

CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH
LUCKNOW.

Dated : This the 18th day of October 2007

Hon'ble Mr. M. Kanthaiah, Member (J)

Hon'ble Mr. P.K. Chatterji, Member (A)

Original Application No. 266 of 2007

Radhey Shyam Dubey, S/o late Sri K.N. Dubey, R/o Shri Nagar Colony, Mohibullahpur, Lucknow.

... Applicant

By Adv: Sri A. Srivastava

V E R S U S

1. Union of India through the Secretary, Ministry of Home Affairs, New Delhi.
2. Registrar General of India, Census Department, New Delhi.
3. Director, Census Operation, Lekhraj Market, Indra Nagar, Lucknow.

... Respondents

By Adv: Sri K.K. Shukla

Alongwith

Original Application No. 265 of 2007

Prakash Narain Tripathi, S/o late Sri B.P. Tripathi, R/o Type III 6, Aakansha Parishad, Sector-F, Jankipuram, Lucknow.

... Applicant

By Adv: Sri A. Srivastava

V E R S U S

1. Union of India through the Secretary, Ministry of Home Affairs, New Delhi.
2. Registrar General of India, Census Department, New Delhi.
3. Director, Census Operation, Lekhraj Market, Indra Nagar, Lucknow.

... Respondents

By Adv: Sri G.K. Singh

meesh

Alongwith**Original Application No. 290 of 2007**

Ram Naresh Mishra, S/o late Sri K.P. Mishra, R/o 89, Type III, Kendranchal Colony, Sector-K, Aliganj, Lucknow.

. Applicant

By Adv: Sri V.P. Nagar

V E R S U S

1. Union of India through the Secretary, Ministry of Home Affairs, O/O Registrar General India through Under Secretary, 2-A, Man Singh Road, Delhi.
2. Director, Census Operation UP (Administrative Section), Lekhraj Market-III, Indra Nagar, Lucknow.
3. Deputy Director of Census Operation Uttrakhand (At Lucknow, New DCO) Controlling Officer, Lekhraj Market-III, Indira Nagar, Luknow.

. Respondents

By Adv: Sri K.K. Shukla

Alongwith**Original Application No. 333 of 2007**

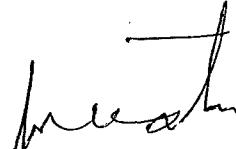
1. Arun Kumar Sharma, R/o C-3761, Rajajipuram, Lucknow.
2. Avadhesh Mani Pathak, R/o 1/467, Vikas Nagar, Lucknow.
3. Ramapati Verma, R/o A-937/9, Indira Nagar, Lucknow.
4. Ganga Ram, Ss/o Sri R. Singh, R/o D-2280, Indira Nagar, Lucknow

. Applicants

By Adv: Sri S. Srivastava

V E R S U S

1. Union of India through Union Home Secretary, New Delhi.
2. Registrar General of India, Census, Operations, 2-A Man Singh Road, New Delhi.



