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**CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH, KOLKATA
(CIRCUIT BENCH AT PORT BLAIR)**

LIBRARY

O.A. 208/AN/ 2008

**Coram : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Mr. N. Neihial, Administrative Member**

Smti M. Elizabeth,
W/o Shri P. Saleem,
No.32 KM Road,
Prem Nagar,
Port Blair.

..... Applicant.

Versus

1. Union of India,
Through the Secretary,
Ministry of Home Affairs,
Jaisalmer House,
26 Man Singh Road,
New Delhi - 110 011.
2. The Lieutenant Governor,
Andaman and Nicobar Islands,
Raj Niwas, Port Blair
3. The A & N Administration,
Service through the Chief Secretary,
A & N Administration,
Port Blair.
4. The Chief Secretary,
Andaman & Nicobar Administration,
Port Blair.
5. The Secretary (Personnel),
Andaman and Nicobar Administration,
Port Blair.
6. The Assistant Secretary (Personnel),
A & N Administration,
Port Blair.
7. V. Veena,

Working as Stenographer (OG),
Secretariat,
Port Blair.

8. B. Sony,
Working as Stenographer (OG),
Office of the Executive Engineer,
CD, APWD, Car Nicobar.

9. Challa VDL Madhavi,
Working as Stenographer (OG),
Office of the Chief Engineer,
APWD, Port Blair.

10. CH Srinivas,
Working As Stenographer (OG),
Office of the Executive Engineer,
CD, APWD, Kamarta.

11. Zainab Bibi,
Working As Stenographer (OG),
Office of the Executive Engineer,
CD-II, APWD, Prothrapur.

12. L. Ambily,
Working As Stenographer (OG),
Office of the EE (NRSE),
Electricity Department, Prothrapore.

13. PR Shinija,
Working As Stenographer (OG),
Directorate of Civil Supplies,
Port Blair.

14. N. Saida Bibi,
Working As Stenographer (OG),
Office of the Executive Engineer,
CD, APWD, Rangat.

15. M. Kaveri,
Working As Stenographer (OG),
Secretariat, Port Blair.

16. Alok Kumar Bakshi,
Working As Stenographer (OG),
Office of the Executive Engineer,
CD, APWD, Campbell Bay.

17. S. Ramalaxmi,
Working As Stenographer (OG),

Office of the General Manager,
District Industries Centre,
Port Blair.

18. Savita Kumari,
Working As Stenographer (OG),
Office of the Government Pleader,
District & Sessions Court,
Port Blair.

19. Prahlada Kumari P,
Working As Stenographer (OG),
Office of the Executive Engineer (E&M),
E&M Division, APWD,
Port Blair.

20. Neetasha Rani,
Working As Stenographer (OG),
Directorate of Agriculture,
Port Blair.

21. CH Padmawathi,
Working As Stenographer (OG),
Office of the Chief Fire Officer,
Fire Brigade,
Port Blair.

22. Smita Devi,
Working As Stenographer (OG),
Directorate of Education,
Port Blair.

23. Shakuntala,
Working As Stenographer (OG),
Office of the Executive Engineer,
MID, APWD, Hut Bay.

..... Respondents.

For the applicant : Mr. A. Prasanth, Counsel

For the respondents : Md. Tabraiz, Counsel

Reserved on : 07.06.2019

Date of Order : 11.9.19

ORDER**Per : Bidisha Banerjee, Judicial Member**

This O.A. the applicant has sought for the following reliefs:

- "8.a) An order be passed quashing the appointment orders of the private Respondents to the post of Stenographer (OG).*
- b) An order directing the Respondent authorities to appoint the applicant to the post of Stenographer (OG).*
- c) An order directing the Respondent authorities to grant all the benefits consequential and monitory to the applicant.*
- d) An order directing the respondent authorities to act in accordance with law.*
- e) An Order to issue directing the respondents to produce the records of the case before this Hon'ble Tribunal so that conscious able justice may be done.*
- f) Such other or further order direction or directions, as your lordships deem fit and proper in the interest of justice."*

2. The case has a checkered history of its own.

23. persons including this applicant were appointed on contract basis on consolidated pay vide order 3685 dt. 20.11.95, which was not to confer any right for regular appointment. The services of these persons were extended from time to time with the same terms and conditions.

