$~ R-12AA and R-12AB

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

Date of decision: 16.01.2019

\+ W.P.(C) 3245/2012

NEERAJ KUMAR SANGWAN ..... Petitioner

Through Mr. R.K.Saini, Adv.

versus

THE DITRICT AND SESSIONS JUDGE-I AND ANR ..... Respondents

Through None

\+ W.P.(C) 3253/2012

NARENDER KUMAR ..... Petitioner

Through Mr. R.K.Saini, Adv.

versus

THE DISTRICT AND SESSIONS JUDGE-I AND ANR ..... Respondents

Through None

CORAM:
HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T (ORAL)

1. Since the issue is same in both the petitions, therefore, these petitions are being disposed of vide this common order.

2. Vide the present petitions, the petitioners seek direction thereby

quashing the action of the respondents in calculating the marks of the petitioners in re-typing test by applying wrong methods and evaluate the same in an arbitrary and unjust manner, consequently declare him unsuccessful by granting only 16 marks to the petitioner in WP(C) No. 3245/2012 and 19 marks to the petitioner in WP(C) No. 3253/2012 in the said re-typing test and consequently the results thereof declared on October, 2010 qua the petitioners.

3. Petitioners further seek direction thereby to quash the letter dated 23.01.2012 issued by the office of respondent no.1 whereby the representations of the petitioners were rejected by a cryptic, non-speaking and unreasoned order being illegal, arbitrary, unjust, unwarranted, without jurisdiction and in violation of the Rules, Regulations and the principles of equity, justice and good conscience.

4. Petitioners further seek direction thereby to declare the petitioners qualified in re-typing test held on 29.09.2010, as more than the qualifying marks have been obtained by the petitioners in the said test as per the procedure followed and the standards set down by the respondents and consequently, appoint the petitioners on the post of LDC w.e.f. the date when other successful candidates were appointed along with seniority and other consequential benefits.

5. Brief facts of the case are that in the month of December, 2009 respondent no.1 issued an advertisement for filling the vacancies of Lower Division Clerk. The petitioners applied for the same. They were called for written test vide letter dated 11.2.2010 for the test to be held on 7.3.2010. The petitioners qualified the said written test and were called for a typing test on 25.4.2010. Thereafter, the petitioners were qualified in the said

typing test and called for interview. Finally petitioners were selected as LDC and joined duty in the month of July, 2010.

6. In the meantime, one Sh. Anupam Garg, who was also a candidate in the selection of LDC filed writ petition before this Court in WP(C)No. 3467/2010 praying for direction directing the respondents to modify the list of candidates selected for interview by including his name for interview for the recruitment for the post of LDC. The said writ petition was dismissed by the learned Single Judge vide order dated 26.05.2010. Being aggrieved the said Anupam Garg filed LPA No. 417/2010 and the same was disposed of vide order dated 9.8.2010 directing the respondents to conduct retyping test. It was further directed that all the 138 candidates to whom the offer of appointment have been given including the petitioners (herein) and who have joined and those candidates who have not yet joined, they should be required to sit for a type writing test once again and only those who attain the speed of 30 words per minute would be eligible for appointment. In the said order, it is clarified that the directions shall also apply to those, who have already joined duties before the passing of the order dated 26.07.2010 in LPA No. 417/2010, but did not attain the speed of 30 words per minute.

7. Pursuant to said directions, the office of the respondent issued two circulars dated 13.08.2010 and 17.8.2010. In the two circulars it has been stated that the typing test will be conducted after two weeks to all those candidates who secured 20 to 29.5 marks in the previously held type test and those who clear the type test with speed of 30 words per minute will be considered for appointment to the post of LDC. It is further stated that those who have already joined the service shall also have to pass the type test with speed of 30 words per minute and services of candidates, who fail in the

type test will be terminated forthwith and the office will issue fresh letters of appointment to the selected candidates.

8. Being aggrieved by the order passed in LPA, the petitioners filed review petition, same was dismissed as not maintainable. Thereafter, they filed the writ petition before this court, same was also dismissed as not maintainable. Then filed LPA and the same was also dismissed. Being aggrieved they approached the Supreme Court by way of SLP and the same was also dismissed. Finally the petitioners sat in the retyping test.

9. Counsel for the petitioner has drawn the attention of this Court in the criteria set for re-typing test which is as under:

> "*In continuation of earlier circular no. 48473-48477/Ret./09/Admn.II dated 13.08.2010 it is clarified that the evaluation of typing speed of 30 words per minute shall be done on the basis of a passage of about 450 words carrying 30 marks to be given to the candidates for being typed within ten minutes. The candidate may repeat the passage, if time is left. The candidates in order to qualify the prescribed type test of 30 words per minute has to obtain minimum 20 marks and above out of 30 marks for passage of about 450 words. The concerned candidates may also note that one mark for every 15 mistakes shall be deducted out of marks obtained for typing. Similarly one mark shall be awarded for every 15 additional words typed in addition to 300 words. Shortfall below 300 words in typing shall be treated as mistakes.*
>
> *The candidates of Schedules Tribe shall be considered as per criteria of eligibility applicable to General category.*
>
> *The candidature of those Scheduled Case and OBC candidates who are migrants from outside Delhi shall be considered as per criteria of eligibility applicable to General category. The benefit of reservation extended to such candidates who have already joined service in pursuance of LDC examination 2009, stands withdrawn and necessary consequences shall follow."*

10. The learned counsel has also drawn the attention of this Court of Annexure-12 which is at page 53. The roll number issued to the petitioner for appearing in the re-typing test whereby the criteria fixed as under:

> *"The evaluation of typing speed of 30 words per minute shall be on the basis of the passage of about 450 words carrying 30 marks to be given for being typed within 10 minutes. You can repeat the passage, if the time is left in order to qualify the test of 30 words per minute. Every 15 words will carry one mark. Thus, a candidate will be required to obtain 20 marks for showing that he has typed 300 words. Additional words will also carry one mark for 15 words. 15 minutes will result deduction of one mark. Indention should be uniform in all paragraphs.*
>
> *1. Faulty shifting which results in capitals and upper case character being printed out of the line of writing or half printed is counted as error.*
> *2. Lower case letters printed below the line of writing would also be marked as errors.*
> *3.Light impression is taken as an error if it is not visible.*
> *4. Heavy impression which pierces the paper is also counted as an error.*
> *5. Every cancellation with 'x' will be counted as an error.*
> *6. Words wrongly divided at line-end will be counted as an error.*
> *7. Shortfall below 300 words in typing shall be treated as mistakes."*

11. He further drawn the attention of this Court towards the typing sheet typed by the petitioner which is at page 151 sought under RTI whereon it is noted that total words typed 345; additional 45; added additional 3 marks and deducted 7 marks. Accordingly, the petitioner was given 16 marks, which are below minimum requirement of 20 marks.

12. It is stated that after inspection of the typing test, the petitioners

surprised to note that the typing sheets of the petitioners were not checked as per the principles, regulations and norms which were settled by the respondents.

13. Learned counsel submitted that on a bare perusal of the typing sheet of the petitioner in WP(C) 3245/2012, it can be easily seen that the petitioner typed total 371 words with 12 mistakes. More so, the petitioner re-typed a line of 26 words. As per the typing sheet of the petitioner in WP(C) 3253/2012 it can be easily seen that the petitioner typed total 350 words with 24 mistakes from which 23 have been circled and 1 has been marked as dashed. However, the same could not be treated as mistake / error as the same does not fall in the definition of errors settled by the respondents themselves.

14. In reply to the counter affidavit filed in WP(C) 3245/2012 it is stated that as per re-typed answer sheets of the petitioner the examiner mentioned that petitioner had typed 345 words for which he was given 23 marks (20 marks for typing 300 words and additional 3 marks for typing 45 words). Further the examiner deducted 7 marks out of 23 marks for the mistakes committed by the petitioner and thus, reaching the net marks to 16.

15. In reply to the counter affidavit filed in WP(C) 3253/2012 it is stated that as per re-typed answer sheets of the petitioner the examiner mentioned that petitioner had typed 350 words for which he was given 23 marks (20 marks for typing 300 words and additional 3 marks for typing 50 words). Further the examiner deducted 4 marks out of 23 marks for the mistakes committed by the petitioner and thus, reaching the net marks to 19.

16. It is pertinent to mention here that when the present petitions were called before noon, none appeared on behalf of the respondents, thus,

directed the counsel for the petitioner to convey the counsel for the respondent that these matters would be taken up for final hearing at 2.15 PM.

17. Learned counsel for the petitioner stated at Bar that he conveyed to Mrs. Avinash Alhawat, Standing counsel for the District and Sessions Judge, however, none appeared on their behalf. Finding no other option this Court has taken up these matters for disposal.

18. As per the stand of the respondent, the petitioner in WP(C) 3245/2012 has typed 345 words whereas the petitioner claimed that he has typed 371 words. To come out from this controversy this Court directed the Court Master to calculate the words and as per his calculation the total words typed are 364.

19. Counsel for the petitioner even does not dispute the same.

20. As per the criteria, which is at page 35, for each 15 words one mark will be awarded to the candidate. If we divide 364/15 it will come as 24.26.

21. On perusal of the typing sheet of the petitioner in W.P.(C) 3245/2012 (at page 151) total circles are 12 which indicates the mistakes committed by the petitioner. As per the criteria for every 15 mistakes one mark is to be deducted, accordingly if one mark is deducted for 12 mistakes then the marks of the petitioner will be 23.26. Whereas the respondents awarded 23 marks to the petitioner and deducted 7 marks for the mistakes. Thus he was awarded only 16 marks which is less than 20 minimum marks and declared fail in the typing test.

22. Again, on perusal of the typing sheet of above petitioner, the mistakes are only 12 and instead of deducting 7 marks the respondent ought to have deducted only one mark. Thus, in my view, the said petitioner got 22.26

marks total (after deduction) which is above the minimum 20 marks. Even if I go by the calculation of respondents and by deducting 1 mark, he got 22 marks. Accordingly, I hereby declare that the petitioner in WP(C) 3245/2012 has qualified the re-type test.

23. As per the typing sheet of the petitioner in WP(C) 3253/2012 as per the respondent the petitioner has typed 350 words including additional 50 words above 300 which was minimum. As per the criteria, for every 15 mistakes one mark is to be deducted and if the marks 350 is divided by 15, the marks of the petitioner comes to 23. I further note that the respondent has deducted 4 marks for the mistakes and finally given 19 marks.

24. On perusal of the typing sheet total mistakes are 24 which is admitted in letter dated 23.01.2012 by the respondents. If 24 mistakes are divided by 15, it will come to 1.6 and if it is rounded and it will come to 2 marks. Thus, instead of deducting four marks for mistakes, respondents ought to have deducted two marks only.

25. Thus, in my view, the petitioner in WP(C) 3253/2012 has got 21 marks which is above the minimum of 20 marks. Thus, I hereby declare that the petitioner has qualified in the typing test.

26. As stated by counsel for the petitioner at Bar that after re-type test the interviews were not conducted and whatever the marks already received by the candidates in previous round of interview those marks were added. Accordingly, I hereby direct the respondents that by adding the marks of the typing test of the petitioners, merit list shall be prepared afresh and accordingly if the petitioners are otherwise eligible, the appointment letters shall be issued within four weeks from the receipt of this order.

27. Since the petitioners have not worked from 11.10.2010, the order of

termination, till date, the petitioners shall be entitled for 50% of the wages with all consequential benefits including the seniority.

28. Both the petitions are accordingly allowed.

(SURESH KUMAR KAIT)
JUDGE

JANUARY 16, 2019
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HIGH COURT OF DELHI
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