(2020) 02 CAT CK 0042

In the Central Administrative Tribunal

Case No : Original Application 4311 Of 2014

Tilak Raj And Others — APPELLANT

Vs

Employees Provident Fund Organisation And Others — RESPONDENT

Date of Decision : 20-02-2020

Acts Referred:

Citation : (2020) 02 CAT CK 0042

Hon'ble Judges : L. Narasimha Reddy, J;A. K. Bishnoi, Member (A)

Bench : Division Bench

Advocate : OP Gehlaut, Satpal Singh, SK Tripathi, Gyanendra Singh

Final Decision : Dismissed

Judgement

L. Narasimha Reddy, J

1. The applicants joined the Employees Provident Fund Organization, the 1st respondent herein, in the year 1989 and 1982 respectively, as Class IV employees. The Recruitment Rules of the Respondent Organization provide for appointment of certain categories of employees, including Class IV, to the post of LDC, to the extent of 35%; through the Limited Departmental Competitive Examination (LDCE). The applicants participated in the examined and were appointed as LDC on 04.11.1991. In 1996, both were promoted to the post of UDC on ad hoc basis. The post of UDC was re-designated as Social Security Assistant (SSA) w.e.f. 23.01.2004. The applicants were re-designated as SSA and were continued on ad hoc basis. The 1st applicant was appointed as SSA on regular basis on 25.01.2007 on his qualifying the skill test. The 2nd applicant was appointed as SSA on regular basis on 24.07.2008 by granting exemption from qualifying in the test when he crossed the age of 45 years.

2. The applicants contend that the typing test is not prescribed as a qualification for promotion to the post of LDC, and it was stipulated only in the context of increments. They contend that while appointing them as LDCs, a condition was incorporated to the effect that in case they do not clear the typing test within the

stipulated time, they would not be entitled to earn increments and beyond that, the typing test did not have any relevance for appointment/promotion to the post of LDC. They submit that there was no basis for the respondents in denying them, the regular promotion to the post of UDC/SSA, even while many UDCs were regularized by granting exemption. It is also stated that in OA No. 845/2011 filed by them, the Tribunal has taken the view that the typing test has no relevance for promotion to the posts of LDC or UDC and despite that, their regular promotions were delayed.

3. With this background, the applicants filed present OA with a prayer to direct the respondents to regularize their services as UDCs from 03.01.2004 on which the SSA cadre was formed, and their juniors were promoted; and to extend all the consequential benefits. A prayer is also made, as regards the promotion to the higher post by reckoning the seniority in the post of SSA, from 03.01.2004. Other ancillary reliefs are also prayed for.

4. The respondents filed a counter affidavit, opposing the OA. It is stated that the applicants did not hold the prescribed qualification for the post of LDC, viz. passing the typing test, and though they were granted time to clear that after they were appointed as LDC, they failed to do so. It is also stated that in OA No.845/2011, no finding was given as claimed by the applicants, and on the other hand, the direction was to examine the entire issue. The respondents state that the procedure for granting exemption from typing test was prescribed in the year 1992, and the guidelines issued were applied to the applicant and all other similarly situated persons.

5. We heard Shri O.P. Gehlaut, learned counsel for the applicant and Shri Satpal Singh & Shri SK Tripathi for Shri Gyanendra Singh, learned counsel for the respondents.

6. This is the second round of litigation by the applicants, in the context of seeking regularization in the post of SSA w.e.f. 03.01.2004.

7. As observed in the preceding paragraphs, the applicants joined the service of the 1st respondent as Class IV employees. They took part in the LDCE and based on the results therein, they were promoted through order dated 04.11.1991. The order reads as under:-

"Having been declared successful in the Departmental Examination held in August - 1991 for promotion to the post of Lower Division Cleark, Shri Tilak Raj of this office is promoted to the post of Lower Division Clerk on a purely temporary and adhoc basis from the date of assumption of charge by him in the Pay Scale of Rs.950-20-1150-EB-25-1500.

The above promotion is subject to following conditions:-

1. He will be on promotion for a period of two years. The period of probation may however be extended at the discretion of appointing authority.

2. He must learn typing at minimum speed of 30 words per minute in English or 25 words per minute in Hindi. Failure to pass the typing test will not make him eligible for annual increment or confirmation in the grade of Lower Division Clerk.

3. He will be governed by other conditions of service as laid down in the Employees? Provident Fund (Staff Conditions of Service) Regulations, 1962.

4. The seniority in the cadre of Lower Division Clerks will be determined according to the priority of his place in the recruitment roster."

It is evident that the applicants were required to learn typing at minimum speed of 30 words per minute in English or 25 words per minute in Hindi. It was also mentioned that the passing of the test is the condition precedent for confirmation in the post of LDC. Admittedly, the applicants did not pass the typing test within the stipulated time, or for many years thereafter. Over the period, they were promoted on ad hoc basis to UDC and they were re-designated as SSA on ad hoc basis.

