

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 486/91
~~XXXXX~~

199

DATE OF DECISION 9.8.1991

V Vijayalakshmi and others Applicant (s)

Mr S Ramesh Babu Advocate for the Applicant (s)

Versus

Govt. of India rep. by the Respondent (s)
Secretary, Ministry of Labour
New Delhi and others.

Mr NN Sugunapalan, SCGSC Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. NV Krishnan, Administrative Member

The Hon'ble Mr. N Dharmadan, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not? ✓
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. To be circulated to all Benches of the Tribunal? ✓

JUDGEMENT

Mr NV Krishnan, A.M

The applicants were engaged during 1981 Census Operations as Tabulators. Their services were thereafter dispensed with after the completion of the work vide Annexure-F discharge certificates dated 10.3.82 issued to K Bhargavi, Applicant-3. It is stated therein that her services were terminated due to reduction in establishment consequent on the winding up of the office.

2 It is submitted that alongwith the notice preceeding the termination of their appointment, the applicants were given a note (Annexure-G) which reads as follows:

" Retrenched Census employees who have put in more than 6 months' service will be treated as Discharged Government employees (Central) and will be entitled to Priority III for submission against Central Government vacancies and these employees by virtue of this priority will be able to get alternative jobs at an early date."

The Annexure-H dated 29.11.82 from the Director of Employment dated 29.11.82 clarified that the Priority-III referred to in Annexure-G will be available even to persons engaged in Census Operations with consolidated pay, like the applicants.

3 When the 1990-91 Census Operations were to commence, the applicants requested Respondent-2 to engage them. On the basis of representations from the ex-1981 Census employees, the applicants were called for interview vide Annexure K letter dated 26.2.91 issued to one of them. It is alleged that a perfunctory inter-view was held. No reply ~~was~~ was thereafter received. On enquiry, the applicants found out that there were 200 vacancies available in the Calicut Region, *against* ~~out of~~ which only 1 Checker and 10 Tabulators were appointed from out of the old retrenched employees and the remaining vacancies are proposed to be filled up by new recruits. According to the applicants, 50% of the vacancies had to be reserved for holders of Priority-III as it clear from the Annexure-D filed by the applicants,

which is an extract from the National Employment

Chapter-XII
Service Manual/i.e., Appendix-1-19 in para 12.9.

4 It is in these circumstances that this application has been filed seeking the following reliefs:

- "(a) Direct the respondents to appoint the applicants as Tabulators for the 1991 census operations.
- (b) Direct the respondents not to make appointment directly or through the employment exchange to the post of Tabulators for 1991 census operations except after appointing the applicants and other retrenched census staff of 1981 census operations.
- (c) Set aside any order of appointment of tabulators over looking the priority and claims of the applicants.
- (d) In the event of the Hon'ble Tribunal declining the above reliefs, to set aside the selection and consequent appointment of Tabulators made from the retrenched staff of the 1981 census and direct a fresh and proper selection to be made."

5 Respondents have filed a reply denying the allegation made. It is contended that the concession available to retrenched employees were restricted upto December, 1982 and later extended upto 31.12.85 only. These concessions have now expired. Annexure R1 and R2 have been produced in support of this contention. It is also contended that such applicants had been

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interviewed and they have not been selected. They cannot claim appointment without alleging any malafide in the selection.

6 We have perused the records and heard the ^{learned} counsel on either side. It was submitted by the ^{learned} counsel of applicant that the 4th applicant Smt OM Anandavally has since been appointed for Tabulation work by an order dated 9.4.91, and accordingly, the application subsists only in respect of the first 3 applicants.

7 The priority category persons are entitled to reservation of 50% in employment. Extracts from Annexure-L quoted below establish this.

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" APPENDIX-1(19)

Para 12.9(a))

FILLING UP OF VACANCIES BY PRIORITY/NON PRIORITY
CANDIDATES IN THE RATIO 50 : 50

Copy of Government of India, Cabinet Secretariat, Deptt. of Personnel and Administrative Reforms Office Memorandum No.14/1/74-Estt(D) dated 14th July, 1975.

