

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH
* * * * *

Commercial Complex (BDA)
Indiranagar
Bangalore - 560 038

Dated : 12 SEP 1988

APPLICATION NO. 1503 /88(F)

W.P. NO. _____

Applicant(s)

Shri G. Shankar

To

1. Shri G. Shankar
No. 220, 10th Cross
Nagendra Block
Bangalore - 560 050

2. Shri S. Ranganatha Jois
Advocate
36, 'Vagdevi'
Shankarepura
Bangalore - 560 004

3. The Joint Director of Census
Operations in Karnataka
21/7, Mission Road
Bangalore - 560 027

Respondent(s)

V/s The Joint Director of Census Operations in
Karnataka, Bangalore & another

4. The Registrar General of India & Census
Ministry of Home Affairs
2/A, Mansingh Road
New Delhi

5. Shri M. Vasudeva Rao
Central Govt. Stng Counsel
High Court Building
Bangalore - 560 001

Subject : SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith the copy of ORDER/STAY/INTERIM ORDER
passed by this Tribunal in the above said application(s) on 2-9-88.

Encl : As above

O/C

R.A. Devaraj
DEPUTY REGISTRAR
(JUDICIAL)

12-9-88

CENTRAL ADMINISTRATIVE TRIBUNAL: BANGALORE

DATED THIS THE 2ND DAY OF SEPTEMBER, 1988.

PRESENT:

Hon'ble Mr. Justice K.S.Puttaswamy, .. Vice-Chairman.

And

Hon'ble Mr. L.H.A.Rego, .. Member(A).

APPLICATION NUMBER 1503 OF 1988

G.Shankar,
S/o T.R.Gundappa Shastri,
Aged about 24 years,
working as Compiler,
Office of the Joint Director of
Census Operation,
Mission Road, Bangalore-27. .. Applicant.

(By Sri S.Ranganath Jois, Advocate)

v.

1. The Joint Director of Census Operation in Karnataka, No.21/7, Mission Road, Bangalore-560 027.
2. The Registrar General of India & Census Ministry of Home Affairs, New Delhi-110 001. .. Respondents.

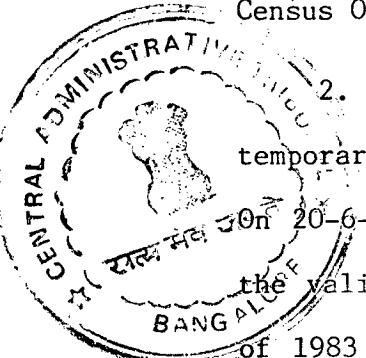
(By Sri M.Vasudeva Rao, ACGSC)

This application having come up for order, Hon'ble Vice-Chairman made the following:

ORDER

In this application made under Section 19 of the Administrative Tribunals Act,1985 ('the Act') the applicant has challenged notice No.ADM EST 83 dated 2-8-1988 (Annexure-F) of the Joint Director of Census Operations, Karnataka, Bangalore ('Director').

2. On 26-9-1981 the applicant was appointed as a Coder on a temporary basis. He was temporarily promoted as a 'Checker' in 1982. On 20-6-1983, the Director terminated the services of the applicant, the validity of which was challenged by him in Writ Petition No.11544 of 1983 before the High Court of Karnataka which was then exercising jurisdiction over Central Government service matters.



3. On the constitution of this Tribunal, the said writ petition was transferred to this Tribunal and was registered as Application No.458 of 1987. On 21-7-1987 a Division Bench of this Tribunal consisting of Sri P.Srinivasan, Member (A) and Sri Ch.Ramakrishna Rao, Member (J) disposed of the same with the following directions:

- (i) The respondents should take the applicant back into service within two months from the date of receipt of this order.
- (ii) The applicant will, however, not be entitled to any backwages till the date of his fresh appointment.

In the purported compliance of this order, Government of India by its order dated 7-10-1987 (Annexure-B) appointed the applicant as Compiler and posted him to the office of Director of Census Operations, Jammu and Kashmir, Srinagar ('J & K') the validity of which was challenged by him in Contempt of Court Application No.56 of 1987 before this Tribunal.

