

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No.
~~T. A. No.~~

365/92

~~190~~

DATE OF DECISION 8-4-93

V. Vijayalakshmi & 4 others Applicant (s)

Mr. S. Ramesh Babu Advocate for the Applicant (s)

Versus

Director, Census Operations,
Trivandrum & another. Respondent (s)

Mr. George C.P. Tharakam Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. N. Dharmadan, Judicial Member

The Hon'ble Mr. R. Rangarajan, Administrative Member

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

JUDGEMENT

R. Rangarajan, AM

The applicants, 5 in number, are approaching this Tribunal for the third time seeking relief for appointments as Tabulators (Compilers) under the second respondent.

The facts of the case are as follows:

2. All the five applicants were employed as Tabulators (Compilers) during the 1981 Census Operations and they were discharged after the above said enumeration work was over and they were treated as "Discharged Government Employees". The applicants say that they are entitled to Priority-III for re-employment against Central Government vacancies. They contend that no steps were taken to confer on them any priority in recruiting them against Central Government vacancies. In the 1991 Census Operations also an attempt

was made by the respondents to ignore retrenched census employees of 1981 census operations. When they voiced their protest, an interview was held on 6.3.91 but they were not selected. Their contention is that under Priority-III, 50% of the vacancies ought to have been reserved for them. In respect of the Regional Office at Cannanore there were 200 vacancies nearly and there were only 70 retrenched employees who could have been easily accommodated against the Priority-III. Instead, only 10 were appointed and the rest were left out by filling the vacancies arbitrarily by the respondents from non-priority category.

3. The applicants approached this Tribunal in OA 486/91 in respect of applicants 1 to 3 and OA 804/91 in respect of applicants 4 and 5. By order dated 9.8.91 this Tribunal ~~has passed orders~~ directed the respondents to reserve vacancies for priority categories as directed in the Govt. of India circular and consider afresh the claim of the applicants in that OA along with other similarly placed persons if they are otherwise eligible for selection and appoint the applicants in accordance with law if selected. The respondents did not comply with the order passed as per Annexure-1 judgement and instead made attempts to avoid the implementation of this direction by filing a clarificatory petition on the ground that this order is unworkable. This clarification application was dismissed. Further, the respondents were reported to have informed the applicants that their case cannot be considered for appointment since they are over aged. A copy of the letter issued to Smt. K.P. Anuradha is at Annexure-2. When the contents of the Annexure-2 were brought to the notice of the Tribunal in the contempt matter, the Tribunal, vide their interim order

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dated 16th January 1992 ~~has~~ maintained that the contention of the respondents in rejecting the case of the applicants as over aged does not seem to be consistent ^{with} the stand earlier taken by the respondents and hence held that the over age should not be a bar to deny the retrenched employees' appointment. xxxx if they are otherwise eligible. When the Annexure-1 judgement was not implemented the applicants moved a contempt petition and it was considered on 13.2.92. Then it was submitted by the ^{learned} counsel appearing for the respondents that a reconsideration of the matter was done by the respondents as directed in the Annexure-1 judgement and that consequent on reconsideration the applicants have been found to be ineligible for appointment. The respondents also produced a note dated 15.12.91 in which the reconsideration of the case of the applicants has been done in terms of Annexure-1 judgement and after the reconsideration they rejected the claims of the petitioners for recruiting them as compilers in the Regional Tabulation Office. A copy of the note dated 15.12.91 is at Annexure-4.

4. The reasons stated in the Note at Annexure-4 for rejection of the applicants for recruitment after having reviewed their cases are as follows:

" i) Smt. V.Vijayalakshmi.

She is found ineligible as she is financially sound and is not in dire need of a job which criterion is one of the principles for selection. Her case was also rejected on the ground that it is difficult to train her for the post as the tabulation work is nearing completion and the contract appointment will be terminated on 28.2.92.

ii) Smt. K.Bhargavi.

Her case has been rejected as she was not qualified. As she has a young child and her husband is also employed, she is not in dire need of a job. She was also considered

unfit because of the difficulty to train her afresh at the final stage of tabulation.

iii) Smt. K.P. Anuradha

She is not a graduate. Her husband is wealthy enough being a wholesale dealer and she applies only just for passing her time, rather than doing the work sincerely and efficiently. Because of her family position she is not in need of a job. Her case has also been rejected because of the fact that she is over 40 years old and hence she cannot apply her mind to the intricacies of census concepts and timely completion of tabulation.

iv) Shri P. Sudhakaran

He is having an alternate employment and if he loses his present job it will affect adversely his career as the Regional Tabulation Office will be wound up shortly. It is also indicated that as the post is temporary he will try to continue his private job also which will create unnecessary problems to the department.

v) Shri M. Sreedharan

He is an agriculturist and he has seldom done any work of this nature. As he has not done any job for a long time his reflexes in sitting in office from 9.00 AM till 5.30 PM will be rather difficult and his employment will be a burden for the department. As census is a time-bound programme no risk can be taken by employing him.

