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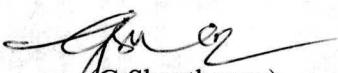
CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

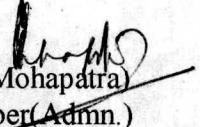
O.A.No.521 of 2008
Cuttack, this the 21st day of September, 2010

Bijay Ku. Sahu & Anrs. Applicants
-Versus-
Union of India & Others Respondents
.....

FOR INSTRUCTIONS

1. WHETHER it be sent to reporters or not?
2. WHETHER it be circulated to all the Benches of the Tribunal or not?


(G. Shanthappa)
Member (Judicial)


(C.R. Mohapatra)
Member (Admn.)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

O.A.No.521 of 2008
Cuttack, this the 21st day of September, 2010

C O R A M

THE HON'BLE MR.G.SHANTHAPPA, MEMBER (J)

A N D

THE HON'BLE MR. C.R.MOHAPATRA, MEMBER (A)

1. Shri Bijay Kumar Sahu, aged about 41 years, Son of Arakhita Sahu, a permanent resident of Village-Bada Saragailo, Po-Teisipur, Via-Sakhigopal, Dist. Puri.
2. Shri Upendra Kumar Naik, aged about 41 years, Son of Ghanashyam Nayak, a permanent resident of Village Kalyanpur, PO. Bhimpur, Dist. Jajpur.
3. Shri Sudarshan Behera, Aged about 48 years, Son of Late Laxmidhar Behera, a permanent resident of Village/Post-Rahania, Dist. Bhadrak.
4. Shri Mohan Chandra Purudhul, aged about 42 years, Son of Late Mansingh Purudhul, a permanent resident of Village/PO-Anua, Dist. Mayurbhanj.
5. Shri Duguram Besra, Aged about 51 years, Son of Late Kanda Besra, a permanent resident of Village-Sanaraikali, Post-Gohalmara, Dist. Mayurbhanj.
6. Shri Giridhari Samantray, Aged about 48 years, Son of Kashinath Barik a permanent resident of Village/Post. Khandasahi, Dist. Cuttack.
7. Narendra Kumar Singh aged about 46 years, Son of Late Jadunath Singh, a permanent resident of Village-Soral, Po.Balichandrapur, Dist. Cuttack.
8. Shri Prabhat Kumar Sethi, Aged about 50 years, Son of Late Manohar Sethi, a permanent resident of At-Darghabazar, Post-Buxibazar, Cuttack.

All of them are working as Assistant Compiler, Office of the Director of Census Operation, Orissa, Bhoiagar, Unit-IX, Bhubaneswar-751 007.

.....Applicants

Legal practitioner: M/s.Ganeswar Rath, S.Ratha, D.K.Mohanty, Counsel

-Versus-

1. Union of India represented through its Secretary to Government of India, Ministry of Home Affairs, North Block, New Delhi-110 001.
2. The Registrar General of India, Ministry of Home Affairs, 21-A, Mansingh Road, New Delhi-110 011.

3. The Director of Census Operation, Orissa, Bhoiagar, Unit-IX, Bhubaneswar.
4. The Deputy Director, Census Operation, Orissa, Bhoiagar, Unit-IX, Bhubaneswar, Dist. Khurda.

..... Respondents

By legal practitioner: Mr. Sarbeswar Barik, ASC

ORDER

MR. C.R.MOHAPATRA, MEMBER (A)

The back ground of the case, according to the Applicants is that Applicant Nos.1, 2&7 are graduates and rest of the Applicants are Matriculates. All of them were/are having proficiency in typing as also computer. Applicant Nos.4 & 5 belong to ST and No.3&8 are SC community and rest of them belong to OC. They had registered their names in the concerned local Employment Exchanges. As per the Recruitment Rules framed and circulated vide letter dated 7th November, 1984 the posts of Assistant Compiler is required to be filled up 90% by direct recruitment and 10% by way of promotion; failing which by direct recruitment. Under clause 6 of the Rules power was vested with the Authority to relax any of the provisions of the Rules with respect to any class or category of persons. Considering the emergent situation requiring filling up the post in the interest of administration, the Department of Personnel and Training, New Delhi relaxed Rules and permitted the Director of Census Orissa, Bhubaneswar in letter under Annexure-A/1 dated 11th October, 1991 to fill up the posts of Assistant Compiler by way of direct recruitment through employment exchange. On the basis of the said letter under Annexure-A/1 Respondents placed requisition to the Employment Exchange and accordingly, names of the applicants having been sponsored by the Employment Exchange, they were asked in letter under Annexure-A/3 dated 21.01.1991 to face the test for the post in question. It was never intimated to the applicants that the selection for