4. On 10-2-1988 a Division Bench consisting one of us (Justice Sri K.S.Puttaswamy, Vice-Chairman) and Sri P.Srinivasan, Member(A) made an order in the said contempt application declaring that the posting of the applicant to J & K was violative of the order in his favour in Application No.458 of 1987 and that he should be reinstated and posted in the office of the Director only and not at any other place within 15 days from that day.

5. In compliance with the aforesaid orders, the Director made an order on 19-2-1988 (Annexure-E) appointing the applicant on a temporary basis for a period of six months and reported compliance of the orders made in his favour. On 29-2-1988, the very Division Bench that had originally dealt with Application No.458 of 1987 dropped the contempt of court proceedings holding that its order in that case had been substantially complied.

6. But, in the impugned order, the Director had notified that

the services of the applicant will stand terminated from 2-9-1988 in terms of his very appointment made on 19-2-1988 and also probably to comply with the Central Civil Services Temporary Service Rules, 1965 ('the Rules'). The applicant has challenged this order on two grounds viz., (1) that the order is mala fide and (2) that there was no justification to terminate the services of the applicant.

7. This application presented on 31-8-1988 was posted before us for admission on 1-9-1988. On that date Sri M.Vasudeva Rao, learned Additional Central Government Standing Counsel appeared for the respondents and sought for time to to-day to produce the records and argue the matter. We granted that request and that is how this case has come up before us. To-day Sri Rao has filed the reply of the respondents and has produced the records. We commend this effort of Sri Rao.

8. In their reply, the respondents have asserted that the appointment of the applicant was only for a term of six months for which period only Government had accorded its sanction to create that post and his termination being in conformity with the said orders, was legal and valid.

9. Sri S.Ranganath Jois, learned counsel for the applicant, contends that the impugned order made by the Director terminating the services of his client from 2-9-1988 was mala fide and the same had been made only to defeat the earlier orders of this Tribunal and only to wreck vengeance against him. In support of his contention

Sri Jois strongly relies on the ruling of the supreme Court in RADHA-KRISHNA JHA v. CHIEF COMMISSIONER AND OTHERS [1987 (3) SCC page 222].

10. Sri Rao refuting the contention of Sri Jois contends that the authorities in exercise of their powers had created the post



for a period of six months and had appointed the applicant for that term only and his termination being in conformity with them were legal, valid and were not at all mala fide.

11. We have earlier alluded to the history of this case which has led to this application.

12. In our earlier orders we had directed that the applicant should be given a posting at Bangalore and to comply with them, Government of India, Ministry of Home Affairs made an order on 12-2-1988 which reads thus:

"Sub: Creation of a temporary post of Compiler on a consolidated salary of Rs.900/- per month, for a period of six months from the date Shri G.Shankar is taken back in service in the office of the Director of Census Operations, Karnataka, at Bangalore, in compliance with the order of CAT, Bangalore Bench, on an Application filed by him.

Sir,

I have the honour to convey the sanction of the President to the creation of one temporary post of Compiler on a consolidated salary of Rs.900/- per month, for a period of six months from the date Shri G.Shankar, a retrenched employee of the Census Directorate, Karnataka, at Bangalore, is taken back in service in that Directorate in compliance with the order of the CAT, Bangalore Bench, on an Application filed by him before that Bench.

2. The expenditure involved is Non-plan and is debitable to the Head "3454: D-Census Surveys and Statistics; D-1. Census; D.1(3) (2). Abstraction and Compilation; D-1(3)(2)(1).Salaries" under the Census grant during the current financial year, 1987-88 and the next financial year, 1988-89."

In conformity with this order the Director appointed the applicant on 19-2-1988 for 6 months on the terms and conditions set out therein.

This order which is material reads thus:

"O R D E R

Ref:1. Orders passed by the Central Administrative Tribunal, Bangalore in Application No.458/87(T)(W.P.No.11544/- 83) - Shri G.Shankar v. The Director of Census Operations, Karnataka, Bangalore on 21-7-1987.

