

(2013) 01 DEL CK 0206
In the Delhi High Court
Case No : Writ Petition (C) 2268 of 2011

Chief Secretary, GNCT Delhi and Another	APPELLANT
Vs	
Sunil Rawat	RESPONDENT

Date of Decision : 09-01-2013

Acts Referred:

Citation : (2013) 01 DEL CK 0206

Hon'ble Judges : Veena Birbal, J;Pradeep Nandrajog, J

Bench : Division Bench

Advocate : Ruchi Sindhwani and Ms. Bandana Shukla, for the Appellant;
Pradeep Gupta, Ms. Aarti Shakalya and Mr. Parinav Gupta, for the Respondent

Judgement

Pradeep Nandrajog, J.—When their respective father died in harness and the family went into financial distress, respondents Sunil Rawat and Pramod Kumar were appointed as LDC/DASS Grade-IV by the Government of NCT Delhi as cases of compassionate appointment. Both were registered with the Employment Exchange and as per the record of the Employment Exchange had been subjected to a typing test which the two successfully cleared typing (Sunil Rawat 34.9 words per minute and Pramod Kumar 31.12 words per minute). The stipulated norm was 30 words per minute. Unfortunately, the letter offering appointment to the two has not been filed by any party and we are noting said fact for the reason it would be of relevance, if in the letter offering appointment it was a condition that the induction of the two in the service was conditional upon the two clearing a typing test or that within a certain period they had to clear a typing test as a condition of permanent absorption in service.

2. Now, as urged by learned counsel for the writ petitioners, on June 08, 1975, vide Government of India OM No. F.3(3)-E.III(A)/75 issued by the Ministry of Home Affairs, an earlier OM dated September 16, 1965 being No. 15/3/53-Estt. (D) was reiterated which required persons appointed to the post of LDC to pass a typing test at the speed of 30 words per minute before increments are allowed after initial induction in service.

3. As per the writ petitioners, after the respondents joined service they never volunteered to sit at a typing test.

4. The respondents had to file Original Applications before the Tribunal when they learnt that persons junior to them were either granted first ACP financial upgradation on rendering 12 years' service or were promoted and the same benefit was denied to them on the premise that they had not cleared the typing test.

5. Deciding the two Original Applications filed, by a common judgment dated August 09, 2010, the Tribunal has noted that a similar OM dated February 05, 1992 issued by the Delhi Administration; similar to the OM afore-noted issued by the Government of India, stipulated a proficiency typing test. But with reference to the decision of the Supreme Court reported as *Dakshin Haryana Bijli Vitran Nigam and Others Vs. Bachan Singh*, in the absence of proof that the OM dated February 05, 1992 was made known to the respondents, the Tribunal held that the said OM could not be used as a shield by the writ petitioners to deny the claim of the respondents. Directions have been issued by the Tribunal that the respondents should be promoted. But a caveat has been added : the writ petitioner would be at liberty to subject the respondents to a typing test through its Technical Training Education Department and thereafter law shall take its own course.

6. What did the Tribunal mean? Learned counsel as also the Court is left wondering.

7. The contention of learned counsel for the petitioners that the OM dated February 05, 1992 was issued by the Delhi Administration much before the respondents joined service and thus it was not the duty of the petitioners to have made known the said office memorandum to the respondents and hence the Tribunal wrongly applied the law declared in *Bachan Singh's* case (*supra*) is noted and rejected by us for the reason it may not be the duty of the writ petitioners to have informed the respondents regarding the OM dated February 05, 1992, but it was the duty of the writ petitioners to have called upon the respondents to take the typing test.

8. We have repeatedly asked learned counsel for the petitioners whether her clients have any material to show that during their service after they were appointed on compassionate grounds the respondents were called upon to take the written test. Learned counsel replies in the negative.

9. Logic guides us that where the employer does not disclose to the employee the existence of an existing Office Memorandum when the employee joins service and thereafter during service does not subject the employee to a stipulated proficiency test, it does not lie in the mouth of the employer to deny benefits to the employee for not having taken the proficiency test.

10. To this extent the reasoning of the Tribunal is correct.

11. However, if there is a stipulation pertaining to a service condition, the same has to be met and thus learned counsel for the respondents concedes that his clients may be subjected to a proficiency typing test through the Technical Training Education Department of the Government of NCT Delhi with the qualifying norm being typing 30 words per minute.

12. We dispose of the writ petitions affirming the directions issued by the Tribunal to give either ACP benefit or promotion to the respondents with effect from the date persons junior to them were granted said benefit but make it clear that the respondents would be subjected to a proficiency typing test within six months from today; the test would be conducted by the Technical Training Education Department of the Government of NCT Delhi and the qualifying criteria would be 30 words to be typed per minute. If the respondents fail the test they would be liable to be reverted or ACP benefit withdrawn. We make it clear that if within six months the test is not conducted it would be deemed that the writ petitioners have waived the same. No costs.