This applicant preferred OA 34/AN/2000 against a decision to terminate their service and issuance of a fresh selection notification inviting applications. A common order was passed in this and 3 other OAs which is as under:

"The respondents are directed to grant by way of one time relaxation another chance to the applicants to appear at a test in Shorthand and Typewriting with the requisite speed as per the old Recruitment Rules. Such examination is to be conducted by a Selection Committee to be constituted by the competent authority. The applicants will be at liberty to appear at the said test. Such of the applicants, who will qualify in the said test, shall be regularized by the respondent authorities w.e.f. the date of their passing such examination and they shall be appointed on regular basis. If no vacancy is available, they shall be placed in a panel to be appointed in future vacancy. This order shall not preclude the respondents from complying with the provisions of the reservation roster for ST or other reserved category of candidates."

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The services of this applicant and 5 other persons were terminated vide order No. 649 dt. 8.2.02 as they failed in the Stenography and Typewriting Test conducted by SSC, as a one time exception. They preferred OA 65/AN/2002, which was dismissed. The orders passed by Hon'ble Court in WPCT 67/03 was as under:

"In the background of these facts, it is not proper on the part of the Administration to terminate the service of the petitioners and appointment another set of employees on daily rated basis without giving the same chance to the petitioners.

In the aforesaid view of the matter and also considering the facts that there are still vacancies, we are of the opinion that justice of the case will be sufficiently met if this court passes an order directing the Administration to offer appointment to the petitioners on the same basis namely, on daily rated basis for a period of six months from the date of such appointment. This court also makes it clear that such appointment will not give the appointees any right to continue in the said post unless they qualify themselves in the regular recruitment test.

We are, hereby giving the petitioners a last chance to appear in the recruitment test which will be held by the Administration. While appearing in the said recruitment test, the qualifications and age of the petitioners will not be a bar and the petitioner should be allowed to complete in the test along with the other candidates. Such test may be held by the Administration as early as possible, preferably within a period of three months from today."

Some of the applicants preferred GPAN 019/04 that followed.

As a result of section subsequently held, order No. 4437 dt. 24.12.04 was issued appointing the persons mentioned therein. The applicant had prior to that submitted a representation on 6.12.04 that she was not called for the Stenography & Typewriting Test and requested for permission to participate as a special case and to allow her to work on daily rated or contract basis. She was informed vide memorandum dt. 15.3.05, that such appointment was given to other stenographers on a petition by the Hon'ble High Court. The applicant preferred WP 160/05 in WPCT 67/03. It is indicated therein that the applicant was a private respondent in the earlier OA. The orders of the Hon'ble High Court is –

"Accordingly, this writ petition stands disposed of with a direction to the Administration that following the old rules if there is existing vacancy or if vacancy arises in future, the petitioner shall be permitted relaxing her age and qualification to compete with the general candidates."

The applicant was informed that "the directions of the Hon'ble High Court will be complied with in letter & spirit as and when the vacancy arises". A written test was held on 25.11.07 and the successful candidates

were asking to appear in the skill test. The result of test was published in February '08 and appointment order was issued vide order No.2118 dt.4.6.08. The name of the applicant not appear in the list of successful candidates. The applicant preferred an application under RTI Act and was informed that merit list of other candidates cannot be supplied. She was also informed –

"3. Smti M. Elizabeth (roll No. 10542) appeared in Stenography and typewriting speed test as per old R.R. vide 4th batch No. SC-I of 25 candidates) on 5.4.2008 at JNRM, Port Blair has attained speed of 67.2 w.p.m. in Stenography and 32.0 w.p.m. in typewriting.

4. The criterion followed for conducting the skill test is based on R.R. and the instructions in the matter being followed by the Admn for conducting the skill test is based on R.R. and the instructions in the matter being followed by the Admn for conducting such examinations. The Skill test was conducted at a speed of 80 w.p.m. in stenography and 40 w.p.m. in typewriting.

The Draft Recruitment Rules' issued vide notification dt. 8.6.99 vides under its Rule 5, the power to relax Educational and other qualifications for direct recruit is as under:

Essential :

- (i) Pass in Senior Secondary School Certificate (XIIth Std) or equivalent from a recognized Board/University.*
- (ii) Should pass in Shorthand and Typewriting Examination with a speed of 80 words per minute in Shorthand and 40 words per minute in Typewriting for becoming eligible for appointment to the post Recruitment test will, however, be held in 100/120 words per minute in Shorthand and for those candidates who initially pass in 80 words per minute also and they will be granted one or two advance increments according to whether they qualify at 100/120 words per minute in Shorthand Test at the recruitment stage. After they enter the service, they will have three chances to qualify at higher speed for purpose of earning advance increment at 100 of 120 words per minute as the case may be in the Shorthand Test.*
- (iii) Should qualify in the written examination as well as trade test conducted by the Administration/SSC.*

The finally published rule is identical and the selection notification, which was challenged in first round of litigation is issued in terms of this rule.

