

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH**

ORIGINAL APPLICATION NO.170/00043/2018

DATED THIS THE 15th DAY OF NOVEMBER, 2018

HON'BLE DR.K.B.SURESH, MEMBER (J)

HON'BLE SHRI C.V.SANKAR, MEMBER (A)

Preethi K.
D/o.Sri Uday Kumar
Aged 23 years
Working as Data Entry Operator on contract basis
All India Institute of Speech and Hearing
Manasagangothri
Mysore-570 006.
R/o # 254, 14th Cross
Janathanagar, T.K.Layout
Mysore-570 009.

....Applicant

(By Advocate Sri Ranganath S.Jois)

Vs.

1. The All India Institute of Speech and Hearing
"Naimisham" Campus
Manasagangothri
Mysore-570 006
Rep. by its Director.
2. The Union of India
Rep. by its Secretary
Ministry of Health and Family Welfare
New Delhi-110 001.
3. Rukmini C
Age Major
Working as Clerk-cum-Typist
All India Institute of Speech and Hearing
"Naimisham" Campus
Manasagangothri
Mysore-570 006.

...Respondents

(By Advocates Shri K.Ananda for R1 & Shri B.O.Anil Kumar for R3)

ORDER

(PER HON'BLE SHRI C.V.SANKAR, MEMBER (ADMN))

The applicant has filed the present OA seeking the following relief:

- a) Call for the entire records relating to the impugned select list*

bearing No.SH/PL/C.20/2017-18 dtd.29.8.2017 passed by First Respondent vide Annexure-A9 in so far as the post of Clerk-cum-Typist is concerned peruse and quash the selection of the respondents 3 as illegal, arbitrary and discrimination and violative of Article 14 and 16(1) of the Constitution of India.

- b) Issue a consequential direction to the respondents to consider the candidature of the application for the post of Clerk-cum-Typist on the basis of the highest marks scored by the candidate in the skill test and thereafter to select and appoint her for the post of Clerk-cum-Typist with all consequential benefits from the respondents 3 is appointed.*
- c) Issue a direction or in the alternative to the respondents to continue the services of the applicant as Data-Entry Operator and until the said post is filled up by UPSC as per rules and extend her the full pay-scale of the post by applying the principle of 'equal pay for equal work'.*

2. The applicant is a graduate and she has applied for the post of Data Entry Operator being qualified for the said post in pursuance of the Notification issued by the 1st respondent and she was issued orders of appointment dt.29.10.2013(Annexure-A1) for a period of 12 months. She reported for duty on 11.11.2013(Annexure-A2). Her appointment was renewed on 14.11.2014(Annexure-A3) and she again reported for duty on 14.11.2014 with a salary of Rs.13,000 per month. She was issued with the third appointment order dtd.20.10.2015 for a salary of Rs.14,000 and continued in service and she reported on 20.10.2015. She was once again appointed on 23.9.2016 for a period of 11 months for a salary of Rs.14,000 per month. She reported on 23.9.2016. The latest appointment is on 28.8.2017 and she reported on 28.8.2017 as accepted on 31.8.2017. She submits that she has been rendering effective service in respect of Data Entry Work in the office and for that experience certificate is issued on 9.3.2017(Annexure-A4). She has not been paid the salary and allowances attached to the post of Data Entry Operator in the Institute. The applicant having served for nearly 4 years had also applied for the post of Typist-cum-Clerk in pursuance of Notification issued on 25.10.2016(Annexure-A5). The applicant was called for Skill Test,

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General Awareness and English Typing etc. on 27.7.2017 in which she appeared and scored a total marks of 98 in Typing and 21 in General Awareness and English. The applicant has passed successfully in first class in SSLC as per marks card vide Annexure-A6 and also in Dept. of Technical Education in Commercial Practice(English) as per marks card vide Annexure-A7. She was treated as qualified as per the result of the Skill Test published vide Annexure-A8. Thus, even though the applicant had scored highest marks as compared to many of the candidates, the applicant has not been either selected or placed under the waitlist. In fact, other 2 candidates who have been placed in the wait list namely Rukmini and D.Raghavendra have scored lesser marks than the applicant. However, they have been selected on the ground that they have scored higher marks in the qualifying examination namely SSLC. The said notification dt.25.10.2016 did not provide any weightage to the services rendered by the applicant and having conducted a Skill Test, the final selection has to be made on the basis of the marks in the said test as per 9 and 10 of the notification. Therefore, non-providing of weightage and refusing her the selection on the basis of marks in the qualifying examination overlooking the marks obtained in the skill test is illegal and arbitrary and in violation of para 9 and 10 of the notification. The respondents have totally ignored the marks obtained in the skill test but prepared the list on the basis of marks in the qualifying examination and not the test.

