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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: MUMBAI

OA No.90/96

Mumbai this the 15th day of June, 2001.

Hon'ble Mrs. Shanta Shastry, Member (Admnv)
Hon'ble Mr. Shanker Raju, Member (J)

V.T. Birwadkar,
c/o CAT Bar Association,
Gulestan, 3rd Floor, Prescott Road,
Fort, Mumbai.

-Applicant

(By Advocate Shri R. Ramesh with Sh. R.S. Ramamurthy)

-Versus-

1. Union of India through the Registrar General of Census, Ministry of Home Affairs, Kota House Annexe, 2A, Mansingh Road, New Delhi.
2. The Director (E), Government of India, Ministry of Personnel, P.G. & Pensions, Deptt. of Personnel and Training, New Delhi.
3. The Deputy Director of Census Operations, Maharashtra Exchange Building, 2nd Floor, Sprott Road, Ballard Estate, Bombay.

-Respondents

(By Advocate Shri R.K. Shetty)

O R D E R

Mr. Shanker Raju, Member (J):

In this application the applicant who was formerly employed as a Coder in the Census Operations has sought an employment as Coder/Compiler as a retrenched employee of Census Organisation in accordance with the Scheme of Central Government under OM dated 19.5.92, and 22.1.93. The applicant has also sought age relaxation and further relief of referring his name to special cell

in the Department of Personnel and Training and Administrative Reforms for re-deployment of the applicant.

2. The applicant has previously filed OA No.670/92 for a direction to continue him in service beyond 30.6.92 so long as the work of the kind done by him continues to be available or work of any other kind in which the applicant can be employed, continues to be available as temporary employee and to evolve a scheme for the absorption of the applicant in regular service in the Census Organisation. The applicant had also prayed for adhering to the principle of "last come first go". In pursuance of this OA the applicant continued in service upto 31.12.92. The applicant was employed on a contract for a fixed term and had completed service of 12 months and five days in two spells and the respondents sought to terminate the services of the applicant by 31.6.92 but due to the stay OA-670/92 the same was kept pending till 31.12.92. The applicant contends that in Census Organisation he was sponsored by the Regional Employment Exchange and has now become age barred for entering in Government service. The contention of the applicant is that in accordance with the OM of 1993 ibid temporary Group "C" and "D" employees of the Central Government who are retrenched having put at least three years of service are entitled to priority for the purpose of re-deployment through employment exchanges and would be entitled for age relaxation. The applicant has further stated that in view of the OM dated 1.6.92 specifically dealing with the

employees who have been retrenched in 1993 in the Census Operation and who had likely to be reverted in December, 1992 upto the end of June, 1993 are entitled for regularisation in the matter of sponsoring through employment exchange as well as other concessions. In this background it is stated that the scheme is applicable to the applicant mutatis-mutandis and the applicant who ~~was~~ appointed in Census Organisation on or above 26.4.91 and continued till 31.12.92 and were sponsored through employment exchange the scheme would apply to them and would be entitled for re-deployment in Group "C" or Group "D" posts. It is contended that the aforesaid OM has been forwarded to Director of Census Operations Maharashtra for relaxation in favour of retrenched employees of 1991 Census work and due to the reduction in establishment claims right for consideration is for absorption in Group "C" arising in Census Operation upto December, 1992 and extendable upto June, 1993. The applicant has further assailed that after his retrenchment 17 employees of Census Operations have been re-deployed as well as 22 more and continued beyond 31.12.92 as such the applicant has been meted out with a hostile discrimination. It is contended that in the said OA 670/92 the claim of the applicant is taken herein and admitted. The applicant lastly stated that his grievance in the present OA is not his re-instatement but compliance of the Scheme of 19.5.92 togetherwith letter dated 1.6.92. It is contended that one Sonayana^h was taken on duty in OA-105/96 and the cause of action had arisen to the applicant when similarly situated persons

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have been re-deployed. It is also contended that as there is no statutory remedy available to him under the Rules has not filed any representation for claiming the benefit of the Scheme.

3. The respondents rebutted the contentions of the applicant and in their reply contended that the applicant has been appointed as a Coder on contract basis and on expiry of the Census Operation his services have been dispensed with and he has no right for regularisation or appointment as the appointments were made on a consolidated salary. As the office at Ambarnath was closed on 31.12.92 and work being temporary and cannot be converted to be perenial as it arises once in 10 years. The respondents have taken a preliminary objection by stating that the OA is barred by limitation as the applicant's service were terminated on 31.12.92 and the OA has been filed on 15.12.92, i.e., beyond stipulated period laid down under Section 21 of the Administrative Tribunals Act, 1985. The respondents have further contended that the OA of the applicant is liable to be rejected on the ground of constructive res judicata and by referring to OA-670/92 it is contended that the applicant has filed this OA along with others. For the same relief which he is now claiming in the present OA. By referring to the decision in that OA of 10.6.93 it is contended that this Court has rejected the contentions of the applicants therein. On merits, by holding that it is unreasonable to compel the respondents to regularise or absorb the applicant employed on contractual basis for

