

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCH, PATNA

C.A. No. 644 of 1996

Date of order 17-12-1999

1. Ajit Kumar Kulu, son of Joseph Kulu, village Khamahan Toli, P.O. Kenbegi, P.S. Thethaita Nagar, District Gumla.
2. Sri Janak Kumar Prasad, son of Sri Badri Prasad, village Ajad Nagar, P.O. and P.S. Maner, District Patna.
3. Nagina Choudhary, son of Late Anandi Choudhary, village Kandhouli, P.O. Nanouri, P.S. Hilsa, District Nalanda.

Applicants ..

versus -

1. The Union of India through the Secretary, Ministry of Home Affairs, North Block, New Delhi-110011.
2. The Joint Director, Census Operations, Bihar, Boring Canal Road, Patna-1.
3. The Deputy Director, Census Operations, Bihar, Patna, Bihar State Co-operative Bank Building, Ashok Raj Path, Patna-4.
4. The Deputy Director (EDP), Office of Registrar General of India, Data Processing Division, Pushpa Bhawan, New Delhi.

Respondents ..

Counsel for the applicants .. Shri Amit Srivastava.

Counsel for the respondents .. Shri G.K. Agarwal.

CORAM: Hon'ble Shri L.R.K. Prasad, Member (A)

Hon'ble Shri Lakshman Jha, Member (J)

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O R D E R

Hon'ble Shri L.R.K.Prasad, Member (A) :-

This application has been filed by three applicants claiming following reliefs:-

- (a) To quash the order dated 12.9.1996 as at Annexure-1.
- (b) To direct the respondents to produce before this Tribunal the original floppy and print out of the performance of the applicants held in the test on 5.9.1996.
- (c) To direct the respondents to appoint the applicants as Data Entry Operator Grade 'B' with effect from 5.9.1996 with all consequential benefits.
- (d) Cost of litigation.

2. The applicant no.1 (S.T. category) and applicant no.2 and 3 (S.C. category) were appointed as Data Entry Operator Grade 'B' in the Data Processing Division of Census Operations, Bihar in March, 1994 on purely ad hoc and provisional basis with the stipulation that they have to attain the speed of 8000 key depressions per hour in Data Entry work within a period of six months as required under Recruitment Rule. The order of appointment along with terms and conditions are contained in the order dated 20.4.1994 (Annexure-4).

3. On 14.12.1994, the applicants and others were informed that a speed test will be held by a Selection Committee on 10.1.1995. The said test was ultimately held on 21.1.1995 in which the applicants appeared. It is claimed by the applicants that they secured more than 8000

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key depressions per hour. As directed by the Selection Committee, the applicants again appeared for the similar test on 25.1.1995 and it is stated that they secured more than 8000 key depressions per hour. It is alleged that inspite of this, the result of the applicants have not been announced. Another test was held on 25.2.1995 but the result of the same has also not been published. Vide letter dated 31.3.1995, the services of the applicants and 8 others were terminated on the ground that they have failed to attain the minimum speed of 8000 key depressions per hour even after a period of more than six months. Aggrieved by the said termination order, they along with 8 others filed O.A.173/95 before this Tribunal praying for quashing the order of termination dated 31.3.1995. By order dated 29.11.1995 this Tribunal directed the respondents to consider re-appointment of the applicants for a period of six months at the end of which, a test should be held and only those who secure minimum prescribed speed of 8000 key depressions per hour for Data Entry work should be retained further in service. The order of the the Tribunal is at Annexure-6. In pursuance to the direction of this Tribunal passed in O.A. 173/95, the applicants along with others were given re-appointment to the post of Data Entry Operator. By order dated 1.8.1996 (Annexure-9) the applicants were directed to appear in speed test on 10.8.1996. They, accordingly, appeared. It is alleged that the questions put to the applicants in the said test were alien to their job. Such jobs were never performed by the applicants. The key boards which were given to the applicants were also defective. It is further alleged that as the key boards had defects, the same were reported to one Shri J.K.L.Karn, Senior

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Supervisor for change of the Key Board. No action was taken on their complaint regarding defective Key Board. The result of the test was notified on 12.8.1996 which is at Annexure-12, according to which applicant no.1 got 7700 key depressions per hour, applicant no.2 6578 key depressions per hour and applicant no.3 5388 key depressions per hour. further, the allegation of the applicants is that the test was only conducted for 15 minutes and not for one hour as had been directed by this Tribunal. The questions were given out of syllabus and Key Boards given to the applicants were not properly functioning. It is pointed out that while doing their job (Annexure-13) on 1.8.1996, 2.8.1996, 5.8.1996, 7.8.1996 and 8.8.1996 applicants had been able to secure more than 8000 effective key depressions per hour. Being aggrieved by the result as at Annexure-12, the applicants filed O.A.377/96 which was disposed of on 21.8.1996 by directing the respondents to conduct another test of the applicants on machine in proper working order and the applicants should be put to test for one hour. Accordingly, a test held on 5.9.1996 which was participated by the applicants.

