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**CENTRAL ADMINISTRATIVE TRIBUNAL**  
**CUTTACK BENCH, CUTTACK**

**ORIGINAL APPLICATION NO.578 OF 2009**

Cuttack this the 19<sup>th</sup> day of June, 2012

Kshetrabasi Mohanta.....***Applicant***

-VERSUS-

Union of India & Ors. ....***Respondents***

**FOR INSTRUCTIONS**

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

  
**(C.R.MOHAPATRA)**  
**ADMINISTRATIVE MEMBER**

  
**(A.K.PATNAIK)**  
**JUDICIAL MEMBER**

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**CENTRAL ADMINISTRATIVE TRIBUNAL**  
**CUTTACK BENCH, CUTTACK**

**ORIGINAL APPLICATION NO.578 OF 2009**

Cuttack this the 1<sup>st</sup> day of June, 2012

**CORAM:**

**HON'BLE SHRI C.R.MOHAPATRA, ADMINISTRATIVE MEMBER**  
**AND**  
**HON'BLE SHRI A.K.PATNAIK, JUDICIAL MEMBER**

Kshetrabasi Mohanta, aged about 51 years, S/o. Late Mukunda Mohanta, residing at Qrs.No.11/2, Census Colony, Baramunda, Bhubaneswar, Dist-Khurda, at present working as Compiler, Office of Director of Census Operation, Orissa, Janpath, Unit-IX, Bhubaneswar-751 022, Dist-Khurda, Orissa

**.....Applicant**

By the Advocate:Mr.K.C.Kanungo

-VERSUS-

1. The Secretary, Ministry of Home Affairs, Govt. of India, New Delhi-110001
2. Registrar General of India, 24, Mansingh Road, New Delhi-110001
3. Director of Census Operation Orissa, Janagana Bhawan, Janapath, Unit-IX, Bhubaneswar-751022, Dist-Khurda, Orissa
4. Joint of Director of Census Operation, Office of Director of Census Operation Orissa, Janagana Bhawan, Janapath, Unit-IX, Bhubaneswar-751022, Dist-Khurda, Orissa

**....Respondents**

By the Advocate:Mr.P.R.J.Dash, ASC

**O R D E R**

**A.K.PATNAIK, MEMBER(J):** Applicant is at present working as Compiler under the Respondent-Department. He had earlier approached this Tribunal in O.A.No.207 of 2007 challenging the legality and validity of Annexure-A/3 dated 11.6.2007 to this O.A. whereby he had been asked to exercise his choice as to whether he would like to appear in the qualifying test of Typewriting test (English) or

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proficiency in operating Calculating Machines, etc. Clerical Operated, Hand model or Computers or Experience in coding and punching in an office or firm having mechanical tabulation equipment as per relevant Recruitment Rules, with a view to reexamining his suitability for appointment on promotion to the post of Assistant Compiler with effect from 18.5.1998. In the meantime, applicant had been issued with Memorandum dated 29.05.2009 (Annexure-A/5), the gist of which is quoted as under:

### MEMORANDUM

Shri K.B.Mohanta was appointed as Peon on 10.10.1980 in the Directorate of Census Operations, Orissa. On the recommendations of the DPC convened on 18.05.1998, he was promoted to the post of Assistant Compiler against a vacancy which was to be filled by promotion from eligible Group D employees of the Directorate. Subsequently, he was promoted to the post of Compiler w.e.f. 27.09.2006.

2. On receipt of a complaint, a committee was constituted to look into irregularities committed, if any, in holding DPC and making promotion on their recommendations. It was found by the Committee that irregularities have been committed in the matter of promotion, i.e, on the date of holding DPC for promotions, no vacancy existed in the grade of Assistant Compiler which could be filled by promotion from Group D employees. It has also been observed that neither the required documents were made available to DPC which could establish eligibility of candidates in terms of Recruitment Rules, i.e, proficiency in typewriting or operating calculating machines etc., nor efforts were made by DPC to check their eligibility.

3. The Competent Authority has observed that promotion made in case of Shri K.B.Mohanta to the post of Assistant Compiler on the basis of recommendations made by DPC held on 18.05.1998 is irregular as he neither fulfils the requisite essential qualifications as per Recruitment Rules nor did any vacancy exist on the date of holding DPC against which he could be promoted.

4. In order to check their eligibility, both the candidates, considered by the DPC on 18.05.1998, Shri Mohanta and Shri Dehury were given an opportunity to appear for typewriting test or show their proficiency in handling calculating machines etc. vide order No.14/1/2007-Estt. Dt.11.06.2007. Shri Mohanta

instead of availing this opportunity submitted representations against it and filed an O.A.No.207/2007 in the Hon'ble C.A.T, Cuttack Bench, which is pending.