3. Director of Census Operation UP, Lekhraj Market-III, Indra Nagar, Lucknow.

4. Director of Census Operations, Uttrakhand, Presently at Lekhraj Market-III, Indira Nagar, Lucknow.

... Respondents

By Adv: Sri G.K. Singh

Alongwith

Original Application No. 331 of 2007

1. Ram Bahadur Singh, S/o Sri V.P. Singh, R/o A-1499/5, Indira Nagar, Lucknow.

2. Paras Nath, S/o Mahadeo Yadav, R/o 539/113Gha, Bari Jugauli, Lucknow.

3. Pramod Kumar Gupta, S/o late S.R. Gupta, R/o C-140, Sector-B, Aliganj, Lucknow.

... Applicants

By Adv: Sri S. Srivastava

V E R S U S

1. Union of India through Union Home Secretary, New Delhi.

2. Registrar General of India, Census, Operations, 2-A Man Singh Road, New Delhi.

3. Director of Census Operation UP, Lekhraj Market-III, Indra Nagar, Lucknow.

4. Director of Census Operations, Uttrakhand, Presently at Lekhraj Market-III, Indira Nagar, Lucknow.

... Respondents

By Adv: Sri G.K. Singh

Alongwith

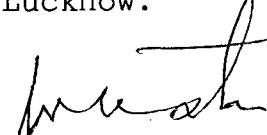
Original Application No. 270 of 2007

1. Dilip Kumar Saxena, S/o late R.K. Saxena, R/o Type III-80, Kendranchal

2. Ramesh Chandra, S/o late Chandra Shekhar, R/o 347, Rajendra Nagar, Lucknow.

3. Devendra Sharma, S/o S.C. Sharma, R/o F-385, Rajajipuram, Lucknow.

4. Vashistha Prandey, S/o Kamleshwar Pandey, R/o 6/741, Vikas Nagar, Kursi Road, Lucknow.



5. A.H. Naqvi, S/o late K.H. Naqvi, R/o 337/154, Hata Burham Saheb, Saadatganj, Lucknow.
6. O.P.L. Srivastava, S/o R.A.L. Srivastava, R/o 1/728, Vinay Khand, Gomti Nagar, Lucknow.
7. Ram Chandra Srivastava, S/o late G.P.L. Srivastava, R/o 481/49, Mohan Meakins Road, Daliganj, Lucknow.
8. Syed Raizul Haque, S/o late M. Haque, R/o 541/R/36, Rafi Colony, New Haiderganj, Lucknow.

... Applicants

By Adv: Sri S. Srivastava

V E R S U S

1. Union of India through Union Home Secretary, New Delhi.
2. Registrar General of India, Census, Operations, 2-A Man Singh Road, New Delhi.
3. Director of Census Operation UP, Lekhraj Market-III, Indra Nagar, Lucknow.
4. Director of Census Operations, Uttrakhand, Presently at Lekhraj Market-III, Indira Nagar, Lucknow.

... Respondents

By Adv: Sri G.K. Singh

Alongwith

Original Application No. 308 of 2007

Glaya Prasad Singh, S/o Sri T. Singh, R/o L-1/116, Vineet Khand, Gomti Nagar, Lucknow

... Applicant

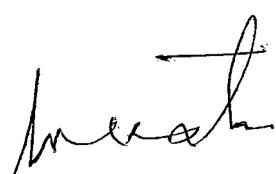
By Adv: Sri A.K. Jauhari

V E R S U S

1. Union of India through the Secretary, Ministry of Home Affairs, New Delhi.
2. Registrar General of India, Census Department, New Delhi.
3. Director, Census Operation, Lekhraj Market, Indra Nagar, Lucknow.

... Respondents

By Adv: Ms Neelam Shukla



Alongwith**Original Application No. 292 of 2007**

Satish Chandra Gupta, S/o late Daya Shanker Gupta, R/o 25 Hata Khan Saman, Near Ram Mandir, Subhash Marg, Lucknow.

. . . Applicant

By Adv: Sri S. Srivastava

V E R S U S

1. Union of India through Union Home Secretary, New Delhi.
2. Registrar General of India, Census, Operations, 2-A Man Singh Road, New Delhi.
3. Director of Census Operation UP, Lekhraj Market-III, Indra Nagar, Lucknow.

. . . Respondents

By Adv: Ms Neelam Shukla

Alongwith**Original Application No. 289 of 2007**

Anil Saxena, S/o late Sri N.S. Saxena, R/o 21/280, Indira Nagar, Lucknow.

. . . Applicant

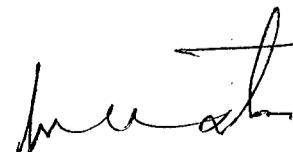
By Adv: Sri V.P. Nagar

V E R S U S

1. Union of India through the Secretary, Ministry of Home Affairs, O/O Registrar General India through Under Secretary, 2-A, Man Singh Road, Delhi.
2. Director, Census Operation UP (Administrative Section), Lekhraj Market-III, Indra Nagar, Lucknow.
3. Deputy Director of Census Operation Uttrakhand (At Lucknow, New DCO) Controlling Officer, Lekhraj Market-III, Indra Nagar, Luknow.