This Tribunal dismissed the OA vide order dt. 9.9.10 having held as under:

"We have given this matter our careful consideration. We have gone through the lengthy pleadings. It is seen that the respondents have carried out directions of the Hon'ble High Court given in WPCT 160/05 ON 31.3.2006. She was allowed to complete with general candidates

and given necessary relaxation in age and qualification. She however, could not qualify in the stenography test. The applicant has stated that the test was conducted improperly. This Tribunal cannot become an expert body to judge how an examination should be conducted.

18. Secondly, the applicant has stated that the test should have been conducted by senior officers and not by private Secretaries and has cited the old recruitment rules in this regard. The senior officers as per the old recruitment rules are officers who sit in the DPC. The skill test conducted for the applicant is by no stretch a DPC. In their reply the respondents have furnished details of the test conducted. We find no evidence of any malafide or that applicant has been discriminated against. In the absence of proof, wild allegations made by the applicant against the Pvt. Respondent are mere speculation and the Tribunal cannot act on that."

The Hon'ble High Court in WPCT 677/2011 preferred against this order, held as under in its judgment dated 21.9.11—

"As the records were not before the Tribunal the said issue was not considered, the order dt. 2.9.71 is not presently interfered with but the Tribunal will hear the matter afresh limited only to the extent of the power of the Lieutenant Governor to relax the rules and, in fact, whether any further relaxation has been made. The said issue will be heard by the Tribunal with an open mind and any decision taken by the Tribunal will be afresh."

This Tribunal dismissed this O.A. on 13.3.12 having held as under:

"The learned counsel for the applicant has contended that (a) there was no prior relaxation of Recruitment Rules and (b) the Lieutenant Governor has ratified/approved the proposal subsequent to holding of the test.

9. The following picture emerges from the perusal of the file —

- (a) The selection notification is for 17 posts, one post having been earmarked for this applicant. (This was not brought on record by the applicant, but is available in the file.) The notification further provided that each candidate has to pass both in the written test and skill test of Stenography/Typewriting.
- (b) The minutes of the Recruitment Committee meeting held on 24.4.08 show that the Committee noted that only three persons under General Category have obtained requisite speed in Stenography and Typing. It noted amongst others that even though the normal minimum mistake (sic) for qualifying is 5%, in the last examination conducted with the assistance of SSC 15% mistakes were allowed. It accordingly recommended that marks may be relaxed as under —

	General	OBC
Stenography (80 wpm)	75	66
Typewriting (40 wpm)	32	26

It is noted that the applicant has attained the requisite speed in Typewriting but not in Stenography. This vacancy was accordingly added to General Category.

It was presided over by Secretary (Personnel).

10. Rule 5 of the 1999 Recruitment Rules is as under :

"Power to relax :-

Where the Lieutenant Governor (Administrator), Andaman and Nicobar Islands is of the opinion that it is necessary or expedient to do so, he may by order and for reasons to be recorded in writing relax any of the provisions of these rules with respect to any class or category of persons."

11. The Three Judge Bench of the Apex Court in **UOI -vs- S.B. Kohli [AIR 1973 SC 811]** has held:

"But the discretion is given only to the Union Public Service Commission in cases of direct recruitment and not to the Departmental Promotion Committee in cases of promotion. As that is the intent of the law it has to be given effect to. Moreover, the Union Public Service Commission when it proceeds to fill up a post by direct recruitment does so by calling for applications by extensive advertisements and it is but reasonable that if on a consideration of all those applications it finds that persons possessing the prescribed qualifications are not available but there are persons otherwise well qualified, they could be selected. But that is not so in the case of Departmental promotion at least in this case. The rules themselves contemplate that if there are no qualified candidates then direct recruitment could be resorted to. That question does not arise here."

12. The result sheet available in the file shows that the applicant was not asked to appear in the written test. She has participated in the Stenographic and Typewriting Test. She has obtained 67.2 and 32 marks respectively as against qualifying marks of 80 & 40 and relaxed qualifying marks of 75 & 32. She does not qualify as per the qualifying marks and does not pass in Stenography in relaxed qualifying marks. It is also to be noted that SSC which was associated, with the earlier Selection had recommended 15% relaxation. After noticing that only 3 persons have qualified the Recruitment Committee recommended relaxation, having regard to the facts noted.

13. If for arguments' sake it is accepted that decision to relax recruitment rules should have been taken beforehand, then the applicant is herself not eligible and cannot be a person aggrieved. This OA would then be in the nature of PIL, which this Tribunal cannot entertain.

