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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO 272 OF 1987

Date of decision : February 25, 1988

Gangadhar Naik, aged 21 years,
son of Shri Nirakara Naik
Department of Electronics(C.C.I.Wing),
National Informatics Centre,(Eastern Region),
Sachivalaya Marga, Unit-IV,
Bhubaneswar.

..... Applicant

Versus

1. Secretary, Department of Electronics, Loknayak Bhawan,
Khan Market, New Delhi-13.

2. Additional Secretary and Director-General,
Department of Electronics(C.C.I.Wing) ,
National Informatics Centre(Headquarters),
A-Block, C.G.O Complex, Lodhi Road,
New Delhi-3.

.... Respondents

M/s M.M Basu,
P.R Bhuyan, R.K Nath,
Advocates

... For Applicant

Mr A B Misra
Senior Standing Counsel(Central)

... For Respondents

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C O R A M

THE HON'BLE MR B.R PATEL, VICE-CHAIRMAN

AND

THE HON'BLE MR K.P ACHARYA, MEMBER(JUDICIAL)

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1. Whether local reporters have been permitted to see the judgment ? Yes.
2. To be referred to the Reporters or Not ? NO
3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes.

B.R PATEL, VICE-CHAIRMAN This case was heard analogously with O.A No.

223 of 1987 as the facts in both the cases were more or less similar.

2. The applicant was appointed as a Lower Division Clerk (Typist) on adhoc basis by Respondent No.2 in his Eastern Regional office at Bhubaneswar by his letter No.6(27)/86-PP dated 14.5.87 vide Annexure 1. He joined his duties on 26.5.87 and when the recruitment was finalised, one of the selected candidate was appointed in place of the applicant whose services were terminated, with effect from 7.9.87. It is against this order that he has moved this Tribunal, praying for a declaration to be issued to the ^{effect} that he has been regularly appointed to the post of Lower Division Clerk(Typist) as against a regular reserve vacancy of a Scheduled Tribe in the office of Respondent No.2, Eastern Region at Bhubaneswar since 26.5.87 and to quash the order of termination of service at Annexure 5 and 6.

3. The facts briefly stated are that he was sponsored by the local Employment Exchange, Bhubaneswar, passed a typing test and was selected by a Selection Committee for the appointment as a Lower Division Clerk(Typist). Before his appointment, the Department of Electronics, Government of India had got an advertisement published in the Employment News and some newspapers for recruitment to the posts of Junior Hindi Translator, Stenographer Gr.III and Lower Division Clerks for its headquarters at New Delhi and Regional Centres at Pune, Bhubaneswar, and Hyderabad on all India basis.

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When the recruitment was finalised, one of the selected candidate was appointed in place of the applicant, the applicant has come up with an application under section 19 of the Administrative Tribunals Act, 1985.

4. The respondents, in their counter affidavit have maintained that the applicant was appointed on adhoc basis pending regular appointment according to rules and regular appointment having been finalised the selected candidate will have to be appointed in place of the applicant. They have further stated that under the Department of Electronics of Government of India, there were 38 vacancies of Lower Division Clerks in the various offices which were sought to be filled up by regular employees and the recruitment has been done according to rules and regulations, the candidate selected through the process of recruitment will have to be appointed and as the applicant did not take the examination and has consequently not been selected, he cannot claim a regular appointment and will have to make room for the candidate selected by following the procedure laid down by rules and regulations. They have, therefore urged that the action taken by the Department should not be interfered with and the application should be dismissed.

5. We have heard Mr M.M Basu, the learned Counsel for the applicant and Mr A.B Misra, the learned Senior Standing Counsel for the Central Government and perused the documents. Mr Basu has drawn our attention to clause (f) of Annexure 1 which reads:-

" If you are interested for a regular appointment in this office, you may have to apply in response to open Advertisement within the period of your

M. M. Basu

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ad-hoc appointment and appear before the selection committee alongwith other candidates."