. . . Respondents

By Adv: Sri G.K. Singh

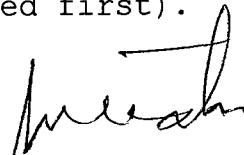


O R D E R
By Hon'ble Mr. P.K. Chatterji, AM

The applicants in all the above mentioned OAs have a common grievance. They are all employees of the Directorate to Census Operations and have been working in the office of the DCO UP at Lucknow. They have all impugned the order dated 15.06.2007 from the office of the DCO UP whereby they have been transferred to the office DCO Uttrakhand. The State of UP was bifurcated with the passing of the UP reorganization act 2000. A new state Uttranchal comprising 11 districts were formed by this act. Consequent upon bifurcation of UP an office of the DCO had to be located at Uttranchal. As the work of the whole state of erstwhile UP got truncated, some work load including staff contingent had to be diverted for the work needed in the new office at Uttranchal. As a result the office of DCO Lucknow had to issue the transfer orders.

2. The applicants have stated that that by means of an order dated 3.2.2007 the Registrar General of India directed creation of 72 post for the office of DCO Dehradoon. It was also directed that 62 posts had to be diverted from the office of DCO Lucknow and fixed a criteria for transfer of Group 'B' and C' on the basis of:

- i. Option exercised
- ii. Seniority in the grade (indicating that juniors will be transferred first).



3. A list of officials to be transferred was also attached in the list and they were given opportunity upto 22.2.2007 to make representation against the proposed transfer in case they feel that the criteria has been wrongly implemented.

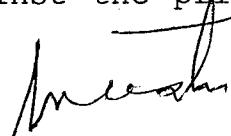
4. Subsequently vide OM dated 16.04.2007 the respondents modified the criteria of transfer as follows:

"That subsequently vide Office Memorandum dated 16.04.2007 the respondents modified the criteria of transfer as follows:

- i. the employees in SC/ST category will be transferred to the new DCO within their proportions in the present filled up posts.
- ii. The women employees will not be transferred until and unless they have given options; and
- iii. The employees would be transferred batch wise for each post to ensure that the promotional prospects of the transferred employees are not adversely affected. Thus, the persons to be transferred will now be selected from each batch proportionately in the order of their juniority.

This order was also accompanied by a list of employees who were proposed to be transferred following the modified criteria and the employees were given time upto 01.05.2007 to represent against the proposed transfer. The applicant submits that this time also his name did not figure in the list of employees who were proposed to be transferred from Uttar Pradesh to Uttranchal."

5. Thereafter, a fresh order was issued on 15.06.2007 (impugned order) whereby the applicants have been transferred from UP to Uttranchal without affording them any opportunity and without taking their consent while some of their juniors have been retrained. It is stated by the applicant that it was in clear violation of the criteria set out by the respondents initially going against the principles

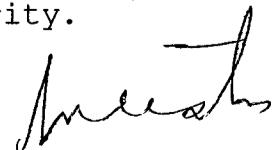


of natural justice and they resorted to sending people from UP to Uttranchal on pick and choose basis.

6. The above facts are almost entirely common for all the applicants in the above mentioned OAs. The only difference is that in case of some applicants (i.e. applicant in OA 266/07) the name first figured in the transfer list of 15.06.2007. In case of some other applicants the name figured in the previous list such as the list circulated alongwith order dated 03.02.2007. There is practically no other distinction between the circumstances of the applicants in the above OAs.

7. The grounds on which the order dated 15.06.2007 has been assailed are also almost common which are as follows:

- i. The orders are arbitrary, illegal and without jurisdiction as the same has been passed without taking consent of the applicants.
- ii. The cadre controlling authority of the applicants was being changed without obtaining their consent. in terms of the rules of their initial appointment their transfer liability was only within the state of UP. Therefore, this order of transfer went against the terms of the initial appointment which did not envisage transfer out of the home state or a change in the cadre controlling authority.



iii. The impugned order dated 15.06.2007 or the earlier orders of 03.20.2007 and 16.04.2007 were illegal for the reason that the orders were not issued consistently with the provisions of Section 73 of the UP Reorganization Act which required the Central Govt. only to issue such order. In terms of Section 3 (8) (b) (ii) of the General Clauses Act Central Govt. would mean the President of India and, therefore, order in respect of Central Govt. employees in such matter has to be issued by the President of India or by authorities who has been vested with the powers to issue such orders in exercise of the powers conferred upon them by the President.