3. The applicant further submits that she has been working on contract basis in pursuance of a selection as a Data Entry Operator from 2013 and has been discharging her duties to the best of her abilities and has been appreciated by the Office for her service. Further the 1st respondent denied the opportunity for consideration to the post of Typist, and has not provided any weightage for

the services already rendered by her. She submits that there is a proposal by the 1st respondent to outsource the service of the applicant and bring candidates from outsourcing which will affect her service as Data Entry Operator. She apprehends that the present Director, who herself is on contract appointment is making efforts to make appointment from outsourcing by displacing the contract employees serving for 4 to 8 years. As long as the candidates from UPSC are not posted, the applicant cannot be disturbed in the capacity of Data Entry Operator which she is holding. Therefore, the applicant is also entitled for a direction to continue her services as Data Entry Operator and to extend her the pay scale and allowances as per 'equal pay for equal work' attached to the post.

4. The respondents have filed reply statement wherein they submit that the 1st respondent i.e. All India Institute of Speech and Hearing(AIISH), Mysore is an autonomous body under the Administrative control of Ministry of Health and Family Welfare and is wholly funded by the Govt. of India. The Director of the Institute carries out the duties and functions under the guidance of the Executive Council and Bye-laws and Rules and Regulations framed by the Executive Council of the Institute.
5. The applicant was engaged on contract basis as Data Entry Operator for a particular period initially and thereafter she was continued from time to time with intermittent breaks. As per the contract appointment order dtd.28.8.2017(Annexure-R1), the applicant was appointed to the post of Data Entry Operator on 28.8.2017 and as per the terms and conditions of the said contract appointment, the term of the applicant will expire on 27.8.2018. The terms of contract appointment are clear and unambiguous wherein it is stipulated that 'this offer does not confer any right or title to claim permanent

OA.170/00043/2018/CAT/Bangalore Bench appointment at AIISH, Mysuru. Admittedly, the applicant accepted these terms and conditions and reported for duty in the 1st respondent Institution.

6. They submit that the Govt. of India had issued an OM dtd.29.12.2015(Annexure-R2) stating that there is no interview for the recruitment in so far as Gr.C, Gr.D posts and non-gazetted posts of Gr.B category and all such equivalent posts are concerned. Further, it was made clear that Skill Test or Physical Test is different from the interview. However, these tests will only be qualifying in nature. The assessment will not be done on the basis of marks obtained for such tests. Thereafter, on 15.2.2016, the Govt. of India issued one more OM dtd.15.2.2016(Annexure-R3) based on which the 1st respondent passed an order on 15.03.2016(Annexure-R4) regarding the procedure to be followed for filling up the posts at the level Gr.B, C and C(MTS) in the 1st respondent Institution. The 1st respondent had issued the Recruitment Notification dtd.25.10.2016(Annexure-R5) to fill up the posts of Store Keeper, UDC, Accountant, Steno Gr-III, LDC and Clerk-cum-Typist in the 1st respondent Institution. It is submitted that as per the recruitment notification and the above OM's, the method of recruitment to the said posts is that, after receiving all the applications, the 1st respondent Institution verify the same and prepare at the ratio of 1:20 of the total notified posts based on the marks secured in the qualifying examination. Thereafter they will conduct the Skill Test to the eligible candidates. To qualify in the Skill Test, the candidates should secure minimum 40% of marks in each paper. However, the marks secured in the said Skill Test will be considered only to declare that such candidates are qualified or not qualified in the Skill Test and the same will not be considered to prepare the selection list. Thereafter, out of the qualified candidates, the merit list will be published based on the marks secured in the essential educational qualification and thereafter, the 1st respondent will

publish the selection list.

7. It is submitted that the applicant had applied for the post of Clerk-cum-Typist in pursuance of the notification dtd.25.10.2016 and had appeared for the Skill Test along with others. The person who secured highest marks in the essential educational qualification and obtained qualifying marks in the Skill Test was offered the post and as he did not join within the stipulated date, the said post was offered to the person who was next in the order of merit i.e. Smt.Rukmini C(Respondent No.3). Admittedly, the applicant has secured 65.28 percentage of marks in her essential educational qualification, 21 marks in General Awareness & General English and 98 marks in the Skill Test. On the other hand, the 3rd respondent has secured 80.48 percentage of marks in her essential educational qualification, 21 marks in General Awareness & General English and 93 marks in the Skill Test. The copy of the list of candidates who appeared for the Skill Test to the post of Clerk-cum-Typist and their marks in the essential educational qualification and the Skill Test is produced as Annexure-R6. Thus it is clear that the applicant has secured less marks than the selected candidates in the essential educational qualification and therefore, the applicant was not selected to the said post. There is no provision to give weightage for the services rendered on contract basis and the applicant is not entitled for grant of pay scale for the post of Data Entry Operator as claimed. It is also pointed out that 2 other candidates at Sl.No.9 and 11 in the Annexure-R6 have secured more marks both in the essential educational qualification as well as Skill Test but they are still not considered for selection based on the approved criteria as per the Govt. of India guidelines. Since the applicant secured less marks in the essential educational qualification than the 3rd respondent, the applicant was not selected to the said post of Clerk-cum-Typist and the selection of the 3rd