Subject: Filling up of direct recruitment vacancies by priority and Non-priority candidates in the ratio of 50 : 50 - instructions regarding.

The undersigned is directed to refer to the Ministry of Home Affairs (now Department of Personnel and Administrative Reforms) Office Memorandum No.71/300/54-CS(C), dated 28th May, 1955, according to which the Central Government vacancies notified to the Employment Exchanges are to be filled by candidates belonging to the priority categories and those belonging to non-priority categories, in the ratio of 50: 50."

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"It has been brought to the notice to this Department that, while a number of establishments under the Govt. of India, particularly those which came ~~XXXXXX~~ into

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existence after 1955, are not aware of the instructions of 28th May, 1955, referred to above many have found it difficult to allocate vacancies to Priority and non-Priority categories against reserved and unreserved vacancies, in accordance with instructions referred to in para 1 above. There also appears to be some doubt regarding allocation of posts reserved for SC/ST amongst priority and non-priority candidates. It is, therefore clarified that in accordance with the position stated in para 1 above, the vacancies reserved for Scheduled Castes and Scheduled Tribes and backlog of reserved vacancies, if any, should also be allocated to Priority and Non Priority categories in the ratio of 50: 50 while all vacancies reserved for ex-servicemen would go to Priority Category; and thereafter, the remaining unreserved vacancies should also be allocated among priority and non-priority that the total number of vacancies in the priority categories does not exceed 50% of the total number of vacancies in the year, (i.e., the overall ratio of priority and non-priority should be 50 : 50). The above position will be clear from the illustration given below:-

(If there are 100 vacancies in Class IV posts in a given year, then out of them approximately 25 vacancies will be to be reserved for SC/ST and 20 vacancies will be reserved for ex-servicemen. 5 vacancies may be utilised for filling up the carried forward vacancies for SC/ST if needed). The division between priority and non-priority categories will be as under:-

Number of Posts(Class-IV-100)	Priority	Non priority
1. Reservation for SCs and STs	12½	1 2½
2. Backlog or increase or decrease of vacancies in accordance with Rule 4(i.e., carried forward vacancies for SC/ST in the instant case).	12½	2½
3. Reserved for Ex-servicemen	20	--
4 Un-reserved	15	35 "

8 More details about persons accorded priority status are at Annexure-M which is appended in 1-8 of the Manual reproducing the Department of Personnel and Administrative Reforms letter dated 31.7.84. There is Priority I, II(A), II(B) and III.

9 The combined effect of Annexures L and M is that employers have to reserve 50% for priority categories in employment and Employment Exchanges have to sponsor the names of persons having priority for these vacancies.

10 We have carefully considered the submissions of Respondents that Annexure R1 and R2 memos show that the concessions to Census employees have ^{already} ~~early~~ expired.

Annexure R1 memorandum dated 5.7.82 gives the following concessions to retrenched Census employees, in addition to those generally admissible to retrenched Central Government employees:-

(i) Retrenched Census employees will be entitled Staff Selection Commission to appear in the examinations conducted by the ~~SSC~~ and Railway Service Commission for recruitment to Group C posts till the end of 1983, subject to fulfilling certain eligibility conditions, with which we are not concerned.

(ii) Concession No.2 is important and is reproduced in full.

" (ii) In order to facilitate the absorption of these retrenched census employees, it has also been decided that such of them as had been initially recruited through employment exchanges and had put in not less than 6 months of continuous service and were retrenched due to reduction in establishment will also be

11 It is seen that ^{it} ~~is~~ only in respect of concession at Sl.No.I and Sl.No.III, that it is stipulated that they will be available till 31.12.83 and 31.12.82 only respectively. In respect of concession No.II, there is no time limit ~~has been~~ stipulated. This concession renders the ex-census employees eligible to apply for recruitment to vacancies advertised by various recruiting authorities without having to be sponsored by the Employment Exchange.

