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Central Administrative Tribunal, Principal Bench

Original Application No. 163 of 2003

New Delhi, this the 2nd day of January, 2004

Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. S.A. Singh, Member (A)

Smt. Anima Mandal,
W/o Shri D.K. Mandal
Presently working as Stenographer
in the office of the Director General
of Audit, Central Revenues,
A.G.C.R. Building,
I.P. Estate, New Delhi-2

.... Applicant

(By Advocate: Shri V.K. Mehta)

Versus

1. Comptroller and Auditor
General of India,
10, Bahadur Shah Zafar Marg,
New Delhi-2
2. Director General of Audit,
Central Revenues,
A.G.C.R. Building,
I.P. Estate, New Delhi-2
3. Union of India
through Secretary,
Dept. of Official Language,
Ministry of Home Affairs,
North Block,
New Delhi-1
4. Union of India
Through Secretary,
Dept. of Personnel & Training,
Ministry of Personnel,
Public Grievances and Pensions
North Block, New Delhi-1

.... Respondents

(By Advocate: Shri Madhav Panikar)

O R D E R

By Justice V.S. Aggarwal, Chairman

The applicant joined as a Stenographer in the office of the Comptroller and Auditor General (CAG) of India in 1983. She continued to work and was made quasi-permanent in October, 1986. A circular had been issued from the office of the CAG dated 13.8.82 that a

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person who passes shorthand test in Hindi at the speed of 100 words per minute, would be deemed to possess the minimum speed prescribed for promotion to the grade of Rs.425-700/- . The said circular reads:

"A reference is invited to this office circular letters Nos.2366-NGE-I/112-67 dated 29.11.1968, 6-N.3/159/73 dated 2.1.1974 and 4532-NGE-I/60-74-I dated 27.12.1974 according to which a Stenographer has to possess, inter alia, a minimum speed of 100 words per minute in shorthand to be eligible for promotion to the grade of Rs.425-700.

2. A question has been raised whether a Stenographer who pass in the shorthand test in Hindi at a speed of 100 words per minute under the Hindi Teaching Scheme organised by the Department of Official Language, Ministry of Home Affairs, Government of India could be treated to possess the minimum speed of 100 w.p.m. prescribed for promotion to the Grade of Rs.425-700. The matter has been examined and it has been decided that the Stenographers who qualify in the test held under the Hindi Teaching Scheme organised by the Department of Official Language at the speed of 100 words per minute may be deemed to possess the speed prescribed for being eligible for promotion to the grade of Rs.425-700."

2. It was followed by another circular of 30.12.87 from the office of the CAG of India. The relevant portion of the same reads:

"2. We have been receiving representations from Staff that equal opportunities are not available for all Stenographers to avail of the facilities under the Hindi Teaching Scheme. The staff can also now take tests conducted by the Staff Selection Commission.

3. The matter has, therefore, been examined de novo and it has been decided that in future the qualifications in speed tests conducted under the Hindi Teaching Scheme will not be considered for career advancement. The Stenographers will have to qualify in the speed test conducted by the Staff Selection Commission.

4. However, the Stenographers who have appeared/appear and qualified/qualify in the test at 100 w.p.m. conducted under the Hindi Teaching Scheme upto the end of 31st December 1987, would be deemed to possess the qualification, in terms of



the circular dated 13.8.1982, for promotion as Personal Assistants."

3. Vide the order of 22.2.99, the applicant was promoted as Personal Assistant/Stenographer Gr.II in the pay scale of Rs.5000-8000. She was kept on probation for a period of two years and was confirmed subsequently by another order of 4.4.2001. She was promoted as Stenographer Gr.I from 30.3.2001 or from the date when she takes over the charge to the said post. She took over the charge.

4. The conditions of service of the applicant are governed by the rules called Indian Audit and Accounts Department (Headquarters Office) (Group 'C' posts) Recruitment Rules, 1988. Under the said rules, in case of promotion as Steno Grade-II, 75% of the posts have to be filled up by Stenographers with three years regular service but they must have a speed of 100 words per minute in shorthand, failing which by transfer on deputation.

5. A stenography test was conducted under the Hindi Teaching Scheme in July, 1997. The applicant had passed the said test.

6. Subsequently, it appears that the respondents realised that the applicant could not have been promoted by passing Hindi stenography test. In this regard, a notice to show cause was issued to her as to why she should not be reverted. The applicant replied but vide the impugned order of 23.9.2002, she was reverted to the post of Stenographer

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Grade III. The said order reads:

"WHEREAS in terms of Headquarters instructions issued vide letter No.1436-NII/71-87 dated 30.12.87, qualification in a speed test conducted under the Hindi Teaching Scheme was not to be considered for Career advancement and the stenographers will have to qualify in the speed test conducted by Staff Selection Commission.

AND WHEREAS Smt.Anima Mandal, Stenographer Grade I do not possess the requisite qualification (speed test for 100 w.p.m. in shorthand conducted by the Staff Selection Commission) for promotion to the post of Steno Grade II as well as Grade I.