OA.170/00043/2018/CAT/Bangalore Bench respondent is in accordance with law and there is no violation as alleged by the applicant. The applicant was appointed on contract basis as Data Entry Operator and the terms of her contract appointment are unambiguous and clear that the contract appointment is on a consolidated salary and for a particular tenure that is indicated in the order. This contract service has been extended periodically with intermittent breaks and over a period of time, the duration of the contract has been clearly indicated in the letter of appointment. The salary payable has been clearly spelt out in the letter of appointment each time which has duly been accepted by the applicant. The applicant has been provided with appointment on contract basis intermittently only because of the need of Institute during the periods cited by the applicant and the salary was predetermined which was accepted by the applicant and there is no provision for providing salary attached to the post of Data Entry Operator in the Institute as there is no sanctioned permanent post of Data Entry Operator in the 1st respondent Institute. In the order of contract appointment, it is clearly mentioned the consolidated salary amount and also mentioned that no other allowances are admissible. Admittedly, the applicant accepted these terms and conditions and also accepted to work on contract basis for the consolidate salary. Therefore, now she cannot turn around and claim that she has not been paid salary and allowances attached to the post of Data Entry Operator as there is no such permanent sanctioned post in the Institute. The applicant was called for Skill Test in General Awareness and English Typewriting after verifying her eligibility to fulfil the required qualification as per the RRs of the Institute and not based on the service of contract employment. It may be seen from the results of the Skill Test that there were 9 candidates who qualified in the Skill Test along with the applicant. Out of 9 candidates, the candidates who possessed highest percentage of marks in the essential

educational qualification prescribed for the post were placed in the order of merit and the 1st candidate who fulfilled the merit criteria was issued the offer of appointment and 2nd candidate was placed in the waiting list. As the 1st candidate did not join the post, waiting list candidate was offered the position and he has joined the post. This procedure is in accordance with the guidelines prescribed by the Govt. of India, Min. of Health & Family Welfare as indicated in OM dtd.15.02.2016 and implemented in the Institute as per order dtd.15.3.2016. In the above guidelines, it is clearly mentioned that the marks secured in the Skill Test will not be considered for the selection. There is no provision for selection of candidates from UPSC as stated by the applicant as the 1st respondent is an autonomous body having its own RRs to appoint persons to the required posts. Therefore, the UPSC has no role in filling up of the posts in the 1st respondent Institution. The post of Data Entry Operator is purely temporary and valid only till the duration which has been clearly stipulated in the offer of contract appointment unless the Institute requires the services which is purely need based. If the service of the applicant is not required for the Institution, the contract employee has no right to claim continuation of his/her contract service. There is no provision to fill up the post of Data Entry Operator on regular basis as stated by the applicant. It is submitted that the applicant has no right to comment regarding the appointment of the Director of 1st respondent Institution. There is no continuity of 4 years of service as claimed by the applicant and more so there is no provision to give service weightage to the person who have worked on contract basis.

8. They further submit that the applicant had made an allegation that the 1st respondent issued the tender for the purpose of taking out source agency for supply of man power which is in no way connected with the contract

OA.170/00043/2018/CAT/Bangalore Bench appointment of the applicant and she is entitled to complete her tenure as stated in the contract appointment order subject to conditions thereof. Therefore, the applicant has no right to challenge the said Tender Notification.

