

Court No. - 33

Case :- WRIT - A No. - 14700 of 2012

Petitioner :- Jai Prakash & Others

Respondent :- Union Of India Thru Secy. Ministry Of Railways & Others

Counsel for Petitioner :- Ram Gopal Tripathi, R.N. Singh

Counsel for Respondent :- Vivek Singh, A.K. Gaur, Karan Singh Yadav, S.C.

Hon'ble Manoj Misra, J.

Hon'ble Ved Prakash Vaish, J.

Heard Sri R.G. Tripathi for the petitioners; Sri Rajnesh Kumar Rai for the respondents; and have perused the record.

The petitioners were ex-army personnel. They were appointed in Railways on Group 'D' category post as '*Khalasi*' in the year 1989. On 29.5.1998, after written test and interview, they were promoted on the post of Junior Clerk. In between, on 20.08.1997, a notification was issued thereby providing that for promotion from Group 'D' to Group 'C' post such as Junior Clerk, typing test will have to be passed within two years. As the petitioners had not passed the typing test they were required by the department by various orders to pass typing test. As a consequence whereof, on 20.06.2000, when a suitability test was held for promotion to the post of Senior Clerk the petitioners were not allowed to appear. Claiming that the typing test was introduced on 20.8.1997 whereas the vacancies had arisen up to 31.3.1997 therefore typing test should not be imposed upon them as condition for retaining the post of Junior Clerk, they filed Original Application No. 268 of 2001 before the Central Administrative Tribunal, Allahabad (in short the Tribunal). The Tribunal vide order dated 2.9.2005 took the view that since typing test was a mandatory requirement, as per

Railway Board circular letter dated 20.8.1997, for confirmation on Group 'C' posts and the petitioners, who were provisionally promoted, had failed to clear the typing test, within the period specified in the Railway Board circular, were not entitled to retain the post of clerk and were liable to be reverted. Aggrieved by the order of the Tribunal dated 2.9.2005, the petitioners filed Writ No. 65560 of 2005 before this Court which was disposed of by order dated 17.10.2005 thereby directing the respondents to reconsider the whole case after determining the date on which the vacancy occurred and, thereafter consider whether typing test would be required or not. The writ court took the view that vacancy is to be filled up as per the law prevailing on the date of vacancy and, therefore, it was necessary to determine as to when vacancy on the post of Junior Clerk had arisen as also as to what was the eligibility requirement at that point of time.

Pursuant to the order of the writ court dated 17.10.2005, on 20.5.2006 a decision was taken to exempt the petitioners from typing test for one time.

As a consequence of the decision taken by the Railway Authority, the impending reversion of the petitioners consequent to not qualifying the typing test though was dispelled but, in the meantime, the petitioners were not allowed to appear in the suitability test for the post of Senior Clerk held on 29.10.2005. As a result, petitioners filed yet another Original Application before the Tribunal which was registered as O.A. No. 1216 of 2006. In this Original Application the prayer of the petitioners was that the respondents be directed to pay to the petitioners arrears of salary, pay-scale, benefits admissible to the post of Senior Clerk and Head Clerk by treating the petitioners

promoted on the post of Senior Clerk w.e.f. 28.5.2000 and Head Clerk w.e.f. 28.5.2002 respectively.

In the subsequent Original Application, the case of the petitioners was that they were wrongly denied opportunity to appear in the suitability test held on 29.6.2000 and 29.10.2005 for consideration of promotion on the post of Senior Clerical grade and, therefore, they were entitled to the benefits of the promotion post.

In the subsequent application, the Railways resisted the claim and placed reliance on a circular dated 7.4.1994 in which it was provided that for all promotions from Group 'D' to Group 'C' posts in the ministerial cadre and from clerks to senior clerks against L.D.C.E. quota, the incumbent had to acquire typing skill and clear typing test within two years. It was the stand of the Railways that as, admittedly, the petitioners had not acquired typing skill and had not cleared typing test, therefore, notwithstanding that they were promoted on the post of junior clerk, they can not be allowed to participate in the suitability test for the post of senior clerk because that exemption from passing typing test was provided for one time only under the orders of the writ court.

The stand taken by the Railways was accepted by the Tribunal and O.A. of the petitioners was dismissed by impugned order dated 1.12.2011.

Assailing the order dated 1.12.2011 passed in O.A. No. 1216 of 2006, the learned counsel for the petitioners has submitted that Tribunal was not legally justified in placing reliance on the circular letter dated 7.4.1994 because the said circular letter was never placed in the earlier round of litigation

and otherwise also once this Court had directed the railways to consider the case of the petitioners as per the law prevailing on the date of occurrence of the vacancy and the railways acting upon the direction of the writ court had exempted the petitioners from appearing in the typing test, the insistence of the railways on clearing the typing test by the petitioners for promotion on the post of senior level clerk was legally unjustified and arbitrary.