14. The decision in **S.B. Kohli (supra)** shows that Recruitment Rules can be relaxed. The post is to be filled by direct recruitment and yet this clause

has been kept. In the facts and circumstances of this case reasons have been shown to exist. It is not a case of no evidence.

15. The OA is fit to be dismissed and is dismissed."

The order travelled to Hon'ble High Court holding the hands of the respondents. Hon'ble High Court in WPCT No. 86 of 2001 issued the following direction:

" Therefore, we are of the view that this application is devoid of any merit and the same is dismissed.

However, we make it clear that the benefits which have been given by the learned Tribunal will not be treated to be a precedent in future or should not be made applicable to the other candidates who had not approached the learned Tribunal.

There will be no order as to costs."

Accordingly we confine to the limited issue of correctness of invoking power under Rule 5 of RR, and by the competent authority.

3. Having perused the file No. 48-06/ 2007 PW (Vol.II) we discern a note, extracted herein below for clarity:

"F.No.48-06/2007-PW (Vol.II) PERSONNEL WING

Recruitment of Stenographer(OG) in Amalgamated Stenographic Cadre under A&N Admn – Recruitment Exam & Skill tests in stenography & Typewriting for Steno(OG) – regarding

- (1) This is regarding recruitment of Stenographers(OG) under this Administration.
- (2) It is submitted that during last recruitment examination conducted by the Admn with the assistance of SSC, New Delhi, we could get only 7 qualified candidates as against 16 vacancies and the SSC had advised this Admn to initiate action to fill up the remaining vacancies. Accordingly, the Admn initiated recruitment process to fill up the the 17 vacant posts of Stenographer(OG) (9 under General Category, 7 under OBC category and 1 as per Hon'ble High Court's Order) lying vacant in various Office of this Admn and a Recruitment Committee was constituted to finalize the recruitment process vide Admn's Order No. 3144 dated 10.10.2007 (Flag – A).
- (3) As per the vacancy notice published, the written examination was held on 25.11.2007 (Sunday) in two Centres, (Port Blair, and Mayabunder), in which 480 Candidates have appeared as against 541 registered. The answer books of the written exam were got evaluated through the Principal, TGCE and the result placed

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before the Recruitment Committee which met on 7.2.2008 at 11.00 am. A copy of the proceeding of the said meeting may kindly be seen at **Flag-B**.

- (4) As per the recommendation of the Committee, 99 candidates were declared qualified purely on merit basis to appear for skill tests in Stenography and typewriting. These 99 candidates alongwith 1 candidate to appear for skill tests only as per the order of Hon'ble Calcutta High Court, have been called for skill tests in Stenography & typewriting test which held in four batches from 3rd to 5th April, 2008 at JNRM, Port Blair under the Supervision of Dr. R.N. Rath, HOD, Ploy. Science, JNRM, Port Blair duly coordinated by Shri Arvind Ray, IAS, Secretary(Perl) (link Officer) in the absence of regular Secretary(Perl) on duty-cum-tour to Delhi. The Dictation for the Stenography test was held in four batches by the Officers appointed vide Admn's Order No.1208 dated 28.3.2008 (**Flag-C**).
- (5) Out of 100 candidates, 84 candidates have appeared for the Skill test in stenography & typewriting. The answer scripts of both the tests received have been evaluated on 05.04.2008 at JNRM by the group of officials appointed for the purpose vide Admn's Order No. 1209 dated 28.03.2008 (**Flag-D**) under the supervision of Coordinator/ Nodal officer. It is pertinent to mention that both the answer scripts were evaluated by adopting coding/decoding method to maintain confidentiality and also to avoid any irregularities.
- (6) As per the result of skill tests, three candidates have passed both in stenography and typewriting tests with required minimum speed. The merit list of these 84 candidates in written examination as well as the speed attained by them in stenography & typewriting test (**Flag-E & F**) have been placed before the Recruitment Committee for taking decision in connection with filling up the notified vacancies. The proceeding of the Recruitment Committee meeting held on 24.4.2008 may kindly be seen (**Flag-G**).
- (7) The committee, after deliberation and taking all aspects into consideration, has recommended for relaxation/moderation to the extent as noted below on the grounds mentioned in the proceeding:
 - (A) GENERAL CATEGORY:
 - (i) Stenography from 80 w.p.m to 75 w.p.m (5 words)
 - (ii) Typewriting from 40 w.p.m. to 32 w.p.m. (8 words)
 - (B) OBC CATEGORY:
 - (i) Stenography from 80 w.p.m to 66 w.p.m (14 words)
 - (ii) Typewriting from 40 w.p.m. to 26 w.p.m. (8 words)
- (8) The Candidate appeared for the skill tests as per the order of Hon'ble High Court, could not qualify the skill tests in Stenography as well as in typewriting inspite of allowing the relaxed standard as given to the general candidates. Though she has attained a speed of 32 w.p.m. in typewriting, but she could attain a speed of only 67.2 w.p.m. in Stenography which is much lesser than that of downgraded/relaxed standard prescribed for general candidates. Thus, the Committee has recommended that the Vacancy reserved under General category as per Hon'ble High Court's order may also be filled up from amongst the eligible candidates under General Category on merit.
- (9) In this connection, it may be further mentioned that the typewriters whatever available & provided to the candidates for the typing test were very old and due to long wear and tear these machines were not in good running condition. Majority of offices are not using Typewriters in official work, but computers for typing works. This Admn in batches through NIC for improving their efficiency in typing works. Further, necessary provisions already exist in Rules for relaxation of minimum standard for OBC candidates also. (**Flag-H**)
- (10) Since the Committee has recommended the names of 17 candidates, purely on merit basis in written exam as well as speed test in Stenography & typewriting, by recommending relaxation in their favour for appointment against the notified vacancies of Stenographer (OG) under this Admn., we may seek approval from the competent authority to relax minimum standard and downgrade the minimum speed in stenography & typewriting to the extent specified above. The SSC New Delhi, during the last recruitment of Stenographer (OG) has allowed/condoned 15%

