



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

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Date of decision: July 11, 2023

+ W.P.(C) 9255/2019

RAJU RANJAN

..... Petitioner

Through: Mr. Rajan Mani, Adv. with
Mr. Rajeev Narayan, Adv.

versus

UNION OF INDIA AND ANR.

..... Respondents

Through: Mr. Brijesh Kumar Tamber,
Mr. Vinay Singh Bist, Mr. Yashu
Rustogi and Mr. Khushal Kolwar,
Advs. for R-2

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

V. KAMESWAR RAO, J. (ORAL)

1. The present petition has been filed by the petitioner challenging two orders, which are dated March 13, 2019 and May 2, 2019, passed by the Central Administrative Tribunal Principal Bench, New Delhi ('Tribunal', for short) in Original Application No.1821/2015 ('OA', for short) whereby the OA and Review Application ('RA', for short) filed by the petitioner herein were dismissed.

2. The case of the petitioner before the Tribunal was that in June 2009, Employees Provident Fund Organisation ('EPFO', for short) / the respondent No.2 had issued an advertisement for



recruiting Social Security Assistant ('SSA', for short). He applied for the same and he qualified in the written test (on September 06, 2009), so as to enable him to appear in the skill test. The skill test, as specified, is typewriting test with a speed of minimum 5000 Key Depressions Per Hour ('KDPH', for short). The petitioner being a Person with Disability ('PwD', for short) had on January 19, 2010 applied for exemption from appearing in the skill test on account of his disability of 40% with regard to one arm. However, the exemption was denied and the petitioner was called to appear in the typewriting test held on February 12, 2010. The petitioner made representation to the Chief Commissioner for Persons with Disability, New Delhi (Case No.50/1012/09-10). The same was decided on August 05, 2011 with following directions:

"14. It is observed that some functional similarity between LDC/UDC on the one hand and SSA on the other, can be established as working on computer and typewriter have the same functional requirements. The two category of posts also have some similarity in as much as both the category have to work partly on computer/typewriter and partly do the manual work to maintain physical records, registers, etc. However, the requirement of proficiency in working on computer for SSA is apparently more intense. It is also observed that the RRs for SSA provide that unless an LDC/UDC passes the computer skill test of at least 5000 key depression per hour, he/she would have to remain in the cadre of UDC which is a dying cadre. In the light of the fact that there is neither any provision for exemption from the skill test in the Recruitment Rules nor the Government of India or EPFO have so far made any such rules or have issued any such instructions, it would not be within the purview of this Office to issue any



directions for exempting the complainants from computer skill test as provided in the RRs. However, Department of Personnel & Training who are examining the issue, may consider relaxation of standard of the computer skill test in respect of certain category of persons with disabilities in the spirit of para 22 of OM No.36035/3/2004-Estt (Res) dated 29.12.2005 which relates to relaxation of standard of suitability in respect of persons with disabilities.

15. The cases are disposed of accordingly.”

3. From the above, it is noted that the Commissioner has directed the DoP&T to consider the relaxation of standard of the computer skill test in respect of certain category of persons with disabilities in the spirit of paragraph 22 of the OM dated December 29, 2005. Thereafter, the Regional PF Commissioner, EPFO rejected the petitioner's representation vide order dated November 10, 2014, by stating as under:

“In this regard it is to inform that the Recruitment Rules to the post of SSA does not have any relaxation for physically handicapped candidates in the minimum qualifying speed of 5000 key depressions. No guidelines in relaxation of standard of the computer skill test in respect of person with disabilities has been received so far from the DOPT. Accordingly, it is not feasible to consider the relaxation in computer skill test for physically handicapped person.”

4. Thereafter, the petitioner approached the Central Information Commission seeking certain information. It may be stated here that, on March 4, 2016, the DoP&T has issued instructions in the following manner:



“3. Further, the DOPT has issued instructions on exemption from passing the skill test on computers vide DOPT’s OM No.14020/1/2014-Estt.(D) dated 22.04.2015. It may be reiterated that DOPT has modified the entries pertaining to skill test norms for the LDC to include skill test norms „only on computers” vide DOPT’s OM No.AB-14017/32/2009-Esst.(RR) dated 17.05.2010. Further, it has been decided that the criteria of grant of exemption from passing the typing test in respect of LDCs including persons with disabilities as stipulated in DOPT’s OM No.14020/2/91-Estt.(D) dated 29.09.1992 would also be applicable to test on computers.”

(emphasis supplied)

5. The grievance of the petitioner is that, despite the above, his candidature to the post of SSA under EPFO, has not been considered and accordingly, he filed OA before the Tribunal which resulted in the impugned order. The prayers as made by the petitioner were in the alternative, i.e., to exempt the petitioner from appearing in skill test as per rules framed for the persons with disability as issued by the Government of India or to direct the respondent No.2 to declare the result on the basis of the skill test taken by him on February 12, 2010 wherein he qualified the typing test with a speed of 5000 KDPH.