Mr Basu has contended that during the tenure of his adhoc appointment, the applicant came to understand that a written test through an advertisement had been over in the meanwhile and the applicant should have been given an opportunity to appear before the Selection Committee alongwith other candidates who have cleared the written test and that though he made a representation to the competent authority, he had not been given an opportunity and further that the respondents gave no opportunity to the applicant to apply in response to advertisement within the period of his adhoc appointment and appear before the Selection Committee. The other ground urged by Mr Basu is that the applicant was appointed on being sponsored by the local Employment Exchange and having been selected in an interview by a Selection Committee constituted by the employer himself, his appointment should be treated as regular and he should not be replaced by^{any} other candidate. Mr Basu has also urged that there were no indication in Annexure -1 which^{is} the offer of appointment that the services of the adhoc employees would be terminated after candidates selected through regular recruitment assumed their offices and has submitted that it is the responsibility of the employer to fulfil the conditions embodied in the Appointment Order by affording the employees opportunity to comply with such conditions. He has also challenged the legality of the recruitment test and contended that the applicant was appointed on regular basis in as much as he has been medically examined for

medical fitness and service book was opened in respect of him which go to show that the applicant was absorbed regularly against a permanent vacancy as medical fitness certificate and maintenance of service books are not required for adhoc appointees. Mr Basu has further contended that the Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 make it mandatory that all vacancies in a Government Establishment should be notified to the Employment Exchanges except for such vacancies as are exempted under section 3 of the Act. and that in the present case the applicant alone has been sponsored through the local Employment Exchange and none of those qualified at the so called regular test conducted by the employer have been sponsored by the Employment Exchange and the provision of law cannot be superseded by any rule or regulation prescribing another mode of recruitment. Mr Basu has asserted that all appointments in a Government department have to be made by notification of vacancies in the Employment Exchange. and that the so called test conducted by the employer contravenes the statutory provisions of the Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 and a recruitment through an examination or test is illegal and the applicant having been duly sponsored by the Employment Exchange and having been selected by a Selection Committee is the only regular candidate to be appointed. Mr Basu has further challenged the correctness of the list of successful candidates in the recruitment on the ground that as many as 43 candidates who were not declared to have been qualified at the Written Test as at Annexure-2 were declared to have been qualified at the typewriting speed test vide Annexure 3. The other point made by Mr Basu is that the applicant is a

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member of Scheduled Tribe and he should not have been replaced by a general candidate according to the roster of reservation made for the Bhubaneswar office. Finally Mr Basu has submitted that a post of Stenographer was lying vacant at Calcutta within the control of Respondent No.2 and that post was also advertised for being filled up. But one Subrata Bhattacharya whose name was sponsored at the behest of Respondent No.2 from the Staff Selection Commission, Calcutta was regularly absorbed in the same post. If variations from principles could be made for Subrata Bhattacharya, Mr Basu urged, there was no reason why the applicant should not be accepted as ^a regular appointee.

6. Mr Misra, on the other hand, has contended that the Employment Exchanges(Compulsory Notification of Vacancies)Act 1959 does not apply to the recruitment in Government offices. According to him such recruitment is done by the Union Public Service Commission or like agencies under the Constitution of India, unless any recruitment is taken away from the purview of the Commission or such agencies to be done by the Department itself under proviso to Clause(3) of Article 320 of the Constitution and has drawn our attention to the Notification issued by the Government of India, Cabinet Secretariat, Department of Personnel and Administrative Reforms dated 13 August 1975 as at Annexure R-1. Under this Notification, the President has amended the Union Public Service Commission(Exemption from Consultation) Regulations, 1958 by the Union Public Service Commission(Exemption from Consultation) Second Amendment Regulation, 1975(hereinafter referred to as the Regulations

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By this Regulations all technical and administrative posts in or under the Department of Electronics and the Electronics Commission have been removed from the purview of the Union Public Service Commission. Mr Misra has therefore maintained that recruitment to all technical and administrative posts under the Department of Electronics and the Electronics Commission will have to be done by the Government and in pursuance of this, the Government of India have framed recruitment rules for Group B and Group C posts in and under Department of Electronics and in pursuance of the recruitment rules, the Central Government have made Department of Electronics(Competitive Examination for direct recruitment to the Lower Division Clerks' Grade)Regulations, 1982. Regulation 3 of these Regulations has provided for the examination to be conducted by the Department of Electronics in the manner set out in the First Schedule. The scheme of examination has been indicated in the First Schedule in 3 parts. Part I prescribes a Written Examination in English Language and General Knowledge with marks of 150 for each. Part II provides for typewriting test of one paper of running matter of 10 minutes duration and Part III provides for a Personality Test (Interview) -100 marks. It has further been provided that such candidates as attain at the Written Examination a minimum standard as may be fixed by the Department of Electronics, in their discretion, will be eligible to take the typewriting test under Part II of the scheme of Examination, and only such candidates as qualify at the typewriting test at a speed of not less than