The relevant clause is as follows:

"Central Government shall in relation to anything done or to be done after the commencement of the Constitution, mean the President; and shall include in relation to the administration of a Party C state, the Chief Commissioner or Lieutenant-Governor or Government of a neighboring State or other authority acting within the scope of the authority given to him or it under Article 239 or Article 243 of the Constitution, as the case may be."

iv. The learned counsel for the applicant referred quite at length to the orders of the Tribunal, Allahabad Bench in OA No. 537/06 decided on 05.02.2007. The application was against the CAG and the Accountant General Allahabad on the question of the transfer of the staff of the office of the AG from Allahabad to offices set up in Uttranchal (now Uttrakhand) consequent upon the formation of the new state. The ground taken in challenging the order was that the CAG could not be construed as part of the Central Government and, therefore, in

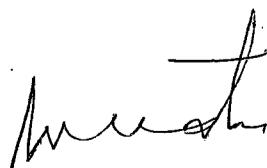
mechan

terms of the Section 3 (8) (b) (ii) of the General Clauses Act the direction of CAG for transfer of staff from the office of AG Allahabad to Uttrakhand was not valid.

The OA was allowed by the Tribunal after accepting the above arguments and as per the following observations:

"Thus, to conclude it is clear that in the wake of the enactment of Uttar Pradesh Reorganization Act, 2000, under Section 73, there should be an order for shifting of the persons serving in the State of UP before bifurcation from the present State of UP to the newly carved out state of Uttranchal. There has been no such order, general or special, passed by the Central Government. Again, the policy of transfer issued by the C & AG vide the impugned order cannot be said to be one framed under the provisions of Act 148(5) of the Constitution, as Act 148 provides for making rules in respect of persons serving under C & AG not by the C & AG but by the President and of course, in consultation with the C & AG and further such rules, if made, are clamped by a condition precedent that such rules should be "subject to the provisions of the Constituted and of any law made by Parliament, and here, the law made by the Parliament, vide Uttar Pradesh Reorganization Act, 2000 prescribed under Section 73, a general or special order by the Central Government for shifting of persons already serving in the pre-bifurcated UP State to the State of Uttranchal, and such an order is conspicuously missing.

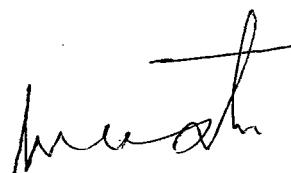
Thus the applicants have made out a cast iron case in their favour. The policy of transfer vide impugned order in OA 537/2006 has to be held as illegally unsustainable, having been passed by the C & AG of authorities subordinates to them which have been assailed in these OAs are also equally sustainable. These are, therefore, quashed and set aside. It is however, open to the respondents, to undertake the exercise of having necessary orders passed by the Central Government in accordance with the provisions of Sec 73 of the Uttar Pradesh State Reorganization Act, 2000 and implement the same. Till such a legally tenable action is taken by the respondents, the applicant cannot be disturbed from their respective position in the State they are functioning."



v. No opportunity was afforded to the applicants to submit their abjections against the proposed transfer (in case of some applicants as in OA 266/07). Those whose names were listed in the order of 03.02.2007 and 16.04.2007, however, were given this opportunity.

vi. The respondents were adopting pick and choose method for transferring the persons without any objective criteria as a result of which persons who are senior have been directed for transfer leaving their juniors. The applicants have also alleged that after deciding some criteria for transfer and issuing a list of officials to be transferred, the respondents again changed their mind, revised the order and reconstructed the whole list. In the revised order the respondents decided to transfer officials in accordance with their batch wise seniority and not the actual seniority as on date. This has created serious anomaly in the orders and distortions in the norms of transfer generally followed. It is also alleged by the applicants that some applicants whose names did not figure in the first list suddenly found their name figuring in the list of transferred officials in the impugned order which took them entirely by surprise. The applicants' grievance is, therefore, against the transfer policy adopted by them for operationalising the new office of the DCO at Uttrakhand.

8. The relief which has been sought for is as under:

A handwritten signature in black ink, appearing to read "Meath".

- "i. That the impugned order dated 15.06.2007 as well as the criteria for transfer as contained in Annexure No. 1 to the OA permanently transferring the applicant on the post of Compiler from the office of Director Census Operations Uttar Pradesh Lucknow to the office of Director Census Operations Uttrakhand may be quashed.
- ii. That the opposite parties may further be directed to allow the applicant to continue on the post of Compiler at his present place of posting in the office of Director Census Operations Uttar Pradesh Lucknow and pay him salary regularly every month.
- iii. That any other relief which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case may also be passed.
- iv. That costs of the present petition may be allowed."