6. The case of the respondent / EPFO before the Tribunal was that SSA is a higher level post as compared to LDC for which relaxation was granted and the recruitment rules for the post of SSA which are reproduced as under, contemplate the mandatory requirement of a candidate possessing a speed of at least 5000



KDPH for data entry work and should possess a Computer Training Certificate from a recognised institution:

1.	<i>Name of Post</i>	<i>Social Security Assistant</i>
8.	<i>Educational and other qualifications required for direct recruits</i>	<i>Essential</i> <i>a. Degree of a recognized University or equivalent.</i> <i>b. Possessing a speed of at least 5000 key depressions per hour for Data Entry Work.</i> <i><u>Desirable</u></i> <i>c. Should possess a Computer Training Certificate from a recognized institution.</i>
11.	<i>Method of Recruitment whether by direct recruitment or by promotion or by deputation/absorption and percentage of the posts to be filled by various methods.</i>	• 85% Direct Recruitment by open competitive examination by EPFO through an Agency or Agencies approved by the CBT/transfer failing which by deputation. • 15% by promotion thorough departmental qualifying examination/skill test. • <u>Initial Constitution Clause</u> <i>i. Persons holding post of Upper Division Clerks on regular basis shall have the option on the commencement of these Rules to switch over to the post of SSA by qualifying a computer skill test conducted by the Appointing Authority.</i> <i>ii. Those who do not opt for SSA or do not pass the computer skill test shall remain in the cadre of UDC which has been declared as a dying cadre.</i> <i>iii. The Upper Division Clerks shall on passing the qualifying skill test be placed en-block senior and, their inter-se placement shall be fixed in accordance with the date of regular appointment to the respective grade subject to the condition that their inter-se placement shall not be disturbed provided they qualifying in skill test within one year from the date of notification of these rules.</i> <i>iv. If any UDC pass skill test after the stipulated period of two years they shall be placed below all those already holding the post of SSA on the said</i>



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7. According to the Tribunal, the said stipulation being an essential requirement for the post of SSA, the same could not have been relaxed. That apart, it is also stated that certain vacancies were also reserved for physically challenged candidates as per Government of India norms and as a result of the written test followed by the same specified skill test a total of 18 orthopedically handicapped candidates had finally qualified in the skill test with key depressions of 5000 per hour and above. According to them, 18 PwD orthopedic candidates have been selected for the post. That apart, 10 candidates had also qualified in Data Entry Skill Test and hence were kept in panel.

8. It was the case of the respondents / EPFO that the selection having been completed long back and skill test being an essential part thereof, no relaxation could be considered at that time. The Tribunal finally has in paragraphs 12 to 14 stated as under:

“12. The facts of this case are not in doubt. The applicant is a physically challenged person. He had applied against a recruitment notice and qualified the written examination to appear in the next stage to appear in the skill test. The applicant was unable to qualify the skill test.

13. The applicant had approached to adjudicate the matter in the office of Chief Commissioner for Persons with Disability as well as in CIC thereafter when requisite information was not made available from DOP&T. For any selection it is the recruitment rules that are required to be honoured.



In the instant case, the recruitment rules provided certain essential qualifications which also included the skill test (para 8 supra). There were other physically challenged candidates also who had also appeared in the same skill test and qualified (para 9 supra). The said selection has since been finalised already.

14. In view of the foregoing, there is nothing that subsists in said recruitment. The applicant was unable to qualify as per the specified procedure which was applicable for all other candidates including those who were physically challenged. Many physically challenged candidates had also been declared finally successful. Therefore, nothing subsists in this OA. The same is dismissed being devoid of merit. No order as to costs."

9. The submission of Mr. Rajan Mani, learned counsel for the petitioner is that the Tribunal has failed to appreciate that the petitioner is a physically challenged having Locomotor Disability to the extent of 40% (one arm affected). The disability is such which is likely to interfere with typewriting, yet the respondents despite identifying the post to be filled up by the candidate with one arm disability refused to grant exemption to the petitioner from appearing in the Typewriting Test despite the petitioner producing the Exemption Certificate issued by the Competent Authority.

10. According to him, the Tribunal failed to appreciate the fact that, as per Section 33 of the Right of Person with Disability Act, 1995 ('Act of 1995', for short) every appropriate Government shall appoint in every establishment such percentage of vacancies not less than 3% for persons or class of persons with disability of



which 1% each shall be reserved for persons suffering from various disabilities including Locomotor Disability.

11. In fact, it is his submission, the respondent / EPFO had identified the posts of SSA to be filled by a person with one arm disability thereby complying with the obligation mandated under the Act of 1995, however surprisingly the recruitment rules for the post of SSA provided that the SSA was essentially required to possess speed of at least 5000 KDPH for data entry work which is arbitrary and discriminatory towards the physically handicapped (one arm affected) individual, as no physically handicapped (one arm affected) individual would be in a position to possess speed of at least 5000 KDPH for data entry work.

12. According to him, only way the advertisement could be logically applied was to grant exemption to physically handicapped (one arm affected) individual, however the same was not done. In fact, he lay stress on the fact that even EPFO has not prescribed relaxed standard for a candidate with one arm disability. It is his endeavour to highlight the fact that the petitioner could able to reach the speed of 1935 key depression per hour.

13. He states that the conduct of EPFO clearly depicts that they have identified the post only for the purpose of window dressing and showing that they are complying with the provisions of the Act and did not have any intention to actually give the benefit of the Act to potential beneficiaries.

14. He states that insofar as the other eligibility conditions are concerned, the petitioner has fully meet the same, inasmuch as the



petitioner has requisite and sufficient knowledge of computer and has been awarded Diploma in Accountancy with Computer Science.

