

CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 172 OF 1993
Cuttack, this the 17th day of August, 1999

Prasanna Kumar Sahoo Applicant

Vrs.

Union of India and others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? *Yes*
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? *Mo.*

(G.NARASIMHAM)
MEMBER (JUDICIAL)

(SOMNATH SOM)
VICE-CHAIRMAN

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CUTTACK BENCH, CUTTACK.

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CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

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Prasanna Kumar Sahoo,
son of Binod Bihari Sahoo, aged about
27 years, at present resident of At/PO-Nabaghanapur,
P.S-Nayagarh, District-Puri (Orissa)Applicant

Advocates for applicant - M/s N.Panda
M.P.Mohapatra

Vrs.

1. Union of India, represented through the Secretary, Ministry of Home Affairs, At/PO-New Delhi, New Delhi.
2. The Registrar General of India, Census Operations, Kotah House Annexe-2/A, Mansingh Road, New Delhi-110 011
3. Director, Census Operations, Orissa, Janpath, Unit-IX, Bhubaneswar-751 007, District-Puri.
4. DeputyDirector, Census, Regional Tabulation Office, At/PO-Bhubaneswar, District-Puri ...Respondents

Advocate for respondents - None

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this application under Section 19 of Administrative Tribunals Act, 1985, the applicant has prayed for a direction to the respondents to regularise the service of the applicant in regular establishment with all benefits and for a declaration that the order dated 30.11.1992 (Annexure-4) is illegal.

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2. By way of interim relief it was prayed that pending disposal of the OA, no further recruitment should be made to the post of LDC by Director, Census Operation, Orissa (respondent no.3). On the date of admission of the petition on 2.4.1993 the prayer for interim relief was disposed of with the direction that the result of the application would govern future service benefits of the petitioner and if any appointment is made in the meantime, such appointee should be specifically informed that his appointment is subject to the result of this application.

3. The applicant's case is that his name was sponsored by the Employment Exchange for an interview for the post of LDC and after being selected he was offered the post of LDC in the Regional Tabulation Centre in the scale of Rs.950-1500/-.. The offer of appointment is at Annexure-1. The applicant submitted his joining report on 8.4.1991. On 26.4.1991, in order at Annexure-2, it was indicated that his appointment is on temporary and ad hoc basis with effect from 8.4.1991 until further orders. From 1.4.1992 he got increment. The increment certificate is at Annexure-3. On 30.11.1992 the impugned order of termination (Annexure-4) was issued in which it was mentioned that service of the applicant shall stand terminated with effect from the date of expiry of the period of one month from the notice. The applicant has stated that termination is violative of Articles 14 and 16 of the Constitution. It is also stated that for smooth conduct of census operation, Regional Census Tabulation Offices are opened at different places under the Director of Census Operations and Deputy Directors are placed in charge of Regional Offices. It is stated that the procedure adopted by the census organisation for appointment to the post of LDC is the same

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which was adopted in the case of the applicant. The scale of pay is also the same. The applicant has stated that he has worked under respondent no.3 from 8.4.1991 to 31.12.1992. During this period six LDCs were recruited behind the back of the petitioner. The list of these five persons along with their dates of appointment is at Annexure-5. One Pradipta Kumar Padhi was given an offer of appointment as LDC in order dated 23.12.1991 which is at Annexure-6. The applicant has stated that he is senior to all these persons and therefore his service should not have been terminated. Lastly, it is stated that there are a number of posts still lying vacant under respondent no.3 and instead of adjusting the applicant, his services have been terminated. The applicant has further stated that five persons whose names have been given in the application were recruited in connection with 1971 census operation in the Regional Offices and they are still continuing in service although census operation of 1971 was long over. Similarly, five persons recruited for census operation in 1981 have not been discharged from service. In view of this, it is stated that the applicant has been discriminated against moreso when the respondents have not followed the principle of first come last go. In view of this, the applicant has come up with the prayers referred to earlier.