9. The applicant has filed an MA.No.413/2018 for interim order to which the respondents have filed statement of objections.
10. We have heard the Learned Counsel for both the parties. Learned Counsel for the applicant has filed written arguments note enclosing therewith recruitment notifications of similar Institutions under the same department all over India where marks in the Skill Test and Written Test/Examination have been taken to prepare merit list and not the marks in the qualifying examination alone and the selection in the similar organisations are made on the basis of marks obtained in the Skill Test/Written Test conducted by them and not on the basis of marks in the qualifying examination. The Learned Counsel for the respondent No.1 has also filed written argument note enclosing therewith Annexure-R8 wherein it is stated that the relaxation in upper age for recruitment to various categories of the posts under the Central Government is applicable only to the central government employees and not the contractual employees. The Learned Counsels for the applicant and the respondents have made submissions reiterating the factual position and their points as highlighted by them in the OA and reply statements.
11. We have gone through the main contentions of the applicant, reply of the respondents and the written arguments note filed by both the parties in detail. The issue relates to the notification issued by the respondents vide dtd.25.10.2016(Annexure-R5) for the post of Clerk-cum-Typist-1 post (UR). The essential qualification mentioned being SSLC or equivalent and minimum speed of 30 words per minute in English Typewriting. The applicant had also

participated in the recruitment process and according to the applicant, she had scored highest marks compared to many of the candidates, but she has not been either selected or placed under the waitlist. The Govt. of India vide OM dtd.29.12.2015(Annexure-R4 in OA.No.279/2018) discontinued the process of Interview and as per para-2(d), it has been clearly stated that 'from 1st January, 2016, there will be no recruitment with interview at the junior level posts'. It was also clarified in the same OM vide para-2(f) that 'as Skill Test or Physical Test is different from Interview, they may continue. However, these tests will be only of qualifying nature. Assessment will not be done on the basis of marks for such tests'. Vide Annexure-R6, the respondents have also given the details of the candidates whose cases were examined for filling up the post of Clerk-cum-Typist and they have gone by the percentage of marks in the essential qualifying examination and one Ms.Rukmini C who had secured 80.48% in the qualifying SSLC examination was initially waitlisted and thereafter was selected. Ms.Preethi K's case had also been examined and since she had secured 65.28% in SSLC examination, she was not selected. The applicant would claim that in similar other organisations, the marks obtained in the Skill Test etc. have been considered and since the applicant has scored more marks in the Skill Test than respondent No.3, she should have been selected to the post of Clerk-cum-Typist.

12. From the facts of the case, it is clear that the interview process was to be dispensed with w.e.f. 01.01.2016 and Skill Test etc. can be considered only for qualifying the candidates and not for actual rank of selection. The respondents have followed the decision of the Govt. of India and adopted an uniform procedure for all candidates and therefore, we are not able to find fault with the same. On perusal of the written arguments note filed by the respondents, we also find that one Smt.Janhavi C and Smt.Anjana Nambiar

secured more marks than the applicant in the Skill test and also one Sri Sri.Raghavendra D had secured the same marks as secured by the applicant and he has also secured 77.92% of marks in essential education qualification. The applicant has secured less in the essential qualifying examination and the 3rd respondent who was waitlisted was offered appointment as Shri M.Rajesh Kumar who was the selected candidate did not accept the offer of appointment. Therefore, the applicant has no case in so far as the selection to the post of Clerk-cum-typist is concerned. The question of continuing the applicant in the post of Data Entry Operator does not arise as the post she was occupying was a contract appointment and after completion of the contract period, the applicant has no right to continue in the said contract post. Therefore, on both these accounts, the OA is dismissed. The only direction we would give is that the respondents should not fill up the post of Data Entry Operator by another contractual or outsourced employee in the place of the applicant so long as there is a need for her services and her work is satisfactory. No costs.

(C.V.SANKAR)
MEMBER (A)

(DR.K.B.SURESH)
MEMBER (J)

/ps/

Annexures referred to by the applicant in OA.No.170/00043/2018

- Annexure A1: Copy of the appointment order dtd.29.10.2013
- Annexure A2: Copy of the duty report dtd.13.11.2013
- Annexure A3: Copy of the renewal of the appointment order dtd.14.11.2014
- Annexure A4: Copy of the certificate dtd.9.3.2017
- Annexure A5: Copy of the Notification dtd.25.10.2016
- Annexure A6: Copy of the SSLC marks card
- Annexure A7: Copy of the Diploma Marks Card
- Annexure A8: Copy of the skill test result
- Annexure A9: Copy of the final select list dtd.29.8.2017

Annexures with reply statement:

Annexure-R1: Copy of the Contract Appointment order dtd.28.8.2017

Annexure-R2: Copy of the OM dtd.29.12.2015

Annexure-R3: Copy of the OM dtd.15.2.2016

Annexure-R4: Copy of the order dtd.15.3.2016

Annexure-R5: Copy of the Advertisement No.15/16

Annexure-R6: Copy of the Marks Statement of the candidates who are eligible for
Skill Test for the post of Clerk-cum-Typist

Annexures with MA.413/2018 for interim order filed by the applicant:

-NIL-

Annexures with objection to the MA.413/2018 filed by the respondents:

-NIL-