12 The Annexure R2 Memorandum dated 10.5.84 extended the concessions given by R-1 till 31.12.85 after restricting the facility to appearance in the examination conducted by the SSC only. Annexure R-2 ^{has} extended the time limit, only where Annexure R-1 has prescribed a reduced time

limit. Thus, Annexure R-2 applies only to (i) & (iii) specified in R-1. The concession (ii) given by Annexure R-1 has no time limit.

13 Therefore, those ex-census employees who have been granted Priority-III at the time of retrenchment, can still apply for recruitment to vacancies advertised by various recruitment authorities without being required to be sponsored by Employment Exchanges, provided they are otherwise eligible for such appointment. Therefore, the contention of the respondents based on R1 and R2 has no basis. It is clear from the instructions of the Department of Personnel dated 14th July, 1975 (Annexure-L) that there is reservation for recruitment of priority categories, for which a roster has to be maintained.

14 It is, therefore, clear that when recruitment is being made in the context of 1991 Census, the appointing authorities are required to reserve 50% of the vacancies for priority categories as directed in Annexure-L. That being the case, the Respondents are bound to consider the case of the applicants 1 to 3 for placement against vacancies required to be reserved for them if they are otherwise eligible.


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15 We, therefore, dispose of this application directing Respondents 2 to 4 to (i) reserve vacancies for priority categories as directed in Annexure-L circular and (ii) to consider afresh the claim of the applicants 1 to 3, alongwith other similarly placed persons, if they are otherwise eligible for appointment and (iii) appointment them, in accordance with law, if selected.

16 There will be no order as to costs.


(N Dharmadan)
Judicial Member

9.8.91.


(NV Krishnan)
Administrative Member

9.8.1991

(24)

NVK & ND

Mr Ramesh Babu for petitioner
Sr CGSC for respondents by Madhusoodhanan

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Respondents seek some more time in this regard.
Considering the nature of the directions issued as well
as this type of relief granted, let this case be listed
for final disposal on 2.12.91.

[Signature]

22.11.91

NVK & ND

(22)

Mr Ramesh Babu by Pury
Mr NN Sugunapalan

Let this matter be listed
for further direction on 6.12.91

[Signature]

NVK & ND

(20)

Mr Ramesh Babu
Mr NN Sugunapalan SEAR

The learned counsel for respondents
states that he is filing a statement.
Let this matter be listed for final
hearing on 13.12.91

[Signature]
6/12/91

NVK & ND

(19)

Mr. C M Suresh Babu
Mr NN Sugunapalan for R,
Mr P. V. Narayanan for R-5

We have heard learned counsel for
his request call on 9.1.92

[Signature]

13/12/91

NVK AND

CCP 71/91

(10)

Mr Ramesh Babu

Mr P C Madhusoodhanan Pring in scave

learned counsel for respondents

submit that the order of the Tribunal

has been complied with. He seeks time

to produce the order issued in this

connection. Call on 16.1.92

Ph

9.1.92

NVK & AVH

(3) Mr S Ramesh Babu
SCGSC by Madhu

It is submitted by the learned counsel for the applicant ^{not} and pursuant to certain oral directions given in the past, the respondents have passed orders intimating the applicant that they are ~~ineligible~~ ineligible for appointment after the case was ~~xxxx~~ considered by the appropriate authority because of over age. The learned counsel for the applicant points out that this does not seem to be correct because in para-6 of the counter affidavit in the OA, the respondents ^{have} ~~are~~ admitted that 3 categories would be considered for appointment, namely those sponsored by the Employment Exchange, those who are above 35 years and those who are retired. This has been adverted to in our judgment and we direct that the applicant, be considered, if they are otherwise eligible for appointment. The statement that the applicants are over aged and therefore not eligible for consideration does not seem to ~~be a fit reason~~ ^{with} ~~according to~~ the stand earlier taken by the respondents.

