

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 36 OF 2010

Wednesday, this the 12th day of October, 2011

CORAM:

HON'BLE Mr.JUSTICE P.R.RAMAN, JUDICIAL MEMBER
HON'BLE Mr. K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER

1. L.L.Sujamani
Assistant Complier
Directorate of Census Operations
Thiruvananthapuram, Kerala
Residing at Quarter No. II. Type III Quarter,
CGO Complex, Poonkulam
Thiruvananthapuram
 2. Athira Devi. A
Assistant Complier
Directorate of Census Operations
Thiruvananthapuram, Kerala
Residing at 'Prathana', Vengeri Po
Kozhikode
 3. Dhanalakshmi. S
Assistant Complier
Directorate of Census Operations
Thiruvananthapuram, Kerala
Residing at Quarter No.18 , Type III Quarter,
CGO Complex, Poonkulam
Thiruvananthapuram
 4. Ambili Sudheer
Assistant Complier
Directorate of Census Operations
Thiruvananthapuram, Kerala
Residing at Ponnambili, Kudanad Line, Veliyasala
Trivandrum
- ... Applicants

(By Advocate Mr. P.Ramakrishnan)

versus

1. Union of India represented by Secretary
to Government
Ministry of Home Affairs
New Delhi – 110 001
2. The Registrar General , India
Office of the Registrar General India
2/A, Man Singh Road
New Delhi – 110 011

3. The Director of Census Operation
Office of the Directorate of Census Operations
CGO Complex, Poonkulam
Trivandrum
4. The Deputy Director
Office of the Directorate of Census Operations
CGO Complex, Poonkulam
Trivandrum
5. Nisha. P Menon
Compiler
Directorate of Census Operations
CGO Complex, Vellayani PO,
Thiruvandanthapuram
6. Ambili. K.S
Compiler
Directorate of Census Operations
CGO Complex, Vellayani PO,
Thiruvandanthapuram
7. Shalma. T
Compiler
Directorate of Census Operations
CGO Complex, Vellayani PO,
Thiruvandanthapuram
8. Deepakumari. D
Compiler
Directorate of Census Operations
CGO Complex, Vellayani PO,
Thiruvandanthapuram
9. Renju Krishna. M
Compiler
Directorate of Census Operations
CGO Complex, Vellayani PO,
Thiruvandanthapuram
10. Sureshkumar. T. B
Compiler
Directorate of Census Operations
CGO Complex, Vellayani PO,
Thiruvandanthapuram
11. Jayalakshmi. K
Compiler
Directorate of Census Operations
CGO Complex, Vellayani PO,
Thiruvandanthapuram
12. Vibha. V
Compiler
Directorate of Census Operations
CGO Complex, Vellayani PO,
Thiruvandanthapuram

13. Manju. P
Compiler
Directorate of Census Operations
CGO Complex, Vellayani PO,
Thiruvandanthapuram
 14. Vijaya Shekhar. S
Compiler
Directorate of Census Operations
CGO Complex, Vellayani PO,
Thiruvandanthapuram
 15. Dinesh Kumar
Compiler
Directorate of Census Operations
CGO Complex, Vellayani PO,
Thiruvandanthapuram
 16. Sindhu. N
Compiler
Directorate of Census Operations
CGO Complex, Vellayani PO,
Thiruvandanthapuram
 17. Lachithamol. V.C
Compiler
Directorate of Census Operations
CGO Complex, Vellayani PO;
Thiruvandanthapuram
 18. Meera. A.P
Compiler
Directorate of Census Operations
CGO Complex, Vellayani PO,
Thiruvandanthapuram
 19. Vijay Laxmi
Compiler
Directorate of Census Operations
CGO Complex, Vellayani PO,
Thiruvandanthapuram
- ... Respondents

(By Advocate Mr. Sunil Jacob Jose, SCGSC (R1-4))

The application having been heard on 12.10.2011, the Tribunal on the same day delivered the following:

