

CENTRAL ADMINISTRATIVE TRIBUNAL: ERNAKULAM BENCH

Date of decision: 20.11.89

Present

Hon^{ble} Shri NV Krishnan, Administrative Member
and
Hon^{ble} Shri N Dharmadan, Judicial Member

O.A. No.245/89

MK Vilasini : Applicant

Vs

1 The Union of India rep. by
the Secretary,
Ministry of Home Affairs, New Delhi.

2 Registrar General & Census
Commissioner for India, New Delhi.

3 Director of Census Operations,
Kerala, Trivandrum.

4 Babu Philip, Computer,
Directorate of Census Operations,
Kerala, Trivandrum.

5 N Rajagopalan Nair -do-

6 G Kamala Bai, Statistical Assistant
-do-

7 PP Joy -do- : Respondents

M/s K Ramakumar & VR Ramachandran Nair : Counsel of Applicant

Mr PA Mohamed, ACGSC : Counsel (for R-1-3)

Mr B Raghunathan : Counsel (for R-4-6)

Mr CS Rajan : Counsel (for R-7)

O R D E R

Shri NV Krishnan, Administrative Member.

The applicant is aggrieved by the seniority assigned to her as Statistical Assistant in the Directorate of Census Operations, Kerala as on 1.1.88 ~~xxxxxx~~ in the seniority list annexed to the order dated 26.9.1988 (Annexure D) and her reversion to the post of Computer based on that seniority. She has, therefore, prayed that she be declared senior to Respondents 4 to 7 in the post of

Statistical Assistants and that Respondent-3 be directed to continue her as Statistical Assistant instead of reverting her.

2 The facts of the case may be noticed: The Respondents 4 and 5 filed an application before this Bench (TAK 120/87) in which, besides the Departmental Respondents, 3 other Statistical Assistants were impleaded as Respondents. That application was disposed of by the order dated 16th March, 1989 (Annexure E). In that order it was held that the two petitioners therein (the present Respondent 4 & 5) should be treated as senior to the three private Respondents therein, both in the list of confirmed Computers and Statistical Assistants. In order to give effect to this decision of the Tribunal, it was necessary to amend the seniority list of Statistical Assistants as on 1.1.1988 (produced by the applicant as Annexure D and by the Respondents as Ext.R4). As these two officials had, ^{Q also} to be inducted as Statistical Assistants, two persons had to be reverted. Accordingly, the persons at Sl.No.28 in the Seniority List (i.e. the applicant) and the last person in the Seniority List ^{ie, PS Venu} at Sl.No.30 were reverted.

3 The applicant did not have any grievance against the Annexure E order passed by the Tribunal. Her contention is that in giving effect to that order, the Respondents have committed a mistake, and that it was not her turn

to be reverted as there were others junior to her.

She points out that Respondent-6, Kamala Bai is admittedly junior to her as Statistical Assistant as she has been kept only at Sl.No.29 in the Seniority List at Annexure D, immediately after her. Therefore, she should have been reverted instead of the applicant.

Further, ~~xxxx~~ it is also contended that Respondent-7 is also far junior to her because it is seen from the Annexure D Seniority List that while the Respondent-7 was appointed as a Statistical Assistant only from 1.6.1983, the applicant had started continuous officiation on an ad-hoc basis from 6.7.1982 which was regularised from 15.4.83. She, therefore, contends that the Respondent-7 cannot be assigned ^{at a place} at Sl. No.20 in the Seniority List in Annexure -D. and he could therefore have been reverted.

4 The Respondents 1-3 and Respondent-7 have filed reply affidavits. It is contended by Respondent 1-3 that the application is devoid of merit and has to be rejected. The applicant cannot have any grievance against the seniority assigned to Respondent 4 and 5 which led to consequential reversions as that was in pursuance of the Tribunal's order at Annexure-E. The seniority of Respondent-7 has been fixed properly at Sl.No.20 because he is a direct recruit and that vacancy was reserved for direct recruits. Similarly, the Respondent-6 was not liable to be reverted even though she was one place

u

junior to the applicant because that Respondent was a Scheduled Caste and was holding the post reserved for that community.

5 We have heard the counsel of the applicant as well as ^{Counsel for} the Respondent 1 to 3, Respondent 4 & 5 and Respondent-7. We have also perused the records.

6 We notice that the applicant has no case against Respondent 4 & 5 and therefore, she cannot be granted any relief ^{against} the higher seniority assigned to them over her as Statistical Assistant.

