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CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 343 OF 1993  
Cuttack, this the 20th day of August, 1999

Bishnu Charan Patra ..... 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? NO

(G.NARASIMHAM)  
MEMBER(JUDICIAL)

*Somnath Som*  
(SOMNATH SOM)  
VICE-CHAIRMAN 20.8.99



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CORAM:

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

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Bishnu Charan Patra, at present working as Checker in  
Special Editing and Coding Cell, Office of the Director  
of Census Operations, Orissa, Bhubaneswar, Saheed Nagar  
(near IPICOL), PO-Bhubaneswar, District-Khurda .

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Applicant

Advocates for applicant - M/s K.C.Kanungo  
B.D.Rout  
S.Behera

Vrs.

1. Union of India, represented by the Registrar General  
of India, 2-A Mansing road, New Delhi-110 011.
2. Director of Census Operations, Government of India,  
Ministry of Home Affairs, Orissa, Bhubaneswar,  
Saheednagar, (near IPICOL), P.O-Bhubaneswar,  
District-Khurda.
3. Mr.Santosh Ku. Acharya
4. Mr.Niranjan Rout

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Respondents

Advocates for respondents - Mr.A.K.Bose  
Sr.C.G.S.C.  
&  
M/s M.Misra  
U.C.Patnaik  
P.K.Das  
P.C.Panda  
Ashok Mohanty  
P.R.Dash  
T.Rath  
D.Nayak

Som.



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O R D E R

SOMNATH SOM, VICE-CHAIRMAN

This OA was initially filed by two applicants. Later on applicant no.1 Dibakar Swain submitted through his learned counsel Shri A.K.Nayak that the relief claimed by him in this OA has already been given to him by the departmental authorities and therefore he does not want to pursue the OA. In view of this, in order dated 23.4.1999 it was held that the OA has become infructuous so far as applicant no.1 is concerned. Thus, this OA is now being considered only respect of applicant no.2.

2. In this OA applicant no.2 Bishnu Charan Patra has prayed for quashing the speed test on computer held on 26.6.1993 and 27.6.1993 for the post of Data Entry Operator Grade-B. The second prayer is for a direction to the respondents to confine the speed test on computer amongst the departmental candidates only.

3. By way of interim relief it was prayed that the departmental respondents should be directed not to publish the result of the speed test on computer held on two dates indicated earlier. On the date of admission of the application on 14.7.1993 it was directed that if any appointment is made resulting from this interview the last two appointees in the merit list should be specifically informed that their appointment is subject to the result of this OA. When in order dated 23.4.1999 the application was held infructuous as regards applicant no.1, the above interim order dated 14.7.1993 was modified and it was ordered that appointment of the last person in the merit list shall be subject to the result of this application.

J Som.



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4. The case of applicant no.2 (hereinafter referred to as "the applicant") is that he has been working as Checker in the office of Director of Census Operation, Bhubaneswar, from the year 1981. The applicant's employment was effective till 31.12.1992 and as his services were terminated, the applicant along with certain other persons similarly situated filed different Original applications before the Tribunal for a direction to the respondents not to terminate their services till the then census operation is completed by 31.12.1993. This applicant preferred OA No. 119 of 1993 along with some other petitioners. There were four other OAs and all the five OAs were heard together and disposed of in order dated 10.3.1993 by the Tribunal with a direction to the respondents to consider the cases of 166 persons and to give them appointment according to their suitability. In pursuance of this judgment the authorities concerned considered the cases of 166 persons and issued appointment orders to successful candidates. The applicant joined as Checker on 20.4.1993 and has been continuing since then. In the meantime 10 permanent posts of Data Entry Operator Grade-B belonging to the Computer Division were created in the office of respondent no.2. Of these ten posts, four posts are for General candidate, two for deputationist, two for SC and two for ST candidates. For filling up of the above posts, respondent no.2 called for names from Employment Exchanges of all Districts of Orissa. Names of the applicant along with others were also sponsored. In all 229 candidates were there and interview/call letters were issued to them to appear at a selection test on 19.5.1993 and 20.5.1993. On the said dates 116 candidates appeared in the interview on their respective dates but none qualified in the test.

J.B.M.



Again respondent no.2 proposed to hold selection test for the aforesaid posts and accordingly issued call letters to 116 candidates to appear at the test on 26.6.1993 and 27.6.1993. The applicant was directed to appear on 26.6.1993. It is stated that on these two dates the selection test has been held by the authorities and respondent no.2 is now going to fill up the posts by fresh candidates who have no earlier experience. The applicant has stated that in conducting the test, the previous practice has not been followed. It is stated that respondent no.2 should have issued interview/call letters to the departmental candidates only. In support of this, the applicant has relied on an order dated 22.8.1985 at Annexure-4 in which Operators of DDE Unit who were initially appointed on ad hoc basis were regularised from certain dates. The applicant has further stated that in the absence of a specific rule for conducting the selection test, the authorities should have followed the previous practice and selection test should have been confined to the departmental candidates only. It is further stated that in the Department there are many temporary and ad hoc employees who have gathered experience and have been working since long and because of their existence the authorities should not have called for names from Employment Exchanges. It is further stated that on 26.6.1993 there was leakage of question papers after the test was over and the authorities have helped their candidates in practising the answers in the computer machines. It is also stated that one Niranjan Rout who has appeared as an intervenor and respondent no.4 was allowed second chance on 27.6.1993 as he could not compete the test on 26.6.1993. It is further stated that because the applicant had come up before the Tribunal earlier, the authorities are bent on not

J. Som.



selecting him. In the context of the above facts, the applicant has come up with the prayers referred to earlier.