15. He has also drawn our attention to the fact that the Government of India notification dated December 29, 2005, provides if sufficient number of persons, with disabilities are not found on the basis of general standard to fill all the vacancies reserved for them, candidate belonging to the category may be selected through relaxed standards to fill up the remaining vacancies reserved for them, provided they are not found unfit for the said posts. It is surprising to note that out of 18 vacancies for physical handicap, 10 candidates had qualified for Data Entry Skill Test and due to non-joining of candidates, only four candidates from the panel were offered appointment.

16. He also states that, according to the petitioner, all the ten candidates who have qualified for Data Entry Skill Test are those who have no disability of upper arm so in that sense they could have successfully cleared the skill test unlike the petitioner, who was disabled with one arm.

17. In support of his submission, Mr. Mani has drawn our attention to Annexure P.11 (page 271 of the paper book) to contend that the action of the respondent / EPFO is also arbitrary and discriminatory as the respondent / EPFO through its internal mechanism has granted exemption from computer skill test to all physically challenged LDCs for their promotion / absorption to the



very post of SSA which includes disability of both hands / or any hand affecting the use of computer operations.

18. According to Mr. Mani, the only justification given by the respondents and even their counsel is that the exemption for the LDCs was given because they being the internal candidates / employees already working in the EPFO are liable for career progression through promotion, which cannot be denied to them, and as such the standards have been relaxed, though may be justified but there is no ground to deny similar benefit to the petitioner / outside candidates who is / are seeking direct recruitment appointment to the post of SSA. He submits that the plea of the respondents through their counsel is that, a person with one arm disability shall not be able to effectively discharge the duties as SSA who necessarily has to work on computer with regard to settling of the claims is without application of mind as the LDCs who are promoted as SSA who are exempted with the similar disability are also to discharge similar duties and not giving similar treatment to petitioner like candidates is discriminatory. He also states that, it is not a case where the petitioner cannot work on the computer, as he was able to achieve speed of 1935 KDPH.

19. According to Mr. Mani, unfortunately, the Tribunal has overlooked all these submissions made on behalf of the petitioner by rejecting the OA by an order simplicitor only noting the fact that the recruitment process has been finalised long back.

20. He states that, when such an important issue has been raised, which issue is regulated under the provisions of the Act of



1995, the Tribunal could not have rejected the OA. It was required to consider the stand placed by the petitioner on its merit and decide the OA.

21. On the other hand, learned counsel for the respondent / EPFO would submit that the respondent / EPFO has been setup for implementation of the provisions of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 and the scheme framed therein. It has taken up the task of modernisation through the project "Re-inventing EPF India" involving business process re-engineering, re-tooling of Accounting System and development of Comprehensive Application Software towards achieving organizational goals including settlement of claims within 2-3 days and service to members from any geographical location in the country in terms of the powers entrusted by the statute. That apart, the EPFO has setup various Group-C cadres which includes SSA in the pay scale of ₹4000-6000 (pre-revised) and Recruitment Rules of SSA Cadre were notified on January 03, 2004.

22. According to him, the purpose of creation of SSA cadre is to facilitate the shift from manual handling to a computer based system to ensure quicker settlement of claims and therefore the most essential requirement for being recruited to this post is a minimum typing speed for accurate data entry and the entire purpose of the said post would be exhausted in case this requirement is not met. The SSA is engaged for accounts work and their task includes updation of accounts, settlement of claim done through computer. He has also highlighted the duties which are



attached to the post of SSA. These posts are available in all field offices of the EPFO.

23. At the time of exam notification in June 2009, the SSA post was in the pay scale of ₹5200-20,200/- (GP:2400/-). As per the Recruitment Rules, 80% of the posts are filled through direct recruitment, 15% by promotion through departmental examination failing which by direct recruitment and 5% for meritorious sportsmen. The essential and other qualification required for direct recruitment are the following:

“Essential:

(a) Degree of a recognized University or equivalent

(b) Possessing a speed of at least 5000 Key Depressions Per Hour for Data Entry Work

Desirable:

(c) Should possess computer training certificate from a recognized institution.”

24. He also highlighted the fact that the Recruitment Rules have been amended in the year 2021, which contemplates a typing speed of 35 words per minute in English or 30 words per minute in Hindi on computer, corresponding to 10500 key depression per hour which means, on an average of 5 key depression for each word for Data Entry Work. He states that the categories of PwD are suitable for job etc, includes one arm, one leg, one arm one leg, leprosy cured etc. Later these instructions have been amended to



include one one arm, one leg, both legs, blind, low vision, hearing handicapped etc.

25. According to him, though one arm is identified as disability for appointment to the said post, there is no provision to relax the eligibility criteria or to relax any requirement for SSA post for PwDs. He states that persons with physical disabilities are being appointed to the post of SSA, only when they meet the eligibility criteria laid down for the post.

26. He concedes to the fact that the petitioner had cleared the first stage of recruitment and had appeared in data entry skill test and the test was conducted without any human intervention. The candidates were intimated in advance that the requirement is to achieve at least 5000 KDPH speed at the end of the ten minutes test. The candidates who had achieved the minimum speed of 5000 KDPH were further required to submit their documents regarding eligibility etc. as per instructions to the authorities.