7 In so far as the Respondent-6 is concerned it is the contention of the applicant that, as a Scheduled Caste, she has only a right to ^{out of turn initial} appointment to a vacancy reserved for Scheduled Caste, as and when that vacancy arise. That right has already been given to her when she was appointed as Statistical Assistant. A situation has now arisen when two more persons have to be accommodated in the cadre of Statistical Assistants as a result of the Tribunal's order at Annexure-E. This necessitated the reversion of two Statistical Assistants. Therefore, the only persons who can be reverted are the junior most in the gradation list. These are Respondent-6 at Sl.No.29 and P Venu at the last serial number 30. It was also argued on behalf of the applicant that since Respondents did not have any hesitation in reverting the person at Sl.No.30

(P Venu), who belongs to a Scheduled Tribe, their contention that Respondent-6 could not be reverted does not stand scrutiny, as she was holding a post reserved for Scheduled Caste.

8. Respondent 1-3 have pointed in their counter affidavit that the post held by Respondent-6 fell vacant as an earmarked vacancy long before the applicant was appointed. It is stated that orders regarding reservation were issued on 27.11.72.

Sl.No. 1 to 9 of the Seniority List as on 1.1.1988 (Ext.R4) filed by the Respondents, were promoted before this date.

Thereafter, the reservation for Scheduled Castes were on the fresh roster points No.1, 8 and 14, which meant the 10th, 17th and 23rd vacancies in the cadre of 30 persons mentioned in the Seniority List. The three Scheduled Castes appointed to these posts were TP Kunjan (Sl.No. 16), PV Kunhithami (Sl.No. 18) and G. Kamala Bai (Respondent-6 at Sl.No.28).

It is, therefore, clear from this statement of facts that ^{the reserved post} other general vacancies arose after Sl.No. 23 in the list of Posts in the cadre was filled up by a Scheduled Caste. Therefore, when two candidates, viz, Respondent 4 & 5, had to be accommodated in the cadre of Statistical Assistants, in pursuance of the order of the Tribunal, it is only the last two

general candidates who can be reverted and not the Respondent

6 though she was ^U(but last) one in the Seniority List. It is

^Ualso ~~contended~~ ^{stated} that though Venu belongs to Scheduled Tribe,

he does not occupy a post reserved for Scheduled Tribes,

because that post is held by Smt. K Sarojini (Sl.No. 25).

Hence, the ^U~~reservation~~ ^{reversion} of P Venu, though a Scheduled Tribe, is as a general candidate.

9. In the light of this clarification, we are unable to agree with the contentions of the applicant. If the reversion was necessitated by the induction of a Scheduled Caste on the ground that it was his turn as a Scheduled Caste to occupy the reserved vacancy earlier than Respondent-6, the latter could have been reverted. That is not the case at present. Respondents 4 & 5 whose induction as Statistical Assistants resulted in the reversion are general candidates.

If at all any persons have to be reverted, they should ^{be} ~~the~~ ^U ~~the~~ ^{be} last ^U ~~the~~ ^{be} general candidates confirmed on the last two general vacancies. These are, according to Respondents 1 to 3, the applicant (Sl. No. 28) and P Venu (Sl.No.30) and hence they were reverted. We see ^U ~~no~~ ^{no} injustice done to the applicant by this decision, which is just and reasonable. In this view

of this matter, the applicant cannot have any grievance against the non-reversion of Respondent-6.

10. The contention of Respondents 1 to 3 in regard to PP Joy, Respondent-7, is that he is a direct recruit appointed to one of the two vacancies which arose in 1982 which was to be filled up by direct recruits. It is stated that the rules of recruitment to the post of Statistical Assistant was amended in March, 1982 when it was decided that the quota for promotion and direct recruitment should be 75 : 25.

There arose 8 vacancies of Statistical Assistants in 1982.

Therefore, 2 had to be filled up by direct recruitment.

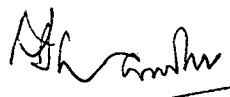
Against the requisition made by the Department, Respondent-7, PP Joy, was selected by the Staff Selection Commission. The other post of direct recruitment was reserved for Scheduled Tribe candidate, but as none was sponsored by the Staff Selection Commission, they permitted the vacancy to be filled up by other methods of recruitment. Therefore, when PP Joy joined duty on 1.6.83 it was against the vacancy ear-marked for a direct recruit in 1982. It is for that reason that he has been held senior to the applicant.

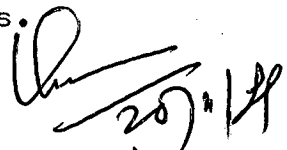
11. We find considerable merit in this submission. We are,

therefore, of the view that the applicant can have no grievance against the seniority assigned to Respondent-7 and consequently, he cannot claim that Respondent-7 - and not she - should have been reverted.

12 For the reasons mentioned above, we find that this application has no substance and has to be dismissed. It is ordered accordingly.

13 There will be no order as to costs.


(N Dharmadan) 20/11/89
Judicial Member
20.11.89


(NV Krishnan)
Administrative Member
20.11.89