

# **CENTRAL , ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH**

Original Application No.040/00237 of 2015

Date of Order: This the 6<sup>th</sup> Day of September, 2017.

**HON'BLE MOHD HALEEM KHAN, ADMINISTRATIVE MEMBER  
HON'BLE MR.S.N.TERDAL, JUDICIAL MEMBER**

## -Versus-

1. The Union of India represented by the Secretary to the Government of India, Ministry of Home Affairs, North Block, New Delhi-110001, Delhi
2. The Joint Secretary (BM-3) to the Government of India, Ministry of Home Affairs, North Block, New Delhi-110001, Delhi
3. The Accounts Officer, The Regional Pay and Accounts Office (Intelligence Bureau), Ministry of Home Affairs, Government of India having his office at Shillong-3, Meghalaya
4. The Directorate General, Shshastra Seema Bal (SSB) having his office at Directorate General, SSB, East Block-V, R.K. Puram, New Delhi-110066, Delhi
5. The Inspector General, Frontier Head Quarters, Sashastra Seema Bal (SSB), Nikita Complex, Khanapara, Guwahati-781022, Assam
6. The Deputy Inspector General (pers), Government of India, MHA Directorate General, SSB, East Block V, R.K.Puram, New Delhi-110066.

By Advocate Ms.G.Sutradhar, Addl.C.G.S.C.

**ORDER**

**Per Mr.S.N. Terdal, Member (J):**

This O.A. is filed seeking relief of setting aside the speaking order No.20/SSB/Pers-III/2014(1)2298-99 dated 10.3.2015 and setting aside the conditions of appointment of the Applicants as fresh

appointment in their offer of appointment and for a direction for counting their past services rendered in the office of the Commissioner (Border) towards computing their seniority, qualifying service for availing pensionary benefits, towards the grant of financial benefits under ACP/MACP, etc. and also for pay protection of their pay, each one of them was drawing at the time of their appointment in the SSB, with all consequential benefits.

2. The undisputed facts of the case are as follows:-

The Applicants were initially appointed in the year 1985-86 in the office of Commissioner (Border), Guwahati under the Ministry of Home Affairs, Government of India, in Group 'C' & 'D' posts in a temporary capacity with pay scale until further orders, fixing their pay under the Rules with a probationary period of 2 years. They continued until closure of the office of the Commissioner (Border) w.e.f. 29.2.2004. Before the closure of said office of the Commissioner (Border), Guwahati, the Applicants along with others had filed O.A. No.298 of 2002 before this Bench for regularization. This Tribunal vide order dated 8.8.2003 directed the Respondents to consider the request of the Applicants sympathetically. However, as stated above, the office of the Commissioner (Border) was itself closed by the orders of the Government w.e.f. 29.2.2004. On closure of said office, some of the

similarly situated employees filed O.A.No.65/2004 before this Bench seeking a direction to accommodate them in some other departments of the Respondents. The said O.A. was disposed of on 31.3.2004 with a direction to the Respondents to explore the possibility to accommodate them to some other department under their control as early as possible. In compliance of the said order, the Respondents accommodated them in Sashastra Seema Bal (SSB). However, in their appointment letter a specific condition was stated to the effect that their appointment will be treated as fresh appointment for all purposes. Aggrieved by the said specific condition, some of them filed O.A.No.131 of 2010 in the Hon'ble CAT, Patna Bench. The Hon'ble CAT, Patna Bench passed an order dated 11.11.2013. The operative portion of the said order is extracted below:-

“The Applicant served with the office of the Commissioner (Border) for long 16 to 20 years. It is not the case of the respondents that he or other locally recruited staff were engaged illegally or irregularly. Thus while their regularization might have been rejected but issue of applicability of CCS(TS) Rules and Redeployment of Surplus Staff Rules 1990 as also counting past services for legality admissible benefits including pension, needs a reconsideration by the competent authority at appropriate level in consultation with concerned Departments in Department of Personnel and Training/Ministry of Finance.

A question of limitation has also been raised as the order rejecting prayer of applicant was passed in 2006 and O.A. has been filed in 2010. Since the matter is also interlinked with the question of applicability of new or old pension scheme, it has implication for future. Hence, the O.A. has been entertained. However, if the matter is decided in favour of Applicant and if some arrears are found admissible, the same will be paid only w.e.f. filing of this O.A.