Respondents are given 7 days' time to clarify the matter. Call on 23.1.92.

Copy of the order be given to the counsel by hand.

16.1.92

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T.O. Issued on
20/1/92

NVK & ND

- (4) Mr S Ramesh Babu
Sr CGSC for respondents by Madhu

Respondents seek some more time. With reluctant time is granted upto 30.1.92. We make it clear that no further opportunity will be given to clarify the position in regard to the earlier stand taken by the respondents as the applicants are overaged and not eligible to be considered.

Call on 30.1.92

[Signature]

23.1.92

NVK & ND

Mr. S. Ramesh Babu.

Mr P. K. Madhukrishnan Pring for leave.

One learned counsel for respondents seek some more time. We have given respondents time till today to making it clear that no further adjournment will be given in this regard. Nevertheless, as the learned counsel seeks a short adjournment let this case be listed for further direction on 3.2.92. No further adjournment will be given.

[Signature]

30/1/92

NVK & ND

Mr. S. Ramesh Babu for Pet. basis

Mr. P. K. Madhukrishnan Pring for leave.

Respondents have filed reply today. List for final hearing on 5.2.92.

[Signature]

3/2/92

(20)

(19)

respondents for
addl. statement
only on 4/2/92
[Signature]

Mr. Ramesh Babu
Mr. N. N. Sugunapalan, SOGSC

When this C.C.P. came up for hearing today, the learned counsel for the respondents brought to our notice their ~~the~~ reply dated 4.2.92 and also brought the original records for our perusal. It is seen from the Registrar General's letter of 15.11.90 that in the office of the Director of Census Operations, Kerala, 200 posts of Checkers have been ^{allotted} ~~awarded~~. In pursuance of our ~~on~~ judgment dated 9.8.91, 50% of this vacancies are to be reserved for the priority-I category. The learned counsel for the respondents submits ~~that posts~~ on the basis of instructions received by him, that except for the posts filled up by eligible candidates who ^{belong to} ~~have~~ priority, No.1, all the remaining posts in that category are lying vacant.

In regard to the applicants, he submits that in pursuance of our judgment dated 9.8.91, Ext. P, the cases ^{of the applicants} have been considered and the original records shows that none ^{of them} ~~in this behalf~~ was ^{allotted} ~~sanctioned~~ by the Regional Director of Census Operations, Trivandru. We have perused the records. The grounds given there for non-selection of the applicants are more or less the same as ~~has~~ been stated in the reply now filed.

Whether the selection has been done properly or not, is a matter which cannot be taken up for decision in the CCP. Therefore, as far as the CCP is concerned, we are inclined to close it on the basis of the statement made by the respondents. However, as the post for which the applicants were to be appointed would expire shortly by the end of February, 1992, we are of the view that in case the applicants so feel, it is open to them to challenge their non-~~inclusion~~ selection in appropriate proceedings. In that view of the matter, we do not propose to dispose of the CCP today. Let this matter be taken up for final hearing on 20.2.92.


5.2.92

Mr. Ramesh Babu by proxy
Mr. P.K. Madhusoodhanan proxy for SCGSC

The applicant has filed an affidavit today in the
~~stating~~ ^{stating} ~~CCP~~ ^{CCP} ~~trying to submit~~ that the averments made by the

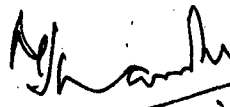
respondents that 50% of the vacancies reserved for

'priority' categories has not been filled up except by

those eligible to be appointed to those vacancies, ^{is not} ~~correct~~

2. We notice that we, ^{has} practically closed this CCP on
the last occasion with liberty to the applicants to
challenge their non-selection in appropriate proceedings.

The learned counsel for the applicants submits that an
O.A. is being filed today. In the circumstances, we
close this CCP.


21.2.92

(N. Dharmadan)
Judicial Member
20.2.92


21.2.92

(N.V. Krishnan)
Administrative Member
20.2.92

V.D.
21/2
Mr. Madh...