

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

+LPA No.287/2007

%Date of Decision:30.04.2008

ANIL KUMAR & ORS.

...Appellant

Through: Mr. S. Chandrasekhar and Mr. Jai
Bansal, Advocate.

Versus

GOVT. OF NCT OF DELHI

...Respondent

Through: Ms. Zubeda Begum, Advocate.

CORAM :-

THE HON'BLE MR.JUSTICE A.K.SIKRI

THE HON'BLE MR. JUSTICE J.R. MIDHA

1. Whether Reporters of Local papers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

A.K. SIKRI, J. (Oral)

The appellants herein were working with Delhi Energy Development Agency (DEDA) on casual basis and were performing the duties as Data Entry Operator which is a Group 'C' post. DEDA was under the administrative control of National Capital Territory of Delhi. The Government decided to close down the certain activities of DEDA in the year 1998 as a result whereof the services of the appellants herein and some other persons were sought to be dispense with. All these persons filed various Writ Petitions in this Court, including Civil Writ No. 5077/1997. The appellants also filed Civil Writ No. 39/1998. The prayer made in these writ petitions was to issue directions to the Government of

NCT of Delhi to absorb these persons in the service of the said post. On 11.5.2001 orders were passed in Civil Writ No. 5077/1997 giving various directions. Further directions were given in the said writ petition on 7.11.2001. These directions inter-alia stated that the list of all Group 'C' & 'D' employees with their correct address be circulated to all the Heads of various departments and also to autonomous bodies and societies under Delhi Government with a direction from the Principal Secretary (Services) that the persons in the list shall be given preference in filling up all the future vacancies keeping in view the educational qualification and the experience.

In the said order the court also noted that on earlier occasion the Government had granted relaxation from recruitment through SSC/DSSSB in some Group 'C' appointments. Taking note of this fact and without commenting on the desirability of such a relaxation, the Court pointed out that before circulating the list to various departments, the Principal Secretary (Service) may take a final decision on the issue in its correct perspective, keeping in view the spirit of the order of the Court. For the Group 'C' posts selections are made through DSSSB. It is also one of the reasons that the candidate should qualify typing test. We may also note at this stage that some of the persons had approached the Central Administrative Tribunal and observations were made by the Tribunal in the said cases for giving relaxation insofar as recruitment procedures are concerned, namely, the appointment

to Group 'C' posts be done by the Government without resorting to DSSSB. Pursuant to these directions, the Government at that time granted two years further time to such employees to appear and pass the typewriting test. Orders to this effect are placed in the file of this case.

In so far as the appellants herein are concerned it is not in dispute that they failed in the typewriting test. The grievance of the appellant is that they were not given relaxation, i.e., further two years period was not provided to them for passing the said test. It may be noted that for failure to pass the test, the appellants are employed in Group 'D' posts. Appellant in these circumstances filed Civil Writ Petition 9665-71/2006, which has been dismissed by the Learned Single Judge vide judgment dated 6.3.2007. The learned Single Judge has taken a note of the above-mentioned events in the impugned judgment and has also extracted in detail the directions given by this court in its order dated 7th November 2001 in Civil Writ No. 467/1998. It is further noted that pursuant to those directions the Government conducted a typewriting test in which the appellants have also participated but could not qualify the said test. It is because of this reason they were not regularized in Group 'C' post but were absorbed in Group 'D' post.

Learned Single Judge had arrived at a conclusion that as the appellants failed to qualify the typewriting test which is a

mandatory requirement for appointment to Group 'C' post, the appellant could not be appointed in Group 'C' post.

The grievance of the appellants is that when relaxation of two years was given to other similar situated persons and they were given further chances to qualify the test, the same could have been granted to the appellants as well.

Before we appreciate this contention, it is necessary to point out that the appellants herein had filed the Contempt Petition in this court alleging violation of order dated 7th November 2001. This Contempt Petition was filed after the respondents failed to qualify the typewriting test and they were accommodated in Group 'D' posts. Their contention was the same which was urged in the Writ Petition and now in this appeal. However, the said Contempt Petition was dismissed vide order dated 8th January 2004 holding that no contempt was made out. It would be necessary, to extract the relevant portion of the said order which depicts the thought process of the court while dismissing the contempt petition:-

“It is not disputed that a list was prepared and the petitioners figured in the list since they were already registered with the Employment Exchange. However, as a pre-condition for appointment, a qualifying test was held. The petitioners failed to qualify the test for Group 'C' post and were granted further time to take another test in which also they were unsuccessful. However, subsequently, they appeared for the test for Group D post and learned counsel for the respondent on instructions states that petitioners no. 2&3 were successful in the test for the post of Lower Division Clerk (LDC) and have been issued appointment letters.

In view of the aforesaid, the non-qualification of the petitioners in the qualifying test is the reason for their non-selection. The directions passed in the Order dated 7th November 2001 of which contempt is alleged does not require any relaxation for the test and, in fact, says that the persons had to be appointed if they qualify for appointment to the relevant post”.

It is categorically stated in the aforesaid order that the non-qualification of the appellants in qualifying test is a reason for their non selection in Group ‘C’ posts. It is also stated that the order dated 7th November 2001 passed by this Court is not violated as there is no direction given in the said order to give relaxation for the test.

In view of the aforesaid position prevailing on record it is difficult to accept the submissions of the appellants herein. Notwithstanding this position when the appeal came up for preliminary hearing on 4th May 2007, while issuing notice in the appeal, the respondent was directed to file affidavit on the following aspects:-

1. Whether any Group ‘C’ casual employee of the respondents Delhi Energy Development Agency has been regularized without his passing the typewriting test.
2. Whether the petitioner has exercised the option of regularization against a Group ‘D’ post after failure to qualify in the typewriting test for Group ‘C’.

In compliance with the aforesaid directions respondent has filed the affidavit. It is categorically mentioned in the said affidavit that no Group ‘C’ casual employee has been regularized without passing the typewriting test. It is also mentioned that after the

appellants failed to qualify in the typewriting test for Group 'C' post they exercised their option for regularization against Group 'D' posts and it was pursuant to that option they were allowed to be regularized. In view of this position contained in the affidavit we are unable to grant any relief to the appellants.

This appeal has no merit and is therefore, dismissed.

(A.K. SIKRI)
JUDGE

April 30, 2008
aj

(J.R. MIDHA)
JUDGE