27. He states that the petitioner, who appeared for the Data Entry Skill Test from Mumbai Centre, wherein he had tried to give the copy of his certificate for grant of exemption from Data Entry Skill Test to the Test Personnel there, however, the same was not accepted, and the petitioner appeared for the Data Entry Skill Test. As admitted by the petitioner, he had achieved a speed of only 1935 KDPH as calculated by the software based on the performance in 10 minutes. The result has been declared on the following vacancies in Maharashtra:



Vacancy	Gen - 221	SC-181	ST-10	OBC-615	Total	Exm-62	PH-18
Merit Listed	Gen - 221	SC-181	ST-10	OBC-173	Total-615	Exam-62	PH-18

28. That against the 18 vacancies for PH, 18 candidates who were persons with disability had been selected as can be seen from the result published. In addition to the 18 candidates merit listed in the result against the 18 vacancies notified, 10 candidates were also qualified in the Data Entry Skill Test and hence were kept in panel. Due to non-joining of candidates, merit listed or candidates found to be ineligible for the post against PH category, 4 candidates from the waitlist panel were issued offer of appointment. All these candidates had appeared for both the written test as well for the Data Entry Skill Test and had achieved the minimum speed of 5000 KDPH.

29. He does state that the posts in the existing cadres of Lower Division Clerk (LDC) and Upper Division Clerk (UDC) were merged into a new cadre. Only 576 posts were retained in LDC cadre to provide for promotional avenues to the Group-D employees by way of promotion.

30. He agreed with the submission made by the learned counsel for the petitioner that the LDCs, who were promoted to the post of SSA were exempted to appear in the skill test. The only justification given by him is that, since the LDCs are internal candidates and they are entitled to career progression, therefore they were exempted from appearing in the skill test on computer. In other words, they being differently placed, no comparison can



be drawn between appointment to be made through direct recruitment and through promotion.

31. He submits that the issue in hand is covered by the judgment of the Supreme Court in the case of ***V. Surendra Mohan v. State of T.N., (2019) 4 SCC 237***, more specifically paragraph 44, wherein a particular degree of disability was prescribed, and it was held that it is well within the power of the Appointing Authority to prescribe eligibility looking at the nature of job which is to be performed by holder of post.

32. He states the requirement of 5000 KDPH being an essential requirement under the recruitment rules, the same could not have been relaxed. He seeks the dismissal of the writ petition.

33. Having heard the learned counsel for the parties, the issue which arises for consideration is whether the respondents should have, insisted upon the petitioner to appear in the skill test or relaxed the standard for a PwD like the petitioner. There is no dispute that the respondent / EPFO has identified the post of SSA to be filled with a person with one arm disability or for that matter with one arm and one leg as well. The requirement of the recruitment rules is very clear as can be seen from the rules which we have reproduced above.

34. No doubt, the Recruitment Rules stipulates 5000 KDPH, the same is also a stipulation in the case of promotion to the SSA from amongst LDCs. Insofar as the LDCs are concerned, the EPFO has exempted them from Data Entry Skill Test. The reason being that they being the internal candidates, they are entitled to career



progression / promotion and hence, such a stipulation would have affected their chances of promotion. But the said submission does not answer the issue raised by Mr. Mani that the same benefit should have been granted to the petitioner as well when the nature of duties to be performed by a directly recruited SSA as well as promotee SSA are the same. This submission of Mr. Mani is appealing; the LDCs having been granted the exemption, the respondent should have extended / granted the same exemption / benefit to the petitioner.

35. There is no dispute that the post has been identified to be filled by a person with one arm disability and one arm one leg disability. In that sense, judicial notice can be taken of the fact that a person with one arm may not be able to achieve 5000 KDPH like a person, without disability. It is surprising that the respondents have not even provided lower threshold to a person having one arm disability or for that matter, one arm and one leg disability for the reasons best known to them. The effect thereof, is that a person with one arm disability is sought to be compared with a person who does not have any arm disability. Moreso, when the nature of skill test is typewriting on computer, i.e., Data Entry Skill. This action of the respondents is totally without application of mind and contrary to the instructions issued by the Government of India of which a reference has been made by Mr. Mani during his submissions.

36. In fact, Mr. Mani has also drawn our attention to the OM of the DoP&T dated April 22, 2015 where the DoP&T has exempted



the persons with one arm disability from appearing in the typewriting test for appointment of LDCs. The same read as under:-

OFFICE MEMORANDUM

Subject: Instructions on exemption from passing the Typewriting Test on Computer in respect of LDCs, regarding.

.....

The undersigned is directed to say that instructions issued by this Department vide O.M.No.14020/2/91-Estt(D) dated 29th September, 1992 provide for grant of exemption from passing the typing test for drawal of increments and confirmation in respect of LDCs.

2(i). The above mentioned instructions provide for exemptions as under:-

- a) If above 45 years of age on the date of their appointment, such persons may be granted exemption from the date of their appointment.*
- b) If between the age of 35 years and 45 years at the time of their appointment, such persons may be granted exemption on attaining the age of 45 years.*
- c) If below 35 years of age on the date of appointment, such persons may be given exemption after 10 years of service as LDC provided they have made two genuine attempts to pass the typing test; otherwise they may be granted exemption after attaining the age of 45 years.*
- d) Those LDCs who have made two genuine attempts for passing the typing test prior to issue of this O.M. but have not completed 8 years service as LDC, may be granted exemption from passing the typing test after completion of 8 years of service or on attaining the age of 45 years, whichever is earlier.*



