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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

ORIGINAL APPLICATION NO. 207 OF 2007
Cuttack, this the 15th day of July, 2009

Sri Kshetrabasi Mohanta Applicants
Vs.
Union of India & Others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not?
2. Whether it be circulated to Principal Bench, Central Administrative Tribunal or not?


(C. R. MOHAPATRA)
ADMINISTRATIVE MEMBER


(K. THANKAPPAN)
JUDICIAL MEMBER

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NOS. 207 OF 2007
Cuttack, this the 15th day of July, 2009

CORAM:

Hon'ble Mr. Justice K. Thankappan, Member (J)
Hon'ble Mr. C.R. Mohapatra, Member (A)

.....

Sri Kshetrabasi Mohanta, aged about 49 years, S/o.-Late Mukunda Mohanta, residing at Qr. No.-Type-II/32, Census Colony, Baramunda, Bhubaneswar, Dist-Khurda, at present working as Compiler, O/o-Director of Census Operation, Orissa Janapath, Unit-IX, Bhubaneswar - 751022

..... Applicants

By the Advocate(s)M/s. A.K. Mohapaatra,
A.K. Mohanty,

Vs.

1. Union of India represented through it's Secretary to Government of India, Ministry of Home Affairs, New Delhi-110 011
2. Registrar General India, 2A Manshing Road, New Delhi-110 011.
3. Director of Census Operation, Orissa, represented through the Deputy Director, Janapath, Unit-IX, Bhubaneswar, Dist-Khurda-751022.

..... Respondents

By the Advocate(s).....Ms. U.B. Mohapatra, S.S.C

O R D E R
(ORAL)

HON'BLE MR.JUSTICE K. THANKAPPAN, MEMBER(J)

Challenging Annexure-A/7 order dated 27.09.06 passed by the Respondents directing the applicant to intimate his option for qualifying test of type writing or proficiency in operating calculating machine, this Original Application has been filed by the applicant with the following prayer:-

- “ (i) To set-aside the order of Respondent No.3 directing the applicant to give his option for re-examining his suitability under Annexure-7.



(ii) To direct the Respondents not to take any examination of the applicant as directed under Annexure-7.

2. The short factual matrix leading to filing of this Original Application is that while working as Peon (Group 'D') under Government of India, Ministry of Home Affairs, Office of the Director of Census Operation, Orissa, Bhubaneswar the applicant passed Annual High School Certificate Examination in the year 1992. Thereafter, he was promoted to the post of Asst. Compiler against the 10 % quota earmarked for Group 'D' employee. However, after that promotion the applicant continued as Asst. Compiler and the Departmental Promotion Committee met during 2006 and as per the order dated 27.09.06, the applicant was promoted as Compiler on regular basis in the scale of pay Rs.4000-6000. However, the Respondent No.3 after lapse of 09 years of his promotion required the applicant to intimate his option for qualifying test of typewriting or proficiency in operating calculating machine viz. Electrically operated, hand model or comptometers or experience in coding and punching in an office or from having mechanical tabulation equipments to reexamine the suitability of applicant to the post of Compiler. Aggrieved by the said direction vide Annexure-A/7, the present Original Application has been filed by the applicant.

3. In response to notice issued by this Tribunal a counter reply has been filed for and on behalf of the Respondents. In the counter the Respondents have taken the stand that as per Recruitment Rules, the applicant had not passed the type writing test which is the necessary qualification for continuing or holding the post of Assistant Compiler as well Compiler. Further it has been submitted that the applicant had been promoted from Group 'D' to the post of Assistant Compiler without having regard to his proficiency in typewriting and as per Recruitment Rules it is necessary for passing the typewriting test for the post of Compiler. On these grounds they have submitted that the O.A being devoid of merit is liable to be rejected.



4. Heard Mr. A.K. Mohapatra, Ld. Counsel for the applicant and Mr. U.B. Mohapatra, Ld. Sr. Standing Counsel for the Respondents and perused the materials placed on record.