The matter is therefore, remitted back to the concerned respondents amongst respondent No.1 & 2 for re-consideration of the matter in the light of specific observations made in this order regarding applicability or otherwise CC(TS) Rules and Regulation of Surplus Staff Rules 1990 in consultation with concerned department i.e Depart of Personnel and Training and/or Finance Ministry and then to pass a fresh reasoned and speaking order within a period of six months from the date of receipt of a certified copy of this order. “

3. The Applicants had filed O.A.No.128 of 2013 before this Bench, for the same relief. This Bench vide its order dated 8.5.2014 directed the Respondents as follows:-

“18. In view of the above, let justice be done by directing the Respondents authority more particularly Respondent Nos.1 & 2 to re-consider the case of the Applicants at their appropriate level in consultation with concerned department i.e D.O.P&T and/or Finance Ministry in the light of the ratio laid down in the foregoing paragraphs. Accordingly, we direct the respondents Nos. 1& 2 to reconsider the matter in the light of specific observations made in the judgment and order passed by different Benches

of all Tribunal as cited in the foregoing paragraph and in consultation with concerned department i.e. D.O.P&T and/or Finance Ministry and then pass a reasoned and speaking order within a period of four months from the date of receipt of a certified copy of this order.”

4. In compliance of the said orders, the Respondents passed the Speaking Order dated 10.3.2015 holding that the Applicants were not declared as Surplus Employee before appointment in SSB, as such, the provisions of CCS(Re-deployment of Surplus Staff) Rules 1990 are not applicable to them and also provisions under CCS(TS) Rules are not applicable as they were engaged on contact basis in the office of Commissioner (Border), Guwahati. On these grounds, the relief sought by the Applicants was rejected by passing the Speaking Order No.20/SSB/Pers-III/2014 (I)2298-99 dated 10.3.2015. The operative portion of the said observations are as follows:-

“ 7. Whereas, Department of Personnel and Training has examined the issue in its entirety and found that Shri Krishna Kanta Roy has not been declared surplus before his appointment in SSB and as such the provisions of CCS(Redeployment of Surplus Staff) Rules, 1990 are not applicable to him.

8. Whereas, Ministry of Law and Justice, Department of Legal Affairs has also observed in the instant matter that CCS(TS) Rules are not applicable for the said Government Servant who were engaged on contract. Further, a person employed in extra/temporary establishment is also not covered under CC(TS) Rules.

9. In view of the foregoing facts and material on records, advise of Department of Personnel

and Training, Ministry of Finance and Ministry of Law and Justice, the request of Shri Krishna Kanta Roy and similarly placed Nirpen Kakati & 06 others who are the applicants of O.A.No.131/2010 and O.A.No.128/2013 respectively for counting the past service rendered in the office of Commissioner (Border) Guwahati, for purpose of fixation of seniority, protection of pay and pay scale, continuance of the coverage of GPF and other service benefits cannot be acceded to being devoid of merit and therefore their prayer is accordingly rejected."

5. Heard Mr.U.K.Nair, learned counsel on behalf of the Applicants and Mr.S.K.Ghosh, learned Addl.C.G.S.C. for the Respondents, perused the pleadings and the documents produced by both sides.

6. The learned counsel for the Applicants submitted that it was the duty of the Respondents to issue a declaration under provision of CCS (Re-deployment of Surplus Staff Rules, 1990). In the said declaration/non-declaration, the Applicants had no say at all. Having taken the services of the Applicants for 19 to 20 years in the office of the Commissioner (Border) Guwahati, it was incumbent on the part of the Respondents to take necessary steps under Surplus Staff Rules and the Respondents cannot take that benefits of their own omission in not declaring the Applicants as Surplus Staff.

7. Learned counsel for the Applicants further strenuously submitted that their appointment in 1985 was not under a contact. It

was on temporary capacity in a pay scale until further orders, and also keeping them under probation for a period of 2 years. In that temporary capacity they were continued from 19 to 20 years. As such, their past services under the said temporary capacity cannot be stated to be engagement on contact basis.

8. The learned Addl.C.G.S.C. for the Respondents equally strenuously contended that their earlier appointment was on contact basis, thus, he forcefully supported the decision taken in the Speaking Order dated 10.3.2015.

9. Be it as it may, at the time of hearing the learned counsel for the Applicants submitted that the Applicants may at least be given the relief of counting their past services rendered in the office of Commissioner (Border), Guwahati, for pensionary benefits.

10. It is observed that the Applicants have been agitating their grievances for the last 15 years. Every time this Bench and other Benches have been directing the Respondents to consider the grievances of the Applicants. The Respondents on technical grounds rejecting the prayers of the Applicants. Many of the Applicants are on the verge of retirement. Taking into consideration all the aspects, and also in view of the above submission, without going into other aspects of the matter, this O.A. is allowed only to the extent of counting the

past services rendered by the Applicants in the office of Commissioner (Border), Guwahati, to be counted only for pensionary benefits.

11. In respect of those who have already retired the Respondents shall finalise their pensionary benefits and make payment within a period of 4 months from the date of receipt of this order.

12. No order as to costs.

(S.N.TERDAL)  
JUDICIAL MEMBER

(MOHD HALEEM KHAN)  
ADMINISTRATIVE MEMBER

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