

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

OA/021/01037/2014

HYDERABAD, this the 7th day of October, 2020

(Reserved on 30.09.2020)



**Hon'ble Mr. Ashish Kalia, Judl. Member
Hon'ble Mr. B.V. Sudhakar, Admn. Member**

P.Ramachandra Rao,
S/o P.L.Narayana Rao, aged 57 years,
Occ : Senior Supervisor,
O/o The Director of Census Operations,
CGO Complex, Sultan Bazar,
Hyderabad-95. ...Applicant

(By Advocate : Mr.K.R.K.V.Prasad)

Vs.

1. Union of India rep by The Secretary,
Ministry of Home Affairs & Director of
Census Operations, New Delhi.
2. The Registrar General of India &
Census Commissioner, 2/A Man Singh Road,
New Delhi-110011.
3. The Director of Census Operations,
Govt of India, Ministry of Home Affairs,
Posnet Bhavan, 2nd Floor, Tilak Road, Hyderabad-482.
4. The Assistant Director,
O/o the Director of Census Operations,
Govt of India, Ministry of Home Affairs,
Posnet Bhavan, 2nd Floor, Tilak Road, Hyderabad-482.
5. H. Radhakrishna, Occ : Assistant Director,
O/o The Director of Census Operations,
CGO Complex, Sultan Bazar, Hyderabad-95.
6. B. Krishna Prasad, Occ : Assistant Director,
O/o The Director of Census Operations,
CGO Complex, Sultan Bazar, Hyderabad-95.Respondents

(By Advocate : Mr.V.Vinod Kumar, Sr.CGSC)

ORDER
(As per Hon'ble Mr.B.V.Sudhakar, Administrative Member)

2. The OA is filed challenging the decision of the respondents in not counting the past service rendered by the applicant in the post of Computer to the service of subsequently joined post of Data Entry Operator (for short “**DEO**”) Grade B.



3. Brief facts of the case are that, the applicant was appointed on adhoc basis as Computer on 28.1.1981 in Census Wing. Later, applicant was selected and appointed as DEO Grade B in Computer Wing on 1.4.1983. Applicant claims that on approaching the Tribunal in OA 216/1992 adhoc services rendered as Computer were regularised and accordingly the applicant is treated as working in the grade of DEO Grade B since January 1981. The respondents came up with a policy on 31.8.1992 (for short 1992 policy) and according to which he has to be accorded seniority based on the services rendered in the Computer grade, but was denied. Besides, Tribunal was not informed of the 1992 policy when the cited OA was adjudicated. Hence applicant represented on 18.7.2013 which was rejected by an incompetent authority on 26.9.2013. Aggrieved the OA has been filed.

4. The contentions of the applicant are that the representation delving on a policy matter was rejected by an incompetent authority and that too by wrongly interpreting the policy and thereby indulging in arbitrary exercise of power. The policy decision was not brought to the notice of the Tribunal while adjudicating OA 216/1992. Ld. Counsel for the applicant has submitted a memo dated 29.6.2015 issued by the Min. of Home Affairs to further the contentions made.

5. Respondents in the reply statement state that the applicant was recruited to the post of Computer in the technical wing on adhoc basis as a direct recruit. On introduction of the DDE system in 1982, applicant was appointed as operator, later re-designated as Data Entry Operator, in the DDE cadre as direct recruit on 31.1.1983. The post of Computer and DEO are two separate cadres with separate channels of promotion. Complying with the directions of the Tribunal in OA 216/1992 the adhoc services of the applicant rendered as Computer were regularised on 31.5.1993. Further, as per the direction of the Tribunal in OA 374/2008, under ACP scheme 2nd financial up-gradation was granted by taking into account the regular of services rendered in the Computer cadre. The Registrar General, India (RGI) vide lr dated 12.3.1991 gave instructions to regularise services of adhoc appointees in the posts of Statistical Assistants and Computers, who fulfilled prescribed conditions at the time of initial recruitment, from a prospective date after screening of the CRs and that the adhoc services rendered can be considered for the purpose of seniority and promotion to the higher grade. Thereafter this benefit was extended to the other cadre employees vide RGI letter dated 31.8.1992. However, the respondents did not act on the letter dated 12.3.1991 of the RGI, in respect of regularisation of the adhoc services of Computers, since OA 108/1990 was pending adjudication and on its disposal, services of those eligible were regularised. Similarly that of the applicant were regularised w.e.f. 28.1.1981 as per directions in OA 216/1992. Therefore the RGI letter dated 31.8.1992 (for short 1992 lr) is not applicable to the case of the applicant since it deals with regularisation of services of adhoc employees appointed for 1981 census from a prospective date and not from a retrospective date. Hence, it

was found to be irrelevant to be produced when OA 216/1992 was under adjudication. The representation made by the applicant on 18.7.2013 was rejected by the Assistant Director vide lr. dated 26.9.2013, who is the Head of the Office, based on the Tribunal observation in OAs 216/1992 & OA 523/1994, wherein the relief in the present OA was declined. After 21 years the applicant has filed the present OA to seek the same relief as was sought in OA Nos.216/1992 & OA 523/1994 and hence, the OA is hit by the principle of *res judicata* and limitation. If there was a grievance the same has to be challenged in the Hon'ble High Court and not before the Tribunal.

