

CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH

Commercial Complex (BDA)
Indiranagar
Bangalore - 560 038

Dated : 23 DEC 1988

APPLICATION NOS. 1758 to 1765, 1800 to 1807
AND 1854 to 1862/88(F)

Applicants

Shri M.N. Muralidhara & 24 Ors

v/s

The Director of Census Operations,
Karnataka, Bangalore & 2 Ors

To

1. Shri M.N. Muralidhara
2. Shri M. Srinivas
3. Shri E. Ramamallappa
4. Shri Nagendra Prasad
5. Shri Zahid Hussain
6. Shri Prabhakar
7. Shri S. Sathyanarayana
8. Shri Arun Kumar Joshi

(Sl Nos. 1 to 8 -

Assistant Compilers
Office of the Director of
Census Operations in Karnataka
21/1, Mission Road
Bangalore - 560 027)

9. Shri H.R. Gopala Swamy
10. Smt M.N. Rathna
11. Smt S. Vimala
12. Smt Vasantha Kumari
13. Sri Venkata Narasimhaiah

14. Smt B.L. Sarala Devi

15. Shri M.R. Munirathnam

16. Shri P.G. Pradeep

(Sl Nos. 9 to 16 -

Compilers

Office of the Director of Census
Operations in Karnataka
21/1, Mission Road
Bangalore - 560 027)

17. Shri A.S. Diwakara
18. Shri S. Adinarayana
19. Shri K.S. Ravi Prakash
20. Shri C.D. Ambhanadan
21. Shri K. Mohan Pai
22. Shri K. Rajaram Pai
23. Shri Prakash Raj Urs
24. Shri P. Ashok More
25. Shri C.G. Gopala Krishnan

(Sl Nos. 17 to 25 -

Compilers

Office of the Director of Census
Operations in Karnataka
21/1, Mission Road
Bangalore - 560 027)

26. Dr M.S. Nagaraja
Advocate
35 (Above Hotel Swagath)
Ist Main, Gandhinagar
Bangalore - 560 009

27. The Director of Census Operations
in Karnataka
21/1, Mission Road
Bangalore - 560 027

28. The Registrar General of India
Ministry of Home Affairs
2/1, Mansingh Road
New Delhi

29. Smt G. Lakshmi Devate
Compiler
Office of the Director of Census
Operations in Karnataka
21/1, Mission Road
Bangalore - 560 027

30. Shri M. Raghavendra Achar
Advocate
1074-1075, Banashankari I Stage
Sreenivasa Nagar II Phase
Bangalore - 560 050

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

Subject : SENDING COPIES OF ORDER PASSED BY THE BENCH

Enclosed Please find herewith a copy of the ORDER passed by this Tribunal
in the above said applications on 16-12-88.

Shall
SECTION OFFICER
(JUDICIAL)

Encl : As above

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH : BANGALORE

DATED THIS THE 16TH DAY OF DECEMBER, 1988

PRESENT : Hon'ble Shri Justice K.S.Puttaswamy ... Vice Chairman
Hon'ble Shri P. Srinivasan ... Member (A)

APPLICATIONS No.1758-1765/88

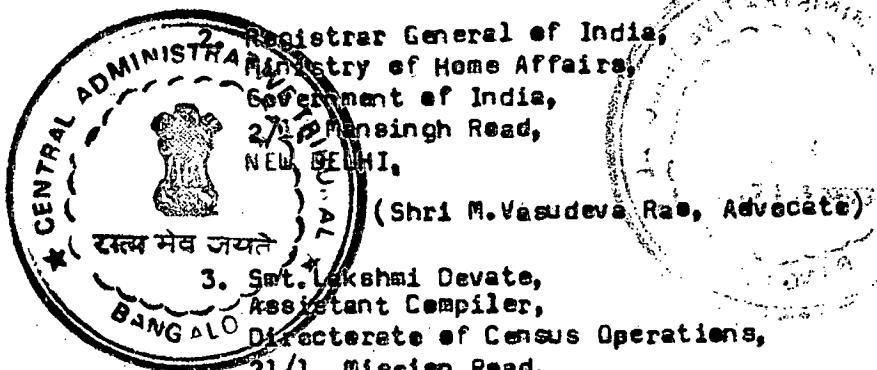
1. Shri M.N.Muralidhara,
S/O Shri S.Nagarajaiah
2. Shri M. Srinivas,
S/O Shri B.V.Madappa
3. Shri E.Ramamalleppa,
S/O Shri Malianna
4. Shri Nagendra Prasad,
S/O Shri Ranganath
5. Shri Zahid Hussain,
S/O Shri Abdul Setar
6. Shri Prabhakar
7. Shri S.Sathyenarayana,
S/O Shri Siddayya
8. Shri Arun Kumar Jeshi,
S/O Shri M.B.Jeshi

... Applicants

(Dr.M.S. Nagareja, Advocate)

vs.

1. Director of Census Operations,
Karnataka, 21/1, Mission Read,
Bangalore-560027.



3. Smt.Lakshmi Devate,
Assistant Compiler,
Directorate of Census Operations,
21/1, Mission Read,
BANGALORE-560027.

... Respondents

(Shri M.R. Achar, Advocate)

APPLICATIONS No.1800-1807/88

P. S.
P. S.

9. Shri H.R.GopalaSwamy,
S/O Shri H.M.Ramachandra Rao
10. Shrimati M.N.Ratna,
D/O Shri M.Narasimha Murthy
11. Shrimati S. Vimala,
D/O Shri A.D.Srinivasa Iyenger
12. Shrimati Vasantha Kumari,
D/O Shri Muni Chadda
13. Shri Venkata Narasimhaiah,
S/O Shri Dase Gowda.
14. Shrimati B.L.Sarala Devi,
D/O Shri B.T.Lakshminarayappa
15. Shri M.R.Munirathnam,
S/O Shri Ramaswamy
16. Shri P.G.Pradeep,
S/O Shri Guru Rao

... Applicants

(Dr.M.S. Nagaraj, Advocate)

vs.

