

Central Administrative Tribunal

Patna Bench, P a t n a

O.A.No.: 573 of 1996.

(Patna, this Wednesday, the 2nd Day of June, 2004).

C O R A M

Hon'ble Smt. Shyama Dogra, Member (Judicial).

Hon'ble Shri Mantreshwar Jha, Member (Administrative).

Tribhuwan Jha, S/o Late Radhika Raman Jha, aged about 40 years 8 months, resident of village & Post Nawada, P.S.: Bahera, District Darbhanga, at present Lower Division Clerk, office of the Director of Census Operations, Bihar, Boring Canal Road, Patna-800 001. APPLICANT.

By Advocate :- Shri Amit Srivastava.

Vs.

1. Union of India through the Secretary, Ministry of Home Affairs, Government of India, New Delhi.
2. The Registrar General of India, Botah House, Annex, 2/A Mansingh Road, New Delhi-110 011.
3. Joint Director of Census Operations, Bihar, Boring Canal Road, Patna-800 001.
4. Dy. Director of Census Operations, Bihar, Boring Canal Road, Patna-800 001. RESPONDENTS

By Advocate :- Shri V.M.K.Sinha.
Sr. Standing Counsel.

O R D E R

Shyama Dogra, Member(J) :- This OA has been preferred by the applicant for directions to the respondents to post the applicant on the post of Junior Stenographer w.e.f. 06.12.81 with all consequential benefits and treat him on the parent post of Junior Stenographer from the post of Lower Division Clerk (L.D.C. in short) while treating the said period to be on duty on the post of Jr. Stenographer for the purpose of determining the seniority and payment of all the legal dues after regularising his services as Jr. Stenographer w.e.f. 30.04.1981 with all service benefits.

2. While praying for aforesaid relief, the main contention of the applicant is that due to suppression of certain facts by the respondents concerned, his case for regularisation on the post of Jr. Stenographer has been thrown out as the applicant was not required to undergo any kind of test to be conducted by Staff Selection Comm

Commission as per Rules on the subject and due to wrong averment made by the respondents, he was compelled to undergo such tests and being not qualified said test was not regularised as such and was left with no alternative but to accept the post of L.D.C. though he had been performing the duties of Stenographer duly appointed by competent authority i.e., Director of Census Operations, after appearing in the competitive examination of typewriting, Short-hand and viva-voce.

3. Before coming to the main matter, it is relevant to give brief history of the applicant's case.

4. The applicant was appointed on adhoc/ temporary basis on the post of Stenographer by respondent i.e., Director of Census Operations, Bihar, Patna, vide memo dt. 30.04.1981 on the basis of selection through a competitive examination for typewriting, short-hand & viva-voce held by a duly constituted recruitment committee for the candidates sponsored by the Employment Exchange, Patna.

5. After serving for more than four years as such, the applicant applied on 25.06.1984 to concerned respondent to make him permanent on the said post of Stenographer. The Deputy Director of Census Operations, Bihar, Patna, issued a circular dt. 26.09.1984 (Annexure-A/5), whereunder, the applicant was required to appear and qualify again at the examination conducted by the Staff Selection Commissioner (SSC in short) for the said post.

6. The applicant appeared at the examination held by the SSC, Allahabad, but could not be selected. Consequently, he was terminated by Dy. Director (Respondent no.4), Patna, by order dated 05.12.1986.

7. The said order of termination was challenged by the applicant in OA 51 of 1987 (Annexure-A/32) with prayer as under :-

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"(i) This Hon'ble Court be pleased to set-aside the order dt. 05.12.1986 which was notified in the newspaper on 07.01.1987 by which the service of the petitioner as a Stenographer in the Census Directorate was terminated.

(ii) This Hon'ble Court further be pleased to allow the petitioner to appear in the special qualifying examination which is being conducted by Staff Selection Commission and which is scheduled to be held on 08.03.1987."

