

CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH LUCKNOW

1. Original Application No. 385 of 1991(L)

Dinesh Kumar Saxena . . . . . Applicant

Versus

Union of India & Others . . . . . Respondents

2. Original Application No. 46 of 1991(L)

Rajendra Kumar Srivastava and others . . . . . Applicants

Versus

Union of India & Others . . . . . Respondents

3. Original Application No. 84 of 1993(L)

Manoj Kumar Pandey and others . . . . . Applicants

Versus

Union of India & Others . . . . . Respondents

4. Original Application No. 493 of 1991(L)

Prem Pal Singh and others . . . . . Applicants

Versus

Union of India & Others . . . . . Respondents

5. Original Application No. 82 of 1993(L)

Roop Kishore and others . . . . . Applicants

Versus

Union of India & Others . . . . . Respondents

6. Original Application No. 116 of 1991(L)

Karuna Shankar and others . . . . . Applicants

Versus

Union of India & Others . . . . . Respondents

7. Original Application No. 208 of 1991(L)

Shyama Charan and others . . . . . Applicants

Versus

Union of India & Others . . . . . Respondents

8. Original Application No. 374 of 1991(L)

Mahabir Ram . . . . . Applicant

Versus

Union of India & Others . . . . . Respondents

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✓ 9. Original Application No. 304 of 1991 (L)

Kunwar Pal and others . . . . . Applicants

Versus

Union of India & Others . . . . . Respondents

✓ 10. Original Application No. 375 of 1991 (L) ✓

Vishnu Kumar Mishra . . . . . Applicant

Versus

Union of India & Others . . . . . Respondents

✓ 11. Original Application No. 45 of 1992 (L)

Smt. Sandhya Tripathi and others . . . . . Applicants

Versus

Union of India & Others . . . . . Respondents

✓ 12. Original Application No. 494 of 1991 (L)

Piyush Kumar Srivastava and others . . . . . Applicants

Versus

Union of India and others . . . . . Respondents

✓ 13. Original Application No. 371 of 1991 (L)

Smt. Sandhya Majumdar and others. . . . . Applicants

Versus

Union of India & Others . . . . . Respondents

14. Original Application No. 420 of 1991 (L)

Yogendra Singh and others . . . . . Applicants

Versus

Union of India & Others . . . . . Respondents

✓ 15. Original Application No. 421 of 1991 (L)

Sohrab Ansari and others . . . . . Applicants

Versus

Union of India & Others . . . . . Respondents

✓ 16. Original Application No. 422 of 1991 (L)

Gulab Chand Sharma and others . . . . . Applicants

Versus

Union of India & Others . . . . . Respondents

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✓ 17. Original Application No. 49 of 1993(L)

Rajendra Prasad Verma and others . . . . . Applicants

Versus

Union of India & Others . . . . . Respondents

✓ 18. Original Application No. 60 of 1993(L)

Shiva Nand Awasthi and others . . . . . Applicants

Versus

Union of India & Others . . . . . Respondents

✓ 19. Original Application No. 471 of 1992(L)

Durga Prasad Dubey and others . . . . . Applicants

Versus

Union of India & Others . . . . . Respondents

✓ 20. Original Application No. 436 of 1992(L)

Rameshwar Tripathi and others . . . . . Applicants

Versus

Union of India & Others . . . . . Respondents

✓ 21. Original Application No. 434 of 1992(L)

Ramkesh Yadav and others. . . . . Applicants

Versus

Union of India & Others . . . . . Respondents

✓ 22. Original Application No. 433 of 1992(L)

Jagat Kishor Awasthi and others . . . . . Applicants

Versus

Union Of India & Others . . . . . Respondents

✓ 23. Original Application No. 435 of 1992(L)

Mahesh Chandra Dwivedi and others . . . . . Applicants

Versus

Union of India & Others . . . . . Respondents

✓ 24. Original Application No. 57 of 1993(L)

Anbind Kumar and others . . . . . Applicants

Versus

Union of India & Others . . . . . Respondents

25. O.A. No. 351 of 1991

Rajendra Sinha

Applicant.

versus

Union of India & others

Respondents.

✓ 26. O.A. No. 88 of 1991

Ganga Prasad Yadav

and others

Applicants.

versus

Union of India & others

Respondents.

✓ 27. O.A. No. 491 of 1991

Pradeep Pandey and others

Applicants.

versus

Union of India & others

Respondents.

Coram:

Hon. Mr. Justice U.C. Srivastava, V.C.

Hon. Mr. K. Obayya, Adm. Member.

(Hon. Mr. Justice U.C. Srivastava, V.C.)

In these bunch of cases which were heard together and with the consent of the parties who have stated that Counter and Rejoinder in one case may be read together in all the cases as there is no difference except that the relief flowing ~~different~~ in some of the cases, may be different which does not change the position. Certain other cases which have been subsequently filed, are also disposed of together as the parties requested that the cases may be disposed of together as identical question of law and fact have been raised in these applications, which were raised earlier.