In the result, all the above cases were sympathetically considered as per the Note but all of them were found to be ineligible for appointment in the Census Department."

5. The applicants further state that in the counter affidavit filed in the original application the respondents have submitted that the selection was done after following the prescribed criteria, namely, qualification, experience



and performance in the 1981 Census, personality and smartness in doing the job, but while rejecting their cases, as per Annexure-4 Note, none of these criteria were followed and extraneous consideration played an important role in rejecting their claim for appointment. They contend that the reason given in the note is not at all valid and is not borne by facts. They further aver that the rejection of the claims of the applicants was to continue those who were selected earlier who are relatives or close to the respondents whose services the respondents did not like to terminate.


6. Under the above circumstances the applicants have approached this Tribunal under section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

- "(1) To set aside Annexure A2 and Annexure-4 Note of the 2nd respondent.
- (2) To declare that the applicants are entitled to and ought to have been appointed as tabulators/compilers for the 1991 census operations under the 2nd respondent.
- (3) To direct the respondents to appoint the applicants as compilers under the second respondent and to further direct that such appointment shall be deemed to have been with effect from the commencement of the census operations with all monetary and other benefits accruing from the said date.
- (4) Or in the alternative to 2 above, to direct the respondents to grant to the applicants all benefits financial and otherwise as if they had been selected and appointed as compilers on the commencement of the 1991 census operations."

7. The respondents in their reply statement have denied the malafide intention on their part in rejecting their cases for appointment. They stated that they considered the claims of the applicants in terms of Annexure-1 judgement and disposed it off after due verification of facts. They further submit that the appointments made during 1990-91 were on contract basis and

not similar to the 1981 census. The concession given in 1981 census is not applicable to the appointments made on contract basis in 1991. It is averred by the respondents that the applicants have no legal claim for any posts created temporarily which are to be filled up on contract basis. They further submit that the selection of the candidates under Priority-III basis is to be done by the Employment Exchange while sponsoring the candidates and hence the respondents cannot be held responsible for not sponsoring their cases by the Employment Exchange. If any lacuna in this respect ^{has} been committed it is the responsibility of the Employment Exchange while sponsoring the candidates and not of the Directorate. In view of the above submission the respondents had requested for reconsideration of the earlier orders of this Tribunal and its modification. They further aver that the interview was done fairly and the cases of the applicants were rejected on the basis of the information gathered from the individuals at the time of interview.

8. The respondents stated that the census work is a short time bound work and the candidates are selected on the basis of some principle which had already been brought to the notice of the Tribunal. The discretionary power of the selection of persons for short term durations is valid and cannot be subjected to scrutiny. As thousands of candidates appear for selection, the Selection Committee on the basis of the prescribed norms select the candidates based on their performance in the interview or in terms of the assessments made by the officers who interviewed them. They further aver that there were no malpractice involved in selecting the candidates and also in rejecting the claims of the applicants.



9. During the hearing the learned counsel for the respondents submitted that the census operation is in the last leg and only residual work which are of technical nature is being done with a skeleton staff and hence at this juncture it will not be feasible and advisable to appoint any more candidates. As the nature of the work is of highly technical the applicants may not fit in the job requirement and hence their appointment is also not possible. In the above circumstances the respondents stated that the application is devoid of any merit and hence prayed for dismissal of the O.A.

10. In the rejoinder the applicants have contended that it is incorrect to state that the concession given under Priority-III category is not available in respect of 1991 census. They aver that an attempt has been made to keep the applicants out of service by raising one frivolous objection or the other so that persons now wrongfully given employment who are the nominees of the officers of the department are continued in service. They further state that the Annexure-1 judgement having become final the respondents tried to get out of the present predicament by praying for reconsideration and modification of the Annexure-1 judgement. They further aver that the appointing authority is fully competent to consider the cases on priority basis and the averment of the respondents that the sponsoring of the candidates as per priority is the responsibility of the Employment Exchange is not correct.

11. We have heard the learned counsel on both sides and perused the records carefully. As indicated earlier this is the third time that the applicants are approaching this Tribunal for justice. The first time when they approached this Tribunal by filing OA 486/91, judgement was

(i)

delivered on 9.8.91 directing the respondents to reserve vacancies for priority categories as directed in the Government of India circulars and to consider the claim of the applicants in that OA along with similarly placed persons if they are otherwise eligible for appointment and appoint them in accordance with law if selected. The respondents had taken no initiative to comply with the orders of this Tribunal. However, they have delayed the implementation of the judgement for one pretext or the other. Initially they rejected the application of those who are above 35 years. By an interim order of this Tribunal dated 16.1.92 the age qualification was clarified. However, when a clarificatory petition was moved by the respondents with a view to further delay the compliance of the directives of the Tribunal, it was rightly rejected. When the contempt petition was moved the respondents hastily issued a note dated 15.12.91 showing the consideration of the candidates in ^{the} ~~that~~ OA as per the directions in the Ann.1 judgement but in all the cases they have rejected the applicants' claim for appointment. The present OA has been filed seeking relief to set aside the Annexure-2 and Annexure-4 Note of the 2nd respondent.

