

## CENTRAL ADMINISTRATIVE TRIBUNAL

## PATNA BENCH

O.A.NO.: 89 OF 2006

[Patna, this *Wednesday* the 2nd day of February, 2011]

## C O R A M

HON'BLE MR. JUSTICE ANWAR AHMAD, MEMBER [JUDL.]

HON'BLE MR. A.K.JAIN, MEMBER [ADMN.]

Krishna Kumar, son of Shri Shatrughan Prasad, resident of village – Taregana Gola, P.O/P.S. Masaurhi, District – Patna, Ex-Peon, O/o the Director of Census Operations, Bihar. ....APPLICANT.

By Advocate :- Shri M.P.Dixit.  
Shri S.K.Dixit.

Vs.

1. The Union of India through Registrar General of India, 2/A, Mansingh Road, Kotah House Annexe, New Delhi-110 001.

2. The Dy. Director, O/o the Registrar General of India, 2/A, Mansingh Road, Kotah House Annexe, New Delhi.

3. The Director of Census Operations Bihar, Jwala Bhavan, Boring Canal Road, Patna-1.

4. The Joint Director of Census Operations Bihar, Jwala Bhavan, Boring Canal Road, Patna-1. ....RESPONDENTS.

By Advocate :- Mrs. Ranjana Kumari.

O R D E R

**Justice Anwar Ahmad, M[J]** :- This OA has been filed by the applicant,

Krishna Kumar, for the following reliefs :-

*“8[A] That your Lordships may graciously be pleased to declare the action and intention of respondents shown in Annexure-A/8 dated 20.05.2005 concerning over age as null and void and set aside accordingly.*

*8[B] That respondents be further directed to re-engage the applicant in service forthwith with all consequential benefits at par with his said junior namely Shri Basudeo Ram shown in Annexure-A/5.*

*8[C] That respondents be further directed to regularise the services of applicant against permanent group 'D' post without any further*

*delay with all benefits.*

*8[D] That the respondents be further directed to treat the entire intervening period, i.e., from the date of dis-engagement upto the date of re-engagement as on duty for all purposes including for qualifying service and seniority, etc.*

*8[E] That any other relief or reliefs be granted to the applicant for that he is entitled to."*

2. As per the pleadings, the applicant was appointed on the post of Peon/Chowkidar on adhoc and purely temporary basis against the post created for 1991 Census Operations for a short period. His service was terminated from 31.12.1992 [A.N.] after abolition of all the posts of tabulation work created in connection with 1991 Census. The sanction of the post was only upto 31.12.1992 so, all the Regional Tabulation Offices were winded up on 31.12.1992 on expiry of the sanction of the posts and the employees so appointed were terminated.

3. The applicant, along with nine others, had earlier filed OA 553 of 1993 for the same relief. The Tribunal at para 6 of the order passed on 04.10.1999 [Annexure-A/6] in OA 553 of 1993 came to a finding that the case was fully covered by the decision of this Tribunal dated 22.07.1999 passed in OA 390 of 1993, OA 491 of 1993 & OA 523 of 1993. The Tribunal referred the decision of the Apex Court in Union of India & Ors. Vs. Dinesh Kumar Saxena [1995 [Vol.III] SCC 401] and quoted the relevant portion as under :-

*"The facts of the present case are closer to those of Sandeep Kumar Vs. State of U.P. than the other cases cited earlier. Here also the respondents had been temporarily employed to handle work which was of a limited duration. It was not possible, therefore, to direct the framing of any scheme for their being regularised in the Census Department since there was not enough work of permanent nature to keep these extra employees busy throughout. We also do not see how these employees, who had been engaged on a contract basis for a*

