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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH;CUTTACK.

ORIGINAL APPLICATION NO. 634 OF 1999.
Cuttack, this the 23rd day of February, 2001.

Sudhansu Ranjan Tripathy. Applicant.

Vrs.

Union of India & 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)
VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH;CUTTACK.

ORIGINAL APPLICATION NO. 634 OF 1999.
Cuttack, this the 23rd day of February, 2001.

CORAM:

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN
AND
THE HONOURABLE MR. G. NARASIMHAM, MEMBER (JUDICIAL).

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Sudhansu Ranjan Tripathy,
Aged about 27 years,
S/o. Subhash Chandra Tripathy,
Village-Uttara Sasan,
Po;Kausalya Ganga, Dist. Puri Applicant.

By legal practitioner : M/s. B. Routray, A.K. Baral,
P.K. Dash, D.K. Mohapatra,
Advocates.

- Versus -

1. Union of India represented through the
Secretary, Ministry of Human Resources
Development (Department of Education),
Government of India, New Delhi.
2. Director, Navodaya Vidyalaya Samiti,
A-39, Kailash Colony, New Delhi-1
3. Deputy Director, Navodaya Vidyalaya Samiti,
Regional Office, 160-Zone-II, MP Nagar, First Floor,
PO; Board Office, Bhopal.
4. Principal, Jawahar Navodaya Vidyalaya,
Munduli, Po; Munduli, Dist. Cuttack.

.... Respondents.

By legal practitioner; M/s. Saroj Kumar Das, B.C. Pradhan,
Special Counsel.

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O R D E R

(ORAL)

MR. SOMNATH SOM, VICE-CHAIRMAN:

In this Original Application, the applicant has prayed that he be allowed to continue in service and his service may be regularised by publication of the result of his interview. Respondents have filed counter opposing the prayer of the applicant and the applicant has filed rejoinder. We have heard Shri P.K.Das, learned counsel for the applicant and Shri S.K.Das, learned Special Counsel for the Respondents and have also perused the records.

2. For the purpose of considering this Original Application it is not necessary to go into too many facts of this case. The admitted position is that the applicant was initially engaged against the post of Lower Division Clerk in Jawahar Navodaya vidyalaya, Mundali, Cuttack on a consolidated salary of Rs.1000/- per month for a period of 89 days from 2-9-1996 to 29-11-1996 but his engagement was continued from time to time with breaks of one day during the period from 2-9-1996 to 12-6-1999 with breaks for 10 days in between as mentioned by the Respondents in para-6 of their counter. Applicant has stated that on 13-5-1999 a notice was issued and displayed in the notice Board in the office of the Principal, Jawahar Navodaya vidyalaya, Mundali, Cuttack for the post of Lower Division Clerk. Pursuant to that notice, applicant applied for the post on 15-6-1999 and according to him he faced the interview on 17-6-1999. Applicant, has stated that the applicant appeared before the Selection

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Committee and was selected for the post. The result was also published and the applicant stood first. After this, he was called to viva-voce test and he came to know from reliable sources that he has also stood first in the viva-voce test but as he was not given any appointment and he was not allowed to work after 13-6-1999, the applicant has come up in this Original Application with the prayer referred to earlier. He has also mentioned that pursuant to a notice dated 19-8-1996, which has been referred to by the applicant in his Original Application and enclosed by the Respondents at Annexure-4 to the counter, the applicant's case deserves to be regularised against the post of Lower Division Clerk.

3. Respondents in their counter have stated that as per the Recruitment Rule for the post of Lower Division Clerk persons who have got minimum 50% marks in class-12 examination are only eligible to be considered as against which the applicant got only 38.06% marks. Respondents have stated that the applicant did apply for the post but his candidature was rejected at the outset as he was not eligible to be considered for appointment. On the above grounds, the Respondents have opposed the prayer of the applicant. It has been submitted by learned counsel for the petitioner that recruitment rule dated 22-6-1995 enclosed at Annexure-3 envisages power to relax the rule. In the instant case, the applicant has worked for more than three years in the post and there has been no complaint about his work and therefore, this is a fit case for relaxing the requirement of 50% marks mentioned in the Recruitment Rule. We have considered the above submission carefully and we find that the rule 6 does not cover the case of the applicant. Rule-6

SJM.

provides that the Executive Committee of the Samiti upon a recommendation made by the Director to that effect that it is necessary or expedient to do so ^{may} ~~and~~ relax any of the provisions of these rules with respect of any class or category of posts or persons. This rule does not envisages relaxation of recruitment rule in favour of a particular person. Only in respect of a category of posts or a class of persons there is a power of relaxation by the Executive Committee on the recommendation of the Director. In view of this we hold that the case of the applicant does not come within the four corners of rule 6. Moreover, even in a case which deserves relaxation of the rule, it is for the Director and the Executive Committee of the Samiti to take a decision and the Tribunal has no power either to relax the rule or to recommend for relaxation of the rule in a particular case.