4. The respondents in their counter have admitted that the applicant appeared at an interview for the post of LDC on 2.2.1991 and on being selected by respondent no.4 and on his selection being approved by respondent no.3, the order of appointment at Annexure-2 was issued. The respondents have stated that the Regional Tabulation Office, Bhubaneswar, where the applicant was appointed was a temporary office opened for the purpose of tabulating the data of 1991 census for a limited period. On

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completion of this work, this office has ceased to exist and that is how notice of termination has been issued to the applicant on 30.11.1992 indicating that his service will stand terminated with effect from the date of expiry of one month from the date of service of the notice. Therefore the termination is not illegal and not violative of Articles 14 and 16 of the Constitution. It is stated that appointment to the post of LDC on regular basis is made by the Director on nomination of candidates by the Staff Selection Commission. In connection with 1991 census respondent nos. 2 and 3 were only competent to appoint LDC against short-term vacancies on ad hoc basis without recommendation of the Staff Selection Commission. The respondents have denied the allegation of the applicant that five LDCs whose names appeared at Annexure-5 were recruited behind the back of the applicant without giving him an opportunity to apply for the post. The names of appointees as at Annexure-5 were sponsored by the Employment Exchange much earlier at a time when the applicant had not been appointed in the organisation. The respondents have stated that with the abolition of the Regional Tabulation Office, Bhubaneswar, no post of LDC in that office is available beyond 31.12.1992 and the applicant cannot be adjusted. It is also stated that no post of LDC was available under Director of Census Operation, Orissa (respondent no.3) on 31.12.1992 and the question of adjusting the applicant does not arise. As regards the applicant's averment that five persons recruited for 1971 census and five persons recruited for 1981 census have been continuing, the respondents have stated that out of the five persons mentioned by the applicant who were recruited in connection with 1971 census B.C.Mohanty and P.K.Patnaik were directly appointed in the

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Census Directorate. As regards P.N.Das, P.C.Dhar and Mohan Behera, the respondents have stated that they were appointed as LDCs in Regional Tabulation Office and they were allowed to continue in the Directorate as such depending upon availability of vacancies and as per relevant instructions which were then in force. A few solitary examples of 1971 without any other instance during the next 20 years will not constitute a precedent or form a basis for a claim for absorption in 1993. As regards the five persons mentioned by the applicant who were recruited in connection with 1981 census the respondents have pointed out that J.Nayak, B.K.Dutta and Sabir Mohammad were originally engaged in 1971 and were retrenched in 1972. They were again appointed in 1981 census in March 1981 and September 1980. There was no continuity in their service. It is further stated that J.Nayak, B.K.Datta and Sabir Mohammad along with T.K.Paul were appointed on regular basis in the Directorate on the basis of recommendation of the Staff Selection Commission. As regards Indulata Mohapatra, she was originally appointed at Keonjhar Tabulation Office not as LDC but as Junior Stenographer. She was later on absorbed as LDC in the Directorate on the basis of recommendation of the Staff Selection Commission. On the above grounds, the respondents have opposed the prayer of the applicant.

5. This matter came up for hearing from the Warning List which was notified earlier. At the time of hearing the learned counsels for both sides were absent. As this is a 1993 matter it was not possible to drag on the matter indefinitely. We therefore perused the record and closed the hearing.

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6. The admitted position is that the applicant was appointed as LDC on his name being sponsored by the Employment Exchange and after he was selected by

respondent no. 4 and after his appointment was approved by respondent no.3 in the Tabulation Office, Bhubaneswar. This was a temporary office created for tabulating the census data of 1991 census. The respondents have stated that this office ceased to exist with effect from 31.12.1992 and therefore the service of the applicant was terminated. It is well known that in census organisation at peak period of activity very large number of staff are recruited and when the work gets decreased, such staff are terminated or discharged. This is the usual practice which is adopted in each census every decade and the applicant was appointed as an ad hoc LDC in an office which itself was abolished on 31.12.1992. The applicant has no case for a claim to continue in that post. The respondents have also pointed out that the post of LDC in the Census Directorate is to be filled up on regular basis through Staff Selection Commission. Moreover, it has also been mentioned that at the time the service of the applicant was terminated no post of LDC under respondent no.3 was vacant. In view of this, the question of adjusting the applicant against any vacancy does not arise. The applicant has stated that there are certain number of vacancies. He has not given the details of these vacancies and in any case under the rules those are to be filled up by getting names from Staff Selection Commission.

7. The applicant has also urged that certain other persons who were recruited for temporary work in earlier census have been allowed to continue. He has given the list of 10 such names. The respondents have pointed out that out of them five were appointed on regular basis after their names were recommended by the Staff Selection Commission. The respondents have further pointed out that of the remaining five, two were directly recruited in the

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Census Directorate. The respondents have admitted that the other three persons were regularised in the Directorate after work of 1971 census got reduced. They have pointed out that this was done on the basis of available vacancies and as per relevant instructions then in force. We agree with the respondents that these three instances of 1971, more than two decades ago, would not help the applicant in his claim to get regular appointment in violation of the recruitment rules.

8. In the result, we hold that the application is without any merit and the same is rejected but without any order as to costs.

(G.NARASIMHAM)

MEMBER (JUDICIAL)

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VICE-CHAIRMAN

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