12. In the judgement in OA 486/91 it has been held that the concession No.2 has no time limit and 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. The relevant portion of this concession No.2 is reproduced below:

"(11) 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 exchange and had put in not less than 6 months

...contd.

of continuous service and were retrenched due to reduction in establishment will also be eligible to apply for recruitment to vacancies advertised by various recruitment authorities without their having to be sponsored through the respective employment exchanges even though they might not have got themselves registered with the employment exchanges for the purpose of availing of concession of high priority (Priority III) in the submission rosters of these employment exchanges."

The respondents could have easily implemented this concession by appointing the applicants against various posts when candidates were recruited for tabulation purposes when the 1991 census operations started. As pointed out earlier the respondents failed to take note of this concession and employ them. Even when a direction was given to consider their cases the respondents have not only delayed the process of consideration as directed but also forced the candidates to file a contempt petition after which only the ~~the~~ Annexure-4 note dated 15.12.91 was issued to comply with the direction of this Tribunal. The above would show that the respondents were only interested in rejecting the case of the applicants. The reasons for rejecting the applicants' claim for appointment has been given vide para 4 supra.

13. From the above it is seen that the respondents were not very anxious to grant relief to them inspite of direction from the Tribunal. As has been correctly pointed out by the applicants that the five criteria mentioned which the respondents admittedly accepted in their counter affidavit in OA 486/91 was given a go by and fresh considerations were taken into account. In our opinion, economic viability, the age or whether the applicant is employed elsewhere or not is not the main criteria in the case of the applicants. The only criterion in our opinion is that they should have enough qualification and experience in completing the job to be entrusted to them, their performance in the earlier

census and the capability to manage the job. In the note dated 15.12.91 there is no mention of all these qualities while considering their claims for appointments. Hence we come to the conclusion that the respondents are only interested in rejecting the application and somehow show to the Tribunal that they have fully complied with the directions of this Tribunal. Though we could not directly lay hand regarding the mala fide intention of the respondents, we are of the opinion that the respondents are not judicious in their review. In the result, we have come to the conclusion that the Annexure-2 and Annexure-4 are only to be set aside. Accordingly, we do so.

14. The learned counsel for the respondents at the time of final hearing submitted that the census operation is going to be completed shortly, probably before the end of this year and the present phase of work is very technical and is carried out ^{through} a skeleton staff who are trained to do the work in the final phase. Hence he submitted that it will be difficult to appoint the applicants now in any of the posts. This argument, in our opinion, may be correct. But Annexure-1 judgement was delivered on 9.8.91 when the enumeration work was in full swing. Had the respondents judicious enough to consider the applicants immediately after 9.8.91 it would have been possible for them to appoint the applicants either as tabulators or compilers. Considerable loss of precious time has led to the present predicament wherein the learned counsel for respondents pleads his helplessness to appoint the applicants. This in our opinion is very unsatisfactory and we cannot accept such excuses. It is necessary in the interests of justice that some relief has to be extended to the applicants in view of the fact that they were approaching this Court on account of the Respondents' attitude as indicated frequently and also they come under the purview of concession No.2 as indicated in para 12 supra.

above

15. In view of the above observations we are satisfied in directing the respondents to consider the cases of the applicants for appointment in suitable positions even if they now employ only a skeleton staff. There may not be any dearth of work for these 5 applicants to do in the final phase of work. If the respondents strongly feel that it is not desirable to increase the number of staff due to limited amount of work, the applicants have to be compensated by way of giving them some monetary benefit.

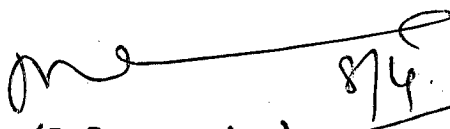
16. In the conspectus of facts and circumstances of the case--


(i) We direct the respondents to consider these applicants against the posts which are now in operation and appoint them in suitable position;

(ii) alternatively, if the direction (i) above is not feasible, we direct the respondents to pay the applicant monetary benefit of six months' pay in the respective posts to which they were working previously, as the respondents have failed to consider their cases in time as per the directions of this Tribunal issued earlier.

17. The application is allowed to the extent as indicated above.

18. There will be no order as to costs.


(R. Rangarajan)
Administrative Member


(N. Dharmadan)
Judicial Member

8.4.93