

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

O.A.NOS. 569 & 581 OF 1999

Cuttack, this the 8th day of February, 2000

Shri Chapa Sreenivasa Rao and others Applicants

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
8.2.2000

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

O.A. NOS. 569 & 581 OF 1999

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CORAM:

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

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In OA 569/99

1. Shri Chapa Sreenivasa Rao,
son of late Ch.Gopal Rao,
Qrs.No.A-97/B,
At/PO-Jatni, Dist.Khurda.
2. Shri Nambada Srinivas, son of late M.Vaskar Rao,
Qr.No.A-87/A, Loco Colony, At/PO-Jatni, Dist.Khurda.
3. Shri Gopidalai Delli Rao, s/o G.Krishna Rao,
Qr.No.A-117/A, Loco Colony, At/PO-Khurda Road,
District-Khurda.
4. Shri Abdul Mohid, son of Abdul Halim,
Qr.No.143/A, Loco Colony,
At/PO-Jatni, Dist.Khurda.

....Applicants

In OA No.581/99

Jampa Chandra Sekhar, son of J.V.S.Prasad,
Qr.No.A-116/A, Loco Colony, At/PO-Jatni, Dist.Khurda

....Applicant

Vrs.

S Som

In both thecases:

1. Union of India, represented through Secretary,
Ministry of Defence, Indian Ordnance Factories,
Ordnance Factory, Badmal, At/PO-Badmal, Dist.Bolangir.
2. The General Manager, Ordnance Factory, Badmal,
At/PO-Badmal, Dist.KEN Bolangir

....Respondents.

Advocates for applicants - M/s P.K.Nayak & R.V.Raman

Advocates for respondents - Mr.S.B.Jena, ASC (in OA 569/99)

&
Mr.A.K.Bose, Sr.CGSC(in OA 581/99)

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

These two applications have been heard separately but the facts urged in both the cases and the reliefs claimed are the same. The stand taken by the respondents in both the cases is also the same and therefore, one Order will cover both the cases.

2. Facts of these cases are not in dispute and can be briefly stated. In OA No.569/99 the four applicants who belong to General Category, have stated that the respondents published an advertisement in Employment News, 24-30 July 1999 inviting applications for different posts under them including 28 posts of Examiner (SS). The break-up of these 28 posts is SC - 6, ST - 7, OBC - 5 and UR-10. In response to the notice at Annexure-1, the four applicants submitted their application forms with required documents for the post of Examiner (SS).They received Admit Cards directing them to appear at the written test on 31.10.1999 at 9.00 A.M. at Kendriya Vidyalaya, Ordnance Factory, Badmal. Copies of Admit Cards issued to the four applicants are at Annexure-2 series. The applicants' case is that due to Super Cyclone on 29th October 1999 the applicants could not attend the written test on 31.10.1999. Later on they enquired and came to know that the written examination

was held on the scheduled date in which the applicants failed to appear because of Super Cyclone. The applicants have stated that their non-appearance at the test was unintentional. It is stated that unless the written test already held is cancelled and fresh examination is held the applicants will suffer irreparable injury. In the context of the above facts the applicants have prayed for a direction to the respondents to cancel the written test already held on 31.10.1999 and to fix another date for written test. The second prayer is to direct the respondents to allow the applicants to appear at the written test afresh and thereafter declare the entire result.

3. In OA No.581 of 1999 the applicant made the same prayer as in the case of the applicant in OA No.569/99. He had also applied for the post of Examiner (SS) and got the Admit Card directing him to appear at the written test on 31.10.1999 at 9.00 A.M. But due to Super Cyclone on 29.10.1999 he could not appear at the examination. Like the applicants in the other OA he has stated that the means of communication were disrupted and his non-appearance at the test was unintentional and if the test already held is not cancelled and a fresh test is not held, he will suffer irreparable injury.