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work of transitory in nature. The issue of equal pay for equal work was also rejected. In this background it is stated that the applicant could have taken the plea of his being covered under the scheme and OM dated 19.5.92 and letter dated 1.6.92 but having failed to raise the same plea before the Tribunal in OA-670/92, despite an opportunity the applicant is now precluded from taking this plea by filing a separate OA which would be hit by the doctrine of res-judicata. The respondents have also stated that the Apex Court in the case of Union of India v. Dinesh Kumar Saxena, CA-731-69/1994 dated 24.2.95 while dealing with the case of regularisation of the employees of Directorate of Census Organisation clearly laid down that the Tribunal cannot direct framing of scheme for regularisation of such of the temporary employees who have worked for a limited duration. Although in this case under the jurisdiction of Article 136 of the Constitution the Census Organisation has been directed to consider the cases of retrenched employee for direct recruitment to regular posts and fulfilling of the eligibility criteria under the relevant rules. It is contended in this background that the Apex court by virtue of the wider scope under Article 136 is only competent to issue such a direction. The Tribunal has no jurisdiction to order for regularisation as under the contract there is no guarantee of regularisation. Apart from it, placing reliance on the settled law it is contended that the decision of the Apex Court does not give a cause of action to an employee. Lastly placing reliance on the ratio of Brig. N. Ramchanderan v.

Hyderabad Alloys it is contended that a contractual appointment is for a fixed term and after its expiry no right or cause of action accrues to a person to claim further regularisation and it is stated that the case of the applicant suffers from the vice of plural remedies and hit by Rule 10 of the C.A.T. (Procedure) Rules of 1987. It is also contended that the OM relied upon would have any application only if the applicant was appointed as a temporary employee and does not cover the cases of the contractual employees. It is also stated that in pursuance of the circular the applicant had never moved to the respondents seeking appointment/regularisation in accordance with the rules.

4. We have carefully considered the rival contentions of the parties and perused the material on record. The case of the applicant in the present OA is at the outset is not maintainable and is liable to be dismissed on the doctrine of constructive res judicata. The applicant in OA-670/92 had challenged his termination and sought regularisation and continues in service as well as absorption as per the Scheme. In the present OA the applicant under the garb of taking resort of the scheme is also seeking his regularisation. The applicant was well aware of this scheme during the pendency of OA 670/92 but has not taken any steps to assail the same and seek his redressal of grievance. In that OA, having failed to take the plea which was available with the applicant and once the case has been conclusively decided between the parties on merits denied the re-instatement

and other benefits to the applicant is estopped from challenging the same by filing another OA and this would be hit by constructive res judicata.

5. As regards extending of scheme to the applicant the Apex Court in the case of Dinesh Kumar Saxena had clearly held that the Tribunal cannot direct framing of scheme for regularising the service of the temporary employees. As the applicant cannot take resort for the purpose of extending the same relief to him which had been accorded in that order. Apart from it, the jurisdiction of Apex Court is more wider as compared to what has been bestowed upon the Tribunal and as such this Court cannot take cognizance of this grievance of the applicant and accord him benefits. As regards the plea of the applicant that OM dated 22.1.93 is to be applied to his case for re-deployment as he had been a Group 'D' employee and had rendered six months service and is entitled for re-deployment with certain concession of age and employment exchange is concerned, we find that this OM applies only to temporary Group 'C' and 'D' Government employees who are retrenched and as the applicant was appointed on a contractual basis the aforesaid OM would not be applicable to him and he cannot derive any benefit out of it.

6. As regards the plea of the applicant that vide letter dated 1.6.92 and OM dated 19.5.92 the applicant had been entitled for concession, relaxation as he continued to work upto December, 1992 and according to

this OM the applicant being initially recruited through employment exchange and having put six months of continuous service and on retrenchment due to reduction in establishment is eligible to appear in the examination conducted by the SSC is concerned, we find that the applicant despite existence of this circular has not made any application to the respondents for permitting him to participate in any of the examination by the SSC, nor has he applied for the same. Having failed to do so the provisions of this OM would have no application in the case of the applicant, although this concession has been admissible to the employees of 1991 Census Operations. A person to be considered is to be eligible in all respects and the post should be of the same grade in which the retrenched employee was initially recruited. The applicant's plea of regularisation and re-instatement was dealt with in OA-670/92 and was rejected.

7. As regards the plea of the applicant of hostile discrimination by contending that 17 retrenched employees and 22 more have been continued on 31.12.92 and were given employment is concerned, it has been stated by the respondents that as there was short fall of SC candidates it was decided to recruit only SC candidates and the circular for vacancies was issued to all the eligible offices where the applications were invited. It is in this regard contended that the temporary post created have already ceased in the Census Directorate and the age relaxation would have been granted if there has been any opportunity to appoint him and there is no provision for

sending the name of a temporary retrenched employee to the surplus cell. The applicant will have no claim for his re-instatement in employment as a contractual employee. He has no right to claim an employment with the Govt. and this will not give him a cause of action and in this view of ours we are fortified by the ratio cited by the learned counsel of the respondents in Ramchanderan's case (supra).

8. However, from the perusal of the reply filed by the respondents we find that submission has been made to dismiss the application and a direction to the respondents to consider the case of the applicant if and when a vacancy arises in future subject to relaxation of age limited to the extent of past service. Although we find no merit in the present OA, by way ^{of} indulgence and keeping in view the statement of the respondents we dispose of this OA with a direction to the respondents to consider the case of the applicant if and when a vacancy arises in future subject to relaxation of age limit to the extent of past service already put in and also to his being conforming to all the relevant eligibility criteria~~s~~ laid down under the rules meant for recruitment. No costs.

S. Raju
(Shanker Raju)
Member (J)

Shanta Shastri
(Smt. Shanta Shastri)
Member (A)