

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
OA No. 455 of 2006
MA 384/2006

Patna, dated the 9th October, 2006

CORAM: The Hon'ble Ms. S. Srivastava, M[J]
The Hon'ble Mr. S.N.P.N. Sinha, M[A]

1. Nagina Chaudhary, son of Late Anandi Chaudhary, Village Kandhouli, PO Nanouri, PS Hilsa, District Nalanda.
2. Ajit Kumar Kullu, son of Late Joseph Kullu, Village Khamahan Toli, PS Kombegi[Thethaita Nagar], District Gumla.
3. Janak Kumar Prasad, son of Late Badri Prasad, Village Ajad Nagar, PO/PS Maner, District Patna.

Applicants ..

By Advocate: Shri Gautam Bose.

versus ..

1. The Union of India through the Secretary, Ministry of Home Affairs, North Block, New Delhi.
2. The Deputy Director [EDP] office of Registrar General of India, Data Processing Division, Pushpa Bhawan, New Delhi.
3. The Joint Director, Census Operations, Bihar, Boring Canal Road, Patna-1.
4. The Deputy Director, Census Operations, Bihar, Patna, Bihar State Co-operative Bank Building, Ashok Rajpath, Patna-4.
5. The Assistant Director, office of the Director of Census Operations, Bihar, Boring Canal Road, Patna-1.

Respondents ..

By Advocate: Shri S.C.Jha

ORDERS.N.P.N.Sinha, M[A]:

The present application has been filed against an order dated 18.2.2000 from Assistant Director, Census Operation, Bihar, by which the applicants' [3 in number] request for giving them training to improve their speed in key depression was rejected. Applicant no.1 was initially appointed as Coder with effect from 22.11.1991 to 1.1.1994, no.2 from 15.11.1991 to 28.2.1994 [in Census Department, Bihar, Patna] and no.3 as Complier from 26.6.1991 to 31.8.1992 [in the office of Regional Deputy Director, Census Operation, Ranchi]. It is further claimed that applicant no.1 was subsequently appointed as temporary Data Entry Operator Grade 'A' from 4.2.1994 [and as DEO Grade 'B' from 1.3.1994], no.2 as DEO Grade 'B' from 1.3.1994 and no.3 as DEO Grade 'B' from 21.3.94. Services of all the three were terminated after 30.6.1994. The requirement for DEO as laid down in GOI, GSR No.66[2.2.1991] is a speed of not less than 8000 key depressions per hour apart from other conditions. For candidates belonging to Scheduled Tribes and Scheduled Castes, Government of India made a relaxation by its Notification No.18/14/93 dated 1.2.1994 to the effect that such candidates will be informed through the appointment letter itself that their progress should be monitored monthly. If during the first six months of their appointment, they do not pick up the required speed of 8000 key depressions, they should be advised and helped to pick up during the next six months. They should be given a further course of six months with the stipulation that they must pick up the desired speed at the end of one

year; with this condition provisional appointment letter may be issued to such candidates who achieved the key depression speed of 4500 per hour or more. Applicant no.1 and 2 belong to Scheduled Caste and no.3 to Scheduled Tribe. They had achieved the speed of 4500 depressions, hence provisional appointment letters were issued to them [20.4.94] along with other candidates. In regular monthly monitoring, it is claimed that they did achieve more than 8000 depressions per hour. In spite of this, they were made to appear at a test and were illegally declared unsuccessful.

2. It was further said that Govt. of India restored the scheme of the said concession even in the year 2000 after keeping the same suspended for a couple of years. The applicants thereafter challenged the holding of test on the ground, *inter alia*, of defective, machine and question papers in OA 173/95. The Tribunal directed the respondents to hold fresh test. This was done but the defects, allegedly, persisted. The applicants moved the Tribunal again in OA No.377/96 in which the respondents were directed to hold fresh test again after removing the alleged defects. A fresh test was held in which the applicants were deliberately made to fail as was claimed. The applicants filed another OA No.644/96 in which the Tribunal directed the respondents to hold fresh test again. The applicants thereafter made a representation to the Registrar General annexing a copy of the Tribunal's order and prayed that they should be given three months' training as per Government of India circular and further informed that no work had been taken from them on Computer for the last three years. The representation was arbitrarily rejected. On 8.8.2000, however, a fresh test was held in which the

questions given to them were a special package on which, it is claimed, they had never worked. A fresh OA No.223/01 was filed before the Tribunal which was, however, dismissed as it was held to be hit by the principle of res judicata and the applicants had failed to make any specific case of mala fide against the authorities.