mistake committed by the Candidate. Thus, the candidates recommended by the Committee for relaxation of standard also stand on equal footing.

- (11) The recommendation of the Committee may, therefore, kindly be approved. Hon'ble Lt. Governor is competent to relax any of the provision in the Recruitment Rule (Flag-X).
- (12) Submitted pl."

We note that with the LG's approval, a list was prepared.

The note further reads:

"Ref: Para 13-14/N Ante.

(15) As approved by the Hon'ble L.G. duly relaxing the minimum standards in skill tests (Stenography & Typewriting) as recommended for the recruitment of the following 17 candidates to the posts of Stenographer(OG) under the A&N Admn, it is proposed that the list of these selected candidates may be published alongwith a brief write-up about the conduct of recruitment exam and skill tests and its finalization by Recruitment Committee in Daily Telegrams for information of all concerned.

Sl. No.	Roll No.	Name of Candidate	DOB	Category
(1)	(2)	(3)	(4)	(5)
1	1011	V. VEENA	30/09/1986	GENL
2	10475	B. SONY	17/08/1981	GENL
3	10536	GHALLA V.D.L. MADHAVI	06/05/1973	GENL
4	10107	C.H. SHRINIVAS	03/05/1973	GENL
5	10319	ZAINAB BIBI	16/04/1984	GENL
6	10430	L. AMBILY	02/07/1976	GENL
7	10240	P.R. SHINIDA	26/03/1980	GENL
8	10477	N. SAIDA BIBI	16/02/1977	OBC
9	10151	M. KAVERI	13/04/1981	OBC
10	10079	ALOK KUMAR BAKSHI	26/11/1985	OBC
11	10190	S. RAMALAXMI	20/07/1983	GENL
12	10247	SAVITA KUMARI	13/02/1985	OBC
13	10098	PRAHLADA KUMARI P.	25/05/1976	GENL
14	10233	NEETHASHA RANI	02/07/1974	OBC
15	10287	C.H. PADMAWATI	22/06/1980	GENL
16	10211	SMITA DEVI	18/11/1981	OBC
17	10183	SHAKUNTALA	24/06/1975	OBC

- (16) Subject to approval, a draft press note is put up for approval pl. (DFA-I)

(17) Further, it is submitted that the candidates qualified for the post of Stenographer(OG) as per the merit order may be appointed as Stenographer(OG) against the vacancy advertised under the Amalgamated Stenographic Cadre of A&N Admn immediately; after giving offer of appointment and its acceptance and other formalities immediately after the publication of the press note. It is suggested that appointment order in respect of all the selected candidates may be issued against the available vacancy with the directions to report for duty in the respective Offices within 30 days from the date of issue of appointment order; if accepting all the conditions mentioned in the "offer of appointment", failing which their appointment will be treated as cancelled.

(18) Accordingly, a draft memorandum/ offer of appointment is also put up for approval pl. (DFA-II)

(19) Submitted for approval pl."

4. In view of such we do not find any reason to interfere with the selection of the 17 candidates, recruited on standards, relaxed by the Hon'ble LG invoking clause 5 of RR, extracted supra. Therefore the O.A. fails and is dismissed. No costs.

(N. Neihial)
Administrative Member

(Bidisha Banerjee)
Judicial Member

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