

(2003) 09 MP CK 0073
In the Madhya Pradesh High Court
Case No : Writ Petition No. 1937 of 2001

Union of India and others

APPELLANT

Vs

Bhupat Singh

RESPONDENT

Date of Decision : 26-09-2003

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2004) 1 MPLJ 376

Hon'ble Judges : S.S. Kemkar, J; Dipak Misra, J

Bench : Division Bench

Advocate : S.P. Sinha, for the Appellant; L.S. Rajput, for the Respondent

Final Decision : Dismissed

Judgement

Shantanu Kemkar, J.

The petitioners by filing this petition under Articles 226/227 of the Constitution of India have called in question the legal propriety the order dated 22-12-2000 passed by the Central Administrative Tribunal, Jabalpur Bench in Original Application No. 523/97.

The undisputed facts are that the respondent was holding the post of Helper (Group-D) in Central Railways. In response to the notification issued on 20-6-1996 by the petitioners the respondent applied for departmental promotion from Group-D to Group-C against the quota fixed for the departmental candidates.

The respondent then appeared in the written test and was declared successful by the petitioner. After the written test a typing test was held of all the candidates in which the respondent could not qualify and, therefore, was not found successful and accordingly, not promoted. It is not in dispute he was much senior to others who got qualified and consequently got promoted.

As per the contention of the respondent before the Central Administrative

Tribunal, under the prevailing Rules possession of typing speed was not a condition precedent for appointment to the post of L.D.C. or for promotion of Group-D departmental employees and only vide, circular issued on 17-7-1995 for direct recruitment of Clerks the condition of possessing typing speed of 30 w.p.m. in English or 25 w.p.m. in Hindi was made necessary. Thereafter, another circular was issued on 20th June, 1996, by which following conditions were incorporated:

(a) In case of promotion from Group "D" to Group "C in the ministerial cadre and promotion of Clerk as Senior Clerk against L.D.C.E. quota, the employees henceforth be required to acquire the typing skill within a period of two years and their promotion will be provisional subject to acquiring the prescribed typing qualification within the stipulated period.

(b) For all promotions from Group "D" to Group "C in the ministerial cadre and from clerks to senior Clerks against L.D.C. quota to be made after two years from the date of issue of these orders, possession of typing skill will be pre-requisite condition selection/L.D.C.E.

The above referred conditions were however, withdrawn by the petitioners vide order dated 3-2-1997 and it was made clear that "henceforth promotions may be made on probation basis and the staff may be allowed two years time from the date of promotion to qualify the prescribed typing test." This order was issued pursuant to the demand of and discussions in Joint Consultative Machinery.

The Tribunal after considering the submissions made by the parties and perusing the circulars/letters has ordered as under:

3. Heard the learned counsel for the parties and perused the records. Based on undisputed facts as stated above, it is seen that from 7-4-1994 to 6-4-1996 the promotion could be ordered on provisional basis subject to acquiring the required typing skill within two years of promotion. There was no condition at all prior to the issue of the letter dated 7-4-1994. Even after 3-2-1997, the condition is to acquire the typing skill within two years continued. Even additional relaxation was granted for those promotion between 7-4-1994 to 6-4-1996. The promotion order based on the four General vacancies notified on 20-6-1996 was issued in June, 1997. The Railway themselves have been changing the conditions so imposed by them. After 3-2-1997 also the authorities have granted two years period for acquiring typing skill.

1 It is also seen that the letter dated 7-4-1994 (Annexure R-1) contains clarification of the order 17-7-1992. The order of 17-7-1992 provides proficiency cannot amend the basic rule. However, the letter of 7-4-1994 simultaneously provides that the employees can be promoted provisionally subject to acquiring required typing skill within a period of two years i.e. upto 6-4-1996. Thereafter this condition was extended from 3-2-1997 on-wards implying that only for the period between 7-4-1996 to 2-2-1997, the promotions even on provisionally basis cannot be made unless the employees pass the prescribed typing test.

In view of the above discussion, we find no reason as to why the applicant should not be granted similar relief as applicable to those w.e.f. 3-2-1997 and also for those granted concession for two years w.e.f. 7-4-1994.

Accordingly this O.A. is allowed with the direction to the respondent that notwithstanding the failure of the applicant in typing test, if he otherwise find place in the merit list within the vacancies published, the applicant should be provisionally promoted against a vacancy, if available, otherwise against a future vacancy which may arise by granting him seniority and notional pay from the date his juniors in the panel were promoted. In case there is a vacancy in L.D.C.E. quota, the applicant should be promoted within one month from the date of receipt of copy of this order. He shall also be allowed two years time to acquire the prescribed typing skill from the date of assumption of charge of L.D.C.

We have heard Shri S.P. Sinha, learned counsel for the petitioners and Shri L.S. Rajput, learned counsel for the respondent and perused the record.

The Tribunal has extended the benefit to the respondent on the ground that as per the circular dated 7-4-1994 a clarification was made in the earlier order dated 17-7-1992 which provides proficiency in typing for direct recruitment only. It has been held by the Tribunal that by way of clarification the basic rule cannot be amended. However, the Tribunal considered the letter dated 7-4-1994 which simultaneously provides that the employees can be promoted provisionally subject to acquiring typing skill within a period of two years i.e. by 6-4-1996 and also the fact that this condition was again extended from 3-2-1997, and has held that but for the period between 7-4-1996 to 2-2-1997 the benefit was extended to all the employees except those who are falling between the said period. When all other employees but for those who are promoted between 7-4-1996 to 2-2-1997 have been extended the benefit of provisional promotion subject to acquiring requisite typing skill within a period of two years the respondent is also entitled for the same benefit. In this backdrop the Tribunal has ordered that he shall be provisionally promoted, if he otherwise finds place in the merit-list within the vacancies, if available, otherwise against a future vacancy which may arise by granting him seniority and notional pay from the date his juniors in the panel were promoted. The Tribunal has allowed two years time to the respondent to acquire the required typing skill from the date of provisional promotion on the post of L.D.C. On a scrutiny of the reasoning ascribed by the Tribunal we are disposed to think that it has rightly arrived at the conclusion.

In view of our premised reasons we do not find any illegality in the impugned order passed by the Tribunal as it is also based on the principle of parity. Therefore, we are of the considered opinion that there is no merit in this petition and we are obliged to dismiss the same without awarding any cost.