5. The departmental authorities in their counter have stated that the applicant was working earlier under the respondents and after some time gap he has been reappointed and is presently working under respondent no.2 on contract basis. As per clause 1 of the contract the applicant shall remain in service for a particular period and no scale of pay is prescribed for him in contractual service. He is also entitled to a consolidated salary. It is also provided that service of such employees who are working under contract will stand automatically terminated at the expiry of the contractual period. The departmental respondents have stated that in view of this, the applicant can have no claim for any other job in the Directorate. Even then when ten posts of DEO Grade-B were decided to be filled up the applicant was given equal chance to qualify himself for the post. As those posts were regular posts in the Directorate, those had to be filled up in accordance with the recruitment rules which provide that 80% of the vacancies are to be filled up by direct recruitment and 20% by transfer on deputation/transfer. Therefore, 8 posts were to be filled up by direct recruitment two by transfer of deputation. Candidates sponsored by the Employment Exchange, retrenched or to be retrenched along with the applicants have taken part in the qualifying speed test on computer. The minimum qualifying speed was 8000 key depressions per hour prescribed in the recruitment rules. The departmental respondents have stated that the speed of 8000 key depressions per hour for data entry work has to be adjudged by conducting a speed test by Electronic Data Processing Machine. 229

*J. Sam*



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candidates including the applicant were called to the trade test on 19.5.1993 and 20.5.1993 for the post of Data Entry Operator Grade-B. 116 candidates including the applicant appeared in the test out of 229 candidates, but none qualified <sup>in</sup> the speed test. Again all the 116 candidates were called for a second test on 26.6.1993 and 27.6.1993. Amongst these 116 candidates called for the second time 106 candidates appeared in the test for the second time. Only four candidates from General Caste were able to qualify. The applicant did not qualify the speed test. Experts of National Informatics Centre, Bhubaneswar, were associated in conducting the test and as per their technical advice and under their supervision selection test was conducted both the times. The departmental respondents have also stated that the applicant has worked from 2.2.1981 to 31.5.1983, from 2.7.1984 to 31.5.1985 during 1981 census and from 16.4.1991 to 31.12.1992 in 1991 census and has been presently working in the Special Editing and Coding Cell from 16.4.1993. As per the present contract services of the applicant will be terminated on 31.12.1993 after completion of editing and coding work. The departmental respondents have further stated that the services of the applicant along with others were terminated on 31.12.1992 as per the terms of their contract. When 106 posts for the Special Editing and Coding Cell were available under respondent no.2, a group of retrenched persons of the Editing and Coding Cell approached the Tribunal for which ordered for appointment of these 106 consolidated salaries post holders through an oral test taking their seniority into consideration. The applicant was however selected in the test and was appointed on contract basis upto 31.12.1993. The departmental respondents have



also stated that there is no question of leakage of question papers because the candidates were given data sheet and the same data sheet was given to all the 106 candidates. But no candidate was allowed to take away the data sheet with him because the data sheet was handled by the candidates in batches. Therefore, leakage of question papers does not arise. The departmental respondents have denied the averment of the applicant that the authorities have helped their candidates by allowing them to answer in their computer machines. As regards Niranjana Rout the departmental respondents have stated that he was taking the test on 26.6.1993 and his machine was hanged after 47 minutes. After the machine was made alright he was allowed 13 minutes to complete one hour of key depression on the same day. He was not allowed any chance on 27.6.1993. A similar hanging of machine occurred in respect of another candidate S.C.Behera after 39 minutes of key depression and he was allowed another 21 minutes on the same day, i.e., 27.6.1993 to complete one hour of key depression. The departmental respondents have stated that the test was held fairly and therefore, they have opposed the prayers of the applicant.

6. Private respondent nos. 3 and 4 S.K.Acharya and Niranjana Rout have filed separate counters in which they have stated that they have been fairly selected in the test and their appointment should not be interfered with. It is not necessary to go into their counters as also the rejoinder filed by the applicant in which he has mostly reiterated the averments made in the OA.

7. We have heard Shri K.C.Kanungo, the learned counsel for the applicant; Shri A.K.Bose, the learned Senior Standing Counsel appearing for the departmental respondents; <sup>and</sup> Shri Manoj Mishra, the learned counsel appearing for respondent no.3. Shri Ashok



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Mohanty, the learned counsel for respondent no.4 wanted time to make his submission on 20.7.1999 on which day he filed a memo of citations with copy to the other side and reiterated the stands taken by respondent no.4 in the counter.