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*limited and fixed duration and on a fixed pay, could not 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, who have been subsequently retrenched, for appointments in any regular vacancies which may arise in the Directorate of Census Operation 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 laid down in this connection by the appellants. The appellants and/or the staff selection commission may also consider giving weightage to the previous 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 posts. It is directed accordingly. The appellants have, in their written submissions, pointed out that as of now, 117 posts are vacant to which direct recruits can be appointed. They have also submitted that out of these posts, there were 88 vacant posts of Data Entry Operator, Grade B, which had been advertised for being filled up only from amongst the retrenchees of 1981, 1984 and 1991. As per recruitment rules, only those retrenchees were eligible to apply who were graduates and had a speed of 8000 key depressions per hour of data entry. Although approximately 800 retrenchees applied, only 476 appeared in the test conducted by the NIC of the Lucknow Unit and only two applicants qualified. Out of these, only one could be appointed, since the other persons was over-aged even after allowing for age relaxation. Whatever may be the difficulties in giving regular appointments to such retrenched employees in the past, the appellants, namely, the Union of India and the Directorate of Census Operations, U.P. are directed to consider these 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 a right to be considered only if they fulfill all other norms laid down in connection with the posts in question under the recruitment rules and/or in other departmental regulations/circulars in that behalf."*

The Tribunal on the basis of the above order of the Apex Court passed the following order in the aforesaid OAs :-

*"7. We would, therefore, most certainly decide the instant cases with direction upon the respondents to go for considering causes of the present applicants as and when occasion arises on the very same guidelines as has been directed by the Supreme Court in the case*



*referred to above.*

8. *The learned counsel appearing on behalf of the respondents, however, raised a point that giving weightage to the previous service rendered by the applicants in the Census Department should in no way stand in the way of the Department to consider any fresh appointment of direct recruits. It, however, simply means that if the case of any of the present applicants stands on the same footings as that of a direct aspirant, only then preference has to be given to the present applicants. We may not choose to disagree with this argument on interpretation of the above guidelines.*

9. *Further as to the age relaxation, we would certainly insist that suitable rules should be made and conditions laid down in this connection by the Census Department.*

10. *All these three aforesaid OAs are accordingly disposed of with direction upon the respondents in terms as narrated above, with no order as to costs."*

Thereafter, the Tribunal in that OA passed the following order:-

*"8. In view of the facts and circumstances as stated above, we are of the view that the case of the applicants is covered by the principles laid down by this Tribunal on 22.07.1999 in the three OAs [supra] quoted above. In view of the aforesaid position, the respondents are directed to consider the case of the applicants in the light of principles already laid down in OA 390/93, OA 491/93 and OA 523/93. This OA is, accordingly, disposed of with no order as to the costs."*

4. The learned counsel for the applicant submits that the order passed by the Tribunal in the earlier OA 553 of 1993 [Annexure-A/6] was not complied by the respondents and hence, CCPA No. 43 of 2001 was filed. He submits that the respondents filed their show cause stating therein that the case of the applicant will be considered as and when vacancy arises and on the basis of such commitment, the contempt petition was withdrawn on 15.03.2005 [Annexure-A/7]. He submits that the respondents thereafter passed an order on 23.08.2005 [Annexure-A/8] [this is not an order but a letter written by the Assistant Director, Census Operation, Bihar, Patna to the



Ministry of Home Affairs, Govt. of India, New Delhi] wherein they admitted about the existing vacancies but changed their stand and took a new stand of over-age. On the point of age relaxation the learned counsel refers to a decision of the Hon'ble High Court, Patna, passed in MJC No. 1157 of 1992, on 19.08.1993 [Annexure-A/9]. He submits that this case also relates to a similar retrenched employee of Census Department and in its order the Hon'ble High Court held that the age bar, if any, is to be ignored. He further submits that in a similar case of Union of India Vs. Pawan Kumar & Ors., the Apex Court in the order dated 02.05.2005 in Special Leave Application No. 10521 of 2004 [Annexure-A/11] passed an interim order directing the respondents to consider, along with other eligible candidates for direct recruit against the regular vacancies relaxing the age limit. He submit that the Apex Court passed final order vide Annexure-A/10 in favour of the applicant. So, he submits that the case of the applicant cannot be rejected on the ground of over-age and in consideration of the orders of the Hon'ble High Court and the Apex Court, ~~the~~ the age bar in the case of retrenched employee is to be ignored. He, therefore, submits that the OA be allowed.