2. The dispute is between employee and the employer of the Census Department. It will be proper to make reference to some of the facts as stated by the parties. Census Department has been established under the Census Act, 1948 and census takes place after every 10 years from 1951 onwards. The department of the Census is headed by the Registrar General of India and Director of Census. There are some permanent posts at the State level and also the <sup>post of</sup> Director of Census but at the time of Census, some temporary posts are sanctioned and even actual enumeration and other arrangements are made to cope up with the work of Census some temporary posts are filled by the temporary hands and when the work of census is over, the services of temporary hands are dispensed with and facilities for their re-employment in various departments have been provided from time to time by extending age limits and

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and sometimes special recruitments have been arranged in which qualified retrenched employees were permanently absorbed and such facilities were given to the retrenched employees of 1971 and 1981 census. For recruitment in the Census Directorate itself they <sup>were</sup> given opportunity for appearing in the tests prescribed for the recruitment for regular vacancies in the grade of Operators and 1726 employees who were working on temporary vacancies had appeared but only 92 candidates were selected on regular posts. In 1971-1981 Census temporary employees were taken into service on adhoc basis on fixed pay for specified period ~~xxx~~ ~~fixed pay~~ which was extended from time to time as per exigencies of work and the posts existed upto 30.6.84 and the remaining work was so small that there was no necessity for temporary hands and so the 900 and odd posts were retrenched on 30.4.1984. The retrenched employees of 1981 census filed writ petition No. 3235 of 1984 before the High Court at Lucknow stating therein that ~~xxx~~ they were working as Tabulators, Checkers and Supervisor on fixed pay posts and their services were terminated wrongly w.e.f. 30.6.84 and the department was going to fill up the posts which were in existence. The writ petitions were disposed of at the admission stage with the following directions:

"In order to safeguard the interest of the retrenched employees the respondents are restrained from making any fresh recruitment in the Census department or its allied working

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If the respondents have to make any fresh appointments it shall only be from amongst the

retrenched employees. The order shall only stand in respect of 900 and odd employees whose services have been dispensed with by respondents.

The S.L.P. was filed against the above judgment in Supreme Court, was also dismissed, at the admission stage. Some

of the 1981 census retrenched employees, who could not qualify in the special recruitment test, filed writ

petition No. 3748 of 1990 'Jangama Pirit Kalyan Samiti

when 1991 census was about to start, in which ex parte

interim order was passed against the fresh recruitment

by Director of Census for 1991 census, until 1981 census

retrenched employees were recruited as per directions

of High Court referred to above dated 16.7.84. As the

jurisdiction of the High Court was questioned, some of

the employees filed O.A. No. 116 of 1991 before the

Central Administrative Tribunal praying that they may be

absorbed permanently in 1991 census operation work and

in the meantime on temporary and others posts as and when

the are created. Thereafter, a number of petitions have

been filed. For 1991 census the Registrar General, after

consulting Department of Personnel and training decided

to recruit persons on contract basis against all the

consolidated salary/fixed pay posts of Supervisors/

Checkers, Compilers, Coders, created for 1991 Census and

directions were issued for carrying remaining work of

1991 Census with economy and within the schedule time

vide letter dated 27.7.1991. Thus appointments were

on fixed pay for certain period as provided in the

contract and their term expires as and when contract comes

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to end and that all the permanent posts of group 'C' which could not be filled up by promotion shall also be deemed to be down graded for purposes of extra 1991 Census work to these consolidated salaried/fixed posts and shall be filled by retrenched employees of previous census operations and thereafter by retired employees throughout the country. A circular was issued on 30.6.92 by the Registrar General in connection with the 1991 census work on the existing terms and conditions and thus the posts were to last upto 31.12.92 which included 24 posts of Dy. Directors, 24 posts of Investigators, 24 posts of Assistants, 22 posts of U.D.C.s, 72 L.D.Cs, 24 posts of Jr. Stenographers and 24 posts of peons, 303 Supervisors, 909 Checkers and 5456 compilers. The 1991 census work completed and on 8.12.1992 letters were issued through which sanction of the President of India had been conveyed for abolition of the posts. On 4.11.92 a letter was issued directing Director of Census that all the posts of Regional Tabulation Officer should be ceased to be in operation from 31.12.1992 and winding up of the work should also be completed by that date, by the regular staff and it is because of this the offices were abolished. It has been stated by the applicants that the Director General created 547 posts in the first phase of census work in the Uttar Pradesh vide letter dated 29.12.89 and authorised the State Government to make appointments

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against these posts ignoring the rights and claim of of the retrenched employees with the result that various retrenched employees could not get appointment, and they filed writ petition No. 3748 of 1990 in which interim order dated 18.12.90 was issued directing the respondents to appoint the retrenched employees of the Census Deptt. on suitable posts. In the second/phase 163 posts were created for Agra, Azamgarh, Bareilly and Shahjahanpur and the advertisement dated 4.12.90 was published in the Daily newspapers. Besides the above, 232 permanent vacancies lying in the census department, and some more posts have further been created for which the applications were invited vide advertisement dated 6.2.1991 and even appointments were made by way of direct recruitment from open market ignoring the retrenched employees with the result that various retrenched employees could not get appointment and in the writ petitions by them it was directed that the respondents cannot ignore the scheme of retrenched employees.