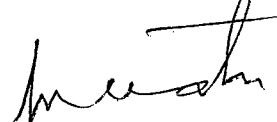
9. The respondents refuted the allegations and filed their detailed reply to the same. Before proceeding further in the matter it would be worth while to quote the provisions of Section 73 of the Reorganization Act which is as follows:

"Provisions relating to other services: (1) Every person who immediately before the appointed day is serving in connection with the affairs of the existing State of Uttar Pradesh shall, on and from that day provisionally continue to serve in connection with the affairs of State of Uttar Pradesh unless he is required, by general or special order of the Central Government to serve provisionally in connection with the affairs of the State of Uttranchal.

Provided that every direction under this sub section issued after expiry of a period of one year from the appointed day shall be issued with the consultation of the Government of the Successor States.

(2) As soon as may be after the appointed day, the Central Government shall be general or special order determine the successor State to which every person referred to in Sub Section (1) shall be finally allotted for service and the date with effect from which such allotment shall take effect or be deemed to have taken effect.

(3) Every person who is finally allotted under the provisions of Sub Sect (2) to a successor State shall, if he is not already serving therein be made available for serving in the successor State from such date as may be agreed upon between the Government concerned or in default of such

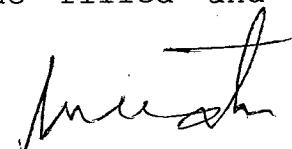


agreement, as may be determined by the Central Government."

10. The respondents explanation regarding the validity and legality of their action was explained in the counter affidavit and may be quoted from their own submission

i. On 03.08.2006, Circular No. A-11011/1/2005-Ad.II(RGI) dated 03.08.2006 was issued declaring the intention to set up the new DCO for the state of Uttrakhand. The circular listed the posts which would be created as well as those which would be transferred and invited options from those who were willing to work in DCO, Uttrakhand. The Circular was displayed on the Notice Board of the State Directorate of Census Operation, UP.

ii. Since the options received were less than the number proposed for the new DCO, OM.No. A-11011/1/2005-Ad.II(RGI) dated 03.02.2007 was issued detailing the criteria adopted for allocation of the persons from the DCO, UP to DCO, Uttrakhand. In para 4 of the OA, it was mentioned that in the attempt to create a composite and balanced cadre, the persons have been allocated in Group 'B' & 'C' posts on the basis of 'options exercise' and 'juniority in the grade'. While doing so, exemption has been given to those personnel retiring within two years from 01.01.2007 (which is the cut off date taken for allocation of personnel), physically handicapped and those personnel whose spouses were working in Central/State Government in UP. The allocation was made in proportion of both the filled and the



vacant positions. The OM had as an attachment the list of officials proposed to be transferred. The list was displayed on the Notice Board and interaction was given individually to all those proposed for allocation for filing representations, if any.

iii. Forty four (44) representations were received in response including those from the applicants who have filed the OA, all of which are analyzed alongwith the persons cited. Following this, a team led by the Addl. RGI had held discussions at Lucknow with the employees and the representatives of the Association in which they had, among other specific personal points concerning them, unanimously pleaded for protecting their promotional prospects in the new DCO (which they felt will be affected if they are transferred). Other points such as proportionate representation of SC/ST, excluding women employees, were also raised.

iv. On consideration of those representations in consultation with the DOP&T, the criteria was modified to the extent that the allocation was decided to be made batch-wise as well as seniority basis for each of the posts to ensure that the promotional prospects of the employees were not adversely affected. While at the same time ensuring creation of composite and balanced cadre of officials in each grade. Juniority continued to be guiding consideration except it was decided to be applied for each batch proportionately. For this, initial year of recruitment in each batch has been taken as the basis. Thus, there entire allocation

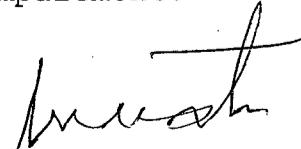


has been so made as would ensure balance allocation in each cadre having persons with almost comparable length and experience for each post in both the Directorates so that the work as well as the promotional prospects are not adversely affected. The second list adopting the revised criteria, was issued on 16.04.2007 and all the employees were afforded opportunity against because of the charges to represent upto 1st May, 2007.

v. Thirty two (32) representations were received in response to the second list. Each and every representation was examined with reference to the criteria adopted in allocation of the employees. It was found that only into cases (in 4 cases the spouse of the respective employee are Government employees, on employee is physically handicapped and another employee was transferred from Bhopal to Lucknow in September, 2001 losing his seniority), officials were required to be retained in Lucknow. All the other representations were given a reply individually as well as the impugned order explaining the reasons for their allocation to Uttrakhand."

