

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW**

**Original Application No.8/2011
Connected with
Original Application No.483/2010**

Reserved on 15.10.2015.

Pronounced on 28.10.2015.

HON'BLE MR. NAVNEET KUMAR, MEMBER (J)

HON'BLE MS. JAYATI CHANDRA, MEMBER (A)

1. Krishna Kumar Kanaujia, aged about 52 years, S/o Late Shiv Pal Kanaujia, R/o 110/2, Babuganj (Nirala Nagar), Lucknow.
2. Dharma Raj, aged about 53 years, S/o Shyam Lal, R/o Village & Post Basara, Tehsil Fatehpur, District Barabanki.
3. Kunwar Pal, aged about 51 years, S/o Teeka Ram, R/o Mohibullapur, Lucknow.
4. Ram Bharosey, aged about 51 years, S/o Late Nanhu Ram, R/o Village Shahpur Raza, Post Singhamau, Itaunja, District Lucknow.
5. Madho Prasad, aged about 52 years, S/o Pancham Lal, R/o Village Pirthipur, Post Ataria, District Sitapur.
6. Baij Nath, aged about 48 years, S/o Ganga, R/o Village Pirthipur, Post Ataria, District Sitapur.
7. Shyam Sundar Lal, aged about 55 years, S/o Putti Lal, R/o Naya Gaon, H/o Sulemabad, Post Badhai Deeh, District Barabanki.
8. Praveen Singh, aged about 53 years, S/o Tara Chandra Singh, R/o 132, Babuganj, Faizabad Road, Lucknow.
9. Beche Lal, aged about 51 years, S/o Late Chotta, R/o Village Ahirawan, Post Berua, District Hardoi.
10. Ram Gopal Chaurasiya, aged about 55 years, S/o Late Deen, R/o 167, Sector D, Bahadur Nagar, Lakhimpur.
11. Bhola Nath, aged about 48 years, S/o Late Kalika Prasad, R/o Rajajipuram, Lucknow.
12. Savita Dixit, aged about 48 years, W/o Prakash Chandra Dixit, R/o D-6/8, PWD Colony, Rajendra Nagar, Lucknow.

13. Umesh Chandra, aged about 50 years, S/o Shatrohan Prasad, R/o Village Karaundi Khurd, Post Galhamau, District Barabanki.
14. Ram Gopal Rastogi, aged about 52 years, S/o Shiv Narain, R/o Satrikh, District Barabanki.
15. Uma Shanker Shukla, aged about 50 years, S/o Tej Narain Shukla, R/o 1/434, Vikas Nagar, Lucknow.
16. Madhu Singh, aged about 49 years, D/o Nathu Singh Rana, R/o 11, Shahnazaf Road, Hazratganj, Lucknow.
17. Ashok Mishra, aged about 52 years, S/o Shyam Charan Mishra, R/o 51/22, Shivgarh Compound, Hewet Road, Lucknow.
18. Anita Kesarwani, aged about 47 years, W/o Chote Lal Pal, R/o 215/312, Bashiratganj, Subhash Marg, Lucknow.
19. Saroj Kumar, aged about 53 years, S/o Mohan Lal, R/o Village Bhawani Khera, Post Mohari Khurd, District Lucknow.
20. Ram Kishore, aged about 50 years, S/o Ganga Deen, R/o 3/672, Jankipuram Extension, Sitapur Road, Lucknow.
21. Rajendra Kumar Verma, aged about 51 years, S/o B.M.L. Verma, R/o 5/410, Vikas Nagar, Lucknow.
22. Hazari Lal, aged about 55 year, S/o Ghooroo, R/o Village Nahaiya, Post Sidhauri, District Sitapur.
23. Jammuna Shanker, aged about 56 years, S/o Rameshwar Prasad Mishra, R/o C/o Sita Mishra, U.P. Postal Primary Co-operative Bank, 3, Balmiki Marg, Hazratganj, Lucknow.
24. Girja Shanker, aged about 52 years, S/o Shriram Verma, R/o Village & Post Semrawa, Kothi, District Barabanki.
25. Nand Kishore, aged about 50 years, S/o Late Padam Dutt Sharma, R/o C/o Smt. Bhawna Sati, Aanganwadi Karyakarta, Aanganwadi Kendra, Pilkhol, Ranikhet.