8. The said OA 51 of 1987 was, however, dismissed on 16.08.1989 (Annexure-A/32-A). The applicant moved the Hon'ble Supreme Court by filing SLP No. 13374 of 1989 and the same was also dismissed by order dt. 11.12.1989 with certain observations as under :

"However, it is open to the petitioner to make a representation to Government for consideration of his case for regularisation as Lower Division Clerk, if that has not already been considered."

9. Accordingly, applicant preferred various representations but the same were lastly rejected vide order dt. 15.05.1990 while denying his prayer for his regularisation as L.D.C. which compelled the applicant to file another O.A. 420 of 1990 (decided on 10.04.1992) whereby, above referred impugned orders of rejection of his representations were quashed with directions to re-engage the applicant as temporary LDC and to give him a chance to appear at the next selection test conducted by the SSC for the said post and on succeeding to consider him for being appointed to a regular post of LDC but without salary and pay for the period he was out of job.

10. In pursuance of this order, the applicant was re-engaged as temporary L.D.C. but his prayer for appearing in the test for Clerk grade examination 1992 to be conducted by SSC was rejected on the ground the applicant being over-age vide Annexure-A/13 without taking

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into consideration the directions of the Court to give him a chance for taking said examination.

11. Thereafter, in 1993 & 1994 for one or the other reason the applicant was not allowed to ^{appear in} ~~take~~ the examination for the said post.

12. Then again applicant filed OA 528 of 1993 seeking directions therein to regularise the services of the applicant as a permanent LDC and to give him the benefit of notional continuity of his service w.e.f. 05.12.1986, the date of his termination from the post of Stenographer and to exempt him from appearing in the SSC examination. The said OA was allowed vide Annexure-A/15 on 24.05.1995 in view of the letter sent by one Shri R.K.Bhatia, Deputy Director to Joint Director of Census Operations, Rajasthan, Jaipur, the reference thereof was made in one OA 500 of 1993 & OA 512 of 1993 filed by one Iqbal Hussain and Rajendra Prasad Sharma respectively who were also similarly situated persons as (Annexure-A/28) the applicant was. In the said letter, it was informed by Dy. Director that in case, any of the officials had already passed the typewriting test he need not be put to type-writing test again.

13. Resultantly, the said OA 528 of 1993 was allowed with following order :-

"26. Accordingly, this application succeeds and is hereby allowed. The impugned office order of termination dated 11.04.1994 (Annexure-25 to this application) is quashed. The applicant shall be reinstated on the post of Lower Division Clerk/ Assistant Compiler w.e.f. 11.04.1994 and shall be entitled to receive the arrears of pay and allowances w.e.f. 11.04.1994 upto the date of reinstatement. The applicant shall not be required to undergo any typewriting test since he has passed the test at the time of ~~typewriting~~ entry in service as stenographer. The applicant shall be given notional continuity of service w.e.f. 30.04.1981, the date of his entry in Government

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service as stenographer. The applicant shall be given the notional seniority by deeming his continuity of service first in the grade of Stenographer from 30.04.81 to 05.12.1986 and thereafter in the grade of Lower Division Clerk from 06.12.1986 till date.

27. As regards the salary and allowances for the period the applicant was out of job prior to being re-engaged as temporary Lower Division Clerk in pursuance of the order dt. 10.02.92 passed by this Bench in OA 420 of 1992 (Annexure-9 to this application), the applicant shall not be entitled to any payment for that period while he was out of job as already decided in the said order dt. 10.02.92 (Annexure-9 to this application).

28. The respondents are directed to reinstate the applicant on the post of Lower Division Clerk/Asstt. Compiler as a regular employee w.e.f. 11.04.1994 without requiring him to undergo any typewriting test. The compliance of this direction of putting the applicant back on the post of Lower Division Clerk/Assistant Compiler shall be made by respondents within one month of the receipt of this order. The arrears of pay and allowances w.e.f. 11.04.1994 till the date of reinstatement shall be paid within one month of the actual date of reinstatement. The notional seniority of the applicant as aforesaid shall be given immediately after his reinstatement and the applicant shall be given the benefits consequent upon reckoning his seniority as per the directions made hereinabove."