ORDER

HON'BLE Mr.JUSTICE P.R.RAMAN, JUDICIAL MEMBER

The applicants were originally LDCs in various Departments. They were deputed to Census Organisation in 2001 as Assistant Compilers. Though the deputation was initially for one year, that was



extended from time to time. Finally by Annexure A-1 order they were regularly absorbed in the services of Census Organisation in the case of applicants 1 to 3 with effect from 12.10.2004 and in the case of 4th applicant with effect from 20.12.2005. As per Recruitment Rules, Assistant Compilers is the feeder category to the post of Compilers. Annexure A-2 is the Recruitment Rules as per which Assistant Compilers in the respective offices with 8 years of regular service in the grade of ₹ 3050-4590 is the qualification prescribed for promotion to the post of Compilers. Subsequently, the 8 years service was relaxed as on the date of promotion by Annexure A-4 dated 06.03.2009 as per which Assistant Compilers who will be completing regular qualifying service of 8 years by 31.03.2011 may be considered immediately for promotion to the post of Compiler. Even though as per Recruitment Rules read with Annexure A-4 would enable an Assistant Compiler having 8 years of service as on 31.03.2011 eligible to be promoted as Compilers, the applicants are not qualified since their regular service is reckoned with effect from 12.10.2004 in the case of applicants 1 to 3 and 20.12.2005 as regards 4th applicant. The applicants were regularly absorbed in service only then. It is the contention of the applicant that they were working as Assistant Compiler for longer period as deputationist and therefore the period of deputation should also be reckoned for the purpose of reckoning the total service of 8 years for further promotion. Respondents on the other hand contend that what is provided in the rules is regular service in the respective office. Had there not been any regularization or absorption by Annexure A-1 there would not have arisen any question of their deputation as they will be ineligible as they are not on regular rolls of the Census Department. When they were subsequently absorbed there was no condition that their period of service

M

as deputation will be reckoned for any purpose. It is contended that their services as deputation cannot be counted as regular service in the department where they are working as deputationist. It is however pointed out that Annexure A-3 was issued by the Director of Census Operations, Ministry of Home Affairs by which certain LDCs who are originally deputationists, whose services as deputation were allowed to be reckoned for their seniority for counting further promotion.

2. The question as to whether the period of deputation can be counted as regular service for further promotion in the transferred Establishment had arisen for consideration before the Apex Court in **(1987) 4 SCC 566, K.Madhavan & anr. v. Union of India & Others**. The petitioners therein were direct recruits as Deputy Superintendents of Police (DSP) in the Delhi Special Police Establishment (S.P.E.) in the Central Bureau of Investigation (C.B.I.) on 06.07.1963. The 5th respondent who was appointed to the post of DSP on 13-7-1962 in the Rajasthan State Police, was sent on deputation to CBI as DSP on 01.07.1967. The Majority of the officers are deputationists. It was the contention of the respondents that the CBI Organisation requires very capable and experienced police officers and, accordingly, such police officers are brought to CBI on deputation from different states and, thereafter, they are generally absorbed in the CBI. When the question of seniority arose for consideration, it was contended that as per the Special Police Establishment (Executive Staff) Recruitment Rules, 1963, for the appointment of a deputationist to the post of SP, the minimum qualification required was DSP in the Special Police Establishment with at least eight years' service in the grade, out of which two years should be probationary

TM

period in the CBI. The 5th respondent became DSP in the Rajasthan State Police in 1962 and he joined the CBI as DSP on 10.07.1967. According to him, he was eligible for appointment to the post of SP after eight years of his service as DSP on July 13, 1970. It is also not disputed that under the 1963 Rules, the mode of recruitment was that not exceeding 15% of the sanctioned strength would be filled by promotion and the remaining by transfer on deputation. It was the contention of the petitioners that as the 5th respondent had not rendered eight years of regular service as SP in the CBI, he was not eligible for appointment to the post of DIG. It is submitted that eligibility requirement in the 1975 Rules is very specific in as much as it provides eight years of service in the grade after appointment thereto on a regular basis. The expression 'on a regular basis', according to the petitioners, means after absorption of the deputationist in the CBI as SP and, as the 5th respondent was absorbed in the rank of SP in the CBI on 01.07.1978, he was not eligible for appointment to the post of DIG on 13.10.1983, that is to say, within less than eight years of his service from the date of absorption. Under the 1966 Rules, the eligibility requirement for being considered for appointment to the post of DIG is as follows:-