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30 words per minute in English or not less than 25 words per minute in Hindi will be eligible for being admitted to Personality Test under Part III of the scheme of examination. The syllabus for the Written Examination has been furnished in the Second Schedule to the Regulations. Under the provision of the Regulations, the Department issued an advertisement inviting applications for intending candidates vide Annexure-R2. The advertisement was published in the Employment News, Patriot, Indian Express, News of the World, Cuttack, Maharashtra Herald, Pune, Pledge, Hyderabad, Citizen's Evening, Hyderabad, Sambad, Bhubaneswar, Prajatantra, Cuttack, Dinalipi, Bhubaneswar, Andhra Patrika, Hyderabad, Kesari, Pune, Hindustan, Delhi, Free Press Journal, Bombay, Amrita Bazar Patrika, Calcutta and News Today, Madras, as has been indicated at Annexure-R3. Mr Misra, has also drawn our attention to Annexure-R4 which is a copy of the letter No.16(1)/85-PP dated 21 May, 1986 from Government of India, Electronics Commission, addressed to the Employment Officer, Sub-Regional Employment Exchange, Pune/Bhubaneswar/Hyderabad forwarding a copy of the advertisement bearing No.EC/86/03 for recruitment to the following posts in National Informatics Centre including the Sou/Wes/Eas. Regional Centre, Hyderabad/Pune/Bhubaneswar :

1. Junior Hindi Translator
2. Stenographer Grade-III
3. Lower Division Clerk

A request was made in that letter for display of the advertisement in the Notice Board of the Employment Exchanges and to inform eligible candidates who had already registered their names with the Employment Exchanges to apply in the

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proforma enclosed with the advertisement. As steps have been taken for direct recruitment by following the prescribed procedures, Mr Misra has maintained that there has been no illegality in the steps taken by the Government and the candidate who has been selected by following the prescribed method of recruitment should be allowed to be appointed in place of the applicant.

7. Mr Misra has further averred that as the advertisement was issued in the Employment News and other newspapers including some of the newspapers published from Bhubaneswar and Cuttack, the applicant should have applied and taken the test for ultimate selection for his appointment on regular basis as LDC(Typist). According to him clause(f) of Annexure 3 does not give any right to the applicant for regular appointment without going through the process of regular recruitment and he should not have waited for another advertisement to be issued within the period of his adhoc appointment. As an advertisement had already issued for vacancies, the applicant should have taken advantage of that.

8. Mr Misra has also cited the judgment of the Central Administrative Tribunal, Hyderabad Bench in Original Application No.594/87 where 4 applicants who were appointed on adhoc basis as Lower Division Clerks in the National Informatics Centre, Department of Electronics, Government of India, Hyderabad, had moved the Tribunal to quash the orders of the Additional Secretary to Government of India, Department of Electronics and Director General of National Informatic Centre replacing the adhoc appointees by regularly selected candidates. It was held by the Hyderabad Bench that it was open to the Department to

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replace the adhoc appointees either by regularly appointed candidates or by Departmental candidates. The application was accordingly dismissed.

9. Admittedly, the applicant was appointed as LDC(Typist) on adhoc basis(Annexure 1). It was made clear in the appointment order at Annexure 1 that the offer was purely provisional on adhoc basis for a period of 3 months from the date of appointment, which may be extended or curtailed at the discretion of the competent authority. Another order was issued dated 31.8.87 vide Annexure 4 by the Additional Secretary to Government of India, Department of Electronics and Director General, NIC extending the period of adhoc appointment of the applicant upto 30th October, 1987 or until further orders, whichever is earlier. As the advertisement for regular recruitment had been issued earlier and the process for direct recruitment had been initiated, we cannot but assume that the applicant was appointed on adhoc basis and the adhoc appointment was either extended or separate order was issued for such appointment pending finalisation of regular recruitment. As the advertisement for regular recruitment was published in the Employment News and the newspapers, some of which were published from Bhubaneswar and Cuttack, the applicant should have applied for the post and gone through the process of selection. The very nature of adhoc appointment which was for a period of 3 months each time was indication enough to the applicant that his appointment was not on a permanent or regular basis. Not having taken advantage of the advertisement issued and not having gone through the process

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of selection, he cannot be treated to be a regular appointee on the basis of clause(f) of Annexure 1. As no regular advertisement for regular recruitment was issued during the period of his adhoc appointment, he cannot be treated as having been regularly recruited under the recruitment rules and the regulations framed thereunder.