(ii) *For the Physically handicapped persons, these instructions provide for exemptions as under:-*

a) *Physically handicapped persons who are otherwise qualified to hold clerical post and who are certified as being unable to type by the Medical Board attached to Special Employment Exchanges for the Handicapped (or by a Civil Surgeon where there is no such Board) may be exempted from passing the typing test.*

b) *The term 'physically handicapped persons' does not cover those who are visually handicapped or who are hearing handicapped but cover only those whose physical disability permanently prevents them from typing.*

3. *Model RRs for the post of Lower Division Clerk (LDC) were issued vide this Department's O.M.No.AB-14017/32/2009-Estt(RR) dated 7th October, 2009. The entries pertaining to Skill Test Norms prescribed in the Col. 8 of the Model RRs for the post of LDC were modified to include the Skill Test Norms 'only on computers' vide this Department's O.M.No.AB-14017/32/2009-Estt(RR) dated 17th May, 2010.*

4. *This Department has received references whether the instructions as contained in this Department's OM dated 29.9.1992 are applicable for test on Computer or not. The matter has been examined and it has been decided that the criteria for grant of exemption from passing the typing test in respect of such LDCs including Physically Handicapped persons/Persons with Disabilities as stipulated in this Department's O.M.No.14020/2/91-Estt(D) dated 29th September, 1992 would also be applicable to the test on Computers.*

5. *It has also been decided to extend the above under instructions to Sportspersons recruited against Sports quota*



under the Scheme of appointment of meritorious Sportspersons.”

37. In fact we find, the decision to exempt physically handicap persons from typing test was initially issued in the year 1961 followed by an order in the year 1992 wherein the following was stated:

“Copy of Office memorandum No. 15/8/61-Estt. Dated 23rd December 1961 from the Ministry of Home Affairs to all the Ministries of the Government of India.

Subject: PROFICIENCY IN TYPEWRITING FOR APPOINTMENT TO CLERICAL POSTS UNDER THE GOVERNMENT OF INDIA- EXEMPTION FROM, IN THE CASE OF PHYSICALLY HANDICAPPED PERSONS

The undersigned is directed to refer to this Ministry's O.M. No. 71/67/56-CS (C), dated 15th September, 1956 under which a speed of 30 words per minute in typing has been prescribed as an essential qualification for recruitment made through the Employment Exchanges to posts of lower Division Clerk. Representations have been received in this Ministry that the above condition operates very harshly in the case of physically handicapped persons who are otherwise eligible for appointment to posts of Lower Division Clerk but cannot be so appointed for the reason that they are not able to satisfy the typing qualification due to the disability they are suffering from. It has been represented that typing qualification in their case should not be insisted upon.

2. After careful consideration of the matter, it has been decided that such of the physically handicapped persons who are otherwise qualified to hold clerical posts and who are certified as being unable to type by the medical



Board attached to Special Employment Exchanges for the Handicapped (or by a Civil Surgeon where there is no such Board) should be exempted from the typing qualification. Accordingly, while retaining the typing qualification in the recruitment rules for the posts of lower Division Clerk, a provision should be made therein that this qualification will not apply in the case of such of the handicapped persons as mentioned above. The ministry of Finance etc., are requested to take steps for modification of the recruitment rules on the above lines.

xxx

xxx

xxx

*Ministry of Personnel and Pensions
Department of Personnel & Training
OM No.14020/2/91-Estt(D), dated 29.09.1992*

Sub: Typewriting Test – Exemption from passing the typewriting test for drawal of increments and confirmation in respect of LDCs who do not belong to Central Secretariat Clerical Service – Consolidated instructions.

1. It is directed to say that instructions have been issued by this depts. from time to time laying down the criteria for grant of exemption from passing the typewriting test in respect of LDCs who do not belong to Central Secretariat Clerical Service. In the light of the provisions contained in this depts. OM No.14/10/78-CS.II, dated 07.06.1990 and 24.09.1990 and OM No.12/5/91- CS.II, dated 22/23.08.1991 (which have been issued after discussion with the staff side) the existing instructions on the subject have been simplified and consolidated as in this O.M.

2. (1) To whom applicable:

Persons appointed as LDCs to post which do not belong to CSCS whether such appointment is by promotion from Group 'D' or by direct recruitment through SSC or otherwise or by any other method including appointment on compassionate Grounds or on ad-hoc basis.

(2) When the exemption may be allowed:



(a) If above 45 years of age on the date of their appointment may be granted exemption from the date of their appointment.

(b) If between the age of 35 years and 45 years at the time of appointment may be granted exemption on attaining the age of 45 years.

(c) If below 35 years of age on the date of appointment may be given exemption after 10 years of service as LDC provided they have made main to genuine attempts to pass the typing test; otherwise they may be granted exemption after attaining the age of 45 years.

(d) Those LDCs who have made two genuine attempts for passing the typing test prior to the issue of this OM but have not completed 8 years service as LDC may be granted exemption from passing the typing test after completion of 8 years of service or on attaining the age of 45 years Whichever is earlier.

(3) Typing test:

(a) The typing test for purpose of these orders will be the typing test conducted by the SSC.

(b) The certificate in typewriting issued under the Hindi Teaching Scheme will be treated as equivalent to the certificate issued by the SSC for the purpose of these orders.

(4) Genuine attempt:

The 'genuine attempt' referred to above would be determined by the Head of Department in consultation with the SSC keeping in view that mere appearance in the test or a perfunctory attempt would not constitute a genuine attempt.