...Applicant.

By Advocate: Sri A.K. Verma.

Versus.

1. Union of India, through Secretary, Ministry of Home Affairs, Government of India, New Delhi.
2. Registrar General of India/Commissioner Census, 2-A, Man Singh Road, New Delhi.

3. Director, Census of U.P., Lekhraj Dollar Building, Indira Nagar, Lucknow.
4. Staff Selection Commission through Secretary, New Delhi.
5. Deputy Director (Administration) Directorate of Census Operation, U.P., Lucknow.

...Respondents.

By Advocate: Sri Deepak Shukla for Sri G.K. Singh.

Connected with

Original Application No.483/2010

1. Prem Shankar Mishra, son of Shri Parmatma Nand Mishra, resident of House No.554/468, Chhota Barha, Alambagh, Lucknow.
2. Suresh Chandra Dixit, aged about 47 years, son of Late Shri Ram Avadh Dixit, resident of 27, Hasariya, Gomti Nagar, Lucknow.
3. Shree Prakash Verma, son of Late D.R. Verma, resident of 554/4, 37/4 Ga/10M, Gali No.2, Pawan Puri, Alambagh, Lucknow.
4. Karuna Shankar, son of Shri Sati Prasad, resident of 538/11/589, Adarsh Puram, Triveni Nagar-III (Ahibaranpur), Sitapur Road, Lucknow.
5. Ram Bahadur, son of Late Buddhu Lal, resident of Nai Basti, Amausi Road, Sarojani Nagar, Lucknow.
6. Kashi Nath Mishra, son of Late Mata Prasad Mishra, resident of 554/176, Chhota Barha, Alambagh, Lucknow.
7. Laxmi Narain Kashyap, son of Late Jag Mohan Kashyap, resident of 31-Kailash Kunj, Faizabad Road, Indira Nagar, Lucknow.
8. Santosh Kumar Singh, aged about 54 years, son of Late Mahendra Bhan Singh, resident of Sector-11/869, Indira Nagar, Lucknow.
9. Om Prakash Tripathi, aged about 56 years, son of Late Sobran Lal Tripathi, resident of House No.E-3/763, Sector-H, Kursi Road, Janki Puram, Lucknow.

10. Shyama Charan, aged about 54 years, son of Late Sobran Lal, resident of House No.E-3/763, Sector-H, Kursi Road, Janki Puram, Lucknow.
11. Ram Prakash Singh, aged about 56 years, son of Shri Shiv Pal Singh, resident of E-3/763, Sector-H, Kursi Road, Janki Puram, Lucknow.
12. Smt. Nirmala Devi, wife of Shri Shiv Sahai Sharma, resident of House No.565/106, Pooran Nagar, Post Singar Nagar, Alambagh, Lucknow.
13. Chandra Bhan Singh, aged about 52 years, son of Late Desh Raj Singh, resident of C/o Shri Ram Prasad Yadav, Shivani Vihar, Kanyanpur, Ring Road, Lucknow.
14. Narsingh Pal Singh, aged about 51 years, son of Late Shri Raj Pal Singh, resident of House No.699, Sector-H, L.D.A. Colony, Kanpur Road, Lucknow.
15. Awadh Bihari Ram, aged about 50 years, son of Late Shri Nath Ram, resident of 291-Sadar Bazar, Lucknow.
16. Chhotkau Prasad (.....), aged about 51 years, son of Late Danne Prasad, resident of House No.555K/14, Kanausi, Swami Viveka Nand Inter College, Manak Nagar, Lucknow.
17. Ravi Prakash Chaurasia, aged about 51 years, son of Late J.N. Chaurasia, resident of House No.570/987, Gopal Puri, V.I.P. Road, Alambagh, Lucknow.
18. Jawahar Lal, aged about 49 years, son of Shri Swami Nath Choudhary, resident of Village Rampur Khas, Post Shvpati Nagar, District Siddhartha Nagar.
19. Ram Charan, aged about 54 years, son of Shri Jaggan Prasad, resident of Village Rampur Khas, Post Shvpati Nagar, District Siddhartha Nagar.
20. Ram Naresh, aged about 49 years, son of Shri Ayodhaya Prasad, resident of Village Rampur Khas, Post Shvpati Nagar, District Siddhartha Nagar.
21. Shiv Ram Sahni, aged about 50 years, son of Shri Sahveer, resident of Village Kandua, Post Urwa Bazar (Sugdi), District Siddhartha Nagar.
22. Daya Krishna, aged about 53 years, son of Shri Ram Bilas Dwivedi, resident of Village & Post Maseet, District Hardoi.
23. Laxman Prasad Singh, aged about 54 years, son of Late Rajeshwar Lal Singh, resident of Wasir Building 417/11. Pan Dariba, Charbagh, Lucknow.

