

\$~9

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 2676/2019 & CM Appl. No. 12376/2019 (stay)**

DHARMENDER KUMAR MEHTO Petitioner

Through Mr. Ashok Rajagopalan, Advocate
along with petitioner in person

versus

THE HON'BLE DELHI HIGH COURT Respondent
Through Ms. Meena Duggal, Advocate for Mr.
Viraj R. Datar, Advocate

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE TALWANT SINGH

ORDER
% **11.10.2019**

1. The Petitioner who has been a Court Attendant in this Court for over a decade, has filed this petition questioning the decision of this Court on its administrative side communicated to him by the impugned letter dated 18th February 2019 rejecting his representations dated 7th December 2018 and 22nd December 2018 whereby he *inter alia* requested that he be declared as 'Pass' in the Junior Judicial Assistant (Departmental) Examination-2017 on par with Mr. Girish Chandra Arya, Court Attendant and to declare him as successful in the Typing Test by treating his mistakes as '11.5' instead of '13.5' as counted by the Examiner.

2. In terms of the Delhi High Court Establishment (Appointment, and

Conditions of Service) Rules, 1972, 20% of the vacant posts for Junior Judicial Assistant (JJA) are to be filled by promotion by written exam, typing test and interview. In the typing test the Petitioner was required to have a minimum typing speed of 35 words per minute.

3. On 3rd January 2018, the Respondent was pleased to invite applications online for filling up 27 existing vacancies of JJA/Restorer against 20% departmental test quota by way of Departmental Competitive Examination. The Petitioner applied and passed the written exam with 57 marks. In the typing test held on 30th September, 2018 the Petitioner typed the passage provided to him with a speed of 42.98 words per minute. The result declared revealed that the Petitioner had committed 13.5 mistakes and had exceeded the permissible limit of mistakes of 12.894 by 0.606. According to the Petitioner one Girish Chandra Arya who had 12 mistakes and had exceeded the permissible limit by .444 was given grace marks and declared pass. The Petitioner on 7th December 2018 made a representation requesting that he should also be granted relaxation.

4. Meanwhile by a reply dated 18th December, 2018 the Respondent in response to Petitioner's application under the Right to Information Act, 2005 ('RTI Act') provided him with a copy of his answer sheet, the question paper and the "Evaluation Scheme for Typing Test" ('ESTT'). According to the Petitioner the question paper had single space after the full stop in some places and there were two spaces after a full stop in some sentences. However, in the answer sheet of the Petitioner, one mark had been deducted by treating the single spaces after a full stop as a mistake. The Petitioner

further states that the ESTT did not indicate that the failure to provide two spaces after a full stop at the end of a sentence would be treated as a mistake. He accordingly made a second representation on 22nd December 2018 stating that the examiner had inadvertently counted the single space after the full stop as a mistake. He claimed that the total number of mistakes, if so committed, would work out to 11.5 which would be within the permissible limit of 12.89.

5. By the impugned memorandum dated 18th February 2019, the Respondent informed the Petitioner that his representations had been rejected by the competent authority. Thereafter, the present petition was filed.

6. When this petition was first heard on 18th March 2019, notice was issued to the Respondent returnable today. An interim order was passed to the effect that in the event that any vacancy in the post of JJA is filled up, it would be subject to the result of the petition. The further direction that the Petitioner would be permitted inspection of the original answer sheets was withdrawn subsequently by the Court on 29th May 2019 on an application by the Respondent. However, it was directed that the original answer sheets would be ready for perusal by the Court on the next date.

7. The Respondent's counter affidavit was tendered in the Court today. One preliminary objection raised therein is that the petition should be dismissed for non-joinder of all the affected parties. Reference is made to the minutes dated 7th February 2019 and 10th April 2019 of the 'Selection Committee for

Appointment of officials of the High Court' (hereafter 'the Committee').

8. The original answer sheets of the candidates, including that of the Petitioner, have been produced in the Court. The original answer sheet is no different from the photocopy provided to the Petitioner by the Respondent and which he has enclosed with the petition. It is seen that the six instances of the Petitioner not providing two spaces after a full stop, have been treated as one mistake.

9. The Court is informed by the official of the Registry present that 26 of the 27 vacancies in the post of JJA have been filled up. He further informs that with the number of candidates who qualified in the written and typing tests being less than the vacancies, it was decided to dispense with the interview. He discloses that one more representation raising an identical issue has been received from another candidate Mr. Sunil Kumar which is pending consideration by the Committee.

10. In response to the objection raised by the Respondent regarding non-joinder of the successful candidates, learned counsel for the Petitioner at the outset on instructions from the Petitioner present in Court states that the Petitioner is not interested in disturbing the position of any of 26 candidates already appointed as JJAs. He further states that in the event he succeeds in this petition and is thereafter appointed as JJA, he will not claim seniority over those already appointed, notwithstanding that he may be found more meritorious than any of them.