4. It is alleged by the applicants that the test was not carried out in accordance with the direction of this Tribunal passed in O.A.377/96 so much so that the applicants were given 4 batches in one hour of the test, thereby wasting of minimum 5 minutes per batch. Therefore, the effective test was done only for 45 minutes and not one hour. The questions were also not clearly legible. These were brought to the notice of respondent no.3 by regd. post dated 5.9.1996 (Annexure-15). The result of the test was not immediately announced

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but the floppy of the test was taken to Delhi and the result was manually coded and then notified on 12.9.1996 as at Annexure-1. It appears from the said result that applicant no. secured 1598 correct key stroke, applicant no.2 7037 and applicant no.6576. Even though the applicants have stated that they have been deliberately failed in the test, they have not been able to establish their aforesaid allegation excepting the points that they were not given full one hour for the test and the machines given to them were not properly functioning. It may also be stated that even though the applicants have stated that the respondents have not acted in accordance with the directions of this Tribunal passed in the OAs referred to above, they have not filed any contempt application. As they were aggrieved by the impugned order, they filed the instant O.A. for redressal of their grievances and seeking reliefs as stated in para 1 above.

5. This O.A. has been challenged by the respondents on the ground of estoppel, waiver, acquiescence as well as on merit. It is stated that these applicants along with some others, who were appointed on similar conditions, were given year's time so that they may pick up the required speed. A speed test was conducted on 25.2.1995 by a Selection Committee of technical experts and senior officers. As 11 Data Entry Operators and the applicants failed in the speed test, their services, as such, were terminated with effect from 31.3.1996. In pursuance to the order of this Tribunal passed in O.A.173/95 (Annexure-6), the applicants of that O.A. were re-appointed as Data Entry Operator with effect from 13.2.1996 with the condition that they should attend the minimum speed of 8000 key depressions per hour within six months. The speed test was

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held on 10.8.1996 in pursuance to the order passed in O.A.173/95. The same was conducted by a Committee of experts from NIC (Govt. of India), Electronic Data Processing Division of Registrar General and Census Commissioner of India and Directorate of Census Operations, Bihar. Out of 11 candidates, including the applicants, 8 qualified by acquiring the required standard but the applicants could not acquire the speed test of 8000 key depressions per hour which is required under the Recruitment rule. For the applicants, another speed test was held on 5.9.1996 in terms of the order of this Tribunal passed in O.A. 377/96 as at Annexure-14. While denying the allegation of the applicants that they were not given one hour for the test and the machines were not properly functioning, the respondents have pointed out that the applicants failed to qualify in the key depression test as is clear from the result of the test annexed at Annexure-A/1. It is pointed out that the test was conducted in live conditions and the machines were in proper working order as per the certificate given by the supplier which is at Annexure A/II. It is stated by the respondents that the appointment of the applicants was purely on ad hoc and provisional basis with the explicit condition that they have to attain the speed of 8000 key depressions per hour. They were given due opportunity for acquiring the same but they failed to qualify in the test, as a result of which their services were terminated with effect from 13.8.1996.

6. We have heard the learned counsel for the parties and examined the materials on record. Before we

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further proceed in the matter, it would be appropriate to refer to relevant provisions of Recruitment Rule for the post of Data Entry Operator Grade 'B' which is at Annexure-2. Following ~~relevant~~ educational and other qualifications are prescribed for direct recruitment to the post of Data Entry Operator Grade 'B':-

- (a) Degree from recognised University or equivalent.
- (b) Should possess a speed of not less than 8000 key depressions per hour for data entry work. The speed of 8000 key depressions for data entry work is to be judged by conducting a speed test on the Electronic Processing Machine by the competent authority. The selection, according to rule, is to be made on the basis of result of speed test on key depressions for data entry work.