24. Hari Narain Singh, aged about 48 years, son of Shri Kamla Singh, resident of E-3062, Rajaji Puram, Lucknow.
25. Maniswaroop Awasthi, aged about 54 years, son of Late Shri Shankar Sahai Awasthi, resident of House No.5/194, Sector-H, Near Sahara Estate, Janki Puram, Lucknow.
26. Beena Kumari Gaur, aged about 52 years, daughter of Shri Ram Avtar Gaur, resident of House NO.5/194, Sector-H, Near Sahara Estate, Janki Puram, Lucknow.
27. Ram Prakash Singh, Son of Shri Ram Bahadur Singh, resident of Village & Post Tedwa, District Barabanki.
28. Dharmanand Mishra, aged about 52 years, son of Shri Krishna Mishra, resident of Village Amra Devi, Post Madhwapur, District Barabanki.
29. Hari Shankar Kashyap, aged about 55 years, son of Late Devi Deen Kashyap, resident of C/o Shri Ram Shankar, House No.S.S.-II/1264, Sector-D, L.D.A. Colony, Kanpur Road, Lucknow.

...Applicant.

By Advocate: Sri G.S. Sikarwar.

Versus.

1. Union of India, through Secretary, Ministry of Home Affairs, Government of India, New Delhi.
2. Registrar General of India/Commissioner Census, 2-A, Man Singh Road, New Delhi.
3. Director, Census of U.P., Lekhraj Dollar Building, Indira Nagar, Lucknow.
4. Staff Selection Commission through Secretary, New Delhi.
5. Deputy Director (Administration) Directorate of Census Operation, U.P., Lucknow.

...Respondents.

By Advocate: Sri A.K. Singh.

ORDER

Per Ms. Jayati Chandra, Member (A).

Both these OAs are being disposed of by a common order as the facts and reliefs claimed in both the OAs are similar to each other.

2. The present Original Application No.8/2011 has been filed by the applicants under Section 19 of the Administrative Tribunals Act, 1985 with the following relief(s):-

"(i). Order/direction to consider and appoint/absorb the applicants as Assistants Compilers or group 'C' posts following the order passed by the Hon'ble Supreme Court.

(ia). To quash/set aside the decision taken 17/11/2009 communicated through letter dated 18/11/2009 contained in Annexure -1 to the original application and further similar order passed in respect of other applicants after summoning the same.

(ib). In alternative to award heavy compensation in favour of the applicants to be paid by the opposite parties for their inaction.

(ii). Any other order or direction as the Hon'ble Tribunal deems fit and proper under the facts and circumstances of the case be issued.

(iii). The cost of the original application be awarded."

3. The present Original Application No.483/2010 has been filed by the applicants under Section 19 of the Administrative Tribunals Act, 1985 with the following relief(s):-

"(i). Issue an order or direction to consider and appoint/ absorb the applicants as Assistants Compilers or group 'C' posts following the order passed by the Hon'ble Supreme Court.

(ia). To quash/set aside the order/decision dated 16.3.2010 and 5.8.2010 contained as Annexure 1 & 2 to the original application passed by Deputy Director (Administration) Directorate of Census Operation, U.P., Lucknow.