the post was for temporary or adhoc basis. They having come out successful in the process of selection, instead of regular basis, they were appointed on temporary/adhoc basis as in letter under Annexure-A/4 dated 21st April, 1992. Accordingly, while Applicant No.1 joined on 6.5.1992, Applicant Nos.4, 5 and 8 joined on 01.01.1990, 01.01.1990 and 20.04.1990 and rest of the Applicants joined on 01.05.1992 in the posts of Assistant Compiler under the Respondents 3& 4 respectively. However, they were allowed to continue in service uninterruptedly by grant of regular scale of pay and other allowances including the benefit of revision of scale whenever taken place for the post of Assistant Compiler by Government. Thereafter, by filing OA Nos. 763/1997 and 784/97 the Applicants sought direction from this Tribunal to treat them as regular appointee from the respective date(s) of their initial appointment. After being unsuccessful in the OA, Applicants preferred RA No. 36/99 which having been dismissed by this Tribunal, the Applicants filed OJC No. 4791/2001 before the Hon'ble High Court of Orissa. While the matter stood thus, a letter dated 16.11.2000 was addressed by the Joint Registrar General of India to the Directorate of Census Operations seeking some information in regard to the employees continuing on adhoc basis and the Director of Census Operations, Orissa Bhubaneswar in letter dated 2nd February, 2001 intimated to the Respondent No.2 that all of the applicants were recruited through a due process of selection after their names being sponsored from employment exchange and their regularization would not affect the other cases filed or pending by other employees in various courts. Meanwhile, the Respondents decided to regularize the adhoc service of the employees continuing in various Directorates subject to their withdrawing the cases filed in various courts in country and furnishing undertaking that they would not claim their past benefits. On the basis of the undertaking furnished by some of

the employees continuing in the Directorate of Census Operations, Karnataka, Banaglore, their services were regularized w.e.f. 1.7.1994 i.e. the date of their initial appointment on adhoc basis in the post of Assistant Compiler vide order under Annexure-A/7 dated 23.01.2003. Thereafter, similar letter dated 29.06.2004 (Annexure-A/8) was issued by the Respondent No.2 conveying that the competent authority approved the regularization of the Applicants subject to furnishing undertaking that they would withdraw the court cases filed by them and subject to undertaking that they would not claim benefits of their past service for any purposes. For the aforesaid reason, in compelling and panic situation under duress the Applicants withdrew the OJC filed by them before the Hon'ble High Court of Orissa that they would not claim the past benefits in case they are regularized in their posts. However, while withdrawing the Original Application OA No. 784/97 pending before this Tribunal, this Tribunal in order dated 29.07.2004 had specifically issued direction to the Respondents to grant the applicant therein all benefits in accordance with law governing the field (Annexure-A/9). Thereafter, the Applicant Nos. 4, 5 and 8 were regularized in the post of Assistant Compiler w.e.f. 27.07.2004 and all others were regularized w.e.f. 09.07.2004 in the post of Assistant Compilers (Annexure-A/10 series). Further case of the Applicants is that after coming to know that similarly situated employees continuing in other Directorates were regularized much prior to the regularization of the Applicants i.e. with effect from the date of their initial appointment on adhoc basis in the post of Assistant Compiler, by submitting representations they sought for removal of injustice caused in the matter of regularization. They also sought for counting their past service for the purpose of seniority and other promotional benefits (Annexure-A/11 series). Their case is that earlier the post of Compiler was being filled in 100% by way of promotion from the

