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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

Original Application Nos. 1217, 1218 & 1219 of 2003
Cuttack, this the 7th day of January, 2005

IN O.A. NO. 1217/03

Purna Chandra Lenka Applicant
Vs
Union of India & Others Respondents

IN O.A. NO. 1218/03

Kailash Chandra Behura Applicant
Vs
Union of India & Others Respondents

IN O.A. NO. 1219/03

Srikanta Kumar Nath Applicant
Vs
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 ? Yes


(M.R. MOHANTY)
MEMBER (JUDICIAL)


(B.N. SAHA)
VICE-CHAIRMAN

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CUTTACK BENCH, CUTTACK

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CORAM :

HON'BLE SHRI B.N.SOM, VICE-CHAIRMAN

AND

HON'BLE SHRI M.R. MOHANTY, MEMBER (J)

IN O.A. NO. 1217/03

Purna Chandra Lenka, aged about 35 years, Son of Nilamani Lenka, At present working as Sepoy, Central Excise and Customs Bhubaneswar-II, Rajaswa Bihar, At/P.O. Bhubaneswar, Dist-Khurda.

..... Applicant.

By the Advocates M/s D.N.Lenka, D.S.Roy,
S.K.Mohanta.

Vs

1. Union of India represented through Ministry of Finance, Department of Revenue, Central Board and Excise and Customs, North Block, New Delhi.
2. Chief Commissioner, Central Excise and Customs, Bhubaneswar, Rajaswa Bihar, At/P.O. Bhubaneswar, Dist-Khurda.
3. Commissioner, Central Excise and Customs, Bhubaneswar-I, Commissionerate, At/P.O. Bhubaneswar, Dist-Khurda.
4. Commissioner, Central Excise and Customs, Bhubaneswar-II, Commissionerate, At/P.O. Bhubaneswar, Dist-Khurda.
5. Joint Commissioner (P & V), Central Excise and Customs, Bhubaneswar.
6. S.N.Sahu, L.D.C., Central Excise and Customs, Rajaswa Bibhaga, Bhubaneswar-II, Commissionerate, At/P.O. Bhubaneswar, Dist-Khurda.
7. G.C.Prusty, L.D.C., Central Excise and Customs, Balasore Division, Balasore.
8. S.K.Chand, L.D.C., Central Excise and Customs, Bhubaneswar Division, Patia, At/P.O. Bhubaneswar, Dist-Khurda.
9. Mr. A.K.Sahu, L.D.C., Central Excise and Customs, Rourkela, Rourkela Division, Naya Bazar, Dist-Sundargarh.

..... Respondents

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By the Advocate

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Mr. U.B.Mohapatra (SSC)

IN O.A. NO. 1218/03

Kailash Chandra Behura, aged about 45 years, Son of Late Kelu Behura. At present working as Sepoy, Central Excise & Customs, Bhubaneswar-II, At/P.O. Bhubaneswar, Dist-Khurda.

..... Applicant

Advocate for the Applicant

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M/s D.N.Lenka, S.K.Mo-
hunta.

Vs

1. Union of India represented through Ministry of Finance, Department of Revenue, Central Board and Excise and Customs, North Block, New Delhi.
2. Chief Commissioner, Central Excise and Customs, Bhubaneswar, Rajaswa Bihar, At/P.O. Bhubaneswar, Dist- Khurda.
3. Commissioner, Central Excise and Customs, Bhubaneswar-I, Commissionerate, At/P.O. Bhubaneswar, Dist-Khurda.
4. Commissioner, Central Excise and Customs, Rajaswa Bihar, Bhubaneswar-II, Commissionerate, At/P.O. Bhubaneswar, Dist-Khurda.
5. Joint Commissioner (P & V), Central Excise and Customs, Bhubaneswar-I.
6. S.N.Sahu, L.D.C., Central Excise and Customs, Rajaswa Bihar, Bhubaneswar-II, Commissionerate, At/P.O. Bhubaneswar, Dist-Khurda.
7. G.C.Prusty, L.D.C., Central Excise and Customs, Balasore Division, Balasore.
8. S.K.Chand, L.D.C., Central Excise and Customs, Bhubaneswar Division, Patia, At/P.O. Bhubaneswar, Dist-Khurda.
9. Mr. A.K.Sahu, L.D.C., Central Excise and Customs, Rourkela, Rourkela Division, Naya Bazar, Dist-Sundargarh.