(ib). In alternative to award heavy compensation in favour of the applicants to be paid by the opposite parties for their inaction.

(ii). *Any other order or direction as the Hon'ble Tribunal deems fit and proper under the facts and circumstances of the case be issued.*

(iii). *The cost of the original application be awarded."*

4. The facts relevant to this case as averred by the applicants are that the applicants had worked in the office of Director Census, U.P., Lucknow in 1981 and 1991 on fixed pay as Tabulators, Checkers, Supervisors, Compilers etc. when the work of census was undertaken. The Department of Census was established under the Census Act of 1948 for the specific work of conducting the census operation in the country every 10 years from 1951 onwards. Thus, it may be said that the work of the census department is one of continuing in nature. The applicants are at various levels of the educational qualifications for example applicants no.1, 2,10,11,14 and 16 have post graduate degree. applicants no.3,7,12,15,17,21 and 23 to 25 have graduate degree and applicants no.4,8,9,13,18 to 20 and 22 have the qualification of Intermediate and the rest of the applicants have passed High School examination. As the applicants were not regularized in service they filed several OAs. These OAs were clubbed together and were decided by a common order dated 26.02.1993 (the leading case being OA.No.385/1991 Dinesh Kumar Saxena vs. Union of India & Others). By this order, the respondents were directed to frame a scheme for absorption and regularization of the O.As. applicants. The department preferred a Special Leave Petition before the Hon'ble Supreme Court, which was decided by an order dated 24.02.1995, the operative portion is being quoted below:-

“It is not possible, therefore, to direct the framing of any scheme for their being regularized in the Census Department since there is not enough work of a permanent nature to keep these extra employees busy throughout. We also do not see how these employees, who have been engaged on a contract basis for a limited and fixed duration and on a fixed pay, can be directed to be absorbed in any other department of the Government. Ends of justice will be met if the Directorate of Census operations, U.P. is directed to consider those respondents who have worked temporarily in connection with 1981 and /or 1991 Census Operations and who have been subsequently retrenched for appointment in any regular vacancies which may arise in the Directorate of Census Operations and which can be filled by direct recruitment, if such employees are otherwise qualified and eligible for these posts. For this purpose the length of temporary service of such employees in the Directorate of Census Operations should be considered for relaxing the age bar, if any, for such appointment. Suitable Rules may be made and conditions in this connections by the appellants. The appellants and /or the Staff Selection Commission may also consider giving weightage to the service rendered by such employees in the Census Department and their past service record in the Census Department for the purpose of their selection to the regular post. It is directed accordingly. The applicants have in their written statements pointed out that as of now, 117 posts are vacant to which direct recruits can be appointed. They have also submitted out of these posts there were 88 vacant posts of date entry operator Grade-B which had been advertised for being filled up only from amongst the retrenches of 1981, 1984 and 1991 as per recruitment rules, only retrenches were eligible to apply who were graduates and had a speed of 8,000 key depressions per hour of date entry. Although approximately 800 retrenchees applied only 476 appeared in the test conducted by the NIC of Lucknow Unit and only two applicants qualified. Out of these only one could be appointed since the other person was over aged even after allowing the age relaxation. Whatever may be the difficulties in giving regular appointments to such retrench employees in the past the appellants namely the Union of India and the Directorate of Census Operations, U.P. are directed to consider the retrenched employees for direct recruitment to regular posts in the Directorate of Census Operations, U.P. in the manner herein above stated. The retrenched

employees will however, have right to be considered only if they fulfill all other norms laid down in connections with the posts in question under the recruitment rules and/or in other department regulations/circulars in that behalf."