11. In addition to the above points the respondents also made the following further submissions during the course of hearing:

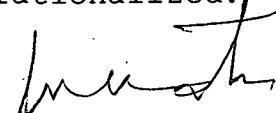
a. The OAs were not maintainable as except in OA No. 331/07 and 332/07, Director of Census Operation Uttrakhand was not made a part by impalement.



b. In respect of all applicants it may be stated that they all rushed to the Tribunal before exhausting the departmental remedy which was available to them.

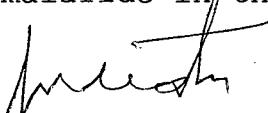
c. The respondents initially attempted to transfer officials by taking their options. As the number of optees were much less than the number of persons required, they had to follow a transfer policy.

d. The first list was prepared as it was considered suitable by the respondents. However, after issuing the list there was representation in large number against it. Not only that, the union also took up the matter. There were discussions with the staff side by a representative of Registrar General Census Operations. Through these discussions a norm which will be acceptable to the largest number of staff was formulated and implemented. It has been emphatically stated by the respondents that after framing the new norm there has not been any deviation of the same. The respondents have strongly refuted the allegation that they transferred officials capriciously and on a pick and choose method. The respondents have further stated that it would not be possible to satisfy each and every official as whoever was transferred was likely to be aggrieved. Still the respondents had to discharge their functions to ensure that the new office was operationalized.



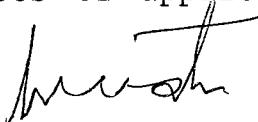
e. The respondents admitted that after discussion with the staff union the norm of transferring persons on batch wise seniority was followed. It is true that it was not actual seniority but batchwise seniority and there may be some difference between the two in case of some officials. However, this was done to ensure that promotional avenue in the parent office as well as in the new office was not blocked.

f. The learned counsel for the respondents cited a large number of Apex Court decisions in the matter of liability of transfer. By citing a large number of judgments such as Gujrat Electricity Board VS. Atma Ram Sungomal Poshani AIR 1989 SC 1433, the case of Shilpi Bose Vs. UOI, Janardan Devnath Vs. UOI etc, the learned counsel tried to make out that the refusal to accept transfer was to be construed as misconduct and be liable for disciplinary action. No one could claim to remain posted in a particular station through out his life. Transfer was an incidence of service and the decision of the respondents to transfer these employees in the interest of service could not be questioned in the Court's/Tribunal's. The only ground on which transfer could be challenged is on the ground of malafide intention and in such cases it is necessary to substantiate the same by impleading the necessary parties by name. However, there is no such allegation of malafide in these cases.



g. The other and quite important submission which the respondents made was that the office of the Director Census Operation could not come under Section 73 of the Reorganization Act, 2000. The respondents have submitted that the matter was referred to the DOPT and also to the Ministry of Law. It has been opined that the reorganization act will not be applicable in so far as Central Govt. employees were concerned. In consequence no presidential order is required in the case of these employees. The Registrar General of India is competent to decide such matters in the offices within the entire territory of India. It has been very emphatically clarified by the respondents' counsel that the Act was applicable only for allocation of staff of State Govt. of UP and not for the Central Govt. employees of the Directorate of Census Operation.

