

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 4980/2008

SANJIV KUMAR JHA & ANR Petitioners
Through: Mr.Rahul Sharma, Adv.

versus

THE CHAIRMAN, A.A.I. & ANR Respondents
Through: Ms.Anjana Gosain, Adv. for AAI

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

ORDER
% **28.07.2008**

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether judgment should be reported in Digest?

: **PRADEEP NANDRAJOG, J.**

1. Petitioners pray that a direction be issued to the first respondent to exempt them from taking a typing test and a mandamus be issued to the first respondent directing it to interview the petitioners in compliance with an order dated 30.4.2007 passed by the Division Bench of this Court in a batch of writ petitions, lead matter being W.P.(C) No.18661-65/2004.

2. Backdrop facts are that a large number of workers

who were deployed to execute various works under the first respondent has served the first respondent for varying periods since the year 1994. The employment of these persons was without following the mandatory selection procedure. The first respondent proceeded to terminate their services. A batch of writ petitions, lead matter being W.P.(C) No.18661-65/2004, were filed. Prayer made by the writ petitioners was that a direction be issued to the first respondent to give regular and permanent employment to them.

3. Instant petitioners were also petitioners in the said batch of writ petitions.

4. The writ petitions were disposed of by the Division Bench on 30.4.2007. Consent directions were issued.

5. Relevant for the purposes of the instant petition is direction No.3 issued by consent. It reads as under:-

“3. For Group C posts, a written objective test, which would assess the aptitude, General Knowledge, the job knowledge, proficiency in English language would be held. A Typing Test would also be held. However, those of the petitioners/terminated employees, who have qualified the typing test of the respondents earlier, would be considered for exemption. This would be applicable where the record of Typing Test passed earlier is available. In addition, candidates would be interviewed.”

6. Since instant petitioners claimed right to be

appointed to a group 'C' post both took the written test conducted by the first respondent after the Division Bench had disposed of the writ petitions, and were successful.

7. Petitioner No.1 received a communication on 24.1.2008 informing him that he had to appear for a typing test on 15.3.2008. Likewise, petitioner No.2 received a communication on 24.1.2008 informing from that he had to appear for a typing test on 17.2.2008.

8. On 11.2.2008, petitioner No.1 informed the first respondent that he had cleared a typing test while in service which was held on 28.7.2004. Second petitioner likewise informed the respondent vide letter dated nil (sent in the first week of February 2008) informing that, while in service, he too had cleared typing test held on 26.5.2004. Notwithstanding the receipt of the communication from the petitioners aforesaid, which I note was accompanied by necessary proof of petitioners having cleared the typing test as stated by them, the first respondent required the petitioners to take the typing test. The petitioners undertook the typing test but were not successful. Since having failed in the typing test the petitioners were not being called for an interview, instant petitions were filed.

9. It is not in dispute that the letter addressed by the first petitioner on 11.2.2008 informing that he be exempted to retake the written test scheduled to be held on 15.3.2008 was not processed by the first respondent till 1.4.2008. It was only on said date that the Joint Manager (JM) sent a communication to the Regional Executive Director informing that the first petitioner is a beneficiary of the order dated 30.4.2007 and that he had already passed the typing test while in service.

10. It is not in dispute that the letter addressed by the second petitioner praying that he be exempted from taking the typing test scheduled for 17.2.2008 was processed only on 12.6.2008 when the Manager Personnel informed the Regional Executive Director that the petitioner had cleared the typing test while in service prior to his termination.

11. It is urged by learned counsel for the petitioners that the consent directions issued by the Division Bench on 30.4.2007 binds the parties and that the admitted fact was that the petitioners had cleared the typing test while in service under the first respondent prior to their service being terminated, they were entitled to be exempted from retaking the typing test. It was further urged that the petitioners informed the first respondent, well in time, of their having

cleared the typing test. Learned counsel urged that it is a clear case of bureaucratic inefficiency and for inefficiency of the department, petitioners should not be made to suffer.

12. Ms. Anjana Gosain, learned counsel for the respondents urged that the petitioners are guilty of not being vigilant. Learned counsel urged that when consent directions were issued on 30.4.2007, petitioners knew that they had to clear a written test and if had not cleared a typing test while in service before their services were terminated they had to retake the typing test and therefore, learned counsel urged, it was incumbent upon the petitioners to have themselves informed the department soon after the consent directions were issued that they had cleared the typing test. Ms. Anjana Gosain, learned counsel for the first respondent urged that the first respondent manages airports all over India and that the 130 writ petitioners whose writ petitions were disposed of by the Division Bench on 30.4.2007 had worked at different places and had taken typing tests at different places while in service before their services were terminated and hence it was very difficult for the first respondent to find out who had cleared the typing test and who had not cleared the same while in service. Learned counsel urged that a chaotic

situation would arise if this Court were to issue directions to the first respondent to interview the petitioners notwithstanding that the petitioners had failed the typing test held in the month of February and March 2008. Lastly, learned counsel submits that the petitioners having undertaken the typing tests held in the month of February and March 2008 and having failed, cannot turn around and claim exemption.