5. Despite specific directions the respondents advertised the post of Data Entry Operators Group-'B' vide advertisement dated 08.6.2002. The advertisement was challenged by the applicants through O.A.No.397/2002. On being informed by the respondents that the advertisement has been cancelled the OA was dismissed on 27.02.2003 with liberty to challenge certain selections made by the respondents on 25.02.2003 without issuing any advertisement. Accordingly, applicants filed OAs. The respondents thereafter despite their earlier stand taken on 01.04.2008 that there are no vacancies in Group 'C' and 'D' categories issued an advertisement on 15/21.03.2008 for 960 posts of Statistical Investigator Grade-III (S-1) and Compiler. The applicants challenged the same by means of O.A.No.216 /2008 but the same was dismissed. A second advertisement was issued on 15.10.2008 for the post of Assistant Investigator Grade-III and Compiler. The applicants have challenged the same by means of filing O.A. which was also dismissed on the ground of there not meeting the eligibility conditions. The applicants latest application dated 29.10.2009 was disposed of by the respondents vide their order dated 18.11.2009 and a commitment in lieu of any concrete action has been made that whenever any advertisement are issued for direct recruitment all disengaged/retrrenched persons shall be considered.

6. The applicants have averred that basically the respondents are not interested in following the judgment of the Hon'ble Supreme Court passed in S.L.P. in letter and spirit. They have continuously re-changing the rules of the game for example in the advertisement dated 15/21.03.2008 they had issued an advertisement for the post of Statistical Investigator Grade-III and Compiler, which are Group-'C' posts advertising 960 posts in different categories. The age limit prescribed in the advertisement is between 18-25 years of age for Statistical Investigator Grade-III and 18-26 for the post of Compiler and the relaxation of 3 years in case of retrenched employees who had worked earlier in 1981, 1991 and 2001 plus length of service rendered by them in connection with Census, before retrenchment and weightage of past service. These provisions of age relaxation were given against the recruitment rules for Date Entry Operators Group-'B' (Group-'C' posts) Recruitment Rules, 2007, which shows that persons who are being brought on deputation or by virtue of absorption can be considered for absorption till the age of 56 years. Moreover, the Government has full power to relax the provisions of any Rule in respect of age limit and educational qualifications in special circumstances and for special class of persons. It is further stated that since the applicants belongs to special class of persons as they are retrenched employees who have participated in the census Operation in 1981 and 1991 and also because no appointment has been made by the respondents for a large number of years, despite repeated directions of the Tribunal and Hon'ble Supreme Court. The respondents should have considered the case of the applicants for their absorption against the available Group-'C' posts as they

are retrenched employees, who are participated in the Census Operation in the year 1981 and 1991. The respondents have also been changing the number of posts available in each category and have also the method of recruitment. Initially the recruitment in Group-III and IV posts in the department is governed by the Recruitment Rules of 1973 but the same were replaced by the Recruitment Rules of 1984. In the Recruitment Rule of 1984 Appendix-I has been attached showing the number of sanctioned posts of Assistant Compilers in the office of Director of Census Operations, U.P., as 182 and the total number of posts are 900. It is further stated that the educational and other qualifications required for the aforesaid post as provide in Column 8 of schedule was (1) Matriculation or equivalent; (2) minimum speed of 30 words per minute in typewriting (English) or Proficiency in operating calculating machines viz. electrically operated, hand modeled or comptometers or experience in coding and punching in an office or firm having mechanical tabulation equipment. Column 11 of the schedule provides the method of recruitment as by direct recruitment 90% by promotion 10% failing which by direct recruitment. Thus, subsequent to the pronouncement of the Hon'ble Supreme Court in S.L.P. instead of making provisions for the applicants the respondents again amended the recruitment rules in 2000 superseding the earlier rules of 1994. The recruitment rules were also amended in 2001 and 2005. The perusal of the Recruitment Rules of 2000 shows that there are total numbers of post of Assistant Compilers is 990 and for the State of U.P. there were 180 posts. But, while framing Recruitment Rules, 2000 deliberately the total (All India) number of posts of

Assistant Compiler has been reduced to 468 posts. Further, in a similar matter ***Government of Tamil Nadu & Another Vs. G. Mohummed Ammenudeen reported in 1999 (Lab) IC 3570*** the Hon'ble Supreme Court had given specific direction to the department of Census that retrenched employees should be absorbed and a specific scheme for this purpose be drawn-up.