post of Assistant Compiler. But without taking any decision on their representations in deviation of the Recruitment Rules Respondents intend to fill up post of Compiler by way of direct recruitment and according to them in case all the posts of Compiler are filled up by way of direct recruitment meanwhile, the Applicants would be deprived of their legitimate right for promotion for ever. Hence being aggrieved by such action of the Respondents 8(eight) Applicants who are working as Assistant Compiler, Office of the Director of Census Operation, Orissa, Bhoiagar, Unit-IX, Bhubaneswar-751 007 [Respondent Nos.3&4] have jointly filed this Original Application under section 19 of the Administrative Tribunals Act, 1985 *inter alia* challenging the inaction of the Respondents in sitting over their representing filed by them seeking ante-dating the date(s) of regularization i.e. from the date(s) they were initially appointed to the post of Assistant Compiler on temporary/Ad-hoc basis and for counting their services with effect from their initial date(s) of appointment for all purposes i.e. seniority, promotion to next higher grades and grant of ACP etc. Hence by filing the present OA they seek the direction to the Respondents to ante-date their date of regularization to that of their initial appointment, count their services with effect from their respective initial date(s) of appointment for all purposes.

2. Respondents filed their counter opposing the stand of the Respondents. The grounds of opposition are that the appointment of the Applicants was against the short term vacancies created in connection with 1991 census. The permissible channel for regular recruitment to the post of Assistant Compiler is the SSC. However, relaxation was granted by the DoP&T and SSC to fill up temporary posts of 1991 Census only on adhoc basis through local employment exchange. Therefore, the Applicants were recruited through the Employment Exchange with the terms and conditions

stipulated in their respective order of appointment. They approached this Tribunal earlier for ante-dating their date of regularization and after becoming unsuccessful in this Tribunal they approached the Hon'ble High Court of Orissa in OJC No. 4791/01 which was subsequently withdrawn by the Applicants. In consideration of their representations, the competent authority approved regularization of the service of the applicants with effect from the date of withdrawal of the court cases provided each of the Applicants have to furnish undertakings not to enter into any further litigations claiming for counting their past adhoc service for the purpose of their seniority, promotion, ACP scheme benefits etc. After submitting such undertaking and withdrawing the cases filed before the Hon'ble High Court of Orissa/in this Bench (OA No. 784/97) the services of the applicants were regularized w.e.f. 09.07.2004 and 27.07.2004 i.e. with effect from the date of withdrawal of the cases filed by them. Once this Tribunal dismissed the OA and the Writ Petition filed against the order was withdrawn by the Applicants the present OA with the self same prayer is not maintainable. Since the vacancies were for the census work of 1991 as per the terms and conditions stipulated in the letter of the SSC under Annexure-R/3 dated 21.7.1989 the applicants were recruited locally through Employment Exchange on adhoc basis. The directive made in letter under Annexure-A/7 having been addressed to the Director of Census Operations, Karnataka and Bangalore has no application to the Applicants. Similarly it has been contended by the Respondents that the order dated 29.7.2004 in OA No. 787 of 1997 (Annexure-A/9) has no application in view of the dismissal of the OA filed by five applicants earlier. It was next contended by the Respondents that the applicants cannot claim parity with the regularization made in case of LDC and HPMO in Annexure-A/8; especially the terms and conditions of the initial appointment of those LDC and HPMO

being different from the Applicants. With the aforesaid reasons while opposing the prayers, the Respondents have stated that this OA is liable to be dismissed being devoid of any merit.

3. In the rejoinder filed by the Applicants it has been contended that they have sought the direction under the authority of the decision of the Hon'ble Supreme Court of India rendered in the case of **Maharashtra Class II Engineering Service Association and others v State of Maharashtra**, holding that subsequent regularization in service entitle an employee to count their seniority from the date of Ad-hoc appointment, even if such appointment was not in accordance with Rules. The aforesaid rulings of the Hon'ble Apex Court have also been reiterated by this Tribunal in very many cases and in support of this stand they have relied on the decision of the Bangalore Bench of the Tribunal in the case of **Smt.L.Poornima and others v Union of India and others** OA Nos.361/2000 & others disposed of on April, 2002. It has been emphasized that once this Tribunal after taking note of the conditions of regularization put by the Respondents in letter dated 29-06-2004, while permitting withdrawal of the OA No. 784/97 in order dated 29.07.2004 directed for grant of all benefits in accordance with law governing the field vide Annexure-A/9 after which the Respondents granted the benefit of retrospective regularization and seniority to other similar situated employees such as **Smt.M.Choidhury and Joydeb Deb Barma, Smt. Uma Das and Shri Bidyut Das** (Annexure-A/5) continuing in Directorate of Tripura vide order dated 14th July, 2004 (Annexure-A&B), the Respondents are estopped to deny the same benefits to the Applicants by taking recourse of the undertaking obtained by the Respondents from the Applicants under duress.

