

(9)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No.174 of 1989.

Date of decision : April 4, 1991.

Purna Chandra Mudi ... Applicant.

Versus

Union of India and others ... Respondents.

For the applicant ... Mr.P.Venkateswarlu, Advocate.

For the respondents...
1 & 2. Mr.A.B.Misra,
Sr.Standing Counsel(Central)
Mr.Tahali Dalai,
Addl. Standing Counsel(Central)

C O R A M:

THE HONOURABLE MR.B.R.PATEL, VICE-CHAIRMAN

A N D

THE HONOURABLE MR.N.SENGUPTA, MEMBER (JUDICIAL)

1. Whether reporters of local papers may be allowed to see the judgment ? Yes.
2. To be referred to the Reporters or not ? *✓*
3. Whether Their Lordships wish to see the faircopy of the judgment ? Yes.

N.SENGUPTA, MEMBER (J), JUDGMENT

In this application under section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for a declaration that the order dated 6.6.1986 reverting him to the post of Peon is illegal, and a declaration that the regularisation of the services of Respondent No.3 as Junior Clerk is bad in law and that he (the applicant) should be given all consequential service and financial benefits.

Recd Sept 4/4.

2. The applicant was initially appointed in a Group D post under the Welfare Commissioner, Labour Welfare

He was given an adhoc promotion to the post of Junior Clerk in the Office of the Assistant Welfare Commissioner, Iron Ore, Manganese Ore and Chrome Ore Mines Welfare organisation, Barbil. However, he (the applicant) was posted at Holiday Home at Puri as a Caretaker. On 6.6.1986 he was reverted to his former post of Peon and was posted at Boula. Prior to 1985 while the applicant was working as a Peon, he was offered temporary post of Centre Incharge in the Office of the Iron Ore Welfare Commissioner which carried the pay scale slightly more than that prescribed for a Group D employee. That was in August, 1978. Subsequently, he was reverted to his former post in Group D. The applicant's grievance is that in the year 1985 two posts of Junior Clerks were available but the Administration did not allow him to continue in one of such posts even though he belongs to a scheduled tribe and has the requisite qualification. He has further averred that Respondent No. 3 was junior to him in Group D. Therefore, when Respondent No. 3's services as Junior Clerk were regularised, his (applicant's) services as Junior Clerk should also have been regularised.

3. Respondents 1 and 2 in their reply have stated that the applicant was promoted on ad hoc basis on the express understanding that he shall cease to hold the post of Junior Clerk after regular appointment of a Junior Clerk. For appointment of Junior Clerks a Typing test was held in which besides the applicant and Respondent No. 3 some others sat and as Respondent No. 3's performance was the best, he was put at the top of the list and as the others who took the test ~~had~~ not the requisite qualification the applicant's

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name appeared in the list but below that of Respondent No.3. After two posts were available in the Ofissa Office of the Welfare Commissioner, one was abolished, however one more post was created in West Bengal Office. Therefore, the applicant cannot be allowed to continue as Junior Clerk in the Bhubaneswar Office.

4. After the filing of the counter affidavit by the respondents the applicant has filed a rejoinder in which he has stated that his transfer to Boula was only for the purpose of accommodating another person ignoring his claim as a person belonging to the Scheduled Tribe and thus he has been deprived of his legitimate post of Junior Clerk.

5. We have heard Mr. Venkateswarlu, learned counsel for the applicant and Mr. A. B. Mishra, learned Senior Standing Counsel (Central) for the Respondents 1 and 2. From the narration of facts mentioned above, it would be evident that there is not much dispute with regard to the factual aspect of the case but the real question for consideration in this application is whether the applicant could claim to continue to hold the post of Junior Clerk even after the typing test. Mr. Venkateswarlu has vehemently contended that a typing test cannot form the basis of selection, therefore, the reversion of the applicant is bad in law, More so, when he had once been promoted as Junior Clerk. Mr. Venkateswarlu has sought reliance on a decision of the Jabalpur Bench of this Tribunal in the case of Ghan Shyam vrs. Union of India, reported in All India Services Law Journal 1987(3) (CAT) 673. The facts of that case were

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entirely different, in that case the applicant before the Bench was an employee of Western Railway who challenged the order of reversion from the post of Ticket Collector to a Cook in the Medical Department. The applicant in that case was working as a Points-man, due to defect in his vision, he was medically decategorised and made a cook in 1963. In 1980 in accordance with a decision to offer opportunities to the Class IV servants for promotion, applications were invited and the persons applying were asked to take a test. The applicant appeared in the test and obtained 5th position in the order of merit, he was empanelled and was promoted as a Ticket Collector in August, 1980 but in December, 1980 his name was removed from the panel of Ticket Collector and he was reverted to his substantive post of Cook. In the context of this ~~case~~ ^{facts} it was held that though the appointment of the applicant before that Bench as a Ticket Collector was on ad hoc basis, he could not be unceremoniously reverted to the post of Cook. It was further held in that case though the applicant's appointment stated to be adhoc was in reality not adhoc appointment but only an officiating regular appointment. In the instant case, as would be evident from the Recruitment Rules, appointment of Junior Clerks, Steno Typists, Office Clerks & Storekeepers are to be made by direct recruitment and the qualifications prescribed are Matriculation or its equivalent and a minimum speed of 30 words per minute in typing. However, a person can acquire the qualification in typing even after his appointment, but he would not be entitled to any increments or confirmation till he attains the required speed in typing. When a Junior

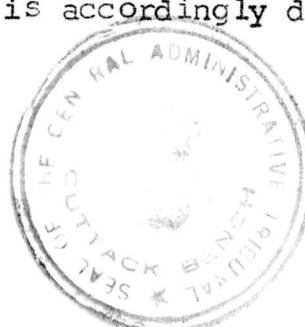
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Clerk in order to be entitled to confirmation or draw increment is required to possess a particular speed in ~~typing~~^{-ansking -}, no fault could be found with the aspirants for the post of Junior Clerks to pass in typewriting. There is no denial of the fact that there ~~were~~ more contenders for the post of Junior Clerk ~~than the number of~~ [^] though a particular posts available. So, the Department was bound to evolve a process of elimination. When the Department got a better candidate, it was bound to appoint such a candidate. In these circumstances, we have absolutely no doubt in our mind that the challenge of the applicant about the appointment/regularisation of the services of Respondent No.3 as a Junior Clerk is without any substance.

6. The applicant has not been able to show that the post against which Respondent No.3 was appointed was reserved for the person belonging to scheduled tribe and he being a scheduled tribe candidate should have been appointed.

7. The case is accordingly dismissed. No costs.

Ramachandra
.....
Vice-Chairman



Neelam
.....
Member (Judicial)

Central Administrative Tribunal,
Cuttack Bench, Cuttack.
April 4, 1991/Sarangi.