7. To sum up, the applicants have averred that the respondents have not followed the direction of the Hon'ble Supreme Court in their order dated 24.02.1995 in letter and spirit by (i). reducing the number of posts of Assistant Compilers, which is the most appropriate post for the applicants in view of their educational qualifications. (ii). changing the educational qualifications which in 1984 was matriculation or equivalent with minimum speed of 30 words per minute in typewriting (English) or Proficiency in operating calculation machines viz. electrically operated, hand modeled or comptometers or experience in coding and punching in an office or firm having mechanical tabulation equipment (iii) Method of selection. Moreover, the respondents have also not kept in mind the directions of the Hon'ble Supreme Court passed in S.L.P.No.810/1998. Through the Supplementary Affidavit they have further averred that the respondents are ignoring the claim of the applicants for being engage/appointed in the department in compliance of the orders of the Hon'ble Supreme Court. There is clear availability of work but the respondent no.3 has started getting the work performed through out-sourcing, through the contractors. They have engaged approximate 109 Class-III

employees through contractors instead of engaging the applicants on the basis of availability of the work. Hence, this OA.

8. The respondents have filed their Counter Affidavit denying the averments so made by the applicants. They have stated that the Hon'ble Supreme Court in passing the order dated 24.02.1995 had made specific observations that it is not possible to direct the framing of any scheme for regularizing the applicants in the Census Department since there is not enough work of a permanent nature to keep these extra employees busy throughout. The Hon'ble Supreme Court also observed how can a direction be given for their regularization, who has been engaged on a contract basis for a limited and fixed duration and on a fixed pay. All the applicants have worked temporarily in connection with 1981 and or 1991 Census Operations and they have been terminated in accordance with the provision of the contractual engagement. However, the Hon'ble Supreme Court was pleased to give a direction to the respondents to consider the retrenched employees for direct recruitment to a regular vacancy which may arise and which can be filled by direct recruitment, if they fulfill all other norms laid down in connection with the post in question and if they are eligible for these posts. For this purpose, the length of temporary service of such employees in the Directorate of Census Operations should be considered for relaxing the age bar, if any for such appointment. It is also directed that OA respondents (applicants in SLP) or the Staff Selection Commission may also consider giving weightage to the service rendered by such employees in the Census Department for the purpose of their

selection to the regular post. In compliance of the above judgment and order of the Hon'ble Supreme Court, a provision for age relaxation plus weightage of past service has always been made in respect of the retrenched census employees whenever there was an occasion for direct recruitment. The same has also been extended in the case of direct recruitment to 761 DR vacancies of Compilers and 199 DR vacancies of Statistical Investigator Grade-III. Age relaxation to extent of temporary service rendered by the retrenches in the RTOs, plus additional age relaxation of three years beyond the duration of the temporary service rendered by them was provided in the recruitment clause. In so far as the averment of reducing the number of vacancies are concerned the post of Assistant Compiler, Computer, Statistical Assistant and Investigator had been sanction in the statistical cadre in the office of Registrar General of Indian. The 5th Central Pay Commission recommended restructuring of the cadre which had been implemented by G.O.No.A-320/11/2/2000-Ad.II dated 20.09.2000 (Annexure-1). The numbers of posts after restructuring are as under:-

Posts in Statistical Cadre before Vth CPC	Posts after implementation of Vth CPC's recommendations w.e.f. 29.09.2000
Investigator No. of posts-313 Pay scale Rs.5500-9000	Statistical Investigator Gr.I Present No. of post-142 Pay scale Rs.6500-10500 Statistical Investigator Gr.II No of post-169 Pay scale Rs.5500-9000
Statistical Assistant No. of Post-707 Pay Scale: Rs.4500-7000	Statistical Investigator Gr.III No. of post-707 Pay Scale: Rs.5000-8000
Computer No. of post-1061 Pay Scale: 4000-6000	Senior Compiler No. of post-308 Pay Scale: Rs.4500-7000 Compiler No. of post-775 Pay Scale: Rs.4000-6000