14. At present applicant has been working as Upper Division Clerk (UDC, in short) since 13.04.1999.

15. The pivotal issue now revolves around the point as raised by the applicant to the effect that due to suppression of facts by respondents while filing wrong averments in the earlier written statements, he was subjected to undergo tests on various occasions to be conducted by SSC particularly, letter dated 26.09.1984 (Annexure-A/5), whereas, it was factually incorrect in view of letter dt. 20.07.94 (Annexure-A/28) reference thereof has already been given in OA 528 of 1993.



16. It is contended by ld. counsel for the applicant that had this fact been brought to the knowledge of the court at the initial stage his OA 52 of 1987 would never had been failed which compelled him to left with no other alternative but to accept the post of LDC.

17. Otherwise also, as contended by ld. counsel for the applicant, the administrative instructions/circulars issued by respondent vide Annexure-A/5 dt. 26.09.1984 cannot override Rules and statutes on the subject, as no such conditions have been laid down in the Recruitment (Amendment) Rules, 1979 (Annexure-A/1) for Group 'C' and Group 'D' Posts office of the Director of Census Operations and Ex-officio Supdt. of Census Operations, Bihar and Director of Census Operations is the competent authority to appoint Group 'C' candidates in duly constituted DPC consisting of Director as Chairman and Deputy Director of Census Operations as Member. By virtue of these Amendment Rules, the earlier Rules of 1973 stood amended to the extent as envisaged in Amended Rules of 1979.

18. While referring to these Rules the submissions of the applicant is that these Rules nowhere prescribes the requirement of undergoing any kind of test to be conducted by SSC and appointment is to be made by Director who was the appointing competent authority of the applicant and said fact has also been observed by this Court in OA 51 of 1987, decided on 17.08.1989 (Annexure-A/32-A).

19. In support of his contention with regard to injustice being caused to the applicant because of mis-statement of facts, the ld. counsel for the applicant has placed on record copy of decision passed by Hon'ble Apex Court cited in 2003(4) PLJR(SC) 208 (Ram Chandra Singh Vs. Savitri Devi & Ors.) and pleaded that in view of fraud being played by respondents, the applicant is entitled for the relief as claimed in the present OA. He has also cited AIR 2000 SC 1165


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(Insurance Co. Vs. Rajendra Singh); AIR 1997 SC 259 (Mehrunisa Vs. T.N.P.S. Commissioner) and AIR 1978 SC 1283 (Workmen C.P.Trust Vs. Board of Trustees) in support of his submissions as made hereinabove.

20. Respondents have filed written statement and contested the claim of the applicant on the ground that the applicant was appointed on adhoc and purely temporary basis as Jr. Stenographer and he was to undergo the test conducted by the SSC for his regularisation. The applicant appeared in the test in 1985, but failed in the same and; therefore, his services were terminated and he had lost his claim for his reinstatement in the Hon'ble Apex Court in the SLP referred to hereinabove as per contentions raised by the applicant. Therefore, he cannot now re-open that chapter for his re-engagement as Jr. Stenographer from the very initial stage.

21. The respondents have admitted that no such condition was imposed in the letter of appointment of the applicant as Jr. Stenographer at the time of his adhoc appointment. There is also no mention about this in the Recruitment Rules. However, for the regular appointment the applicant was required to qualify the test conducted by the SSC which is a normal Rule/Instructions of the Government and the same is not required to be notified/intimated to the adhoc appointee in his appointment letter. On appearing in the test, the SSC selected the suitable candidate and accordingly, the Directorate of Census Operations appoints the candidate as he being the competent authority.

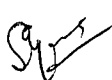
22. Moreover, it is further contended by the respondents that in pursuance of the order passed by this Court in OA 528 of 1993 (Annexure-A/15), the applicant has already been appointed to the post of LDC and presently he has been working on the promotional post of UDC on regular basis. Therefore, nothing survives in this OA for redressal of his



grievance as made by the applicant.