(5) Services LTC:

For the purpose of computing services as LDC:

(a) Broken period of service, if any as LDC on a regular scale of pay may also be taken into account.

(b) Continuous combatant clerical service will also be reckoned in the case of ex-serviceman appointed as LDC.

(6) Release of increments:



(a) On such exemption being granted, the increments of affected person may be released from the date from which such exemption is granted to them without any arrears for the period prior to the date of exemption, subject to the retention of normal annual date of increment.

(b) On their passing the typing test the increments may be released from the date of the test without any arrears for the period prior to the date of test subject to retention of the normal annual date of increment.

(7) Eligibility for regular regularization confirmation:

They would also be eligible for regularization confirmation in LDC Grade from a date not earlier than the date of exemption or the date of the test at which they passed the typing test, as the case may be.

(8) Physically Handicapped:

(a) Physically handicapped persons who are otherwise qualified to held clerical post and who are certified as being unable to type by the Medical Board attached to Special Employment Exchange for the Handicapped (or by a Civil Surgeon where there is no such Board) may be exempted from passing the typing test.

(b) The term physically handicapped person does not cover those who are visually handicapped or who are hearing handicapped but covers only those whose physically disability permanently prevents them from typing.

(9) Surplus Employees:

In respect of surplus employees redeployed as LDCs the provisions for stoppage of increment for not passing the typing test may be on forced from the date of next but one increment after re-deployment.

(10) Existing LDCs:

Those LDCs who have put in at least 10 years' service in the grade as on 01.01.1990 may be exempted from passing the typewriting test without insisting on the condition of genuine attempt as a one time measure not to be quoted as a precedent in future.

(11) Date Of Effect:



These instructions will come into force with effect from 01.01.1990.

3. This OM may be brought to the notice of all concerned."

(emphasis supplied)

38. During the course of his submissions, learned counsel for the EPFO has raised an issue of delay and laches stating that the selection process having been initiated in the year 2009 resulting in the appointments in 2012 and 11 years have gone by, this Court shall not entertain this writ petition at a belated stage. We are not in agreement with the said submission of the learned counsel for the EPFO, for the simple reason that the petitioner had immediately approached the Commissioner for PwDs. The Commissioner for PwDs had made observations for the DoP&T to take action for relaxing the standard of the skill test. The DoP&T had only taken action in the year 2014, pursuant thereto, the request of the petitioner was rejected, which made the petitioner approach the Tribunal in the year 2015, resulting in the impugned order. The present petition has been filed in the year 2019 which is pending consideration in this Court since then. The facts reveal that the petitioner has been vigilant in pursuing his remedy before the Tribunal and this Court. The pendency of the proceedings in the Court cannot be taken against the petitioner to deny him his rights under the Act/instructions which he is seeking enforcement of in this petition.

39. Insofar as the judgment relied upon by the learned counsel for the respondents in the case of *V. Surendra Mohan (supra)* is



concerned, Mr. Mani states that the said judgment has been overruled by the Supreme Court in the case of ***Vikash Kumar v. UPSC, (2021) 5 SCC 370.***

40. We have seen the judgment in ***V. Surendra Mohan (supra)***, the issue which fell for consideration in that petition was with facts, after the enactment of the Act of 1995, the State of Tamil Nadu vide G.O. dated April 11, 2005 had identified 117 categories of posts as most suitable in Group-A and Group-B in direct recruitment which includes Tamil Nadu State Judicial Service Civil Judge (Junior Division / Judicial Magistrate-First Class.

41. The Government of Tamil Nadu had also issued a notification dated August 31, 2012 in exercise of powers conferred by the proviso to Section 33 of the 1995 Act exempting the post of District Judge (Entry Level) and Civil Judge in the Tamil Nadu State Judicial Service from the provision of the said Section 33 in respect of complete blindness and complete impairment.

42. The Tamil Nadu Public Service Commission ('TNPC', for short) received a requisition from the State Government for filling up 162 posts of Civil Judge (Junior Division). TNPC has written a letter dated August 4, 2014, to both the State Government as well as the High Court proposing to notify the percentage of disability as 40-50% for partially blind and partially deaf for selection of 162 Civil Judges (Junior Division). The High Court communicated its approval to the aforesaid proposal which was also consented by the State of Tamil Nadu. The State of Tamil Nadu issued letter dated



August 8, 2014 to TNPC to go ahead with the notification for the 162 posts of Civil Judge, announcing 40-50% disability for partially blind and partially deaf for the selection in question. TNPC issued notification dated August 26, 2014, inviting applications through online for direct recruitment.

43. The appellant also applied for the post. In the column “percentage of disability”, the appellant had mentioned “more than 40%”. The disability certificate was also issued to the appellant on October 10, 2014, mentioning his disability as 70%. The written examination was held on October 18, 2014 and October 19, 2014. After the examination was completed, TNPC issued a letter to the appellant to submit self-attested copies of the relevant documents which also require certificate of physical disability obtained from the Medical Board specifying that his/her physical disability would not render him/her incapable of efficiently discharging his/her official duties for the post of Civil Judge. The appellant in response to the said letter submitted his certificates including the certificate of physical disability dated October 10, 2014.