11. The above statement is placed on record. It obviates the need for the Court to examine the plea of the learned counsel for the Respondent that if the Petitioner's plea is accepted, then the answer sheets of all candidates would have to be evaluated afresh and that this might affect the seniority of those selected.

12. Although in the first representation dated 6th December 2018, the Petitioner had sought parity with Mr. Girish Chandra Arya, who had been given grace marks and declared pass, and there is also a prayer in the petition that the Petitioner should be granted grace marks, this point was not pressed during arguments. In any event, the two cases are not comparable as pointed out by the Committee in the minutes of the meeting held on 7th February 2019 as regards the above representation. The Committee has referred to an earlier decision dated 27th November 2018 in which it was decided that "while calculating 3% of the number of words typed in 10 minutes, the number of permissible mistakes can be anywhere between '.1' to '.49' and '.51' to '.99'. Thus, in such cases, it is directed that the number of permissible mistakes be calculated by treating the said mistakes anywhere between '.1' to '.49' as '.5' and the mistakes between '.51' to '.99' as '1'." The Committee noted that in the case of Mr. Girish Chandra Arya the 11.56 mistakes committed by him were treated as 12 mistakes and he was accordingly declared successful in the typing test. The Court notes that as far as the Petitioner is concerned he was found to have committed 13.5 mistakes, whereas 3% being permissible mistakes, as per typing speed, is 12.89 (i.e. 13). The two cases are indeed not comparable. No interference is called for with the decision of the Committee to reject the Petitioner's first

representation dated 6th December 2018.

13. Learned counsel for the Petitioner then drew the attention of the Court to the ESTT and pointed out that it does not specify that failure to provide two spaces after a full stop at the end of the sentence as a mistake for which there will be a deduction of marks. He also drew the attention of the Court to the criteria specified by the Staff Selection Commission for appointment of typists in the central government which also contains no such stipulation.

14. Before beginning to examine the above submission, it is necessary to note the reasons why the Committee rejected the Petitioner's representation dated 22nd December 2018. The relevant portion of the minutes of the Committee's meeting on 7th February 2019 read thus:

"Vide Minutes of the Meeting dated 25.01.2019 the Committee recommended that the original typing sheet of the representationist along with a copy of the representation be forwarded to the Examiner for his comments on the representation made by the candidate. Accordingly, the Examiner has submitted his comments as under:

"The candidate has stated that for giving single space after full stop has wrongly been counted one mistake. After carefully going through the representation and the original typing sheet, it is respectfully submitted that as per the guidelines half mistake is counted for not giving space or wrongly given space. If same mistake is repeated, irrespective of number of times total one mistake is counted.

Accordingly, all such candidates who have given single space after full stop have been treated equally and total one mistake for any number of repeated mistakes has been counted."

The Committee is of the view that the issue of double-spacing after full-stop

is within the domain of the Examiner and nothing arbitrary or unreasonable has been done by the Examiner as the said criterion has been followed for all candidates.

In view of the above, the Committee recommends that representation dated 22.12.2018 of Mr. Dharmender Kumar Mehto, Court Attendant be rejected.”

15. This Court has perused the ESTT which specifies what errors in the typing test would result in the candidate losing marks. There are 14 instances specified of which the one at Sl. No.9, which has been referred to by the examiner, and which reads:

“Improper spacing between two words. For example, two different words are joined or extra space among two words or among letters of a single word is given”

16. “Half mistake for every improper spacing” is provided. In other words, the above error is confined to ‘improper’ spacing between words and not on account of failure to provide two spaces after a full stop. There is also nothing in the Scheme to indicate that irrespective of the number of times such error is committed, it will be treated as one mistake.

17. On a perusal of the Petitioner’s answer sheet, it is seen that the Examiner has circled the six instances of the Petitioner not providing two spaces after a full stop at the end of the sentence, and has treated it as one mistake. The Petitioner’s speed was determined as 42.98 words per minute and the permissible mistakes was 3% thereof i.e. 12.89 rounded off to 13. If the above ‘mistake’ was not treated as such, the Petitioner would have 12.5 mistakes and would pass.

18. The Court enquired of the official of the Registry present in Court whether it was specified in the advertisement or anywhere to the knowledge of the candidates that two spaces should be given after a full stop at the end of the sentence. The reply was that this is a standard practice adopted whenever there is a typing test held.

19. The Court does not find this to be a satisfactory reply. The plea that this is 'standard practice' does not appear to be correct considering that even the Staff Selection Commission does not identify this as a mistake in the criteria laid down for selection of typists in the Central Government, an extract of which has been enclosed with the petition as Annexure P-10. While it talks of 'spacing errors' i.e. "no space provided between two words" which would be treated as a 'half mistake', the failure to provide two spaces after a full stop is not identified as a mistake.

20. Learned counsel for the Petitioner appears to be right in his contention that the above criteria of requiring two spaces after a full stop was in vogue in an era where manual typewriters were in use. In this Court, as in many other work spaces, manual typewriters have been phased out entirely. There is not a single branch in the Registry of this Court which uses manual typewriters. In fact, the typing test in the present case was conducted on computers.