5. The learned counsel for the respondents refers to age relaxation for appointments [Annexure-C to the written statement] and submits that this rule provides that the period spent as casual labour, including broken period of service rendered, is to be excluded in taking into account for the purpose of age relaxations for appointments provided he has rendered service for more than six months at one stretch. He submits that after excluding the period of services rendered during the year 1983 to 1988 and the period 31.01.1991 to



31.12.1992 by the applicant and the age relaxation of three years in his case, he has crossed the age as his date of birth is 13.01.1960. He submits that under the impugned Annexure-A/8 Assistant Director, Census Operation, Bihar sought instructions from the M/o Home Affairs, Govt. of India in the matter of the applicant as he had crossed the age. He submits that the Deputy Director, Census Operation, Bihar under memo dated 01.06.2001 [Annexure-B] informed one Vijay Kumar, who was applicant along with the present applicant, Krishna Kumar, in CCPA No. 135 of 2000, that on account of over-age it was not possible to offer appointment.

6. The learned counsel for the applicant further submits that one Basudeo Ram, who is junior to the applicant vide Annexure-A/5 and who also had crossed age limit was given employment. He further submits that not only Basudeo Ram, but even Birbal Prasad, Pramod Kr. Yadav and Shashi Bhushan Sahay, who are juniors to the applicant, have been given employment, after giving age relaxation vide Annexure-A/12. He, therefore, submits that discrimination has been made in the case of the applicant and this is against principles of natural justice. So, he submits that on this ground also the applicant is entitled for appointment.

7. The learned counsel for the respondents, in reply, submits that Basudeo Ram and others, of course, have been given appointment but their case is different. He submits that they were rendering services continuously from since 1981 census. He submits that Basudeo Ram, Birbal Prasad and Pramod Kr. Yadav have been given temporary employment under order dated 16.04.1991 [Annexure-E]. He further submits that Annexure-A/12 is not the



appointment order but it is provisional seniority list which shows the date of regular appointment and inter-se seniority. He, therefore, submits that no discrimination has been made in the case of the applicant. He, therefore, submits that the OA is fit to be dismissed.

8. Considered the facts and circumstances of the case and rival submissions made. There is specific circular of the DOPT in respect of age relaxation. It provides age concession of the period spent as casual labour in the case of casual labourer for absorption in regular establishment in Group 'D'. It provides that broken period of service rendered as casual labourer may also be taken into account for the purpose of age relaxation. In the instant case the period of service rendered by the applicant as casual labourer has been excluded, age relaxation of three years in the case of the applicant has been given and even thereafter the applicant is found to be over-aged. In the order of the Hon'ble High Court [Annexure-A/9] age bar has been directed to be ignored because of the unfair action of the State Government but, in the present case there is no unfair action on the part of the State Government resulting in the retrenchment of the applicant. Further, the facts of Pawan Kumar & Ors. [supra], in which the Apex Court has given some directions, are different. Above all, the Apex Court in the case of Union of India Vs. Dinesh Kr. Saxena & Ors [supra] held that "the retrenchment employee will, however, have a right to be considered only if they fulfill all other norms laid down in the connection with the post in question under the recruitment rules and/or any other departmental regulations/circulars in that behalf. In the order dated 22.07.1999 passed in three OAs, referred to above, the Tribunal held



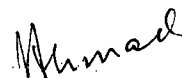
“Further as to the age relaxation we would certainly insist that suitable rules should be made and conditions laid down in this connection by the Census Department.”

9. In consideration of the above discussion, we are of the view that the applicant is not entitled to age relaxation simply because of being retrenched employee and hence, there appears no error in the order passed by the respondents.

10. In the result, the OA is dismissed. No costs.



[A.K.Jain]/M[A]



[Anwar Ahmad]/M[J]

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