44. TNPC issued the list of register numbers who were provisionally admitted to the oral test. The name of the appellant was not included in the list of successful candidates. The appellant filed a writ petition before the High Court of Madras being Writ Petition No.10582/2015. An interim order dated April 13, 2015, was issued by the Madras High Court directing that the appellant shall be permitted to participate in the viva voce, however, the result of the appellant will be kept in a sealed envelope, until



further orders are passed by the High Court. The appellant appeared in the interview, the Commission issued a list of provisionally selected candidates for direct recruitment.

45. Later, the appellant amended the writ petition by adding a prayer for quashing of the letter dated August 8, 2014 issued by the State Government. The amendment application of the appellant was allowed. The writ petition was heard by the Division Bench and vide its judgment dated June 5, 2015, the High Court held that as per the decision of the Government dated August 8, 2014 and notification issued by TNPC dated August 26, 2014, partially blind with 40-50% disability were only eligible and the appellant having 70% disability was not eligible to participate in the selection. The appellant aggrieved by the Division Bench judgment has approached the Supreme Court.

46. The case of the appellant was that the post of Civil Judge (Junior Division) having been identified under Section 32 of the Act of 1995, no restriction of disability to the extent of 40-50% can be put. He submitted that exemption having been issued under the proviso to Section 33 to the complete blindness, the appellant who is not completely blind but has 70% disability cannot be said to be ineligible for appointment to the post of Civil Judge (Junior Division). He submitted that the Act of 1995 does not provide for any such restriction that the eligibility is of only those who suffer from disability of 40-50%. When the post was identified by letter dated April 11, 2005, there was no restriction for only 40-50% disability which is now sought to be imposed. He submitted that



the High Court in its judgment has wrongly relied on the proposed amendment of the Tamil Nadu State Judicial Service (Cadre and Recruitment) Rules, 2007 which having not yet materialised was wholly irrelevant.

47. The Supreme Court has framed three questions for its consideration;

“(1) Whether the appellant who was suffering with disability of 70% (visual impairing) was eligible to participate in the selection as per the notification dated August 26, 2014 issued by the Tamil Nadu Public Service Commission?”

“(2) Whether the condition of 40-50% disability for partially blind and partially deaf categories of disabled persons is a valid condition?”

“(3) Whether the decision of the State Government vide letter dated August 8, 2014 providing that physically disabled persons that is partially deaf and partially blind to the extent of 40-50% disability are alone eligible, is in breach of the provisions of the Act of 1995?”

48. On the issue No.1, the Supreme Court held that the advertisement clearly provided that the post of Civil Judge has been identified as suitable for partially deaf/partially blind/ortho categories of differently abled persons (40-50% disability). In the online application submitted by the petitioner in the column of percentage of disability, he has only mentioned “more than 40%”. The certificate of disability submitted by the appellant showed percentage of disability as 70%. Thus, the Court held that he was ineligible for appointment. Besides, no challenge was laid to advertisement dated August 26, 2014 and hence, the appellant



cannot be allowed to challenge condition of eligibility with regard to partial blindness, i.e., 40-50%.

49. On the issue Nos.2 and 3, the Supreme Court held that when the State, High Court and Public Service Commission are of the view that disability, which is suitable for appointment on the post of Civil Judge should be between 40-50%, the said prescription does not violate any statutory provisions nor contravene any of the provisions of the Act of 1995. It is well within the power of appointing authority to prescribe eligibility looking to the nature of job, which is to be performed by holder of a post. A judicial officer in a State has to possess reasonable limit of the faculties of hearing, sight and speech in order to hear cases and write judgments and, therefore, stipulation of limit of 50% disability in hearing impairment or visual impairment as a condition to be eligible for the post is a legitimate restriction i.e., fair, logical and reasonable and dismissed the appeal.

50. Suffice to state, the judgment of the Supreme Court in **Vikash Kumar (supra)** has held that the judgment in **V. Surendra Mohan (supra)** could not be a binding precedent after the enforcement of the 2016 RPwD Act. The Supreme Court in paragraphs 68 to 73 has held as under:

“68. A discordant note struck by this Court having a direct bearing on the principle of reasonable accommodation finds expression in a two-Judge Bench decision of this Court in V. Surendra Mohan v. State of T.N. [V. Surendra Mohan v. State of T.N., (2019) 4 SCC 237 : (2019) 1 SCC (L&S) 594] (“Mohan”). The proceedings before this Court arose from a judgment



[V. Surendra Mohan v. State of T.N., 2015 SCC OnLine Mad 2100] of the Madras High Court. At issue was the decision of the Tamil Nadu Public Service Commission (“TNPC”) to impose a ceiling of 40-50% visual/hearing impairment to be eligible to be appointed as a Civil Judge (Junior Division). Differently stated, a person whose visual/hearing impairment exceeded 50% was disqualified from being eligible for the said post. In the said case, the appellant's disability was 70%. The appellant's name was not included in the list of registered numbers who were provisionally admitted to the oral test. He challenged this in the Madras High Court. By its judgment dated 5-6-2015 [V. Surendra Mohan v. State of T.N., 2015 SCC OnLine Mad 2100] , the Madras High Court held that as per the decision of the Government dated 8-8-2014 and Notification issued by the TNPC dated 26-8-2014, those partially blind with 40%-50% disability were only eligible and the appellant having 70% disability was not eligible to participate in the selection.