Assistant Compiler No. of Post-458 Pay scale: Rs.3050-4590	Assistant Compiler No. of post-274 Pay scale: Rs.3050-4590
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9. In 2001 Vide DOPT O.M. No.2/8/2001-PIC dated 16.05.2001 the sources of recruitment was limited to 1/3rd of DR vacancies arising in a year, and not exceeding 1% of the total sanctioned strength of the department. The Scheme was applicable first for five years up to 2008-09. As per the approval of the Screening Committee in respect of 902 DR vacancies which had arisen in the five years from 2000-01 to 2004 -05, 251 vacancies were to be filled and the remaining 651 DR posts were abolished w.e.f. 01.04.2005. For the DR vacancies arising after 01.04.2005, the Cabinet's approval had been obtained on 11.10.2007 for exemption from the provisions of the Scheme. Prior to this, the Govt. has also approved advance filling up of 502 DR vacancies (including 196 for the year 2008-09) arising during the three years from 2008-09 to 2010-11. Thus, approval for 761 DR vacancies in the post of Compiler and 199 DR vacancies in the post of Statistical Investigator Grade-III were reported to the Staff Selection Commission. The applicants have averred that they have been ousted from the zone of consideration by re-designating the post of Assistant Compiler as Computer and prescribing the educational qualifications of Graduation instead of Higher Secondary. This is not correct as the educational qualifications for the post of Compiler (previously Computer) have always been Graduation. The direct recruitment educational qualifications of Higher Secondary are prescribed for the post of Assistant Compiler and other Group -'C' posts like Lower Division Clerk. The numbers of posts of

Assistant Compiler and LDC in the department are 274 and 149 respectively. For the DCO, U.P., the numbers are 19 and 10 respectively. Thus, the applicants who possess the educational qualifications of Higher Secondary can apply for the posts of Assistant Compiler and LDC as and when notified by the Staff Selection Commission and they will be considered alongwith general candidates as per eligibility under the recruitment rules and by giving them relaxation as provided by the Hon'ble Supreme Court.

10. The applicants have filed a Rejoinder Affidavit more or less reiterating their contentions as raised in the OA.

11. We have heard the learned counsel for both the parties and perused the entire material available on record.

12. Through this OA the applicants are seeking order/direction to consider and appoint/absorb the applicants on the post of Assistant Compiler or any Group-'C' post following the order of Hon'ble Supreme Court. The order of Hon'ble Supreme Court as quoted in para-4 above clearly states that no direction can be given for framing of any scheme for the applicants' regularization in the Census Department since there is not enough work of a permanent nature to keep these extra employees busy throughout and also how these employees, who have been engaged on a contract basis for a limited and fixed duration and on a fixed pay, can be directed to be absorbed in any other department of the Government. In so far as the judgment of Hon'ble Supreme Court in the case of

Government of Tamil Nadu & Another Vs. G. Mohummed

Ammenudeen reported in 1999 (Lab) IC 3570 the same is

inapplicable as the facts are different from the present case in hand. In the case of Government of Tamil Nadu (supra) the issue is with regard to absorption of retrenched employees in State Govt. in the light of certain bans imposed by the State Govt. on employees other than those sponsored by Tamil Nadu State Public Service Commission. In the present case, the respondents are bound to adhere to the judgment of Hon'ble Supreme Court passed in Civil Appeal Nos.731-69 of 1994 Union of India & Others vs. Dinesh Kumar Saxena & Others. The affirmative directions given were with regard to certain age relaxation and weightage on the basis of services rendered by disengaged/retrenched persons of the census department but no relaxation in eligibility criteria by way of educational qualification was extended to the applicants. In the intervening years between 1995 to the filing of the OA the respondents have periodically advertised for certain posts namely the post of Compiler, Statistical Investigator Grade-III. The applicants by their own averments had challenged these advertisements with no success. In each of these advertisements provisions for age relaxation and weightage for the services rendered were given. The applicants themselves had either not applied on the ground of having less qualification or had applied but were not successful. Thus, it cannot be said that adequate opportunity as provided by the Hon'ble Supreme Court in their judgment and order dated 24.02.1995 was not made available to the applicants. It is true that the respondents had revised the recruitment rules from time to time as well as carried out