..... Respondents

Advocate for the Respondents

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Mr. U.B.Mohapatra (SSC)

IN O.A. NO. 1219/03

Srikanta Kumar Nath, aged about 44 years, Son of Late Iswar Ch. Nath. At present working as Sepoy, Central Excise and Customs, Bhubaneswar-I, At/P.O. Bhubaneswar, Dist-Khurda.

..... Applicant

Advocate for the Applicant - Ms. D.N.Lenka, D.S.Roy,
S.K.Mohunta.

Vs

1. Union of India represented through Ministry of Finance, Department of Revenue, Central Board and Excise and Customs, North Block, New Delhi.
2. Chief Commissioner, Central Excise and Customs, Bhubaneswar, Rajaswa Bihar, At/P.O. Bhubaneswar, Dist-Khurda.
3. Commissioner, Central Excise and Customs, Bhubaneswar-I, Commissionerate, At/P.O. Bhubaneswar, Dist-Khurda.
4. Commissioner, Central Excise and Customs, Rajaswa Bihar, Bhubaneswar-II, Commissionerate, At/P.O. Bhubaneswar, Dist-Khurda.
5. Joint Commissioner (P & V), Central Excise and Customs, Bhubaneswar.
6. S.N.Sahu, L.D.C., Central Excise and Customs, Rajaswa Bihar, Bhubaneswar-II, Commissionerate, At/P.O. Bhubaneswar, Dist-Khurda.
7. G.C.Prusty, L.D.C., Central Excise and Customs, Balasore Division, Balasore.
8. S.K.Chand, L.D.C., Central Excise and Customs, Bhubaneswar, Division, Patia, At/P.O. Bhubaneswar, Dist-Khurda.
9. Mr. A.K.Sahu, L.D.C., Central Excise and Customs, Rourkela, Rourkela Division, Naya Bazar, Dist-Sundargarh.

..... Respondents

Advocate for the Respondents - Mr. U.B.Mohapatra (SSC)

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ORDER

SHRI B.N.SOM, VICE-CHAIRMAN

Since all the O.A. Nos. 1217, 1218 and 1219 of 2003 pertain to common question of facts and law, we dispose of the O.As. through this common order. For the sake of convenience, we may as well refer to O.A. No. 1217/03 which has been filed by Shri Purna Chandra Lenka.

2. The facts of the case are that Shri Purna Chandra

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Lenka entered service w.e.f. 19.2.96 as Sepoy in the Scale of pay of Rs. 775-1150/-. While he was so continuing, the Respondent-Department proposed to hold a departmental qualifying written examination, by their letter dated 26.12.02, for promotion of Group-D/Sepoy to the grade of Lower Division Clerk (LDC in short) against 10% quota of vacancies reserved for educationally qualified Group-D officials. The case of the applicant is though he qualified in the written test by securing very high marks but he could not qualify in the typing test. The Respondents did not promote him as he could not qualify in the typing test. Being aggrieved by the said order, the applicant submitted representation before Respondent No.2 drawing his attention to the clarification contained in DOP&T O.M. No. 40011/1/96-ESTT dated 16.8.96 wherein it has been laid down that a person not passing the typing test at the qualifying examination (provided he has qualified in written ^{test} text) can be given appointment as LDC with the condition that within two years of his appointment he shall have to pass typewriting test, failing which he would be reverted to his earlier Group-D post. His grievance is that the Respondent put a deaf ear to his representation that he is entitled to the said relaxation as contained in the Government letter of 16.8.96 in a routine manner.

3. In this O.A., the applicant has therefore, prayed for the following reliefs :

- "1) that the order under Annexure-A/7 directing

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- promotion of Respondent No.6 to 9 be quashed.
- ii) that order be passed directing the Respondent No.1 to 5 for promoting the applicant to the post of Lower Division Clerk, taking note of the instruction under Annexure-A/11.
 - iii) that order be passed directing the Respondent No.1 to 5 to grant all consequential benefits in the promotional post of Lower Divisional Clerk from the date Respondent No.6 to 9 were promoted.
 - iv) that any other relief as deemed fit and proper in the facts and circumstances of the case be granted."

