

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Second Floor,
Commercial Complex,
Indiranagar,
BANGALORE- 560 038.

Dated: 22 NOV 1994

APPLICATION NO: OA 510 of 1994

APPLICANTS:- Shri. M. Lakshminarayana
V/S.

RESPONDENTS:- Jt. Director of Census, B'lore & 60s.

- T. 1. Dr. M. S. Nagaraja, Advocate, No. 11, 11th floor
Surge the Complex, 1st cross, Gandhinagar, B'lore - 9.
2. Shri. G. Shantappa, Addl. G. Commr., High Court Bldg, B'lore - 1
3. Shri. M. R. Achar, Advocate, 1074-75, 11th Main, 4th cross,
Srinivasanagar, 1st phase - B'lore - 50.
4. Shri. M. Ram Bhet, Advocate,
Charitra, No. 20, 6th cross, 8th Main,
Vasanth Nagar,
Bangalore - 560052

Subject:- Forwarding of copies of the Orders passed by the
Central Administrative Tribunal, Bangalore.

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Please find enclosed herewith a copy of the ORDER/
~~STAY ORDER/INTERIM ORDER/~~ passed by this Tribunal in the above
mentioned application(s) on 17th November, 1994

Issued on

22/11/94



e/c

for

DEPUTY REGISTRAR
JUDICIAL BRANCHES.

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

O.A. NO.510/94

THURSDAY THIS THE SEVENTEENTH DAY OF NOVEMBER 1994

Shri V. Ramakrishnan ... Member [A]

Shri A.N.Vujjanaradhya ... Member [J]

N. Lakshminarayana,
Aged 38 years,
S/o Sri Narasimhaiah,
U-19, 5th Cross, Dayanandnagar,
Srirampuram,
Bangalore-21.

... Applicant

[By Advocate Dr. M.S. Nagaraja]

v.

1. The Joint director of Census Operations in Karnataka, 31/1, Mission Road, Bangalore-27.
2. The Registrar General of India, Government of India, Ministry of Home Affairs, New Delhi.
3. Union of India represented by the Secretary to Government, Ministry of Home Affairs, New Delhi.
4. G. Vijayakumar,
5. Smt. T. Indrani,
6. Smt. Vasanthamma,
7. Smt. G.S. Rukmini,

All working as Data Entry Operators,
Office of the Director
of the Census Operation in Karnataka,
21/1, Mission Road, Bangalore. ... Respondents

[By Advocates Shri G.Shanthappa for R-1 to 3
Shri M.R. Achar for R-4 to 6 and
Shri Ram Bhat for R-7]

O R D E R

Shri A.N. Vujjanaradhya, Member [J]:



1. The applicant who is aggrieved by his non-selection as Data Entry Operator ['DEO' for short] has made this application challenging the selection of Respondents ['R' for short] No.4 to 7.

2. The case put forth by the applicant is as below:

The applicant who has been working as Coder in the Census Department had applied to the post of DEO Grade B in pursuance of the advertisement dated 29.9.1993 [Annexure A-3]. One of the conditions laid down in the notification was that candidates should possess a speed of not less than 8000 key depressions per hour for data entry work. 106 members among whom there were retrenched candidates belonging to SC/ST were called for interview on 28.1.1994 out of whom 64 had attended the same. The Registrar General had instructed that in respect of retrenched candidates the eligibility was reduced to 6000 key depressions and 4500 depressions for SC and ST candidates which is the minimum required for selection. The 64 members who attended were divided into four batches. The first batch who attended the test for 15 minutes for practice walked out in protest and did not take the test whereas the other 3 batches took the test. Subsequently 26 members of the first batch were given a different test and R-4 to 7 were selected. Of this, R-7 Smt. G.S. Rukmini had not even applied for the post and was directly sponsored by the Employment Exchange['EE' for short]. On account of pressure

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and extraneous considerations, R-4 to 7 were favoured and they have been appointed ignoring all canons of fairplay and equal treatment. The applicant who belongs to SC community was thus discriminated and as no uniform system was followed, he has been denied the opportunity. Hence the application seeking to quash the appointments of R-4 to 7, to direct the official respondents to cancel the process of selection in pursuance of notification dated 29.9.1993 and to redo the entire process on the basis of uniformity and equal treatment to the applicant and for costs.