No clear averments have been made by the respondents as to why and under what circumstances two kinds of letters have been issued by the Deputy Director vide Annexure-A/5, dated, 26.09.1984 and letter dt., the 20th July, 1994 (Vide Annexure-A/28), while imposing the condition to the applicant to qualify the test to be conducted by SSC and not imposing such condition to other incumbents working in the Directorate of Census Operations, Rajasthan, Jaipur, to the effect that officials who have already passed the typewriting test need not be put to pass the typewriting test again as the cases of similarly situated persons have been decided by this Bench in OA 500 of 1993 and OA 512 of 1993, decided on 04.04.1995 (Iqbal Hassan & Ors. Vs. Union of India & Ors.), wherein, the said letter issued by the Deputy Director, Shri R.K. Bhatia, has been referred.

23. The applicant has filed rejoinder and reiterated his submissions as made in the OA with further submissions that the mis-statement of facts by respondents at relevant point of time has put him under lot of hardship mentally as well as financially and the same has been further aggravated while respondents not complying with the direction of the Court issued in OA 528 of 1993 wherein the applicant was held to be entitled for consequential benefits.



24. The applicant has also raised plea of discrimination in this regard in view of the admitted fact that he is the seniormost in his Department and he has been performing the duties of ~~the~~ full fledged stenographer since 1992 without break but without any monetary gain and one ^{post} of Jr. Stenographer is still lying vacant since 1983. But inspite of applicant being senior, on recommendation of DPC, one Suresh Rabidas has been promoted to the post of Confidential Asstt. on 12.05.2000 vide Annexure-A/29. Similarly, one Hassan Azad has been promoted as such in 1990 (Annexure-A/30) and applicant has been ignored for promotion to the post of Sr. Stenographer against vacancy lying in the Deptt. since 30.08.1990 and has further been ignored for promotion to the post of Confidential Asstt.


25. The applicant has again tried to challenge the validity of his termination as Jr. Stenographer in his rejoinder due to suppression of valuable information from the Court as detailed hereinabove in clear violation of Rules and Regulations on the subject.

26. No reply or written statement has been filed by respondents in rebuttal to the submissions made by the applicant in the rejoinder.

27. We have heard ld. counsel for the parties and carefully gone through the record.

28. During the course of the arguments, an opportunity was granted to respondents to place on record any Rules or Regulations which prescribed provisions for such test as undertaken by the applicant conducted through SSC for the said post.

29. Learned counsel for the respondents have placed on record various letters issued from time to time by Ministry of Home Affairs, O/o the Registrar General, Govt. of India, with regard to Recruitment to Group 'C'



non-technical posts through the SSC.

30. In reply to this, the averment as made by learned counsel for the applicant was that these instructions cannot override statutory provisions and moreover post of Jr. Stenographer has not been brought within the perview of these instructions being technical post of Group 'C'.

31. After careful perusal of these letters dt. 30.06.1979, 08.05.1979, 24.04.1979, 31.03.1979, 5.5.79 & 21.05.1999 we find force in the contention of the applicant as post of Jr. Stenographer has not been shown in the posts as highlighted in these letters. Only post of Asstt. Compiler has been mentioned to be filled up through SSC.

32. Therefore, it is evidently clear that in absence of such rules quo the post of Jr. Stenographer, Rules of 1973 with Amended Rules 1979 (Annexure-A/1) are to be taken note of for the decision of present case, wherein, Director, Census Operations, has been shown as to be Chairman of the DPC to be constituted for Group 'C' post.

33. After perusal of Rules vide Annexure-A/1 and the letters placed on record, the things are more clear in this regard that there was no requirement for undergoing test for the Group 'C' post at the relevant point of time and in view of this, this Court has already given directions in OA 528 of 1993 while observing that the applicant was not required to undergo any typewriting test since he has already passed the test at the time of entry as Stenographer. The respondents were also directed to give notional continuity of service to the applicant w.e.f. 30.04.1981.

