Counsel with Mr.
D.K.Verma, Addl. Standing Counsel

O R D E R

Per K.N.Shrivastava, Member (Admn.):- This OA has been filed

under Section 19 of the A.T.Act. The applicant has prayed for the following relief:-

“8(i) The applicant humbly prays that the Office Order No. 19/2018 dated 28.03.2018 (Annexure-A/11) may be treated as illegal and be quashed and set aside.”

2. The factual matrix of the case, as noticed from the records, is as under:-

(i) The applicant was appointed as Group 'D' employee in the respondents Railway Department vide Annexure-A/1 order dated 05.10.2005. She was promoted to the grade of Lower Division Clerk (for short, LDC) vide Annexure-A/2 order dated 12.06.2008. The said promotion order had a condition that the applicant's promotion is subject to her passing the Typing Test within two years. This stipulation was in accordance with RBE No. 66/2000, dated 07.04.2000 (Annexure-R/6) according to which, such government servants have to clear the Typing Test within a period of two years of their promotion as LDC and for which they are accorded three chances during the said period.

(ii) The applicant for the first time appeared in the Typing Test on 17.09.2009 but she failed. The respondents notified to conduct the next Typing Test in the year 2010 but due to her being on maternity leave, she did not avail that opportunity.

(iii) The applicant appeared in the Typing Test, for the second time in the Test conducted on 07.10.2011 but she failed again.

(iv) The respondents accorded her a 3rd and final chance vide Annexure-A/3 communication dated 14.02.2014, to

appear in the Typing Test which was scheduled to be held on 09.03.2017. The applicant, however, vide her Annexure-A/5 representation dated 10.04.2017 informed the Divisional Railway Manager (Personnel) that she was unwell and as such she was not in a position to appear in the Typing Test.

(v) The respondents finally, vide their impugned Annexure-A/11 order dated 28.03.2018 reverted the applicant to the Group 'D' post from the grade of LDC on the ground that she has failed to pass the Typing Test within three chances. The applicant represented to the respondents against the Annexure-A/11 reversion order vide her representation dated 12.04.2018 (Annexure-A/12). Besides other grounds, she also took a new ground that in terms of RBE No. 02/2017, she cannot be reverted since she has already worked as LDC for more than eight years.

(vi) As no consideration was given by the respondents to her Annexure-A/12 representation, the applicant approached this Tribunal in the instant OA praying for the relief as indicated in para 1 supra.

3. Pursuant to the notice issued to the respondents, they entered appearance and filed written statement to which a rejoinder was filed by the applicant. During the pendency of the OA the Tribunal, vide its interim order dated 03.05.2018, directed the respondents to decide the pending Annexure-A/12 representation of the applicant.

The respondents finally, vide their order dated 16.05.2018 (Annexure-P/11) rejected the representation of the applicant. Consequently, the applicant filed MA No. 292 of 2018 in this OA placing on record the respondents' order dated 16.05.2018, whereby Annexure-A/12 representation of the applicant has been rejected.

4. Since the pleadings were complete, the case was taken up for hearing today.

5. Mr. S.K.Bariar, learned counsel for the applicant, besides giving background of the case, brought to our notice that some identically placed Railway servants, who, like the applicant, were also promoted from Group 'D' to LDC and were reverted by the respondents after having failed thrice in the Typing Test, came before this Tribunal in OA No. 08 of 2012 challenging their orders of reversion. The Tribunal disposed of the said OA vide order dated 23.12.2016 with the following observation/direction:-

"22. As for the exemption from typing test for employees who have completed 45 years of age, we could not find any provisions in the rules of the Railways. The respondents have submitted that Annexure-A/12 pertains to some other organizations and not the Railways.

23. In conclusion, the OA is dismissed and status quo is vacated with no order as to costs. MA 178/2016 accordingly stands disposed of. However, since the applicants are low paid employees and they have been allowed to continue on higher post because of the Tribunal's order for status quo, it is also directed that no recovery should be made for the excess payment for working in the higher post. However, the respondents are free to make consequential corrections on notional basis in pay scale etc."

6. Mr. Bariar further submitted that the order of the Tribunal in OA No.08/2012 was challenged by the applicants therein before the Hon'ble Patna High Court in CWJC No. 999 of 2017, which was dismissed. He further stated that the petitioners therein had taken a ground that the respondents have been showing partiality in favour of Manisha Kumari (applicant in this OA) as she had not been reverted after having failed in the Typing Test thrice, whereas the petitioners had been reverted. On this issue the Hon'ble Patna High Court, in its judgment has made a very significant observation which is reproduced herein below:-

“6. Learned Senior Counsel representing the petitioners thereafter brings example of one Manisha Kumari to show that the Railways are trying to practice discrimination. She too has not passed the typing test, but she not been reverted and she is going to be given yet another opportunity.