5. As the appointment by promotion to the post of Assistant Compiler and subsequent promotion to the post of Compiler of Shri Khetrabasi Mohanta is totally irregular and in violation of provisions contained in the Recruitment Rules, he is directed to explain in writing why he should not be reverted to the post of Peon.

6. His explanation should reach to the undersigned within 15 days from receipt of this Memorandum. In case no reply is received, it will be presumed that he has no explanation to submit and his case will be decided on the basis of available records.

7. This issues with the approval of the Registrar General, India, New Delhi".

2. In response to the above, as revealed from the record, applicant had submitted his representation dated 11.06.2009 (Annexure-A/6). Be that as it may, in the meantime, this Tribunal, while holding the legality or validity of Annexure-A/7 (A/3 to this O.A.) could not be called in question, disposed of the said O.A. vide order dated 15.7.2009 in the following terms.

"However, it is submitted by the Ld. Counsel that the applicant wants to make representations to Respondent No.1 and 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 promoted post of Asst.Compiler and Compiler since 09 years, and pass appropriate orders within a period of three months from the date of receipt of such representations".

3. Based on the above direction of the Tribunal, applicant preferred a representation dated 07.08.2009 vide Annexure-A/8 to Respondent No.2

4. While this was the backdrop of the matter, the applicant vide Annexure-A/9 dated 6.11.2009 was communicated with the status of his representation by Respondent No.4, which reads thus.

"Sub: Your representation dated 07.08.2009 given in pursuance of CAT, Cuttack Bench Order dated 15.07.2009 in O.A.No.207 of 2007.

I am directed to refer to your representation referred above, addressed to the Registrar General, India (through DCO, Orissa), seeking "Exemption from type test etc", as per this office letter No.14/1/2007 dated 11.06.2007.

2. It is to inform you that on receipt of a representation of Shri Laxmidhar Dehury, Duftary, for not considering his case for promotion, your promotion to the post of Assistant Compiler vide order No.17/2/2006-Estt. Dated 18.05.1998 of DCO, Orissa on the recommendations of the DPC held on 12.05.1998, was reviewed by a Committee comprising three officers of the ORGI constituted by the Head of Department vide ORGI's Order No.12015/39/2006-Ad.IV dated 23.04.2008. The Committee, after examination of relevant papers found that on the date of DPC, i.e., on 12.05.1998, there was no vacancy of Assistant Compiler (AC) available to be filled up by promotion from Group D.

3. In view of the findings of this Committee, a Review DPC was held to review the recommendations of the DPCs held on 12.05.1998 and 22.08.2006. The Review DPC observed that on 12.05.1998 (the date of DPC), there was no vacancy in the post of AC to be filled by promotion from Group D employees under 10% promotion quota. The promotion given to you to the grade of AC in 1998 was found irregular and erroneous by the Review DPC and it has recommended that the recommendations of DPCs held in 1998 for your promotion to the grade of Assistant Compiler and in 2006 for second promotion to the post of Compiler may be treated as not in order, as your first promotion to the grade of Assistant Compiler was itself irregular.

4. The recommendation of the Review DPC is presently under consideration. Your representation dated 07.08.2009 can therefore, be considered only after action on the recommendation of the Review DPC is complete".

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5. Upon receipt of the above communication, applicant submitted a representation dated 13.11.2009 to the Respondent No.2 drawing his attention to the orders of this Tribunal as referred to above and requested to take a lenient view in the matter. In the meantime, applicant having been reverted to the post of Peon w.e.f. 3.12.2009 vide order dated 4.12.2009 (Annexure-A/11) moved this Tribunal in the present Original Application.

6. This Tribunal, vide order dated 11.12.2009 while admitting the O.A. and directing notice to the Respondents, as an interim measure, stayed the operation of the impugned order of reversion vide Annexure-A/11 which is in force as of date.

7. While the matter stood thus, applicant was communicated with the decision taken by the Respondents in pursuance of the order of this Tribunal in O.A.No.207/2007, vide order dated 6.8.2010(Annexure-A/12). For the sake of clarity, the full text of the order is extracted hereunder.

#### **ORDER**

Subject: Disposal of representation dated 07.08.2009 as per the direction of the Hon'ble C.A.T, Cuttack Bench, Cuttack dated 15.07.2009 in O.A.No.207 of 2007 – regarding.

With reference to the orders dated 01.11.2009 and 04.12.2009 and in compliance of the Order of the Hon'ble CAT, Cuttack aBench, Cuttack dated 15.7.2009 in Original Application No.207 of 2007, it is to inform you as under.