3. According to the respondents the retrenched employees were appointed on fixed pay in compliance of the Hon'ble High Court order dated 16.7.84 and the appointments were made by the State Govt authorities and not by the Census department. The posts which were advertised, were fixed pay posts for which priority was given to the retrenched employees for appointment. 232 posts were to be filled up by deputation or by promotion or through Staff Selection Commission, or from class IV posts

and 71 posts of Operators required technical experience and the minimum standard of skill and work output for which test is essential. These posts were not to be filled up upto February, 1992. The respondents' case regarding High Court judgment of 1984 has been that all these applicants are misinterpreting it and the judgment cannot be read with isolation of the other facts. According to the respondents, in fact permanent posts were not vacant which could have been filled in and that appointment of these retrenched employees in supersession of the recruitment rules was not considered by the High Court, nor any mandate was issued to accommodate the retrenched employees. It is the right of the executive for abolition of post or offering employment is a matter of policy of the government and the Government has got a right to make alteration in exigency of the administration and policy decision cannot be said to be colourable exercise of power by the Government.

4. Some of the applicants i.e. group D employees were of the Census department/ to appear in the recruitment test for the post of Assistant Compiler on 25.7.91 which was in group C cadre and was not open for promotion from Group D employees and no recruitment took place so long as they were not absorbed in regular cadre as directed by the High Court in the year 1984 and their complaint is that although the vacancies existed and

been  
their engagement has ~~made~~ on consolidated salary and  
the employer has been exploiting them and the agreement  
is violative of Article 14 and 16 of the Constitution  
of India. The posts of Assistant Compilers being direct  
recruitment posts, no appointments of the Census department  
can be made on the said posts.

5. The facts stated above amply make it clear that  
there are certain permanent vacancies and there are some  
temporary vacancies and some of the posts are filled up  
by the State Government and the State Government itself  
in the Census Department, for carrying out the census  
work must have sanctioned some posts. The directions given  
by the High Court in the year 1984 has attained finality  
in respect of 900 odd employees who were retrenched and  
the judgment has not been correctly read by the respondents  
as in order to safeguard the interest of the employees,  
the respondents were restrained from making any fresh  
recruitment in the Census Department. Thus it became  
obligatory for the Census department first to take those  
employees into service, and only after exhausting those  
employees, the posts were to be filled up from new comers  
or from any other source. As far as these employees are  
concerned, they belong to group C and D and if posts are  
created in group C and D, obviously the preference was to

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be given to these employees, which direction was not complied and more so, because the direction was for Census department, meaning thereby that it was a continuing direction till 900 employees were not taken back and in case they would have been taken back, their regularisation position would <sup>have</sup> arisen. After gaining experience, there was no occasion to ask them to appear in the examination for getting the services regularised or for absorption. So far as these retrenched employees were not taken back, the posts could not have been filled by the outsiders or by taking on deputation, of new comers who had not gained much experience.

6. Accordingly, the respondents, as a matter of fact, could have framed a scheme and should have acted in accordance with the scheme and directions of the High Court. In case they were to contact the State Govt. the department could have contacted the State Government. Accordingly, the respondents are directed to frame a scheme for giving appointment to these 900 employees or remaining who are waiting in the Census department as and when vacancies arise and consider their cases for regularisation. As far as the <sup>are</sup> new comers/concerned, retrenched employees <sup>to be</sup> are/given priority and preference over the new comers. As the

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creation of posts is a policy decision/matter  
not  
direction can/be given in respect of employees in the  
matter of recruitment. Accordingly the respondents  
are directed to frame a scheme within 3 months which  
may contain the appointment of 900 or remaining  
employees and their absorption and regularisation and  
appointment of subsequently appointed employees who  
have been retrenched and their appointment in the  
department or elsewhere if they can be given appointment  
as retrenched employees, in the other departments, and  
these posts are not to be filled in by outsiders so  
long as these employees are appointed and including  
those who are waiting for their turn in pursuance of  
1984 judgment and ~~and~~ they will be given priority  
staff appointed in  
over the/subsequent years. In case the employees, who  
are still working or on the verge of retrenchment or  
working under the interim orders of the Court will also  
be given benefit of the said scheme and their regularisa-  
tion and absorption will also take place as mentioned  
above. *If vacancies are existing or date last date of working has been  
extended the incumbents will be allowed to continue to hold the posts*  
7. Application is disposed of as above with  
no order as to costs.

  
Adm. Member.

  
Vice Chairman.

Shakeel/-

Lucknow: Dated 2<sup>nd</sup> Feb 1993.