69. A two-Judge Bench of this Court held that a judicial officer in a State has to possess reasonable limit of the faculties of hearing, sight and speech in order to hear cases and write judgments and, therefore, stipulating a limit of 50% disability in hearing impairment or visual impairment as a condition to be eligible for the post is a legitimate restriction. This Court affirmed the submission of the Madras High Court that seeking to address the socially constructed barriers faced by a visually or hearing impaired Judge, whose disability exceeds 50%, would create “avoidable complications”. As a result, the impugned ceiling was found to be valid. The relevant portion of the judgment is excerpted below : (V. Surendra Mohan case [V. Surendra Mohan v. State of T.N., (2019) 4 SCC 237 : (2019) 1 SCC (L&S) 594] , p. 257, para 45)

“45. ... The High Court in its additional statement has encapsulated the functions and



duties of the Civil Judge in the following words:

'7. ... Impaired vision can only make it extremely difficult, even impossible, to perform any of these functions at all. ... Therefore, creating any reservation in appointment for those with disabilities beyond the 50% level is far from advisable as it may create practical and seemingly other avoidable complications. Moreover, given the need to prepare judgments based on the case papers and other material records in a confidential manner, the assistance of a scribe or the like completely takes away the secrecy and discreetness that come with the demands of the post.' "

70. This judgment was delivered by this Court after India became a party to the UNCRPD and the 2016 RPwD Act, came into force. The aforesaid view espoused by this Court is innocent of the principle of reasonable accommodation. This Court did not consider whether the failure of the TNPC to provide reasonable accommodation to a Judge with a disability above the impugned ceiling was statutorily or constitutionally tenable. There is no reference in this Court's judgment to whether the appellant would have been able to discharge the duties of a Civil Judge (Junior Division), after being provided the reasonable accommodations necessitated by his disability.

71. The analysis by this Court in the portion excerpted above begs the question. Specifically, the relevant question, under the reasonable accommodation analysis, is not whether complications will be caused by the grant of a reasonable accommodation. By definition, "reasonable accommodation" demands departure from the status quo and hence "avoidable complications" are inevitable. The relevant question is whether such



accommodations would give rise to a disproportionate or undue burden. The two tests are entirely different.

72. As we have noted previously, the cornerstone of the reasonable accommodation principle is making adjustments that enable a disabled person to effectively counter the barriers posed by their disability. Conspicuous by its absence is any reasonable accommodation analysis whatsoever by this Court in Mohan [V. Surendra Mohan v. State of T.N., (2019) 4 SCC 237 : (2019) 1 SCC (L&S) 594] . Such an analysis would have required a consideration of the specific accommodations needed, the cost of providing them, reference to the efficacy with which other Judges with more than 40-50% visual/hearing impairment in India and abroad can discharge judicial duties after being provided the necessary accommodations, amongst other factors. In holding that the ceiling was reasonable on the application of the principle of reasonable accommodation, the ratio as expounded fails as “distinct exhortatory dimension that must always be kept in mind while determining whether an adjustment to assist a disabled person to overcome the disadvantage that she or he has in comparison to an able-bodied person is reasonable”. [Paulley v. FirstGroup Plc, (2017) 1 WLR 423 : 2017 UKSC 4, para 117 [Lord Kerr — partly dissenting].] It is persons with disabilities who have been the victim of this lapse.

73. In light of the fact that the view of this Court in Mohan [V. Surendra Mohan v. State of T.N., (2019) 4 SCC 237 : (2019) 1 SCC (L&S) 594] was rendered in a case under the 1995 Act which has now been replaced by the 2016 RPwD Act and in light of the absence of a reasonable accommodation analysis by this Court, the Mohan [V. Surendra Mohan v. State of T.N., (2019) 4 SCC 237 : (2019) 1 SCC (L&S) 594] judgment stands on a legally vulnerable footing. It would not be a



binding precedent, after enforcement of the 2016 RPwD Act.”

51. It must be said that the issues which arose for consideration in *V. Surendra Mohan (supra)* and *Vikash Kumar (supra)* are in a totally different fact scenario and not the one which falls for consideration in this petition.

52. It follows the petitioner was also entitled to equal treatment of waiving off the computer / typing test having disability of one arm, in view of the instructions issued by the Government of India from time to time which we have already reproduced above. Moreover, the benefit of those instructions have been given in favour of the LDCs, who were promoted to the post of SSA and there is no reason why the same benefit could have been denied to the petitioner herein which clearly violate the mandate of Article 14 and 21 of the Constitution of India.

53. Hence, we have no hesitation to hold, that the stipulation in the recruitment rules that a candidate must qualify the typing test with a speed of 5000 KDPH must be read down to mean the same shall not be applicable to a candidate who has disability of one arm or both arms or one arm and one leg.

54. Accordingly, the writ petition is allowed. The respondents shall treat the petitioner having been exempted from the computer / typing test. They shall declare the result of the petitioner (as he has appeared in the written test) in terms of the instructions, if any, and proceed to take action on the appointment of the petitioner as SSA. We are conscious that the subject matter of the selection



process is of the year 2009 and 14 years have gone by, hence the appointment must be treated as an appointment of the year 2023 for all purposes. The action in terms of this direction shall be taken by the respondents within a period of three months as an outer limit.

55. The writ petition is disposed of. No costs.

V. KAMESWAR RAO, J

ANOOP KUMAR MENDIRATTA, J

JULY 11, 2023*/aky/jg*