34. This Court has also taken note of the said letter sent by Shri R.K. Bhatia, (Annexure-A/28) therefore, the plea of the applicant that this letter was not in his knowledge at that time is not convincing as the orders passed by this Court in OA 528/93 are passed on the basis of the applicant being similarly situated as one Gulam Nabi in whose case the reference of said

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letter has been made for grant of relevant relief as prayed for by him for regularisation of his services as LDC in the orders passed by the Jaipur Bench of CAT in his case.

35. Even the applicant has not given any reasons as to why he has not pressed this point of suppression of facts by the respondents in his earlier OA 528 of 1993. Therefore, his plea cannot be accepted now at this stage particularly, in view of the fact that he has already been given the said relief by this Court while exempting him to undergo any kind of test for his reinstatement on the post of LDC/Assistant Compiler.

36. Now, coming to the prayer of the applicant to post him on the post of Jr. Stenographer w.e.f. 06.12.1986, this Court is constrained to pass any kind of order on this prayer for the simple reason that the termination of the applicant as Jr. Stenographer has already been set at rest by the Hon'ble Apex Court in SLP preferred by the applicant as referred to hereinabove with certain observations with regard to considering the case of the applicant for the post of LDC. Therefore, that chapter of his posting on the post of Jr. Stenographer cannot be now re-opened in the present OA particularly, in view of the fact that almost every relief has been granted by this Court in OA 528 of 1993, wherein, notional seniority has also been directed to be given to the applicant from his initial date of his appointment i.e., w.e.f. 30.04.1981 till 05.12.1986 and thereafter, in the grade of LDC from 06.12.1986 till date. So far as the back-wages are concerned this Bench has already observed that since the applicant was out of job, ~~therefore~~ he was not entitled for any arrears for the said period.

37. Even this Court has observed that the notional seniority of the applicant shall be given immediately after his reinstatement and the applicant shall be given the benefits consequent upon reckoning his seniority as per

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the directions made hereinabove and perhaps in view of this the applicant has further been promoted to the post of UDC.

38. Moreover, the applicant has already accepted the verdict of this Court given in OA 528 of 1993 while joining as LDC and otherwise also best course, in our opinion, was to make these averments with regard to suppression of facts so available to the applicant at the time of hearing of earlier OA 528 of 1993; or by filing R.A. and the applicant has not chosen that course at his own will. Therefore, his prayer for treating him as Jr. Stenographer cannot be accepted for the foregoing reasons.

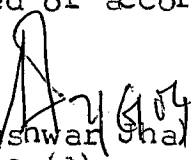
39. So far as the point of discrimination being raised by the applicant with regard to his promotion to the Sr. Stenographer and further promotion to the post of Confidential Assistant vis-a-vis his junior is concerned, as admittedly the applicant is the seniormost in the Census Department at Patna which is evident from the seniority list annexed with the OA as Annexure A/17. Therefore, the applicant is at liberty to file representation in this regard as it was not his one of the main prayers in the OA and the same cannot be looked into merely on the pleadings as made in the rejoinder.

On receipt of such representation, the concerned respondents are hereby directed to examine the case of the applicant particularly, with regard to discrimination, if any, being caused to the applicant for his further promotion to the post of Sr. Stenographer or Confidential Asstt., as the case may be while passing appropriate speaking and reasoned order in accordance with law within a period of three months from the date of receipt/production of a copy of this order.

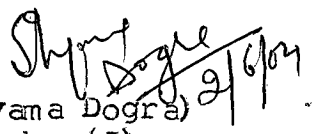
40. In view of the overall discussions, and observations and directions, as made hereinabove, we are of the considered opinion that the applicant has failed to make out his case

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to substantiate his submissions as made in the OA. Therefore, the present OA being devoid of merits is hereby dismissed and disposed of accordingly with no order as to costs.


(Mantreshwar Shal)
Member (A)

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(Shyama Dogra)
Member (J)