5. Reiterating the grounds urged in this O.A., Mr. Mohapatra, Ld. Counsel for the applicant submitted that as the applicant has already been promoted from Group 'D' to the post of Assistant Compiler and thereafter to the post of Compiler on the recommendation made by the DPC, which had adjudged his eligibility & suitability and the applicant having served as Compiler for considerable years, requiring him to take the typewriting test at this stage as per Annexure-A/7 is ~~is~~ illegal, arbitrary and non-application of mind and therefore the same is liable to be set-aside. The Ld. Counsel also urged that Annexure-A/7 requiring the applicant to take typing test after 45 years of age is against the provision of G.I.O.(14) below FR 26 of Swamy's Compilation of F.R.S.R. Part-I General Rules Sixteenth Edition - 2003.

The Ld. Counsel, relying on the above provisions submitted that it is fit case where the Govt. of India can relax the qualifying test for which the applicant is called upon.

6. On the other hand, the Ld. Counsel for the Respondents relying on the counter submitted that as per the existing Rules, it is mandatory on the part of the applicant to pass typewriting test. Ld. Counsel further submitted that even though the applicant had been promoted to Assistant Compiler and thereafter Compiler, he cannot be allowed to continue in the above two posts unless he gets through the typewriting test. In the above circumstances, the Ld. Counsel submitted that Annexure-A/7 order passed by Respondent No.3 is unassailable and therefore, this Tribunal should dismiss the O.A. being devoid of any merit.

7. On anxious consideration of the arguments of the Ld. Counsel on either side and on perusal of the relevant Rules and Records,



we have to consider whether the applicant is entitled to any relief as claimed or not.

8. Admittedly, the applicant was working as Peon (Group 'D' employee) and thereafter in the light of the limited quota of 10%, the applicant was promoted to the post of Assistant Compiler and thereafter having been found eligible and suitable by the DPC he was subsequently promoted as Compiler. However, as per Rule regarding promotion to the post of Assistant Compiler as well as Compiler, it is mandatory to pass typewriting test. The relevant Rule regarding this aspect is quoted as below:-

- “1. Matriculation or equivalent.
2. Minimum speed of 30 words per minute in typewriting (in English)

Proficiency in operating, calculating, machines, viz., electrically operated hand model or comptometers. Experience in coding and punching in an office or firm moving mechanical tabulation equipment.”

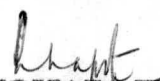
Reading of the above Rule would show that unless a person is having the prescribed qualification as above, he cannot be promoted in the post of Assistant Compiler or and subsequently to the post of Compiler. However, we have seen that the applicant was allowed to continue as Assistant Compiler on his promotion and he was subsequently promoted after a DPC constituted for the purpose found him eligible to be promoted to the post of Compiler. But the fact remains that both the promotions are not in accordance with the Rules, as the applicant does not possess the prescribed qualification. In order to meet the above requirement of Rules as pointed out by the Ld. Counsel for the applicant, we have gone through the relevant provision of G.I.O.(14) below FR 26 of Swamy's Compilation of F.R.S.R. Part-I General Rules Sixteenth Edition - 2003. As per the provisions enshrined therein it is only applicable in case of persons appointed or promoted, as the case may be,

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to the grade of Lower Division Clerk, which is unlike the posts held by the applicant on promotion. Therefore, legality or validity of Annexure-A/7 cannot be called in question.

9. However, it is submitted by the Ld. Counsel that the applicant wants to make representations to Respondent No.1 & 2 seeking exemption from appearing the typing test. If such representations are filed by the applicant within 30 days hence, it is only proper for the Respondent No.1 & 2 to consider the matter keeping in mind that the applicant has in the meantime been continuing in ~~the~~ promoted post of Asstt. Compler and Compiler since 09 years, and pass appropriate orders within a period of three months from the date of receipt of ~~the order~~². such representation. 2

10. With the above observation and direction, this Original Application is disposed of. No order as to costs.


(C. R. MOHAPATRA)
ADMINISTRATIVE MEMBER


(K. THANKAPPAN)
JUDICIAL MEMBER