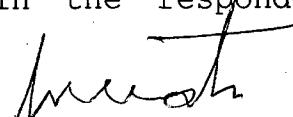
h. In consequence the Section 8 (b) (ii) of the General Clauses Act will also not be applicable. The learned counsel for the respondents stated during the arguments that the applicants tried to make out that the orders of DCO was void because it was not a presidential order as per terms of the above section. This is based on the premises that Section 73 of the Reorganization Act is applicable in such transfer matters. The learned counsel says that as the basic premises of applicability



of Section 73 of the Reorganization Act is nonexistent, there is also no question of applicability of Section 8 (b) (ii) of General Clauses Act.

i. In consequence the entire argument of the applicants falls through on the same premises the respondents also questioned the applicants point regarding applicability of the decisions in OA 537 of 2006 of the CAT, Allahabad Bench. The decision in OA 537/06 was taken on the premises that Section 73 of the Reorganization Act and therefore, Section 8 (b) (ii) of the General Clauses Act were applicable in the cases of transfer of staff under the CAG. By citing the provisions of the Act which formed the office of the CAG the learned member of the Bench had decided that CAG could not exercise the powers of the Central Govt. which was required under the relevant clause of General Clauses Act. The learned counsel for the respondents have emphatically stated that there was no parallel between these cases and those dealt with under OA 537/05.

12. We have perused the rival submission in all these OAs. We also heard the counsel for the applicants in these OAs as well as the respondents counsel. The points and counter points made by both sides have been quite elaborately described in the above paragraphs. Therefore, we do not intend to dilate on those once again. But we would like to observe that there is force in the respondents'

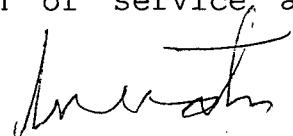


argument as enumerated above. Firstly, the applicability of the Section 73 of the Reorganization Act and consequently Section 8 (b) (ii) of General Clauses Act. The respondents have stated after obtaining a clarification from the Ministry of Law that the Section 73 of the Reorganization Act is not applicable. We are inclined to agree with this view.

13. Secondly, having agreed with this view we do not think it is necessary to state very elaborately as to why the decisions of OA 537/06 would not be applicable in this case. The matter is self explanatory. We also observed that there is a difference between the CAG, a Constitutional body and the Director of Census Operation.

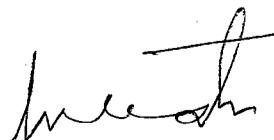
14. The Directorate of Census Operation which is headed by Registrar General is the sole authority to decide the condition of service, promotion, cadre formation, allocation of staff and duties, transfer etc of the employees under the organization. These are matter which are normally not to be questioned in the Tribunals/Courts unless a decision is taken which is in contravention of the principles of natural justice and perverse.

15. The applicants have taken the plea that transfer to a different state and cadre controlling authority was not a condition of service and of



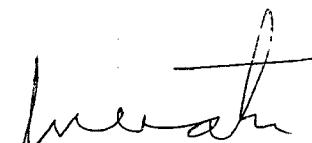
initial appointment. The respondents have stated that truly speaking there liability of transfer was within the territories of their then UP which included the newly formed state. Therefore, it is not that the official are being transferred outside the limits of the erstwhile state of UP. The applicants were all appointed long ago and at that time a new state by bifurcation of UP was not thought of. Now that it has come into existence, the respondents have the onus to form a new office and also to man the same. As work load is being diverted from the parent office, there was no necessity of creating new post at the expense of the Govt. and staff had therefore to be transferred from the parent office.

16. We appreciate the onus and the constraints of the respondents. As the new state has been formed by the Act passed by the parliament all these responsibilities have ensued as far as the respondents are concerned. It is natural that people in different quarters will be aggrieved. However, the respondents have tried to provide an arrangement which was likely to satisfy the largest number of officials. They have not spared any pains in the matter and had detailed discussions with the staff side. We are of the view that keeping in mind the responsibility of the respondents and the severity of the constraints it would not be appropriate by the Tribunal to create roadblocks and

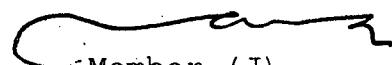


thwart the process of allocation of staff. It is true that some individual would feel aggrieved such as those whose names, for example, did not appear in the first list but came up subsequently. But we are of the view that the Tribunal should not get bogged down into such matters keeping in mind the much larger issue involved. Such matters as to what norms are followed for allocation of staff in the new office is the matter to be decided by the executive and not open to interferences by the Tribunal.

17. From the above points and observations it would follow that there is no merit in the OAs and therefore, we are not able to allow those. All the OAs therefore, are dismissed with no order as to costs.


Member (A)

/pc/


Member (J)

18.10.07