7. A closer examination of facts available on record indicates that Manisha Kumari has failed once. She did not appear in the second examination whatever be the reason and when third examination was held, she was given opportunity and she failed even in that examination. Net effect is that she had sat in two examinations for the typing test and she had failed. Railways are now trying to give her third opportunity, which is not more than three opportunities, which these petitioners have already availed for.”

7. Mr. Bariar thus, argued that the applicant had never availed the third chance.

8. The second and most significant submission made by Mr. Bariar was that the DOP&T, Govt. of India issued OM dated 22.04.2015 on the issue of exemption from passing typing test on

computer in respect of LDCs. He drew our attention to Para 2(i)(d) of the ibid OM which reads as under:-

“(d) Those LDCs who have made two genuine attempts for passing the typing test prior to issue of this O.M. but have not completed 8 years service as LDC, may be granted exemption from passing the typing test after completion of 8 years of service or on attaining the age of 45 years, whichever is earlier.”

He further submitted that this OM of DOP&T was circulated by the Ministry of Railways vide Annexure-A/10 letter dated 16.01.2017 to all the General Managers (P) of all Zonal Railways & Production Units. He thus, argued that the applicant cannot be reverted to the post of Group ‘D’ since she has already worked as LDC for more than eight years.

9. Per contra, the learned counsel for the respondents, Mr. B.K.Choudhary, submitted that the applicant has been granted three chances to appear in the typing test. The third and final chance was given to her to appear in the typing test which was to be conducted on 09.03.2017. Since she chose not to participate in the test, the respondents were left with no option but to pass the impugned order reverting her to the post of Group ‘D’.

10. Mr. Choudhary further submitted that the order of the Tribunal dated 23.12.2016 in OA No. 08 of 2012 and the Hon’ble Patna High Court’s order dated 02.03.2017 in CWJC No. 999 of 2017 have been challenged by the petitioners therein before the Hon’ble Apex Court in SLP (C) No. 31219-31220 of 2017 which is still pending.

11. We have considered the arguments of the learned counsel for parties and perused the records. Indisputably, in terms of RBE No. 66/2000, all the Group 'D' Railway servants, who are promoted to the grade of LDC, are required to pass the Typing Test within two years and for which they are accorded three chances during that period. From the records it would be evident that the respondents have not been very strict in enforcing the prescribed time limit. In the case of the applicant, as the records would show, she appeared in the Typing Test only twice i.e. on 17.09.2009 and 07.10.2011. Thereafter, another opportunity was given to her in 2011 but because of her being on maternity leave, she did not avail that opportunity. Before the third and final opportunity was granted by the respondents vide their Annexure-A/3 order dated 14.02.2017, the DOPT OM dated 22.04.2015 had already come in force which clearly provided that all those LDCs across the Govt. of India who have completed eight years of service or have attained the age of 45 years should not be reverted to Group 'D' post even though they may not have cleared the typing test. This OM of DOP&T has been duly communicated for action by the Railway Board to all the General Managers (P) of all Zonal Railways & Production Units vide RBE No. 02/2017, dated 17.01.2017. The last para of this RBE clearly indicates that this comes into effect from the date of issuance itself. As noticed herein above, the applicant was promoted to the post of LDC on 12.06.2008. Since the respondents did not enforce the instructions contained in RBE No. 66/2000, hence in terms of the ibid OM of

DOP&T, after completion of eight years of service as LDC, the applicant acquired right of continuing on the post and is no more vulnerable to reversion on the ground of not passing the typing test.

12. In the conspectus, we allow this OA and hold that the applicant cannot be reverted to the post of Group 'D' in accordance with the RBE No. 02/2017 read in conjunction with DOPT OM dated 22.04.2015. The impugned Annexure-A/11 order of the respondents dated 28.03.2018 is hereby quashed and set-aside. As a consequence thereof, the speaking order dated 16.05.2018 passed by the respondents also stands quashed and set-aside.

In view of disposal of the OA, all ancillary applications also stand disposed of.

Sd/-
(Jayesh V.Bhairavia)
Member (Judl.)

Sd/-
(K.N.Shrivastava)
Member (Admn.)

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