4. The Respondents by filing a detailed counter have submitted that the applicant is not entitled to any relief and his reliance on the DOP&T O.M. dated 16.3.96 is of no relevance as that circular was issued to regularise appointments of LDCs, already made on adhoc basis and not for as a blanket order for giving promotion to educationally qualified Group-D official to LDC cadre.

5. We have heard the Ld. Counsel for both the parties and have perused the records placed before us.

6. The issue raised in the O.A. requiring an answer revolves around the point as to whether the relaxation granted by DOP&T O.M. dated 16.3.96 could have been made available to the applicant. For this purpose, Ld. Sr. Standing Counsel has placed before us the relevant orders of the DOP&T by

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filing a reply to rejoinder dated 22.11.04. From a perusal of the original order dated 25.1.96 issued by DOP&T it appears that the Government had announced a scheme for regularising promotion of educationally qualified Group-D employees to LDC cadre ^{promoted} on adhoc basis against 10% quota in ^{consultation} consolidation with the Departmental Joint Council of that department. In that scheme it was specially mentioned at para 2(iii) that :

"those appointed as clerks should qualify in typing test within two years and those who do not qualify would be reverted to Group-D....."

This was further amplified by issuing the letter dated 16.3.96 which reads as follows :

"Any person appointed as a LDC on the basis of the qualifying examination should pass typewriting test within two years of the appointment, failing which he would be reverted to his earlier Group-D post. Until he passes the typewriting test within time limit of two years, he will not be allowed to draw his increments. However, if he passes the typing test within six months of his initial appointment, his first increment will be granted after six months instead of one year which will be absorbed in the subsequent regular increment."

7. After perusing the Government letters dated 25.1.96 and 16.8.96, we have no hesitation to accept the submission made by the Respondents that the DOP&T letter dated 16.8.96

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is not an order of relaxation, governing promotion of educationally qualified Group-D officials by examination method, for all times to come. The relaxed conditions contained in the scheme of recruitment of Group-D officials to LDC was done as a one time measure. It is also to be noted here, as admitted by the applicant, that the recruitment rules for the cadre of LDC in the Respondent Department was amended and notified on 26.12.02 in which under Column-11 of Rule 7 it has been laid down as follows :

"50% of vacancies shall be filled up by promotion from amongst Sepoys and Havaldars who possess Matriculation or an equivalent qualification as per Recognised Board or University and have rendered five years of service in the Grade of Sepoys, Havaldars and feeder cadres thereto. On the basis of a departmental qualifying examination with typing test with minimum speed of 30 words per minute in English typewriting or 25 words per minute in Hindi type writing."

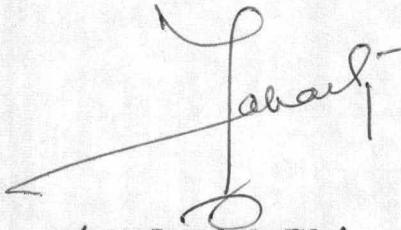
In terms of the amended recruitment rules, the candidates are to possess educational qualification of Matriculation or an equivalent standard, shall have to render 5 years of service in the respective grade and they shall have to pass a departmental qualifying examination with type writing test with minimum speed of 30 words per minute for English and 25 words per minute for Hindi. As these new recruitment rules were framed on 26.12.02, recruitment

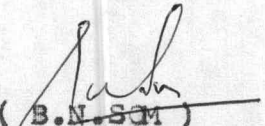
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for LDC and other cadres in the Respondent department, thereafter, have to follow the provisions of the said recruitment rules being statutory in character. In other words, the recruitment made by the Respondent department in the year 2002 for the cadre of LDC was correctly governed by the provisions of the recruitment rules of 2002 and reference made to the DOP&T scheme/letter dated 25.1.96 or 16.8.96 is misconceived.

8. Having regard to the above facts and circumstances of the case and the position of law in the matter, we see no merit in this case which is accordingly dismissed. No costs.


(M.R. MOHANTY)
MEMBER (JUDICIAL)


(B.N. SGM)
VICE-CHAIRMAN

RK/SD