8. The applicants made a representation, claiming seniority in the post of SSA. That was rejected through order dated 29.12.2009. Aggrieved by that, they filed OA No. 485/2011. It was a matter of record that the names of the applicants figured in the seniority list of ad hoc SSAs, that was issued on 25.08.2004. The plea of the respondents was that the applicants cannot be promoted to the post of UDC/SSA unless they have cleared the typing test. The applicants, however, contended that the typing test was exempted through an order in that behalf and at any rate, the same cannot be relied upon once they have been confirmed in the post of LDC. The Tribunal made the following observations in Para 11 and 12 of the order dated 06.02.2012 passed in the OA:-

"11. The impugned order in respect of applicant Balak Rama says that he has been given regular promotion to the post of SSA with effect from 4.1.2007 keeping in view the fact of exemption from computer skill test having been granted by the Head Office in its letter dated 4.1.2007. It is clear from the impugned order that the issue of non-passing of the typing test/computer skill test has been held to be the deciding factor about denial of regular promotion to the applicants. We have already adverted to the policy of the respondent organization granting exemption from the typing test as early as 08.04.2005. The respondents have not said anything about the allegation of discrimination in the matter of regularising similarly placed employees. These are facts which should be verified by the respondents themselves before coming to any conclusion on merits of the claims of the applicants.

12. Considered from all angles, the impugned order dated 29.12.2009 cannot be sustained, hence set aside. The respondents are directed to review the matter in the light of the observations made in the foregoing paragraphs and take a fresh decision on the representation of the applicants seeking parity with similarly placed junior and proper fixation of their seniority in the seniority list of SSAs within a period of three months from the date of receipt of a copy of this order."

From this, it is clear that the Tribunal took note of the fact that the 2nd applicant was granted exemption in terms of the orders issued in that behalf, and the respondents were directed to verify the relevant facts, before coming to any conclusion on merits of the claims of the applicants.

Nowhere, it was held that the applicants are entitled for exemption with effect from any particular date.

9. In compliance with the directions issued by the Tribunal, the respondents passed a detailed order, running into 8 pages. The relevance of the typing test and the circumstances under which, it can be exempted, are mentioned in Para 8 of the order. It reads as under:-

"8. The condition of passing of type writing test is mandatory as per Govt. of India instructions which are being followed while regulating the scheme of promotion to fill up the quota of posts in LDC grade from Group D staff. The appointees are considered for exemption from the condition of type writing test on fulfilling certain conditions as laid down in the DOPT OM No. 14020/2/91.Estt. (D) dated 29.09.1992. The said OM has been issued b the DOP&T for non-secretariat offices i.e., for grant of exemption from passing the typing test in respect of LDCs who do not belong to Central Secretariat Clerical Service. These are applicable w.e.f. 01.01.1990. AS per para 2(1) of the OM, these instructions are applicable to persons appointed as Lower Division Clerks to posts which do not belong to Central Secretariat Clerical Service whether such appointment is by promotion from Group ?D? or by direct recruitment through Staff Selection Commission or otherwise or by any other methods including appointment on compassionate grounds or on ad hoc basis. According to the instructions, the conditions for exemption from passing the type writing test are given when the following conditions are fulfilled:-

Para 2(2): when exemption may be allowed:

(a) If above 45 years of age on the date of their appointment may be granted exemption from the date of their appointment.

(b) If between the age of 35 years and 45 years at the time of appointment may be granted exemption on attaining the age of 45 years.

(c) If below 35 years of age on the date of appointment may be given exemption after 10 years of service as Lower Division Clerk, provided they have two genuine attempts to pass the Typing Test; otherwise they may be granted after attaining the age of 45 years.

(d) Those Lower Division Clerks who have made two genuine attempts for passing the typing test prior to the issue of this OM but have not completed 8 years service as Lower Division Clerk may be exempted from passing the typing test after completion of 08 years of service or on attaining the age of 45 years, whichever is earlier.

Para 6: Release of Increments:

(a) On such exemption being granted the increments of affected persons may be released from the date from which such exemption is granted to them without any arrears for the period prior to the date of exemption, subject to the retention of normal annual date of increment.

(b) On their passing the Typing Test, the increments may be released from the date of the test without any arrears for the period prior to the date of the test, subject to retention of the normal annual date of increment.

Para 7: Eligibility for regularization/confirmation:

They would also be eligible for regularization/confirmation in Lower Division Clerks Grade from a date not earlier than the date of exemption or the date of the test at which they passed the Typing Test, as the case may be."

10. The applicants are not able to demonstrate as to how the OM dated 29.09.1992 does not apply to their cases. Further, they did not protest when the clause was incorporated in the order of appointment for the post of LDC, requiring them to clear the typing test.

11. When the clearance of typing test is stipulated as a condition precedent for confirmation in the post of LDC, the question of their being treated as eligible for the regular promotion to the post of UDC/SSA without passing the typing test, does not arise. Even, by the time, the OA No. 845/2011 was filed, the 2nd applicant was regularized on being extended the benefit of exemption in terms of OM dated 29.09.1992. The Tribunal did not hold that the applicant was entitled to be promoted with effect from an earlier date or that the regularization does not depend upon the exemption.

12. The applicants cannot expect regular promotion to the post of UDC/SSA unless they have cleared the typing test or were granted exemption in terms of OM dated 29.09.1992. While the 2nd applicant got exemption under the said OM with reference to his age, the 1st applicant was promoted on regular basis once he cleared the typing test.

13. We do not find any merit in the OA. It is accordingly dismissed. There shall be no order as to costs.