8. The first stand taken by the applicant is that for the post of Data Entry Operator selection should have been confined to the departmental candidates only. We are unable to accept this contention because the settled position of law is that a post has to be filled up strictly in accordance with the recruitment rules and the departmental respondents have indicated that according to the recruitment rules 80% of the posts are to be filled up by direct recruitment and 20% by transfer on deputation/transfer. For direct recruitment, the departmental authorities were obliged to get names from Employment Exchanges under the Employment Exchange (Compulsory Notification of Vacancies) Rules, 1960. The applicant has also been allowed opportunity to appear at the test along with the persons whose names were sponsored by the Employment Exchanges and also other retrenched persons or to be retrenched persons working in the Census Organisation. The applicant cannot claim that the departmental authorities alone should have been called to the test, as that would have been in violation of the recruitment rules and instructions.

S. S. M.

9. The second limb of the argument of the applicant is with regard to the alleged illegalities and irregularities in the test. It has been urged by the learned counsel for the petitioner that if there are mal-practices in the selection process then the entire process should be struck down. In support of his contention the learned counsel for the petitioner has



relied on the case of Biswaranjan Sahoo v. Sushant Kumar Dinda decided by the Hon'ble Supreme Court and reported in AIR 1996 SC 2522. We have looked into that case. There the Hon'ble Supreme Court have held that where the selection process is vitiated by manipulation, the entire process is liable to be struck down even though the selected candidates might not have been made parties. The law as laid down in the above case has no application to the facts of the case before us. The applicant has challenged the process of selection by stating that question paper has been leaked and favouritism has been shown to Niranjana Rout (respondent no.4). The departmental authorities have explained that the same data-sheet has been used on both the dates of the test on 26.6.1993 and 27.6.1993. The data sheet was not a question paper in the normal sense in which a question paper is understood. It is a set of data which have to be entered into the Electronic Data Processing Machine. Naturally on both the dates the same data sheet has been rightly used so that it cannot be said later on that examinees of a particular day have been shown favouritism by using a different data sheet. This allegation itself shows that the applicant has no idea about work of an Data Entry Operator. The test in this case is not what is entered in the Electronic Data Processing Machine but how fast it is entered. The departmental respondents have pointed out that the qualifying level is 8000 key depressions per hour laid down in the recruitment rules. This contention of the petitioner challenging the validity of the test is therefore held to be without any merit and is rejected.

J Sam.



10. It has been further alleged that one Niranjana Rout who appeared on 26.6.1993 was allowed to again take the test on 27.6.1993. The departmental respondents have pointed out that Niranjana Rout (respondent no.4) took the test on 26.6.1993 and after 47 minutes of key depression the machine was hanged. Therefore he was allowed another 13 minutes to complete one hour of key depression on the same day after the machine was set at right. The allegations that Niranjana Rout took the test on the next day on 27.6.1993 and he was permitted to practise on the machine are allegations in support of which no evidence of any kind has been produced. On the other hand, the departmental respondents have clarified the position to our satisfaction. They have also pointed out that the machine of another candidate S.C.Behera was also hanged after he completed 39 minutes of key depression and therefore he was allowed another 21 minutes of key depression on the same day which for him was on 27.6.1993. From the above it appears that the applicant having become unsuccessful in the test has come up in this petition to make wild allegations hoping that some of them may stick. Learned counsel for respondent no.4 has pointed out that the Hon'ble Supreme Court have laid down in a series of cases that it is not open for a candidate to appear at an examination and challenge the mode of conducting the examination after he has become unsuccessful. In this connection, the learned counsel for respondent no.4 has referred to the decision of the Hon'ble Supreme Court in the case of University of Cochin v. Kanjoonjamma and others, AIR 1997 SC 2083, it has been held by their Lordships of the Hon'ble Supreme Court that the person having participated in the selection is estopped from challenging the process of



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selection. The above decision has also been mentioned in the case of Madan Lal v. State of Jammu & Kashmir, AIR 1995 SC 1088. It has also been submitted that the decision of the Selection Committee cannot be interfered with by Court. In support of this reliance has been placed by the learned counsel for respondent no.4 on the case of Dalpat Abasaheb Solunke v. Dr.B.S.Mahajan, AIR 1990 SC 434. The learned counsel for respondent no.4 has referred to two other decisions of the Hon'ble Supreme Court in the case of Om Prakash Shukla v. Akhilesh Kumar Shukla and others, AIR 1986 SC 1043 and the case of Chancellor and another v. Dr.Bijayananda Kar, AIR 1994 SC 579. We have looked into these cases. These are in no way relevant to the present controversy before us.

11. In consideration of the discussion above, we hold that the applicant has not been able to make out a case for any of the reliefs claimed by him. The Original Application is therefore held to be without any merit and is dismissed but without any order as to costs. The interim order stands vacated.

(G.NARASIMHAM)

MEMBER(JUDICIAL)

*Somnath Som*  
(SOMNATH SOM)  
20.8.99  
VICE-CHAIRMAN