3. The official respondents deny the case of the applicant and contend that there was no discrimination or denial of equal opportunity to the applicant and if at all the applicant had made any representation, he would also have been allowed to take the test along with the first batch of candidates and that anyhow R-5 to 7 being ST community, the applicant is not entitled to challenge their selection. R-4 to 7 who have filed separate reply also contend that applicant being a SC is not entitled to question the selection of ST candidates and that the department had followed a uniform procedure of selection and there is no discrimination whatsoever.

4. We have heard Dr. M.S. Nagaraja, learned counsel for the applicant, Shri G. Shanthappa for R-1 to 3, Shri M.R. Achar for R-4 to 6 and Shri Ram Bhat for R-7 and we have also perused the records produced by the Department.




5. The applications were invited by notification dated 29.9.1993 to fill up 11 posts of DEO in the Census Department out of which 4 posts were reserved for STs, 3 posts were reserved for SCs and 4 posts for general candidates. In addition to this notification, the Department had also requested the EE, Bangalore, to make available the list of candidates eligible for the post but no other EE was requested to provide such list of candidates though the selection was on an All India basis. In respect of retrenched employees and SC/STs certain concessions were shown about the Key depressions. Though uniform test was proposed to be followed, the persons who attended the test were divided into four batches of which the first batch consisted mainly of the persons who were in and around Bangalore and other three batches of candidates were from different places. Of these four batches, the candidates of the first batch walked out and did not take the test on the ground that they were required to be given the test similar to the one that was conducted during August 1993, whereas the candidates of the other three batches attended and participated in the test. The request of the first batch was however, considered and because it was not possible to arrange for the test immediately they were permitted to have such a test subsequently on 2.2.1994 on the consideration that the first batch candidates were mostly retrenched census employees who were mostly in and around Bangalore. The applicant was not from the first batch and therefore it is the contention

of the learned counsel that he has been discriminated against by the candidates who had qualified for selection in that batch. So far as R-7 is concerned her name was sponsored by EE and she had not even made an application for selection. Her selection is challenged on the ground that it was irregular and improper.

6. The test conducted during August 1993 consisted of the procedure that on pressing the correct key and after completing the total depressions in the field the cursor will move to the next field only after the enter key is pressed. In the test held on 28.1.1994 the procedure adopted was that on pressing the correct key and after completing the total depressions in the field the cursor will move automatically to the next field. Thus the difference between the test conducted in August 1993 and the one held on 28.1.1994 is that one was required to depress the 'enter key' to move to the next field in the test held in August 1993 whereas that was not the case in the test held on 28.1.1994 and there was no necessity to press the 'enter key' to go to the next field. If at all the department had adopted uniform method and made the selection on that basis, the applicant would not have had any grievance to complain about his non-selection. Because the applicant and some others who were not selected were given one method of test and the first batch who had walked out had been given a different method of test though the ultimate effect and result may not indicate marked difference.



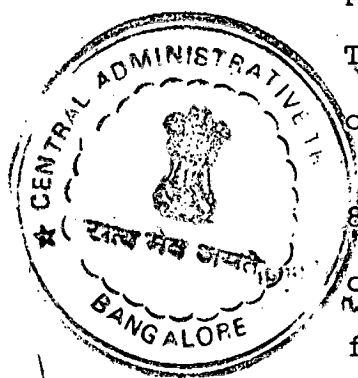
rence, still it has given room for the applicant to agitate and come out with the plea that he was discriminated against than those who took the test in the first batch. The fact remains that the uniformity in the test was not followed and the same has resulted in giving room for complaint by the persons who were not selected in subsequent batches. The first batch of candidates who had walked out of the test, were not required to be called again but having exercised the power of giving a different test to those persons as per their request, the same has resulted in some departure and resulted in denial of fairplay and reasonable opportunity to the applicant. As rightly contended by the learned counsel for the applicant, it is not the decision but the decision making process which has to be fair and reasonable as observed in RANJITH THAKUR V. UNION OF INDIA reported in 1988 SCC[L&S] 1. The first batch of candidates who had walked out of the test were able to get the test prescribed according to their desire which is demonstrative of there being no fairplay and equal treatment to all those that had applied and taken the test in subsequent batches. In our view the selection of the candidates from the first batch is not shown to be fair and reasonable by the Department. The candidates selected from the first batch are R-4 to 6 viz., Vijaya Kumar [SC], T.Indrani [ST] and Vasanthamma [ST]. It was clarified that R-7 Rukmini was selected out of the 4th batch and not from the first batch.