Sri Tripathi further contended that the post of senior clerk had been subjected to recruitment process by holding suitability test in the years 2000 and 2005 but as the petitioners were wrongly denied appearance in those tests, on account of lack of typing skill, there was legal justification for the petitioners to claim benefits of the promotional post from the date their juniors were considered for appointment on the said post.

Sri Tripathi has also submitted that even assuming that the petitioners were required to pass the typing test for senior clerk post that typing test could have been passed by them after promotion, within a period of two years as provided by the circular of 1994, hence, denying them opportunity to participate in the suitability test was legally unjustified, therefore the petitioners are entitled to all the benefits of the promotional post from the date their juniors were considered for promotion on that post.

Per contra, Sri Rai, who has appeared on behalf of the Railways (respondent herein), submitted that the order of the writ court was confined to the junior level clerical post, inasmuch as the petitioners had not staked any claim to senior clerk post in that round of litigation. He further submitted that the existence of the circular dated 7.4.1994 was not doubted in

the earlier round of litigation either by the Tribunal or by the writ court though, unfortunately, the said circular could not be placed in the earlier round of litigation. But merely because the circular could not be placed in the earlier round of litigation, its existence can not be ignored. Therefore, the Tribunal was legally justified in taking notice of the said circular in the subsequent round of litigation. It has been submitted that the said circular clearly provided that for the purpose of promotion on the post of clerical cadre, the promotees would have to clear typing test within a period of two years from the date of their promotion. He has further submitted that as the appointment of the petitioners on the post of junior clerk was without clearing the typing test they had no right to participate for promotion on the post of senior clerk because typing test was required for senior clerk post as well. It has also been submitted that the order of the railway administration dated 20.5.2006 gave exemption from typing test for one time only to retain the post of junior clerk and not for consideration to the higher level post. It is, accordingly, the case of the respondents that the order passed by the Tribunal is legally justified and does not call for any interference in the light of circular dated 7.4.1994.

Sri Rai has further pointed out that since all the petitioners had retired even before the order could be passed by the Tribunal, no relief could now be given to the petitioners keeping in mind that there is no automatic promotion to the post of senior clerk, inasmuch as, to enable consideration for the said post, candidates are required to pass suitability test and since the petitioners have admittedly not passed the suitability test, they can not be granted any benefit of the promotional post.

We have given our anxious consideration to the rival

submissions and have perused the record.

No doubt, in the earlier round of litigation, the circular dated 7.4.1994 was not brought to the notice of either the Tribunal or the writ court and therefore the writ court, under the belief that on the date of vacancy, which was claimed to have arisen in the year 1997, there may not have been requirement to pass typing test had directed to consider eligibility for promotion as prevailing on the date of vacancy, but that, by itself, would not be a ground to ignore the existence of the circular dated 7.4.1994 when the same was produced in the second round of litigation. Moreover, the order of the High Court was complied by the railway administration by observing that the writ court's order was without taking cognizance of railway circular dated 7.4.1994 but in due respect to the writ court's order exemption from typing test was provided as a one time exemption.

Before the writ court the question of eligibility of the writ petitioners for promotion on the post of senior clerk, without passing the typing test, was not under consideration and there was no specific direction of the writ court in that regard. Therefore, the net effect of the order passed by the writ court and consequential order of the railway administration dated 20.5.2006 would be that right of the petitioners to continue on the post of junior clerical cadre was no longer under cloud. That is they were not to be reverted back because of not clearing typing test. But that, by itself, would not confer right on the petitioners to stake a claim to senior level clerical post for which they were required to pass not only suitability test but also possess typing skill which had already been mandated by circular dated 07.04.1994. Further, from the prayer of the

Original Application No. 1216 of 2006, which has been brought on record as Annexure SA-1 along with supplementary affidavit dated 30.10.2017, it appears that the petitioner laid no challenge to the condition imposed in the order dated 20.5.2006 that the exemption from typing test has been provided as one time exemption only. Under the circumstances, they could not claim, as of right, that they should have been allowed to appear in the suitability test for the post of senior clerk when they had not passed the typing test within two years of their appointment on the post of junior clerk as was required by circular dated 7.4.1994. As admittedly, the petitioners have neither passed the typing test nor have appeared in the suitability test and, by the time the matter came up for final adjudication, all the petitioners had already retired, we do not find that any relief could be given to the petitioners of the promotion post, particularly, when promotion is based on passing suitability test as well as typing skill test. Otherwise also, we find no error in the order of the Tribunal.

The petition is accordingly dismissed.

,

(V.P.Vaish, J.)

(Manoj Misra, J.)

Order Date :- 17.7.2018
SU.