13. Having considered the rival submissions it need hardly be emphasized that pursuant to the consent direction No. 'c' issued by the Division Bench vide order dated 30.4.2007 the petitioners would certainly be entitled to be exempted from retaking a typing test inasmuch as admittedly, when in service before their services were dispensed with, both petitioners had cleared the typing test. Further, it is not the case of the first respondent that it ever prepared the list and notified the same to all concerned that the persons mentioned in the list are the ones who are entitled to be exempted from taking the typing test. In the absence of any such information given to the persons affected I fail to appreciate as to how could anyone have thought that the department i.e. the first respondent would not pay heed to their letters informing that they had cleared the typing test. It would have been a different

scenario if the department had prepared a list recording names of the persons who as per the department were entitled for exemption to retake the written test and had circulated the same and the petitioners had not filed objections thereto. It need hardly be reemphasized that both petitioners informed the first respondent well in time i.e. much before the typing tests were held that they had already cleared the typing tests and were thus entitled to be exempted from retaking the typing test. As noted above, the officers of the first respondent remained highly negligent in processing the letters written by the petitioners. As noted above the two letters written by both petitioners were processed after over two months. By that time the date of the written tests were over.

14. It has to be noted that when petitioners were informed vide letter dated 24.1.2008 that they had to take the typing test, a letter dated 24.1.2008 was issued by the Executive Director (D & A) to all the Regional Directors circulating a list of candidates who, as per the record of the department, had cleared a typing test when in service. Thus, the list of candidates who were exempted from taking the typing test was circulated for the first time on 24.1.2008. This was the first opportunity for the petitioners to request the

department to take corrective action, which they did.

15. Further, in the letter dated 24.1.2008 the department itself wrote:-

“i.) In the case of 5 petitioners(Annexure I) we may inform the concerned REDs to grant them exemption in pursuance of Courts, directive as in their case the record of their qualifying the typing test is available.

ii) In respect of the 10 petitioners we may send the documentary evidence submitted by these petitioners through their advocate to the concerned REDs, for considering grant of exemption from appearing in the typing test after obtaining an affidavit that in case it comes to the notice of the Appointing Authority at any stage in the event of their appointment, that they had not qualified the typing test earlier, or the documents produced by them are not genuine, their appointment will be liable to be terminated on this ground alone, in addition to any other action warranted under the rules of the Authority. The draft of the affidavit will also be sent with the above instructions to maintain uniformity.

iii) Any other similar cases coming to notice prior to the typing test will be dealt with as in (i) & (ii) above, depending upon the category in which they fall.”

16. Direction (iii) is relevant. The Regional Directors were directed to grant exemption to the candidates whose entitlement for exemption came to the notice prior to the date of the typing test.

17. Admittedly, petitioners brought to the notice of the department prior to the date notified for the typing test that having already cleared the same they were entitled to be

exempted from retaking the test.

18. That the petitioners subjected themselves to the typing test in the month of February and March 2008 is neither here nor there for the reason it is not a case where the petitioners voluntarily appeared at the typing tests and took a chance. The rule of law that a person cannot participate in a process of selection and take his chance and at the same time, on being unsuccessful cannot question the selection process would not apply in the facts of the instant case inasmuch as the petitioners protested against their being subjected to a written test well before the test was conducted.

19. On the plea of administrative chaos, it is no doubt true that while exercising the discretionary writ jurisdiction, Courts do examine question of administrative chaos or effect of unsettling the settled position, but for that cogent material must be brought before the Court indicating the so called administrative chaos likely to occur if directions are issued by the Court as prayed for by the petitioners.

20. I fail to understand what administrative chaos would result. All that has to be done is to reconvene the Interview Board and subject the petitioners to the process of being interviewed. At best, it would be a case of some

administrative inconvenience caused to the first respondent.
Certainly not administrative chaos.

21. I thus dispose of the petition declaring that the petitioners were not liable to be subjected to any further typing test. I direct the first respondent to reconvene the Interview Board/Panel and call both petitioners for an interview and after interviewing the petitioners pass necessary orders required by law on the basis of the policy of the respondent and in light of the consent directions issued by the Division Bench on 30.4.2007 disposing of the batch of writ petitions, lead writ petition being W.P.(C) No.18661-65/2004.

22. The process be completed within a period of 12 weeks from today.

23. No costs.

PRADEEP NANDRAJOG, J.

JULY 28, 2008
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