21. One ostensible reason for providing two spaces after a full stop in a manually typewritten text was to facilitate ease of reading. This may not hold true for a computer generated text. Each computer (desk top or

otherwise) comes with pre-packaged software, which might be free or licensed, which is used in preparing texts. The available literature on the topic on the internet tells us that the characters in most fonts used in computers (except the 'Courier' and 'Monaco' fonts) are proportional whereas on a typewriter they are 'monospaced'. For e.g. letter 'i' on a typewriter will take the same space as letter 'm' whereas in nearly all computer fonts letter 'i' will take about one-fifth the space of letter 'm'. Whereas in a manual typewriter, effort had to be made to provide line spacing and justifying the paragraphs and also ensuring sufficient gap between words by tapping a key, in computers all this is taken care of by the software which self adjusts the space between letters in a word, the space between two words and fits texts in sentences and paras. The software programme itself arranges the words in a sentence to ensure uniformity. The practice of providing two spaces after a full stop, which was in vogue when manual typewriters were in use, is passé in the age of computers. And apparently for good reason.

22. There is an abundance of literature on the internet on the topic. The Petitioner too has enclosed printouts of the extracts of two such online pieces. These are being referred to not because they are 'legal' or 'binding' but to understand how this practice of providing two spaces after a full stop began and how it has now been rendered obsolete. Writing in an online journal '*Slate*' in 2011, Farhad Manjoo points out that:

“The people who study and design the typewritten word decided long ago that we should use one space, not two, between sentences. That convention was not arrived at casually. James Felici, author of the *The Complete Manual of*

Typography, points out that the early history of type is one of inconsistent spacing. Hundreds of years ago, some typesetters would end sentences with a double space, others would use a single space, and a few renegades would use three or four spaces. Inconsistency reigned in all facets of written communication; there were few conventions regarding spelling, punctuation, character design, and ways to add emphasis to type. But as typesetting became more widespread, its practitioners began to adopt best practices. Felici writes that typesetters in Europe began to settle on a single space around the early 20th century. America followed soon after.

Every modern typographer agrees on the one-space rule. It's one of the canonical rules of the profession, in the same way that waiters know that the salad fork goes to the left of the dinner fork and fashion designers know to put men's shirt buttons on the right and women's on the left."

23. An article by Avi Selk dated 5th May 2018 titled '*One space or two spaces after a full stop? Scientists have finally found the answer*' published by the 'Independent' on its website (independent.co.uk) refers to research conducted by three psychology professors from Skidmore College to test whether providing two spaces after a full stop in a computer generated text made reading easier. Of the sixty students tested, 21 turned out to be 'two-spacers' whereas the rest were 'one spacers'. The study concluded:

"Reading speed only improved marginally, the paper found and only for the 21 "two spacers", who naturally typed with two spaces between sentences. The majority of one spacers, on the other hand, read at pretty much the same speed either way. And reading comprehension was unaffected for everyone, regardless of how many spaces followed a period."

24. It appears that the standards for testing the proficiency of a typist in an era of manual typewriters require to be re-calibrated for testing the proficiency of those typing on a computer keyboard. In the present case

inasmuch as the Examiner has treated one failure to provide two spaces after a full stop as a mistake, it does not reflect the current practice. Such criteria should be held to be obsolete and cannot be applied ipso-facto to evaluate the typing test conducted on computers. This is apart from the fact that without clearly spelling such criteria in the advertisement inviting applications for the post of JJA or making it known to the candidates by any known mode prior to the conduct of the typing test, it could not have been applied. The mere fact that it may have been uniformly applied to all candidates is not a satisfactory answer to it being an inappropriate and obsolete criterion.

25. The Petitioner is bound by his statement that he is not challenging the selection and consequent appointment of the 26 successful candidates, and also not claiming seniority over them, irrespective of whether he may secure a higher mark than any of them in the written and typing tests. The Court makes it clear that this judgment will not disturb the appointment of the 26 successful candidates as JJAs. The Petitioner, if appointed, will also not claim any financial or other benefits for a period prior to the date of his actual appointment.

26. Consequently, while setting aside the decision of the Committee at its meeting on 7th February 2019 rejecting the Petitioner's representation dated 22nd December 2018, as communicated to him by the impugned letter dated 18th February 2019, the Court directs that the Respondent will once again evaluate the Petitioner's typing test answer sheet as well as that of Mr. Sunil Kumar, whose representation is pending consideration by the Committee, by

not treating the failure to provide two spaces after a full stop as a mistake. Needless to state, the one emerging more meritorious will be selected and appointed to the remaining 27th vacancy in the post of JJA. This exercise be completed within a period of six weeks from today and decision be communicated to the Petitioner not later than two weeks thereafter. If aggrieved by such decision, it will be open to the Petitioner to seek appropriate remedy in accordance with law.

27. The petition is disposed of in the above terms. The pending application is also disposed of.

S. MURALIDHAR, J.

TALWANT SINGH, J.

OCTOBER 11, 2019

rr/rd