2. Since there were gross mistakes while recommending your promotion by the departmental Promotion Committee (DPC) in its meeting held on 12.05.1998, such as there was no vacancy in the post of Assistant Compiler to be filled by promotion from Group D employees under 10% promotion quota, the promotion given to you to the post of Assistant Compiler in 1998 and thereafter to the pot of Compiler on the recommendation of the DPC meeting held on 22.08.2006 was found irregular and erroneous. As such, in exercise of the powers conferred on the authority, Review DPC meeting was held on 03.11.2009. On the basis of the recommendation of the DPC, by the order of the competent authority, meanwhile, you

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have been reverted to the post of Peon w.e.f. 03.12.2009 vide order No.33/01/2008-Estt. Dated 04.12.2009. However, challenging the said order, you have filed O.A.No.578 of 2009 before the Hon'ble Tribunal wherein the Hon'ble Tribunal while issuing notice was pleased to stay the order dated 4.12.2009. By virtue of the stay order you have been continuing in the post of Compiler. Since the matter is subjudice before the Hon'ble Tribunal, it is not desirable to state more on your reversion except to state that you cannot claim continuance in the promotional post irrespective of your continuance in the said promotion as promotion to the said post is beyond the quota meant for promotion.

3. In view of the order of reversion, representation dated 07.08.2009 is redundant. However, it is to inform you that the rule/instructions based on which you seek exemption of mandatory requirement of passing typing test is not applicable to your case as at the time of your promotion you were below 45 years and that as per the law, fulfillment of the conditions existing as on the date of promotion should be the guiding factor and subsequent acquiring the age cannot escape you from passing the mandatory typing test as provided in the Recruitment Rules".

8. Upon receipt of the above communication, the applicant sought permission of this Tribunal to bring the above said order within the scope and ambit of this Original Application by way of an amendment which was allowed by this Tribunal vide order dated 25.10.2010. In view of these circumstances, the applicant has prayed for quashing Annexure-A/5, A/9, A/11 and A/12 and to hold that applicant's promotion to the post of Asst.Compiler and Compiler were legal and need not be disturbed at a belated stage to meet the ends of justice.

9. Opposing the prayer of the applicant, Respondent-Department has filed their counter. As the main thrust of the counter has been extracted above from various Annexure issued by the Respondent-Department from time to time which are called in question in the present O.A. to avoid reiteration, we do not feel it inclined to reduce to writing the same standpoint again and again.

10. However, applicant has filed rejoinder to the counter. In the rejoinder the applicant has stated that Recruitment Roster for direct recruitment and promotion is the only source to determine available vacancy position as on 1998. According to the applicant, the statement made by the Respondents that there was no post of Assistant Compiler to be filled against Group D quota in the year 1998 being not substantiated by the roster register is nothing but of doubtful and ambiguous nature. It is the further reply of the applicant that as per the direction of the Hon'ble Supreme Court of India the post based roster was in vogue since 1996 and therefore, it is far fetched to say that the applicant was promoted to the post of Assistant Compiler against which there was no vacancy in existence at that point of time.

11. Secondly, it has been replied that the other alternative method of considering applicant's eligibility, i.e. proficiency in operating calculating machines, Electrically operated, hand model or Comptometers or Experience in coding and punching in an office or firm having mechanical tabulation equipment could have been considered and resorted to by the Respondents.

12. We have heard Shri K.C.Kanungo, learned counsel for the applicant and Shri P.R.J.Dash, learned Addl.Standing Counsel for the Respondent-Department and perused the materials placed on record.

13. It is an admitted fact that this Tribunal while disposing of the O.A.No.207/2007 did not interfere with Annexure-A/3 issued to the applicant calling upon him to appear at the eligibility test as per the Recruitment Rules for the post of Assistant Compiler. Therefore, we are not inclined to unsettle the settled position in so far as Annexure-A/3 is concerned. However, it was the categorical direction of this Tribunal in the said O.A. that the

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representation of the applicant should be considered by Respondent No.1 and 2. Keeping in mind the long period of service rendered by him. As it reveals, the decision (Annexure-A/12) on the representation of the applicant in pursuance of the order dated 15.7.2009 of this Tribunal passed in OA No.207/2007 has been taken only by Respondent No.2 who is not at all the competent authority to take such a decision in so far as exemption and/or relaxation in the matter of typing test is concerned, having regard to Relevant Recruitment Rules. This apart, the language couched by Respondent No.2 in paragraph-3 of the said order "In view of the order of reversion, representation dated 07.08.2009 is redundant" is not only contemptuous but also overreaching the orders of the Tribunal thereby eliciting a prejudicial view in the matter. In this view of the matter, the decision taken by the Respondent No.2 on the representation of the applicant in pursuance of the direction issued by this Tribunal in the aforesaid O.A. is liable to be set aside.

14. In so far as the other aspect of the decision is concerned, it envisaged that exemption of mandatory requirement of passing typing test is not applicable in case of the applicant as at the time of his promotion he was below 45 years and as per law, fulfillment of the conditions existing as on the date of promotion should be the guiding factor.