7. It is pointed out by the applicants that some relaxation was given to S.C. and S.T. candidates in the matter of key depression ^{test} ~~test~~ as a result of which for them 8000 key depressions per hour was reduced to 4500 key depressions per hour but the said relaxation was valid upto 31st March, 1994. In the instant case, the applicants were appointed as Data Entry Operator Grade 'B' in March, 1994 but they appeared for the test only from 1995. Therefore, the relaxation clause is not applicable in case of the applicants even though they belong to S.C./S.T. category. In all earlier examinations, the applicants have not been able to secure the required standard of 8000 key depressions per hour. They were given opportunities to re-appear in the Key Depression test

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in terms of the order passed in O.A. 377/96 (Annexure-14).

In the said O.A. it was submitted by the applicants that key boards were faulty and the applicants had brought the same to the notice of the respondents and had requested that they may be supplied with another Key Board for taking the test. They had also stated that they were given only 15 minutes to undergo the test in question. It was also submitted by them that their services had been terminated with effect from 13.8.1996.

The observation of the Tribunal was that the only remedy available to the applicants now is to undergo another test in live condition, where they will have machine in proper working order duly certified by the supplier of the machine. Accordingly, the respondents were directed that the applicants of the said O.A. should be put to a test for one hour, only then their proficiency in the Key Board Depressions can be assessed. If they qualify the test and secure speed of 8000 key depressions per hour for data entry work, they should be taken back in job which they were holding earlier. The said O.A. was, accordingly, disposed of. In pursuance to the said order in the said O.A., the applicants were asked by the respondents to appear in speed test on 10.8.1996 which was subsequently shifted to 5.9.1996 in which they appeared. However, as per the result, they failed in the test as they failed to secure the required key depression standard of 8000 per hour. It is the allegation of the applicants that they were not given one hour for the test but it was only 45 minutes which has been denied by the respondents. The applicants are stated to have submitted their representations on 5.9.1996 which are

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at Annexure-15 series stating therein that the questions were not clearly legible as they were in pencil and the test was conducted in four batches which led to ~~loss~~ of time. In the aforesaid circumstances, the applicants requested the respondent concerned to hold a test in one batch for one hour so that they can achieve the requisite standard of 8000 key depressions per hour. There is nothing to indicate as to what action was taken by the respondents on the representation(s) of the applicants as at Annexure-15 series. It is also noted that while in the O.A. it is alleged that the machines were not functioning properly during the test, nothing is mentioned about it in the representations at Annexure-15 series. On the other hand, the supplier of the machine vide certificate at Annexure-A/II attached with W.S. has certified that the machine is working properly. The certificate was given on 5.6.1996 itself. The direction of this Tribunal in O.A.377/96 was that the test was to be taken in live condition and the machines should be in proper order duly certified by the supplier of the machines. Therefore, so far as the allegation of the applicants regarding working of machine is concerned, it is not tenable.

8. It was submitted by the applicants that on certain days during their normal work, they were able to achieve the required standard. However, as they were given only 45 minutes time on 5.9.1996, they were not able to achieve 8000 key depressions which is required to be done per hour. During the hearing, therefore, it was submitted that if the matter is

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considered in proportionate terms, the applicants had achieved the standard because their achievement has to be considered in the light of the fact that they were given only 45 minutes time for the test. It may be pointed out that there is no such provision in the Recruitment Rule. The requirement is 8000 key depressions per hour which cannot be judged in proportionate terms. One has to be given one full hour for the test and then judge his ability with reference to the required standard which is 8000 key depressions per hour.

9. While denying the allegation of the applicants that they were not given one hour for the test, the respondents have pointed out that the test was conducted from 11.50 A.M. to 12.50 A.M. which has been mentioned at Annexure-A/III series. The applicants had signed the concerned documents as referred to in Annexure-A/III series. However, the respondents have not rebutted the allegation of the applicants that the test was taken in four batches which has resulted in ~~loss~~ of 15 minutes. While it is ~~admitted~~ position that as per Recruitment Rule one has to secure minimum speed of 8000 key depressions per hour, it has ^{also} ~~to~~ be ensured that the said time is given for the test. As there appears to be a grey area on the question whether one full hour was given to the applicants or not, we feel that it would be appropriate that one more opportunity is given to the applicants to appear in the test as per Recruitment Rule.

10. We have considered the entire matter in the light of submissions made by the learned counsel for the parties and the materials on record. In view of the

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above analysis of the case, we dispose of this O.A. by directing the respondents to give one more opportunity to the applicants to appear in Key Depression test as per the prescribed Recruitment Rule and ^{thereafter} pass appropriate order in the matter on the basis of the said test. This exercise should be completed within a period of three months from the date of receipt of a copy of this Order. No order as to the costs.

Lakshman Jha
(Lakshman Jha)
Member (J)

L.R.K.Prasad
(L.R.K.Prasad) 17.12.99
Member (A)

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