J.S.M.
4. The next point urged by learned counsel for the applicant is that as the applicant has worked for three years and that too satisfactorily the minimum requirement of percentage of marks should not be insisted upon. In support of his contention, learned counsel for the applicant has relied on the decision of the Hon'ble Supreme Court in the case of Bhagawati Prasad Vrs. Delhi State Mineral Development Corporation reported in AIR 1990 SC 371, the decision of the Hon'ble High Court of Orissa in the case of Urmila Senapati Vrs. State of Orissa reported in 1993(1) OLR 348 and the decision of the Hon'ble High Court of Orissa in the case of B.K. Sahoo Vrs. Orissa State Housing Corporation reported in 73(1992) CLT 148. We have perused these decisions. In Bhagawati

Prasad's case, the applicant was engaged as a daily rated worker for many years and at the time of his regularisation it was found that he did not have the minimum educational qualification. Hon'ble Supreme Court held in that case that once the appointments were made as daily rated workers and the applicants were allowed to work for a considerable length of time it would be hard and harsh to deny them confirmation in the respective posts on the ground that they lack prescribed educational qualifications. It is not necessary to refer to the facts of the case of Urmila Senapati (supra). In that case relaxing the educational qualification did not come up for consideration. There the applicant had worked as a Tracer for five years on daily wage basis and the applicant was asked to compete with regular candidates for the purpose of regularisation and the Hon'ble High Court have held that this amounted to discrimination. Thus, the decision of the Urmila Senapati's case does not give any support to the case of the applicant for relaxation of the educational qualification. The case of BK Sahoo's also deals with the requirement of relaxation of daily rated workers who have worked for more than seven years to appear before the Selection Committee. Question of relaxing the educational qualification is also not involved in this case. In the present case the applicant has no doubt worked on a consolidated salary of Rs. 1000/- per month ^{for more than three months}. He was aware right from the beginning that for appointment to the post of Lower Division Clerk the minimum requirement is 50% of the marks in class 12 examination. Hon'ble Supreme Court in a series of cases have held that a post can be filled up only in terms

of Recruitment Rule. As the requirement of Recruitment Rule in this case is that the candidate should have 50% marks in class 12, the applicant can not claim that in order to give appointment to him the Rule should be relaxed or this requirement should not be insisted upon. This contention is also held to be without any merit and is rejected.

5. There has been some controversy between the parties as also incourse of submission by learned counsel for both sides as to whether the applicant took the Typewriting test and Vivavoce. It is submitted by learned counsel for the applicant that in the process of selection in which according to him, the applicant participated there was a written test which was taken by the applicant. According to the learned counsel for the applicant the applicant also appeared in the Typewriting test and Viva-voce. From the averments of the applicant in the Original Application we do not however, find that any averment has been made that the applicant has appeared in a written test or a Typewriting Test. Learned counsel for the Respondents on the other hand has submitted that 16 candidates including the applicant applied for the post and the candidatures of three persons including the applicant were rejected at the outset on the ground that their not having 50% of marks in Class 12 examination. In support of this contention, learned counsel for the Respondents has brought alongwith him an attendance sheet in which are noted the names of 16 candidates and their time of arrival and against the name of three candidates it has been clearly written that they have got less than 50% of marks and accordingly, their candidatures were rejected. In the absence

of any specific averment by the applicant in his petition that there was a written test and a Typewriting test in which the applicant appeared, it is not possible to accept the submission made by learned counsel for the applicant, as the Respondents have not got a chance to reply to this submission. As earlier mentioned the law is clear that a post can be filled up only in terms of the Recruitment Rule. Hon'ble Supreme Court have also held subsequent to the decisions referred to by the learned counsel for the applicant that long period of service would not entitle a person to get appointment de hors the Recruitment Rules as that would result in backdoor entry in service. In view of this we hold that the prayer of the applicant for getting appointment or regularisation in the post of LDC is held to be without any merit and is rejected.

6. Before parting with this case, we must note that from the letter dated 19.8.1996 enclosed by the Respondents as Annexure-4 it appears that prior to joining of the applicant as a Lower Division Clerk on casual basis on 2.9.1996, the Departmental Authorities were considering the regularisation of teaching and nonteaching staff against the existing vacancies. First sentence of the letter dt. 19.8.1996 provides that as per the directions received from NVS Hqrs, the Samiti has decided to review all the appointments made on part time/contractual/daily wage basis in respect of teaching and non-teaching posts of vidyalaya cadre. In other words, from the Annexure-4 it does appear that an exercise was undertaken by the Departmental Authorities to regularise the parttime/contractual daily wage workers against regular vacant posts. In the

corresponding part of the counter Respondents have made no averment if as a result of such an exercise, some of the Part-time/contractual/daily wage workers of teaching and non-teaching posts were actually regularised or not. In case in pursuance of letter at Annexure-4 some other Part-time/contractual /daily wage workers were actually regularised and if the case of the applicant is on all fours with such persons who have been regularised in the past we direct the Respondents to take up the question of regularisation of the applicant's case against any vacancy. This exercise should be completed by the Respondents within a period of 120 days from the date of receipt of a copy of this order and the result thereof should be intimated to the applicant within a period of 15 days thereafter. We make clear that our above direction is subject to the condition that in pursuance of the letter dated 19.8.1996, in the past some other persons similarly situated like that of the applicant had been regularised and the applicant's case is similar to them.

7. With the above observations and directions, the Original Application is disposed of. No costs.

(G. NARASIMHAM)
MEMBER (JUDICIAL)

(SOMNATH SOM)
VICE-CHAIRMAN

KNM/CM.