4. Arguments put forward with reference to the respective pleadings of the parties having been heard at length, perused the materials

placed on record. We have also gone through the decision of the Bangalore Bench of the Tribunal in OA Nos.361/2000 & 386 to 390 of 2000 and 364 of 2000 and 394 of 2000 to 400/2000 and 391 of 2000 filed by the Applicants. It was contended by Learned Senior Counsel appearing for the Applicants that there is/was no provision in the Recruitment Rules that the posts of Assistant Compiler can only be filled up by way of direct recruitment only through Staff Selection Commission and as such once power was relaxed and the applicants were recruited through a positive act of selection through employment exchange and continued in the posts till their regularization and other similarly situated employees working in other directorates having been regularized retrospectively regularization of the applicants being bad in law/in violation of Articles 14 & 16/gross discrimination the applicants are entitled to the relief claimed in this OA and that there was no mention in the call letter issued to the Applicants that their selection or appearing in the selection was for temporary/stop gap/adhoc appointment. The Applicants having been recruited through a due process of selection after their names being sponsored by the Employment Exchange and followed by regularization, as per the law they are entitled to count their past service for all purposes. Further contention of the Learned Senior Counsel for the Applicants is that law is well settled that there can be no discrimination amongst one homogenous group. But in the instant case there has been miscarriage of justice in the decision making process of the matter of regularization inasmuch as while some of the similarly situated employees working under other directorates were regularized with effect from their appointment the applicants were deprived of the same. To buttress the claim, Learned Senior Counsel has also relied on the decision of the Hon'ble Apex Court in the case of **HC Puttaswamy and others v Karnataka High Court, Bangalore and others**, 1991(1) ATJ 31 in which in similar situation,

the direction was made for grant of retrospective regularization and all the benefits of the past service to the Applicants therein. Next it was contended by him that in democratic country like India, power has been vested with the executive for bona fide purpose and not for *mala fide* use. Rules and regulations are framed for harmonious existence of the society. Article 14 and 16 of the Constitution forbids any sort of discrimination. In spite of that, by obtaining the undertaking, the Respondents have acted contrary to the mandate by making gross discrimination among similarly situated employee which is not sustainable in the touch stone of judicial scrutiny. This was vehemently opposed by Learned Additional Standing Counsel appearing for the Respondents by reiterating the stand taken in the counter and adding emphasis on the undertakings furnished by the Applicants before their regularization and has accordingly prayed for dismissal of this OA.

5. From the facts stated above, it is evident that similar recruitment in relaxation of the normal recruitment rule was held in different Directorates of Census in India for 1991 Census. On perusal of the decision of the Bangalore Bench of the Tribunal relied on by the Applicants it is evident that the candidates appointed as Assistant Compiler in Kerala were regularized vide order No.B-1158/90 dated 28.1.1992 from the date of their initial appointment. The same benefit of retrospective regularization was also done so far as candidates employed in Delhi. But So far as the candidates appointed in the Directorate of Maharashtra they were denied such regularization. They, therefore, approached before the Mumbai Bench of the Tribunal and by the order of the Mumbai Bench of the Tribunal benefits of retrospective regularization of the candidates on adhoc basis for the census operation of 1991 were extended to the candidates continuing in the Directorate of Maharashtra. Such decision of the Tribunal is reported in 2000 (3)