10. We are also unable to accept the contention of Mr Basu that the applicant should be treated as regular appointee because he has furnished medical fitness certificate and his service book was maintained. A medical certificate is necessary to know whether the person selected is physically fit enough to do the work and this fact cannot give rise to any claim for regular appointment. The purpose of opening service books is too obvious to need any elaboration. Even for the short period he would be on employment, a record has to be maintained about the personal particulars, leave due and leave availed of etc. This fact also cannot be made use of for regularisation of the appointment without complying with the Regulations for such appointment. We ofcourse agree with Mr Basu that no executive instructions can over-ride the provision of law. The law referred to by Mr Basu is section 3 of the Employment Exchanges(Compulsory Notification of Vacancies) Act, 1959. This section reads as follows:-

" Act not to apply in relation to certain vacancies -
(1) This Act shall not apply in relation to vacancies , -

(a) in any employment in agriculture(including horticulture) in any establishment in private sector other than employment as agricultural or farm machinery operatives;

(b) in any employment in domestic service ;

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(c) in any employment the total duration of which is less than three months ;

(d) in any employment to do unskilled office work ;

(e) in any employment connected with the staff of Parliament .

(2) Unless the Central Government otherwise directs by notification in the Official Gazette in this behalf, this Act shall not also apply in relation to-

(a) vacancies which are proposed to be filled through promotion or by absorption of surplus staff of any branch or department of the same establishment or on the result of any examination conducted or interview held by, or on the recommendation of, any independent agency, such as the Union or a State Public Service Commission and the like ;

(b) vacancies in any employment which carries a remuneration of less than sixty rupees in a month. "

(Underlining has been done for emphasis).

Section 3(2)(a) makes it abundantly clear that the provision of the Act will not apply to recruitment for Government Departments and offices unless a notification is issued by the Central Government directing otherwise. No such notification has been brought to our notice. Section 4 and 5 of the Act which has been mentioned in the body of the petition refers to employment in Public Sector and Private Sector Undertakings and not to Government Departments.

11. As regards Mr Basu's contention against the correctness of the list of successful candidates, the respondents have stated that the candidates who took the speed test of stenography were given another set of numbers corresponding to the serial numbers(with prefix S)given to them earlier and these numbers mentioned for the speed test were quoted in the merit list which was finally published vide Annexure-3. According to them, there were 39 candidates with

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prefix S included in the final list as at Annexure R-11. Roll numbers are assigned to the candidates for convenience of reference. Moreover Annexure 2 is a list of candidates who were successful in the Written Examination and were thus qualified for appearing in the stenography/typing speed test and Annexure 3 is the list of candidates who have qualified in the typewriting speed test, to be eligible for appearing in the Personality Test. Elimination of candidates is done at various stages as per the Scheme of Examination as in First Schedule to the Regulations. We are not convinced that any case has been made out to hold the final list to be incorrect.

12. As regards Mr Basu's submission that the applicant should not have been replaced by a general candidate as he was a member of the Scheduled Tribe, it may be mentioned that not having gone through regular recruitment process, he has no right to be appointed as a Lower Division Clerk on regular basis even if he is a member of Scheduled Tribe. The contention would have substance only if he had been selected in the recruitment test. We are therefore unable to accept the plea of Mr Basu in this regard.

13. As regards the absorption of Subrata Bhattacharya as Stenographer, we would like to mention that the present case relates to appointment of LDC and not of Stenographer. This fact also has not been mentioned in the original application. Moreover as is apparent from Mr Basu's averment, Bhattacharya was selected by the Staff Selection Commission and his appointment by the Department is in accordance with the Recruitment Rules vide Annexure R10. He has gone through a regular process

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of selection and he was not on adhoc appointment as is the case in regard to the applicant. The appointment of Shri Bhattacharya therefore is not a ground for appointing the applicant on regular basis.

14. It has been held by the Hyderabad Bench of the Central Administrative Tribunal that the Department was competent to replace the adhoc appointees either by regularly appointed candidates or by the departmental candidates. The facts of this case are similar to those before the Hyderabad Bench and we agree with the Hyderabad Bench that the Department has the right to replace the adhoc appointees by regularly selected candidates. Regular recruitment has been done under the Recruitment Rules and the Regulations framed thereunder after giving adequate opportunity to all the intending candidates through advertisements published in the Employment News and newspapers mentioned above and we have not found any irregularity in conducting the examination or the interview. The recruitment has been done by the Department concerned after the Constitutional provision under Article 320 has been complied with. The candidates finally selected under the Recruitment Rules and Regulations should therefore be appointed in place of the applicant, whose appointment was a stop-gap measure pending regular recruitment.

15. For the reasons stated above, we find no merit in the application, which stands dismissed. There would be no order as to costs.

K.P ACHARYA, MEMBER (JUDICIAL)



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Vice-Chairman

✓ agree.
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25/2/88
Member (Judicial)

Central Administrative Tribunal
Cuttack Bench, Cuttack
February 25, 1988/N.J. Joseph, SPA.