But her case stands entirely on a different footing.

7. It is now not in dispute that R-7 had not made any application for selection and her name was sponsored by the EE and she was permitted to take the test. This clearly is not in accordance with the notification issued by the Department. When this R-7 had not applied for the post, she was not entitled to take the test and the department having permitted her to take the test shows that there is discrimination and she was shown special favour. Therefore, her selection cannot be stated to be just and proper. It is the contention of the learned counsel for R-7 that the applicant who belongs to SC community cannot question the selection of R-7 because she belongs to ST community and therefore, the application in respect of R-7 cannot be sustained. This contention cannot be accepted as correct inasmuch as if there was no sufficient number of candidates for selection from out of ST quota, it was open for the Department to take action as per relevant rules and instructions to consider filling up the vacancy through other category. When it has come to the notice of the Tribunal that no proper selection process was followed in respect of R-7 such selection cannot be allowed to stand. Therefore, we are constrained to hold that selection of R-7 is improper and it will have to be quashed.

8. R-4 to 6 selected out of first batch in respect of which batch the test conducted is found to be not fair and just because it was one different than those



conducted in respect of other batches their selection will have to be found to be not in order. Consequently the selection R-4 to 7 will have to be set aside. The Department will have to be directed to conduct a fresh test giving opportunity to the applicant, R-4 to 6 and other unsuccessful candidates that had taken the test but not R-7 G.S. Rukmini who is not at all eligible.

9. In the result the application is allowed in part. Selection of R-4 to 7 as DEO is set aside. Official Respondents are directed to hold fresh test for DEO and give opportunity to the applicant, R-4 to 6 and all those belonging to the SC and ST who were not selected in second and subsequent batches except R-7 G.S. Rukmini and take proper decision as per rules. We note that R-4 to 7 belong to SC and ST category only and their posts are reserved for SC and ST and therefore the restriction. No order as to costs.

Sd/-

MEMBER [J]

Sd/-

MEMBER [A]



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[Signature]
22/11/44
Section Officer
Central Administrative Tribunal
Bangalore Bench
Bangalore

**In the Central Administrative Tribunal
Bangalore Bench
Bangalore**

ORDER SHEET

Review Application No. 1 of 1995
in DA 510/94

Applicant

Respondent

Jt Dir of Census Operations
B'lore & ors

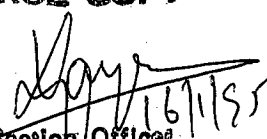
Sh N Lakshminarayana & ors

Advocate for Applicant

Advocate for Respondent

Sh G Shanthappa

Date	Office Notes	Orders of Tribunal
		VR MA/ <u>ANVMJ</u> 10th January, 1995 <p style="text-align: center;"><u>O R D E R</u></p> <p>1. Official respondents in O.A. No.510/94 have filed this Review Application seeking to review the order passed therein on 17.11.1994 on the main ground of not giving an opportunity to the candidates sponsored by the Employment Exchange ['EE' for short] would amount to discrimination and that, therefore, the department wants to extend the benenfit of the order to all the persons that were sponsored by the EE including the 7th respondent in the said O.A.</p> <p>2. In para 7 of our order dated 17.11.1994 wehave discussed and pointed out the reason why the</p>

Date	Office Notes	Orders of Tribunal
		<p>person or persons sponsored by the EE could be given opportunity. It is not disputed that those persons had not applied in pursuance of the notification for the post to which the applications were called for. Besides the selection is having all India ramification and no particular reasons are assigned for restricting the choice only to EE, Bangalore and not to any other EE in the country. Having regard to all these aspects we have found that the persons sponsored by the EE having not applied for the post are not entitled to be given an opportunity.</p> <p>3. In this view of the matter we do not see any merit in this Review Application and, therefore, we reject the same.</p>
		<div style="display: flex; justify-content: space-between;"> <div style="text-align: center;"> <p>Sd/-</p> <p>MEMBER [J]</p> </div> <div style="text-align: center;"> <p>Sd/-</p> <p>MEMBER [A]</p> </div> </div> <div style="text-align: center; margin-top: 20px;"> <p>TRUE COPY</p>  <p>Section Officer Central Administrative Tribunal Bangalore Bench Bangalore</p> </div>