4. Respondents in both the cases have filed identical counters and the counter filed by the respondents in OA No.569 of 1999 is being referred to. The respondents have opposed the prayer of the applicants in their counter. They have stated that call letters were issued to the

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candidates by 13.10.1999 more than fifteen days in advance of the examination. Postponement of the examination would have caused great inconvenience to those candidates who had turned up. It is stated that against 28 advertised posts of Examiner (SS) a total number of 518 candidates appeared at the examination on 31.10.1999. It is further stated that despite natural calamity candidates from the areas affected by Super Cyclone also appeared at the said examination. The applicants in this petition should have made efforts to appear at the written test. They have stated that the interview of the candidates who have passed the written test has already been held on 25/26th November 1999 and at this stage quashing of examination would be out of question. It is stated that the examination has been held on time in order to fill up the posts which are required for serving the security interest of the country. They have further stated that in pursuance of the interim order dated 19.11.1999 the representations filed by the applicants after filing of the OA have been considered and disposed of in order dated 7.12.99, enclosed to the counter. The respondents have stated that for non-appearance of the applicants at the written examination they are in no way responsible. The broad-based written examination and interview have already been held and therefore the petitioners are not entitled to seek relief of rescheduling of written examination and giving them fresh and separate opportunity of appearing at the test. On the above grounds, the respondents have opposed the prayer of the applicants.

5. We have heard Shri P.K.Nayak, the learned counsel appearing for the petitioners in both the cases and Shri S.B.Jena, the learned Additional Standing Counsel appearing for the respondents in OA 569/99 and Shri A.K.Bose, the learned Sr.Standing Counsel for the respondents in OA 581/99, and have also perused the records.

6. From the pleadings of the parties mentioned above it is clear that the basic facts of these cases are not in controversy. The petitioners applied for the posts and were called to appear at the written test on 31.10.1999. They could not appear, according to them, because of Super Cyclone on 29.10.1999. The sole point for consideration in the context of the above facts is whether in such circumstances the applicants are entitled to any relief. The first prayer of the applicants in both these petitions is that the examination/^{already held} on 31.10.1999 should be cancelled. This prayer is absolutely without any merit because for the examination on 31.10.1999 notices were issued well in advance and as many as 518 candidates appeared at the examination. The fact that these applicants did not or could not appear at the examination on 31.10.1999 cannot be a ground for cancelling the examination. This prayer is therefore held to be without any merit and is rejected.

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7. The second prayer of the applicants is that they should be given a chance to take the written examination by directing the respondents to hold a supplementary examination for them. It is submitted by the learned

counsel for the petitioners that if they are deprived of the chance to take the examination, then they will suffer irreparable injury as some of them may become age barred when vacancies are notified next time and examinations are held. On the other hand, it has been submitted by the learned Senior Standing Counsel for the respondents that the ~~xxx~~ Super Cyclone which visited some parts of Orissa on 29.10.1999 is an act of God and no liability can be attached to the State for the Cyclone and therefore the respondents cannot be directed to hold a fresh examination for these applicants. It has been submitted by the learned Additional Standing Counsel Shri S.B.Jena that the respondents have indicated in their counter that several candidates from the areas affected by the cyclone took the examination on 31.10.1999. The applicants did not appear at the examination on 31.10.1999. It may be that the reasons for their non-appearance is beyond their control but that by itself would not justify the Tribunal directing the respondents to hold a special examination for them. This is because there may be infinite sets of circumstances because of which a person called to a written test or interview is unable to appear. There may be a transport strike and there may be a natural calamity as in this case, but that would not give rise to a right on the part of such candidates to claim that a separate test must be held for them. Moreover, in these two cases, the applicants, according to their petitions, are residents of Jatni in Khurda District. In their petitions they have

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not mentioned any detail as to the steps they had taken to appear at the examination on 31.10.1999. They have merely stated that they have been adversely affected by the Super Cyclone and the communications were disrupted. Moreover, holding of a special examination for these candidates will give rise to serious complications because questions may be raised about the standard in the test if held for such candidates who could not appear in the regular test. It may be claimed that the test was too severe or too lax compared to the original test. Lastly the respondents have stated that several persons from the affected areas appeared at the test on 31.10.1999 and in the meantime the *viva voce* has also been held ~~on~~ on 25/26th November 1999. We also find that as against 28 posts of Examiner (SS) of which there were only 10 posts for the General Category, as many as 518 candidates took the examination on 31.10.1999. The break-up of these 518 candidates categorywise, i.e., SC, ST, etc., is not available from the pleadings, but the fact of the matter is that a very large number of candidates appeared for 28 posts. Therefore, the process of selection arising out of the test on 31.10.1999 must be held to have been sufficiently broad-based. In view of this, we hold that the applicants are not entitled to have a separate test conducted for them. This prayer is also therefore held to be without any merit and is rejected.

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8. In the result, therefore, both the Original
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Applications are held to be without/~~any~~ merit and are rejected,
but without any order as to costs.

(G.NARASIMHAM)
MEMBER(JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
8.2.2000

AN/PS