

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

% Date of decision: April 28, 2023

+ W.P.(C) 10304/2020 & CM APPL. 32579/2020

GAURAV KHARB & ORS.

..... Petitioners

Through: Mr. Sourabh Ahuja, Adv.

versus

GNCT OF DELHI THROUGH CHIEF SECRETARY
& ORS.

..... Respondents

Through: Mrs. Avnish Ahlawat, SC with
Ms. Tania Ahlawat, Mr. Nitesh
Kumar Singh, Ms. Palak Rohmetra,
Ms. Laavanya Kaushik and Ms. Aliza
Alam, Advs. for GNCTD.
Ms. Vrinda Awasthi and Ms.
Pepakayala Geetanjali, Adv. for R3.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

V. KAMESWAR RAO, J. (ORAL)

1. The challenge in this petition is to an order dated September 9, 2020 passed by the Central Administrative Tribunal ('Tribunal', for short) in OA 393/2020, whereby the Tribunal has disposed of the OA by stating the following in paragraph 11 of the order:

"11. In view of the above discussion we find no merit in the contentions of the applicants. However, in the interest of justice, fair play and for providing a level playing field it is directed that in case the respondents conduct another test of computer to fill the remaining vacancies, the applicants shall also be permitted to take part in it. The OA is, accordingly, disposed of."

2. The grievance of the petitioners before the Tribunal primarily was with regard to the selection carried out by the respondent No.2 for the post of Assistant Grade-III in Delhi Transco Limited.

3. It was their case that they have applied for selection to the said post in response to an advertisement dated September 12, 2013. They appeared in the written examination on September 24, 2017. Thereafter a notice dated December 17, 2018 was issued by the respondent No.2 asking the candidates to appear in the skill test to be held from January 4, 2019 to January 6, 2019.

4. It was their case that no standards were prescribed for the skill test. Further on January 2, 2019 another notice was issued specifying the required typing speed in English and Hindi on computer. It was their case before the Tribunal that specifications were put just two days before the skill test was held without giving any opportunity of preparation. The petitioners had no option but to appear. This according to the petitioners was not a reasonable opportunity.

5. The case of the respondents before the Tribunal was, the advertisement envisaged holding of skill test relating to computers. They have further justified the prescription of the minimum typing speed by referring to parity between the post of Assistant Grade-III with that of Grade-IV (DASS) of Services Department, Govt. of NCT of Delhi. It was also stated that the public notice dated December 17, 2018 specifically stated that a typing test for the post shall be held between January 4, 2019 to January 6, 2019 and the notice dated January 2, 2019 was issued prescribing the typing speed. The Tribunal in paragraph 9.5, 10 and 11 has held as under:

“9.5. The key question is whether the Public Notice dated 02.01.2019 in any way changes the criteria laid down in the Notice of 17.12.2018. The Notice of 17.12.2018 clearly states that a Skill Test (Short Hand/Typing) will be held. This, read in addition to and in conjunction with the position as specified in the Notice of 12.09.2013, puts any controversy in this regard squarely to rest.

10. A comprehensive reading of all the three documents referred above reveals an inherent consistency between them. Knowledge of computer operation cannot be independent of the ability to operate the keyboard. And this ability essentially includes the attribute of speed. Further, MS Word is a part of MS Office. And if one is required to have complete knowledge of

MS Office, how can he or she shy away from MS Word, which essentially is about typing and raise the plea that typing speed is an extraneous and non-essential requirement?

In view of the above discussion we find no merit in the contentions of the applicants. However, in the interest of justice, fair play and for providing a level playing field it is directed that in case the respondents conduct another test of computer to fill the remaining vacancies, the applicants shall also be permitted to take part in it. The OA is, accordingly, disposed of.”

6. Mr. Sourabh Ahuja, learned counsel appearing for the petitioners reiterates the submissions as were advanced before the Tribunal. Additionally, he states that on December 18, 2019 a notice was issued whereby persons who were below in merit in the written examination were called for the skill test by giving a prior notice of 17 days and they have been selected, which according to him was not a fair action on the part of the respondents as the petitioners were not

given the level playing field to qualify the skill test.

7. On the other hand, Mrs. Avnish Ahlawat, learned Standing Counsel appearing for respondents would justify the action of the respondents and also the order of the Tribunal.

8. Having heard the learned counsel for the parties, the short issue which arises for consideration is whether the Tribunal was justified in giving directions in the manner it did in paragraph 11 of the impugned order.

9. There is no dispute that the advertisement issued by the respondents contemplated a skill test in typing. It is also true that on December 17, 2018, a notice was issued by the respondents prescribing the dates of skill test between January 4, 2019 and January 6, 2019. In that sense, the petitioners had a clear notice of almost 17 days, i.e., between the period December 17, 2018 to January 4, 2019. It is true that the typing speed was prescribed for the first time on January 2, 2019, which is 35 w.p.m. This speed of 35 w.p.m is a normal speed that is expected from a person well-versed in typing. In fact, the normal speed is around 40 w.p.m. If that be so, it is very difficult for this Court to accept that any prejudice has been caused to the petitioners on the respondents notifying the typing speed only on January 2, 2019.

10. In so far as the submission of Mr. Ahuja that a notice dated December 18, 2019 was issued whereby an opportunity was given to the candidates who had secured less marks as compared to the petitioners were given 17 days of notice by prescribing the speed limit of 35 w.p.m. is concerned, the same is unmerited. We have already

held that no prejudice has been caused to the petitioners. It appears, the said process was carried out by the respondents as sufficient number of candidates could not be selected. In any case, the petitioners having appeared in the typing test and have not qualified the same cannot challenge the said condition. In fact, they have not challenged the process till January 25, 2020, by which time, the persons who were lower in the merit had appeared and qualified the skill test.

11. It is a settled law that a person who has appeared in the examination process cannot challenge the very process in which he had participated.

12. One of the pleas of Mr. Ahuja is that the respondents must hold a fresh skill test for all the candidates, who appeared between January 4, 2019 and January 6, 2019. On this plea, Mrs. Ahlawat states as against one vacancy 10 candidates were called for the skill test. So in all against 9 vacancies 90 candidates were called. According to her, the petitioners having appeared and not qualified cannot be allowed to sit in the skill test afresh, otherwise it shall create a wrong precedent. The submission is appealing. We do not see any merit in the petition. The petition is dismissed.

CM APPL. 32579/2020

Dismissed as infructuous.

V. KAMESWAR RAO, J

ANOOP KUMAR MENDIRATTA, J

APRIL 28, 2023/jg