6. Heard both the counsel and perused the pleadings on record.
7. I. The dispute is in regard to the respondents rejecting the request of the applicant to consider the services rendered by him in the Computer cadre for the purpose of seniority and further promotions in the Operator (DEO) cadre.

II. To understand the dispute, we found it proper to chart the hierarchy of the two cadres namely Computer and Operator existing in the organization at the time of filing the OA, as under:

- a. Computer → Statistical Asst → Investigator → A.D
- b. DEO/operator → Jr. Supervisor → Sr. Supervisor → A.D

When we trace the history of the case, applicant was appointed as Computer on an adhoc basis as a direct recruit in the Computer cadre on 28.1.1981. Applicant filed OA 216/1992 seeking two reliefs. The one pertaining to regularisation of adhoc services in Computer grade was allowed and the other in respect of reckoning the regular service in

Computer grade for the purpose of seniority and further promotions in operator cadre was declined as under:



“2. This Tribunal by the orders dated 4.12.1990 in OA108/90 and the order dated 8.8.1991 in OA 280/91 directed the respondents to regularize the services of the employees who are engaged on adhoc basis as Computors by the respondents. It is submitted that in pursuance of these directions, regularization had been given from the date on which the respective employees served as Computors on adhoc basis. It is contended for the respondents that as the applicants are no longer in service as Computors, they were not given the said benefit. But, we feel that it is not proper to make any discrimination between those who are still in service as Computors when regularization was given from the date which one joined service as Computer on adhoc basis. Hence, the first relief as claimed is granted, in view of the orders of this Tribunal in OAs 108/90 and 289/91.

3. The question as to whether the service rendered on regular or temporary basis in one category in the same organization or in some other establishment or Government can be added to the regular service for which such an employee was selected and appointed, is a matter of policy. Hence, this Tribunal cannot give any direction in regard to the first portion of the second relief and the OA in regard to the first portion of the second relief is dismissed. In regard to the remaining portion of the second relief, the question of given direction for promotion as the Junior Supervisors does not arise.”

The Tribunal has made a candid observation that the aspect of reckoning the services rendered in one cadre in another cadre is a matter of policy and hence declined to grant the relief sought. The cadre of Computer and that of the DEO (Operator), as seen from the above chart has a different channel of promotion. The applicant was appointed to the cadre of DEO in 1983 as a direct recruit and thereafter he rose to the rank of Sr. Supervisor as per the promotional channel. The designation and the levels in the two cadres make it evident that they perform different functions. Hence it is clear that the applicant has started a new career in the post of DEO.

III. However, the claim of the Ld. Counsel for the applicant was that, since the applicant was granted the 2nd financial up-gradation by the Tribunal in OA- 374/2005, based on the regular service rendered in Computer grade, the same principle has to be extended for the purpose of

seniority and promotion in operator cadre. The relevant para of the order is extracted hereunder:



“7. As seen from the clarification No.4 given in office memorandum No. 35034/1/97-Estt.(D) (Vol.IV) dated 10.02.2000 given under ACP Scheme for the Central Government Civilian Employees, the Government issued clarificatory instructions to the effect that if a Government Servant has been appointed to another post in the same pay scale either as a direct recruit or on absorption (transfer) basis or first on deputation basis and later on absorbed (on transfer basis), it should not make any difference for the purpose of ACP so long as he is in the same pay scale, and in such cases, the benefits under ACP are to be extended after completion of the prescribed period of 12 ad 24 years of service.

8. In view of the said clarification, it is clear that the Union of India in its wisdom wanted to extend the benefit of ACP scheme even in the case of a Government servant opting for direct recruitment in some other post, provided that some other post also carries the same pay scale. Here, in the instant case, the pay scale of the Computer to which the applicant was initially appointed and the pay scale of Data Entry Operator to which the applicant was selected and passed in the year 1983 carries the same pay scale of Rs.330-560/. Therefore, in our considered view, the clarification is very much applicable to the facts of this case. Hence, the services of the applicant as Computer from 28.1.1981 to 1.4.1983 shall also be counted as regular service for the purpose of extending ACP benefits. Therefore, the applicant is entitled for second financial upgradation with effect from 28.1.2005, as claimed by the applicant. Thus, the point is found in favour of the applicant.”