15. In this connection we would like to note that this is a peculiar circumstance where the applicant is alleged to have been promoted to the post of Assistant Compiler in the year 1998 without his eligibility as per Recruitment Rules being determined, which has been detected after a long lapse of time in the year, 2007 and hence Annexure-A/3 dated 11.6.2007 was issued asking him to appear in the qualifying test. Viewed from this standpoint, the date of calculating the age below 45 years at the time of promotion to the post of Assistant Compiler as has been determined by the Respondent has no reasonable nexus inasmuch as the exact or

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deemed date would be the date when the cause of action for directing the applicant to appear at the qualifying test arose.

16. Apart from the above, we would like to make it clear that both the applicant and Respondents have made the matter confusing inasmuch as though Memorandum dated 29.05.2009(Annexure-A/5) had been issued by the Respondents-Department drawing a red herring across the trail prior to disposal of O.A.No.207/07 on 15.7.2009, yet, either of the parties had not brought this fact to the notice of the Tribunal to take a broader view over the matter.

17. Be that as it may, it is an established fact that the impugned orders under Annexures-A/9, A/11 and A/12 have been issued by the Respondents solely basing upon the Memorandum dated 29.5.2009(Annexure-A/5), which though gives rise to a different cause of action, yet, in the context in which Annexure-A/12 has been issued thereby evading the direction issued by this Tribunal in O.A. 207/2007 is discernible and as such, we cannot restrain ourselves leaving the matter in the lurch.

18. It is the case of the Respondents that on receipt of representation from one Laxmidhar Dehury, Duftry, the recommendations made by the DPC for promotion of the applicant to the post of Assistant Compiler in the year 1998 was reviewed by a Committee constituting three officers of the ORGI which submitted its report on 4.11.2008 based on which a review DPC was held on 3.11.2009 that found the promotion of the applicant to the grade of Assistant Compiler held on 12.05.1998 to be irregular and erroneous and in effect the impugned reversion order was issued on 4.12.2009. In this connection, we would like to note that the law is well settled that before any action prejudicial to an employee is taken by its employer, the former should be given an opportunity to have his say in the matter, failing

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which, principle of natural justice is violated. Even though the applicant had been issued with Memorandum dated 29.05.2009 (Annexure-A/5) to have his say in the matter, yet, the Committee constituted for the purpose which gave its findings on 4.11.2008 (prior to issuance of Memorandum dated 29.5.2009) that when the applicant had been promoted to the post of Assistant Compiler in the year 1998 based on the recommendations of the DPC there was no vacancy in existence, there was no reasonable nexus on the part of the Respondents not to communicate the report of the said Committee to the applicant along with required documents based on which such a finding could be recorded. Therefore, rightly, the applicant has agitated in his rejoinder that in the absence of roster register, existence or otherwise of vacancy position could not be determined. From this angle, we cannot but hold that the impugned reversion of the applicant vide Annexure-A/11 is nothing but violation of the principles of natural justice.

19. Apart from the above, the context also otherwise demands to look into the matter in so far as the competency of the Committee to review the recommendations made by the DPC and the propriety of the review DPC to act on the report of the said Committee. Respondents have not submitted any rule and instructions issued by the Government of India empowering a Body or Committee of officers to review the recommendations made by certain DPC. This action of the Committee, in our considered view, is nothing but dictating the review DPC to act in a manner as the Committee want thereby, leaving no room to the DPC or review DPC as the case may be, to apply its own independent wisdom having regard to the provisions of Rules and instructions. In this view of the matter, we cannot but hold that constitution of the said Committee to review the recommendations made by the DPC does not have the approval of Rules and can not be termed to be legal.

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20. For the reasons discussed above, while quashing the impugned Annexures-A/5, A/11 and A/12 to the O.A. we make the following orders.

- i) The representation dated 07.08.2009 shall be considered only by the Respondent No.1 having regard to observation made in Paragraph-13 above and the observation made by this Tribunal in O.A.No.207/2007.
- ii) The applicant is at liberty to exercise his choice for the qualifying test other than the typing test (English) as provided in the Recruitment Rules.
- iii) Since the Respondents have made out a case that the applicant's promotion to Asst. Compiler in the year 1998 had been made against a vacancy which was not in existence, they are free to take such action as deemed fit and proper in accordance with rule of law, after complying with the principles of natural justice and if necessary, after giving an opportunity to the applicant of being heard in person.

In the result, the O.A. is allowed to the extent indicated above. No costs.

  
(C.R. MOHAPATRA)  
ADMINISTRATIVE MEMBER

  
(A.K. PATNAIK)  
JUDICIAL MEMBER

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