restructuring exercise affecting the number of posts at different levels. Moreover, periodically decisions were taken not to fill up certain posts as enumerated in para-9. However, no adverse conclusion can be drawn to the effect that the same was made to jeopardize the interest of the applicants. Such exercises are part of the policy frame work under which departments work. It is the prerogative of the department to frame man-power policy from time to time. The applicants have also stated that earlier the candidates having Higher Secondary qualification are very much eligible for the post of Assistant Compiler yet the respondents are not filling the posts of Assistant Compiler but are taking the work of Assistant Compiler through out-sourcing. Moreover, matter of determining how many posts may be kept vacant and the manner in which recruitment may be made are matters of policy. The Hon'ble Supreme Court in the ***State of Orissa Vs. Bhikarni Charan Khuntia (2005) 10 SSC 144*** has held that the policy decision of the government regarding recruitment is not amenable to judicial review unless the same is arbitrary. In the present case, all directions of the Hon'ble Supreme Court has given in order dated 24.02.1995 have been complied with.

13. Further, In ***State of Harayana Vs. Subsha Chander Marwaha (1974) 3 SCC 220*** the Hon'ble Supreme Court has held "*.....the government for financial or other administrative reasons might not fill up any vacancy*". In ***Rakesh Ranjan Verma vs. State of Bihar (AIR 1992 SC-1348)*** has held as following:-

"Para-14.

.....It is no doubt correct that 116 vacancies in the general and GTO cadres of Junior Electrical

Engineers were existing as on 31.12.1985, but in our view it lies with the Board decide as to how many posts of Junior Electrical Engineers are required to be filed to enable the Board to carry out its functions under the Act. Merely existence of vacancies alone is not sufficient until the Board considered it necessary as to how many posts were required to be filed in any year in order to carry out its functions and duties....."

14. In ***U.O.I. vs. Puspha Rani (2008) 9 SCC-142*** the Hon'ble Supreme Court had opined that "courts should not specify procedure for recruitment. It is also the prerogative of the government to decide at any point of time how many posts (even if they are existing) to fill up and how many are to be kept vacant".

The relevant para is quoted below:-

"Para-37.

Before parting with this aspect of the case, we consider it necessary to reiterate the settled legal position that matters relating to creation and abolition of posts, formation and structuring/restructuring of cadres, prescribing the source/mode of recruitment and qualifications, criteria of selection, evaluation of service records of the employees fall within the exclusive domain of the employer. What steps should be taken for improving efficiency of the administration is also the preserve of the employer. The power of judicial review can be exercised in such matters only if it is shown that the action of the employer is contrary to any constitutional or statutory provision or is patently arbitrary or is vitiated due to mala fides. The court cannot sit in appeal order the judgment of the employer and ordain that a particular post be filled by direct recruitment or promotion or by transfer. The court has no role in determining the methodology of recruitment or laying down the criteria of selection. It is also not open to the court to make comparative evaluation of the merit of the candidates. The court cannot suggest the manner in which the employer should structure or restructure the cadres for the purpose of improving efficiency of administration."

In view of the ratio laid down by the Hon'ble Supreme Court no order or direction as prayed for to fill-up the vacancies of the Assistant Compiler from amongst the applicants either through recruitment or by absorption can be given.

15. In this situation, the only direction which can be given to the respondents is to strictly to comply-with the direction given by the Hon'ble Supreme Court in the Civil Appeal Nos.731-69 of 1994 in their order dated 24.02.1995 as and when they decide to fill-up the post of Assistant Compiler through direct recruitment. The respondents have already committed for the same in the impugned order dated 18.11.2009 (Annexure-1 to the OA).

16. In the light of the discussions above and in the face of the assurance given by the respondents, there is no case for interference at this stage. Both OAs are dismissed. No order as to costs.

(Ms. Jayati Chandra)
Member (A)

(Navneet Kumar)
Member (J)

Amit/-