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NOW, THEREFORE, Smt.Anima Mandal is reverted/demoted to the post of Steno Grade III from the post of Steno Grade I w.e.f. 23.9.2002 (FN).

Her seniority will be the same which she had before promotion from Grade III to Grade II.

She will draw the same pay and allowances which she would have drawn had she not been promoted from Grade III to Grade II and I."

7. By virtue of the present application, the applicant seeks that the circular of 30.12.87 should be declared to be illegal and further the order of 23.9.2002 whereby she was reverted to the post of Steno Grade III is illegal and should be quashed. She should be allowed to work as Steno Grade II and also as Steno Grade I from 22.2.99 and 30.3.2001, respectively.

8. In the reply filed, the petition has been contested. Some of the basic facts have not been controverted. It has been pleaded that the applicant was promoted from Steno Grade III to Grade II on 22.2.99 after passing the speed test conducted by the Hindi Teaching Scheme. Subsequently it came to notice that the applicant had not passed the speed test from the Staff Selection

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Commission (SSC) which was an essential qualification. A letter had already been issued on 29.12.87 that passing of the Hindi stenography test will not be considered for career advancement. When this fact was noticed, after issuing a due notice to show cause, the applicant had been reverted.

9. We have heard the parties counsel.

10. The first and foremost question that comes up consideration is as to if the circular of 30.12.87 prescribing that Stenographers qualifying the speed test under Hindi Teaching Scheme would be eligible for promotion or not.

11. In the preceding paragraphs, we have already mentioned the necessary qualifications required for being promoted as Stenographer Grade II. Of the 75% of posts reserved for stenographers with three years regular service, they must have a speed of 100 words per minute failing which the appointment could be made by transfer on deputation. The circular of the year 1982 obviously had been issued keeping in mind the fact that there should be greater progress to be made pertaining to the language Hindi. But these were administrative orders and subsequently when it was felt that it did not serve the required purpose, a circular of 30.12.87 was issued. Those who had been promoted before 30.12.87 were not to be affected but for future, passing of the stenography test under Hindi Teaching Scheme was not considered as a

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requirement to meet the speed of 100 words per minute in case of stenographers. We find that there is nothing illegal or arbitrary in these administrative decisions. The applicant admittedly passed the test of Hindi stenography in the year 1997 and therefore, in any case, was governed by the circular of 1987.

12. However, with eloquence, it was pointed that the applicant continued to work as Stenographer Grade II and thereafter as Stenographer Grade I for so many years and therefore, the rights of the applicant could not have been defeated in this process. A feeble attempt even was made that it was taken to be a deemed relaxation of the rules.

13. It is unfortunate that due care and caution was not taken in this regard. The circular of the year 1987 was totally ignored. Still the recruitment rules in this regard cannot be given a total go-by. No promotion could have been effected contrary to the rules.

14. Admittedly the applicant was an English stenographer. Necessarily she had to pass the test accordingly. The test had to be passed in accordance with the rules rather than by another department or in any other language (in the present case under Hindi Teaching Scheme). That cannot be taken to be a test in accordance with the recruitment rules.

15. It is true that under rule 6 of the Rules referred to above, the power is with the authorities to

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relax the matter in accordance with law. The said rule reads:

"Power to relax - Where the Comptroller and Auditor General of India is of the opinion that it is expedient or necessary so to do, he may by order and for reasons to be recorded in writing relax any of the provisions of these rules with respect of any class or category of persons."

16. Perusal of the same shows that it is the Comptroller and Auditor General of India who has to formulate an opinion that it is necessary and expedient to do so and he may, for reasons to be recorded in writing, relax the rules. But we know from the decision of the Supreme Court in the case of Keshav Chandra Joshi and others vs. Union of India and others, 1992 Supp (1) SCC 272 that power to relax is an executive function and the courts should not ~~inter~~ ^{assume} automatic relaxation where it depends upon satisfaction of certain conditions.

17. In the present case, it appears that to that extent, there is no application of mind by the concerned authority and the court will not draw its own inferences or relax the rules in this regard.

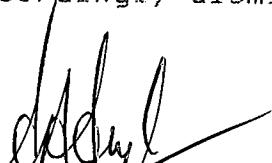
18. Confronted with this position, it was urged that the instructions would be supplementary to the rules and once the applicant had passed the test, she must be taken to be duly qualified.

19. We do not dispute that the instructions which are ~~in~~ consistence with the recruitment rules can be supplementary but herein the instructions of the year 1982

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which could lend some help to the applicant did not exist on the relevant date. She had not qualified before the circular of 30.12.87. She passed the test thereafter. At the risk of repetition, we again mention that she was an English Stenographer and passing of the Hindi stenography test in any case could not come to her help. Therefore, we find that the claim of the applicant is without merit.

20. For these reasons, the petition must fail and is accordingly dismissed.


(S.A. Singh)
Member (A)


(V.S. Aggarwal)
Chairman

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