3. The applicants thereafter filed CWJC No.16480/01 before the Hon'ble High Court, Patna which was, however, dismissed. The present application seeks a direction to the respondents to re-engage the applicants after giving them necessary training along with quashing the order of termination.

4. An MA No. 384/06 has been moved simultaneously for condonation of delay. It is said therein that the applicants ought to have moved the Tribunal latest by 17.2.2001 but they being without job since 1996 were extremely poor.

5. It was said on the respondents' behalf that the applicants have moved this Tribunal on the same facts of the case for the fifth time. In the last OA No.223/01, their case was dismissed. The decision was upheld by the Hon'ble High Court with the observation that the petitioners could not meet the efficiency whereas they were given the latitude of attaining the proficiency repeatedly. It was further said that they were appointed in the first instance on contract appointment on consolidated payment for a period clearly indicated. Subsequent appointment was also on ad hoc and purely provisional basis up to 30.6.1994 as mentioned clearly in the memo dated 20.4.1994. It was further mentioned that the

provisional appointment was made with the condition that the candidates will achieve the speed of 8000 key depressions per hour within a period of six months from the date of appointment, failing which the appointments will be cancelled.

6. From the materials on record and the arguments tendered, it is evident that the memo No.18/14/93 dated 1.2.1994 giving instructions with relation to a special recruitment drive for SC/ST mentions that recruitment rules for Direct Data Entry Operator for Scheduled Castes and Scheduled Tribes have been relaxed with the provision for reduction of the qualifying speed [4500 key depressions per hour] and monthly monitoring and advice and help for achieving the derived speed [8000 key depressions per hour] for candidates being appointed before March 31, 1994. These concessions were withdrawn with effect from 22.7.97 [DoPT OM No.36012/23/96 dated 22.7.97] but were restored with effect from 3.10.2000 [DoPT OM No.36012/23/06 dated 3.10.2000]. The matter came before this Tribunal in OA No.173/95 for the first time. It was observed by the Tribunal that the applicants were appointed till 30.6.1994 on purely ad hoc basis but their services continued till March 1995. Speed tests were held thrice on 21.1.95, 25.1.95 and 25.2.95. The first two were subsequently cancelled due to some mechanical/technical problems. At the test held on 25.2.1995, the applicants failed to achieve the desired speed as laid down in the memo mentioned above. Out of 17 Operators who were appointed relaxing the requirement, six did qualify and are therefore continuing in service. The Tribunal found no mala fide in the cancellation of the first two tests for some mechanical/technical

problem. Candidates who voluntarily appeared in a test cannot challenge the test after having failed in it, nor can they take the plea that it was not necessary for them to appear in it.[AIR 1986 SC 1043 & AIR 1995 SC 1085]. The Tribunal, therefore, declined to quash the order of termination of services. But considering the fact that the applicants were recruited pursuant to a special recruitment drive to fill up backlog vacancies of SC/ST, it was held that they be given a further chance, the respondents should consider re-appointment for a period of six months at the end of which a test should be held and only those who secure the minimum prescribed speed of 800 key depressions per hour should be retained further in service. The applicants thereafter failed at the test held pursuant to the Tribunal's direction. They filed OA No.377/96 in which the Tribunal observed that their services were terminated with effect from 13.8.1996 and gave the direction to the respondents to hold another test after which those qualifying and securing minimum speed of 8000 depressions should be taken back in job. Accordingly, a test was held in which the applicants failed. Another OA No.644/96 was filed in which the Tribunal observed that the applicants' services were terminated with effect from 13.8.1996 and directed the respondents to give one more opportunity to the applicants to appear at another test. This was complied with, the applicants failed at the test so held. Yet another OA No.223/01 was filed thereafter in which the Tribunal held that the case was hopelessly hit by the principle of res judicata. The Hon'ble High Court in CWJC NO.16480/01 upheld the decision of the Tribunal.

7. From the materials on record and the arguments

tendered, it is evident that the applicants were given extensions and opportunity repeatedly to prove their proficiency in data entry operation at which they could not succeed to achieve the desired minimum level. The finding of the Tribunal that the matter was hit by the principle of rest judicata and the Hon'ble High Court upholding the decision leave no justification for any interference in the matter.

8. The application has no merit and is, in the result, dismissed. This order also disposes of MA 384/06. No order as to costs.

[S.N.P.N.Sinha]MA

cm


[S.Srivastava]MJ