Administrative Total Judgments, 269. When such retrospective regularization was not extended to the candidates recruited in Directorate of Bangalore, they approached the Bangalore Bench of the Tribunal in the aforesaid OA. The Bangalore Bench of the Tribunal after taking note of the fact that candidates recruited in other Directorates for 1991 census and thereafter continued and regularized retrospectively with effect from their date of initial appointment and by placing reliance on the decision of the Bombay Bench as also several other decisions of the Hon'ble Apex Court including the decision of the Hon'ble Apex Court the case reported in **2000(2) SC Service Law Judgment 108** in order dated 11th April, 2002 disposed of all the afore-mentioned OAs in favor of the Applicants therein. Relevant portion of the order dated 11th April, 2002 of the Bangalore Bench in OA Nos. 361/2000 & 386 to 390 of 2000 and 364 of 2000 and 394 of 2000 to 400/2000 and 391 of 2000 and the Hon'ble is quoted herein below:

“.....The Respondents are hereby directed to regularize the services of the applicants as Assistant Compilers on the same terms and conditions on which the services of Assistant Compilers in Kerala State have been regularized including according the necessary seniority to the applicants. Having regard to the long lapse of time from the year 1991 to this date we direct that the promotions of any already made shall not be disturbed. While regularizing the services of the applicants in terms of this order if seniority list is to be altered it can be done only to give a notional promotion and on that count applicant would not be entitled for any amount of arrears or other financial benefits. Compliance within a period of four months from the date of receipt of a copy of this order. No costs.”

6. It is also not in dispute that pursuant to the order of the Bangalore Bench the benefits of retrospective regularization have been granted to the applicants therein. Of course we find some difference between the appointments provided to the present Applicants and the Applicants before the Bangalore Bench i.e. the Applicants before the Bangalore Bench were appointed for the 1991 Census on probation for two years whereas the

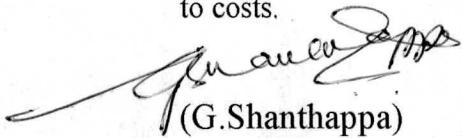
appointment of the present Applicants were for adhoc basis which continued uninterruptedly till their regularization. But it is not in dispute that there is no distinction between the appointments given to the candidates at Maharashtra, Kerala, Delhi and at Orissa and that except the applicants all others were regularized from the date(s) of their initiation appointment.

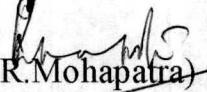
7. It is trite law that discretion cannot be used discriminatorily. Further it is trite law that the principle of reasonableness, legally as well as philosophically is an essential element of equality or non arbitrariness. It is trite law that Governmental action must not be arbitrary or capricious but must be based on some principle which meets the test of reason and relevance. In other words the action of the Government must be just and fair and not arbitrary, fanciful or oppressive flowing directly from the doctrine of equality embodied in Article 14 of the Constitution of India. A public authority is confided with discretionary power for attainment of public good and public interest. Where such power is exercised according to one's whims and caprice such exercise of power is vitiated by illegality. In view of the denial of the benefit to the Applicants on the basis of the undertaking and such undertaking having been taken by the Respondents under duress cannot be a ground to deny the applicants the benefits of retrospective regularization as has been granted to other similarly situated employees recruited like the Applicants in other Directorates of Census. Equally is the position of law that precedents are to be followed by the Tribunal vide **SI Roopal and others vrs. Lt. Governor through Chief Secretary Delhi and others**, (2000) 1 SCC 644.

8. In view of the facts and law narrated above, we do not see any justification to uphold that in view of the undertakings obtained by the Respondents under duress and furnished in panic situation from the employees, the Applicants are not entitled to be regularized retrospectively

with effect from the date(s) they were initially recruited to the post of Assistant Compiler. As a result, we hold that the Applicants are entitled to regularization from their respective date(s) of initial appointment and all consequential service benefits as have been granted to other similarly situated employees recruited along with the Applicants in other Directorates. The Respondents are hereby directed to pass necessary order in compliance of the aforesaid direction within a period of ninety days from the date of receipt of copy of this order.

9. In the result, this OA stands allowed. There shall be no order as to costs.


(G. Shanthappa)
Member (Judl.)


(C.R. Mohapatra)
Member (Admn.)