2. Orders passed by the Central Administrative Tribunal,

Bangalore in C.C.A.No.56/87 in Application No.458/87-(T) dated 10-2-1988 - G.Shankar v. The Joint Director of Census Operations, Karnataka, Bangalore.

3. Letter No.27/39/83-Ad. I dated 12-2-1988 and telegram No.27/39/83-Ad. I dated 16-2-1988 from the Registrar General, India, New Delhi intimating sanction for the creation of one temporary post of Compiler on a consolidated salary of Rs.900/- (Rupees nine hundred only) per month for six months from the date of reporting to duty of Shri G.Shankar in the office of the Director of Census Operations, Karnataka, Bangalore.

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In compliance with the orders passed by the Central Administrative Tribunal, Bangalore referred to above, Shri G.Shankar is appointed as Compiler in Bangalore on a consolidated salary of Rs.900/- (Rupees nine hundred only) per month for a period of six months from the date of his reporting for duty in this office. As per the orders passed by the Central Administrative Tribunal, Bangalore referred to above, Shri G.Shankar will not be entitled to any back salary.

This appointment is subject to the following conditions:

- (i) The appointment is on a purely temporary and on casual employment basis and he will have no claim for indefinite continuance. The appointment will not bestow on the appointee a claim for regular appointment. The service rendered on Casual Employment basis in the grade will not count for the purpose of the seniority in the grade and for eligibility for promotion to the next higher grade. His appointment would be of short term duration and his services would be dispensed with i.e., he would be retrenched due to reduction in establishment.
- (ii) The appointment may be terminated at any time by a month's notice given by either side viz. the appointee or the appointing authority without assigning reasons. The appointing authority, however, reserves the right of terminating the services of the appointee forthwith or before the expiration of the stipulated period of notice or the un-expired portion thereon.

Sri G.Shankar is directed to report himself for duty to the undersigned on or before 25-2-1988. In case he fails to report for duty in this office by the prescribed date, it will be presumed that he is not interested in the job and the order will be treated as cancelled."

From these orders, it is obvious that the creation of the post itself as also the appointment of the applicant was for a period of six months only and no more. With their expiry, the right of the applicant to continue in service also ceases. The impugned order of the



Director only makes that position clear. Even otherwise the order, which is in conformity with the order sanctioning the post and the order of appointment, is also in conformity with the Rules. If that is so, then this Tribunal cannot take exception to them at all. We are of the view that these orders are within the powers of the authorities, legal and valid.

12. When Government and the Director were in the "horns of a dilemma" they have solved the problem in a constitutional and legal manner. We cannot on that score hold that they have been made only to defeat the orders of this Tribunal and are, therefore, mala fide. We see no illegality and impropriety in these orders. We are of the view that the ruling of the Supreme Court in Radhakrishna Jha's case does not bear on the point.

13. On the foregoing discussion, we see no merit in this contention of Sri Jois and we reject the same.

14. Sri Jois next contends that there are vacant posts in equivalent cadre like Assistant Compiler and Operators carrying the very time scale of pay and the applicant should have been continued against any one of those posts without terminating his services particularly when he had crossed the maximum age-limit prescribed for entry to Central Government services.

15. Sri Rao submits that the posts of Assistant Compiler and Operators are not in the equivalent cadre and even otherwise, there were no vacancies either in those or in the equivalent cadres to accommodate the applicant.

16. We ^{do} have no reason to disbelieve what is stated by Sri Rao. If that is so, then there is no ground whatsoever to interfere with the impugned order of termination.

17. As all the grounds urged for the applicants fail, this application is liable to be dismissed. We, therefore, dismiss this application. But, in the circumstances of the case, we direct the parties to bear their own costs.

Sd/-

VICE-CHAIRMAN. 24/9/88

Sd/-

MEMBER(A) T-2.958

np/

TRUE COPY



R. Venkatesh
DEPUTY REGISTRAR (JD)
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE