

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

Date of decision: 19th December, 2011

+ W.P.(C) 1016/2011

% MOHAR SINGH Petitioner
Through: Mr. K.C Mittal, Adv.

Versus

**NATIONAL BUILDINGS CONSTRUCTION
CORPORATION** Respondent
Through: Mr. A.K. Singh, Adv.

CORAM :-

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

J U D G M E N T

RAJIV SAHAI ENDLAW, J.

1. The petition impugns the order dated 10th December, 2010 of the Central Administrative Tribunal, Principal Bench dismissing OA No.2375/2010 under Section 19 of the Administrative Tribunals Act, 1985 preferred by the petitioner. Notice of this petition was issued and pleadings have been completed. The matter was heard in part on 26th August, 2011 and certain suggestions for amicable settlement were given to the respondent. However the counsel for the respondent on 4th November, 2011 informed that the said suggestions were not acceded to by the authorities of the respondent. Accordingly the petition was listed for final hearing. We have heard the counsels.

2. The petitioner, vide letter dated 26th August, 1994 was appointed as the General Clerk, Grade-II in the respondent NBCC, on compassionate grounds. The said letter *inter alia* provided for the petitioner being on probation initially for a period of six months extendable further by the appointing authority; on satisfactory completion of the period of probation, the petitioner being continued in service on temporary basis. Clause 17 of the said appointment letter was as under:-

“You will be required to qualify the typing test at the requisite speed of 30 w.p.m. within three months of your joining duty, failing which your services are liable to be terminated. Your annual increment will be subject to your qualifying the typing test at the speed of 30 w.p.m. and also other conditions regularizing (*sic* for regarding) the grant of increment.”

3. The respondent NBCC vide Memo dated 27th March, 1995 confirmed successful completion by the petitioner of probation period of six months in the category of General Clerk Grade-II and vide office order dated 25th April, 2006 promoted the petitioner from the post of General Clerk Grade-II to the post of Office Assistant Grade-III.

4. However, on 4th December, 2008 the respondent NBCC served a memo on the petitioner stating *inter alia* that as per the letter aforesaid of his appointment he was to clear a typing test but which he had failed to pass inspite of several chances during the past 14 years; that he was again given a chance on 19th November, 2008 but did not turn up for the test and

last and final opportunity was given to him to clear the test failing which he was threatened that his services will be terminated. In accordance with the said letter the petitioner was called for the typing test on 16th July, 2009 for the prescribed speed of 30 w.p.m. and which the petitioner failed to pass. The respondent NBCC accordingly vide order dated 1st August, 2009 terminated the services of the petitioner from the post of Office Assistant Grade-III with immediate effect by invoking Clause 17 (supra) of the appointment letter dated 26th August, 1994 (supra).

5. The petitioner filed the OA (supra) impugning the said termination. The Tribunal finding that the respondent NBCC had given several opportunities to the petitioner to clear the typing test and which the petitioner had failed to clear and that in the year 2006 the post of General Clerk Grade-II was merged with the post of Office Assistant Grade-III, dismissed the OA.

6. Finding, that there was no other allegation against the petitioner; that the benefit of revised pay scale had been extended to the petitioner; that the petitioner was allowed to complete the probation; that he had been appointed on compassionate grounds owing to his father having died in harness, this Court had on 26th August, 2011 suggested that the respondent NBCC takes back the petitioner in service with a stipulation that he would pass the typing test within a span of one year. However as aforesaid the

said suggestion did not find favour with the respondent.

7. It is the case of the petitioner, that after the initial appointment he was never assigned the work of typing; rather he was assigned the duties of a store keeper from 26th August, 1994 till 1999 while at Navi Mumbai Zone and after transfer to Delhi in 1999, he was assigned the duty of a dispatch clerk and from August, 2002 he remained with the Law & Contract Engineering Division of the respondent NBCC and again as a dispatch clerk and performing other miscellaneous duties.

8. On the contrary, respondent NBCC before us has reiterated that the petitioner has been given ample opportunities to clear the typing test but failed to improve his efficiency and competence and as such his services were rightly terminated.

9. The termination of the services of the petitioner has been effected under Clause 17 (supra) of the appointment letter. Under the said clause, the petitioner was required to qualify the typing test at the requisite speed of 30 w.p.m. “within three months” of his joining the duty and failing which his services were liable to be terminated; also, his annual increment was made subject to his qualifying the said typing test.

10. However though according to the respondent NBCC the petitioner did not clear the typing test within three months of joining but notwithstanding the petitioner having not cleared the said typing test, the respondent NBCC did not terminate his services and rather issued certificate of successful completion of probation period of six months. It is also not controverted that the petitioner was given his annual increments. The question which thus arises is, whether the respondents having so waived the Clause 17 (supra) of the appointment letter, could after 14 ½ years do thereunder what was required to be done within three months of the appointment. In our opinion, no.

11. We may also notice that the respondent NBCC in its counter affidavit before this Court in response to the averments of the petitioner of having been never assigned the typing work and having been assigned other duties, has not disputed the same; the only plea is that assignment of other duties could not absolve the petitioner from Clause 17 (supra) requiring him to pass the typing test.

12. We are of the opinion that the respondent NBCC, by its conduct aforesaid, is now estopped from terminating the services of the petitioner by invoking Clause 17. The said clause was not an open ended clause permitting the respondent NBCC to hang a sword on the petitioner's head throughout his service career. The right of the respondent NBCC to

terminate the services on the contingency mentioned in Clause 17 was a time bound right which ought to have been exercised within the time limit mentioned in Clause 17. The respondent NBCC having not done the same and having allowed the petitioner to successfully complete the probation and having given increments to him, to all of which he was not entitled if he did not clear the typing test, has led the petitioner to believe that his services could not thereafter be terminated under the said clause. The memorandums issued by the respondent NBCC from time to time requiring the petitioner to clear the typing test or the attempts made by the petitioner therefor cannot have the effect of extending the period mentioned therein. The period of nearly 15 years for which the petitioner, in spite of having not cleared the typing test was allowed to remain in service is even otherwise found to be an unduly and unreasonably long period. It cannot be lost sight of that had the services of the petitioner for the reason of not passing the typing test been terminated shortly after his compassionate appointment, the petitioner could then have looked for alternative appointment/opportunities. However after 14 ½ years when the action under the said clause was taken, the petitioner was not left of age to seek alternative appointment also.

13. In the entirety of the circumstances aforesaid, we are inclined to allow this petition. The order of the Tribunal is accordingly set aside and the petition filed by the petitioner is allowed. The respondent NBCC is

directed to within four weeks hereof reinstate the petitioner with continuity of service, however without any back wages. We have held the petitioner not entitled to back wages for the reason of not much time having elapsed since termination in 2009; the petitioner having failed to acquire the proficiency which with an effort he could have achieved and in the hope that the respondent NBCC would not agitate the matter further. The respondent NBCC is also given liberty to post the petitioner to any other department where the petitioner may not be required to perform any typing duties.

The petition is disposed of. No order as to costs.

RAJIV SAHAI ENDLAW, J

ACTING CHIEF JUSTICE

DECEMBER 19, 2011

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