The OM dated 10.2.2000 referred to in the OA cited, makes it explicit that for the purpose of ACP the regular service rendered in another cadre can be considered but it did not state that the service so rendered will be counted for seniority or for promotion to the higher grade. Hence the grant of financial up-gradation by considering the regular services rendered in Computer grade has no relevance in examining the aspect of reckoning such services for the sake of seniority and promotion in the Operator/ DEO cadre.

IV. Now coming to the aspect of the policy letter dated 31.8.1992 it speaks of giving regular appointment to adhoc Cartographer/Geographer, Draftsman, Gestetner Operator and Group D employees. Nowhere does the

adhoc service of the Computer grade was mentioned in the said letter. However, the aspect of regularisation of the services of Computer grade was dealt with in the letter dated 11.3.1991 of the respondents. The relevant portion is extracted here under:



“2. The matter has since been considered in depth in consultation with the Department of Personnel & Training and it has now been decided that the services of all such ad-hoc appointees in the grade of Statistical Assistants and Computers, who were recruited through the Employment Exchanges and who fulfilled the prescribed conditions of age and educational qualifications at the time of their initial recruitment may be regularized with effect from a prospective date, after screening on the basis of assessment of CRs. It has also been decided that these ad-hoc appointees in the grade of Statistical Assistants and Computers may be allowed to count their ad-hoc service in the respective grade for the purpose of seniority as well as eligibility for promotion to the higher grade. You are, accordingly, requested to scrutinize the cases of all such appointees in the grade of Statistical Assistant and Computer in your Directorate and take appropriate action for regularizing their services from a date subsequent to the date of issue of this letter after following the guidelines indicated above. The details of the persons whose services are so regularized may be forwarded to this office in due course for record.”

As per the above letter, services of those who have been appointed on a adhoc basis in Computer grade are to be regularised provided certain conditions were fulfilled and that too from a prospective date after screening based on CRs. The respondents did not act on the instructions in the cited letter as OA 108/1991 was pending and on its disposal the adhoc services of those eligible were regularised. In the meanwhile, applicant filed OA 216/1992 and got similar relief. Subsequently respondents issued the letter dated 31.8.1992 extending the benefit to other cadres referred to above. In both the letters of 11.3.1991 and 31.8.1992 it was instructed to regularise the adhoc service rendered in the respective cadre. Applicant's adhoc services were regularised in the Computer grade based on the orders in OA 216/1992. The applicant was thereafter appointed as Operator/DEO on a regular basis in 1983. The cited letter did not state that the regular

service rendered in one cadre i.e. Computer could be added to the service put up in another cadre namely Operator/ DEO. Hence the memo referred is of no assistance or relevance to the applicant's case. The contention of the applicant that the memo dated 31.8.1992 has not been produced while OA 216/1992 was adjudicated, therefore lacks merit.



V. Lastly, any representation which has merit has to be forwarded to the competent authority for a decision. When the request made by the applicant was not as per the memo dated 31.8.1992, relied upon by him, it would suffice if a responsible officer disposes of the same, for the simple reason that there was no need for any discretion to be exercised. Even if it were to be sent to the competent authority, as claimed by the applicant, the result would not have been different. Respondents are bound by the policy framed and at all levels it has to be followed. Applicant contention is thus hyper technical without much substance. In fact, in the instant case it was no less than the Head of the Department who disposed of the representation. Thus the contention of an incompetent authority has disposed of the representation would not hold water.

VI. The issue is being agitated after nearly two decades of the disposal of the OA Nos.216/1992 & OA 523/1994 and therefore it suffers from limitation. *Defacto*, the issue was decided by this Tribunal in the above referred OAs and hence *res judicata* does apply to the case on hand. The applicant has ushered in an irrelevant memo which has no bearing to the dispute in question which would imply making out a case in thin air. It is seen that the applicant has filed quite a few OAs seeking relief and those legally justified were granted declining the others. Once relief was

declined by this Tribunal the proper course was to pursue remedies available under law and not approach this Tribunal since such litigation would get christened as vexatious.

VII. The memo dated 29.6.2015 issued by the Ministry of Home Affairs, submitted by the Ld. Applicant Counsel on the last date of hearing, is in regard to regularising the services of the Asst Compilers in the respondents organisation, who were appointed during 1981 and 1991 census. The said memo does not delve with the issue of considering the regular service rendered in one cadre in another cadre. Hence, irrelevant.

VIII. Thus, keeping the above, we find the OA being devoid of merit, merits dismissal and hence dismissed. No costs.



(B.V.SUDHAKAR)
ADMINISTRATIVE MEMBER

(ASHISH KALIA)
JUDICIAL MEMBER

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