" Superintendent of Police (including Assistant Inspector General of Police/Assistant Director) in the Central Bureau of Investigation with not less than eight years' service in the grade." (emphasis given)

3. It is submitted that on a comparison of the eligibility clauses in the 1966 and the 1975 Rules, it will be apparent that while under the 1966 Rules it was only eight years' service in the grade which might mean eight years' service in the rank of SP in the CBI whether the deputationist was permanently absorbed or not, under the 1975 Rules it is 'eight years' service in the grade rendered after appointment thereto on a



"regular basis". Accordingly, it is urged that the expression 'on a regular basis' can have only one meaning, that is to say, after permanent absorption of the deputationist in the CBI.

4. The Apex Court after considering the rival submissions held in Para 10 as follows:-

"The expression 'on a regular basis' in the 1975 Rules cannot, in our opinion, be interpreted to mean as on absorption in the CBI as SP. The general principle is that in the absence of any specific provision to the contrary, the length of service from the date of appointment to a post should be taken into consideration for the purpose of either seniority in that post or eligibility for the higher post. As no explanation has been given in the 1975 Rules of the said expression, we do not think it desirable to deviate from the established principle of computing the length of service for the purpose of seniority or eligibility for the higher post from the date of appointment. In our view, therefore, the expression 'on a regular basis' would mean the appointment to the post on a regular basis in contradiction to appointment on ad hoc or stop-gap or purely temporary basis."

5. Thereafter, the Apex Court in Para 21 held as follows:-

*"We may examine the question from a different point of view. There is not much difference between deputation and transfer. Indeed, when a deputationist is permanently absorbed in the CBI, he is under the rules appointed on transfer. In other words, deputation may be regarded as a transfer from one government department to another. It will be against all rules of service jurisprudence, if a government servant holding a particular post is transferred to the same or an equivalent post in another government department, the period of his service in the post before his transfer is not taken into consideration in computing his seniority in the transferred post. The transfer cannot wipe out his length of service in the post from which he has been transferred. It has been observed by this Court that it is a just and wholesome principle commonly applied where persons from different sources are drafted to serve in a new service that their pre-existing total length of service in the parent department should be respected and presented by taking the same into account in determining their ranking in the new service cadre. See **R.S. Makashi & Ors. v. I.M. Menon & Ors. [1982] 1 SCC 379; Wing Commander J. Kumar v. Union of India & Ors. [1982] 3 SCR 453.**"*

M

6. Thus, even the past services in the parent department was required to be considered, provided the post they held was equivalent to the post in the transferred department. In this case, it is not necessary to extend the past service in the parent department as part of service rendered as deputationist since the applicants were deputationists working in the post of Assistant Compilers which is the feeder category for the post of Compilers and admittedly, if the period of service rendered as Assistant Compilers from the date of their deputation is reckoned they have completed 8 years of service as on the prescribed date, so necessarily they should be held to be qualified for further promotion as Compilers. In this case, there is no dispute that they have completed 8 years of service as Assistant Compilers for the post of Compilers. If so, we declare that they are entitled to be promoted as Compilers in accordance with law and we direct the respondents to consider them for promotion as Compilers and give them due promotion, in accordance with law, if they are otherwise eligible.

7. OA is **allowed** as above. No costs.

Dated, the 12th October, 2011.



K GEORGE JOSEPH
ADMINISTRATIVE MEMBER



JUSTICE P.R. RAMAN
JUDICIAL MEMBER