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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of hearing and Order: February 20, 2015

+ W.P.(C) 1583/2015
NATIONAL BUILDINGS CONSTRUCTION
CORPORATION LTD

..... Petitioner

Through: Mr. Jayant Pawar, Advocate
versus

MOALA JAMIR

..... Respondent

Through: Mr. Padma Kumar Senior Advocate
with Mr. Krishna Kumar Mishra,
Advocates

CORAM:
HON'BLE MR. JUSTICE KAILASH GAMBHIR
HON'BLE MR. JUSTICE I.S.MEHTA

ORDER

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KAILASH GAMBHIR, J. (ORAL)

Caveat No.173/2015

Since respondent has caused his appearance through Mr. Padma Kumar, Senior Advocate, the caveat stands discharged.

C.M. Appl. No. 2827/2015 (Exemption)

Exemption allowed subject to just exceptions.

Application stands disposed of.

W.P. (C) No. 1583/2015 & C.M. Appl. No. 2826/2015 (Stay)

By this petition filed under Article 226/227 of the Constitution of India, petitioner seeks to challenge the order dated 13.11.2014 passed by

W.P. (C) No. 1583/2015

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learned Central Administrative Tribunal, Principal Bench, New Delhi in O.A. No. 3889/2013.

Assailing the aforesaid order, the petitioner submits that the order passed by the learned Tribunal directing the petitioner to reinstate the respondent is clearly untenable, arbitrary and illegal. It is also contended on behalf of the petitioner that the learned Tribunal has failed to consider the fact that the job of junior stenographer requires the mandatory knowledge of stenography and typing in both the languages i.e. Hindi and English. Counsel further submits that the learned Tribunal has failed to appreciate that clause 16 of the offer letter dated 30.11.2005 clearly mentions that the respondent is required to qualify the test in Hindi Shorthand and Hindi typing within six months of joining the corporation but the learned Tribunal ignoring the said mandatory condition has allowed the Original Application filed by the respondent. It is further contended on behalf of the petitioner that the learned Tribunal has also committed an error in not appreciating the fact that the respondent could not have taken the benefit of its wrong when she had joined the petitioner knowing fully well that she had to clear the shorthand/typing test in Hindi language after joining the petitioner. It is also averred by the learned counsel for the petitioner that the learned Tribunal

did not consider the fact that the respondent himself sought exemption to appear in the test and therefore, she could not have taken advantage of completing eight years of service.

Mr. Padma Kumar Senior Advocate represents the respondent and submits that the order passed by learned Tribunal does not suffer from any illegality or perversity therefore the same does not call any interference of this Court.

We have heard the contentions averred by the learned counsel for the petitioner as well as the submissions made on behalf of the respondent. we have also gone through the record of the case and the impugned order passed by learned Central Administrative Tribunal.

The petitioner National Building Construction Corporation Ltd. (NBCC) had issued an advertisement No.02/2005 inviting applications to fill up certain posts including senior Stenographer and junior stenographer. The respondent had submitted an application dated 6.10.2005 for the post of Senior Stenographer. She was required to participate in English or Hindi Shorthand test at the speed of 110/100 w.p.m. and in typing test on the computer at the speed of 50/40 w.p.m., in terms of the advertisement. The respondent could not satisfy the condition of clearing shorthand/typing test

for the post of senior stenographer, but the respondent found her qualified for the post of junior stenographer and accordingly the offer of appointment to the post of junior stenographer in terms of letter No. SRD/Offer/2005-Estt/3138 dated 30th November 2005 was accepted by her and she joined the service. The respondent then made a representation to the petitioner seeking exemption from qualifying the shorthand and typing test in Hindi language as stipulated in the letter of appointment as well as appointment order No.44/2006 dated 23.01.2006. However, the request of the respondent was declined by the petitioner on 12/13th December 2008 and finally by Office Order No.1393 of 2013 under letter No.38(6525)/08-Estt./13/1624 dated 24.09.2013 the petitioner had terminated the services of the respondent. Feeling aggrieved by the order of termination passed by the petitioner, respondent had approached the learned Central Administrative Tribunal vide O.A.No. 3889/2013.

The learned Central Administrative Tribunal after having appreciated the stands taken by both the parties came to the conclusion that as per the laid down criteria in the advertisement, respondent was required to clear shorthand and typing test in one language and not in both languages and therefore in the teeth of the laid down criteria, the petitioner was not

justified in insisting the respondent to pass the shorthand test in Hindi language at the speed of 80 w.p.m. and typing test on computer at 30 w.p.m. in Hindi language. The learned Central Administrative Tribunal also placed reliance on the judgment of this Court in ***Mohar Singh vs. National Building Construction Corporation, 2012 I AD (Delhi) 814***, wherein this Court took a view that after the NBCC had allowed the employee to remain in service for a period of 15 years, it could not have terminated the services of the petitioner by invoking clause 17 in terms of which he was required to qualify the typing test at the required speed of 30 w.p.m..

After going through the contents of the present petition and on careful scrutiny of the impugned order, we find no illegality or perversity or any kind of irrationality in the reasoning given by learned Central Administrative Tribunal in allowing the Original Application preferred by the respondent. Rather, we are surprised that how the petitioner could introduce a new condition at the time of offering appointment to the respondent, requiring the respondent to qualify the shorthand/typing test in Hindi language at 80 w.p.m./30 w.p.m. In any event, if the petitioner wanted to take a decision to terminate the services of the respondent then, it ought to have taken the same at the earliest possible time and not after a gap of eight

years putting at peril the service career of the respondent.

In view of the aforesaid discussion, we find no merit in the present petition and no illegality or perversity in the impugned order dated 13.11.2014 passed by learned Central Administrative Tribunal. Accordingly, the present writ petition filed by the petitioner is dismissed with costs of Rs.20,000/- to be deposited with Delhi High Court Staff Welfare Fund within a period of four weeks. Consequentially, the petitioner is directed to comply with the directions given by the learned Tribunal within a period of four weeks from the date of this order.

KAILASH GAMBHIR, J

I.S. MEHTA, J

FEBRUARY 20, 2015

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