1. Director of Census Operations,
Karnataka, 21/1, Mission Read,
Bangalore-560027.

2. Registrar General of India,
Ministry of Home Affairs,
Mansing Read,
NEW DELHI.

(Shri M.Vasudeva Rao, Advocate)

3. Smt. G. Lakshmi Devate,
Compiler, Office of the Director
of Census Operations, Karnataka,
Bangalore.

(Shri M.R. Achary, Advocate) ... Respondents

APPLICATIONS No. 1854 to 1862/88



17. Shri A.S.Diwakara,
S/O Late A.R.Sadashiva

18. Shri S.Adinarayana,
S/O Late V. Srinivasaiah

19. Shri K.S.Ravi Prakash,
S/O Shri K.G. Suryanarayana

P. S. V.G.

20. Shri C.D. Ambhanadan,
S/O Shri Derei Raju
21. Shri K. Mohan Pai,
S/O Shri Anantha Pai
22. Shri K. Rajaram Pai,
S/O Shri K. Yashwanth Pai
23. Shri Prakash Raj Urs,
S/O Shri Gopal Raju
24. Shri P. Ashok More,
S/O Late P. More
25. Shri G.G. Gopal Krishnan,
S/O Shri Gundacher

... Applicants

(Dr. M.S. Nagaraja, Advocate)

All the applicants are working as Assistant Compilers/Compilers in the office of the Director of Census Operations, Karnataka, 21/1, Mission Road, Bangalore-560027).

vs.

1. Director of Census Operations
in Karnataka, 21/1, Mission Road,
Bangalore.

(Shri M. Vasudeva Rao, Advocate)

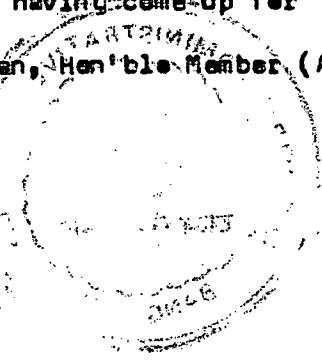
2. Shrimati G. Lakshmi Devate,
Compiler, Office of the Director
of Census Operations, Karnataka,
21/1, Mission Road,
Bangalore-560027.

(Shri M.R. Achar, Advocate) ... Respondent



These applications having come up for
hearing today, Shri P. Srinivasan, Hon'ble Member (A)
made the following:

P. S. *[Signature]*



ORDER

All the 25 applicants in these applications share a common grievance namely that in the gradation list of officials in the grade of Assistant Compiler in the Directorate of Census Operations (DCO), Bangalore, as on 1-7-1987, their seniority has been reckoned with reference to the dates of their regular appointment to that grade and not with reference to the dates from which they were officiating in that grade, albeit on ad hoc basis. Applications No. 1758 to 1765 of 1988 and No.1800 to 1807 of 1988 were heard together on 13-12-88. Applications No.1854 to 1862 of 1988 were heard together on 15-12-1988. Since the issue involved in all these applications is the same, they are being disposed of by this common order.

2. All the 25 applicants were appointed as Assistant Compilers on ad hoc basis in the DCO, Bangalore, on various dates from 31-5-1980 to 13-7-1981. The orders of appointment in each case narrated that the appointment was on a purely temporary and ad hoc basis and conferred no right of indefinite continuance upon the appointee. The appointee could not claim regular appointment nor could his service rendered on ad hoc appointment be counted for seniority or for eligibility for promotion to the next higher grade. The appointment in each case was stated to be of short term duration and was likely

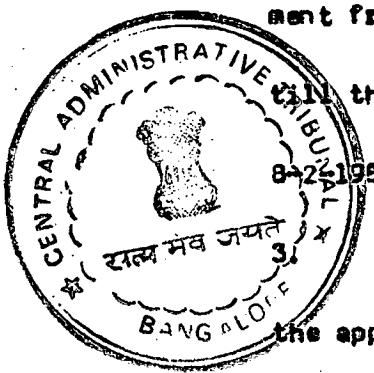


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to be dispensed with in the event of reduction in establishment, employment. The appointment in each case could be terminated by one month's notice from either side or by the appointing authority forthwith before the expiration of the period of notice. Though each one of them was stated to have been appointed on short term duration, they were continued in employment and their appointments were converted into regular temporary appointments with effect from 8-2-1984. A gradation list of Assistant Compilers as on 1-7-1987 was published by the Joint Director of Census Operations, Karnataka, along with his office memorandum dated 17-8-1988. In this gradation list, the applicants were shown at Serial Number 11 onwards on the basis of their regular appointment commencing from 8-2-1984. Their contention is that their regular appointment should count from the dates of their initial appointment on ad hoc basis because they were in continuous employment from the dates on which they were so appointed till their services were regularised with effect from 8-2-1984.

Dr. M. S. Nagaraja, learned counsel for all

the applicants, submitted that it is now well settled law laid down by decisions of several Benches of this



P.f. - 4e

Tribunal and by the Supreme Court that where continuous ad hoc service is followed by regularisation, the ad hoc service should also be counted for fixing the seniority of such persons in the grade in which they are so regularised.

4. Shri M. Vasudeva Rao, learned counsel for respondents 1 and 2 in applications No. 1758 to 1765 of 1988 and No. 1800 to 1807 of 1988 and for respondent No. 1 in applications No. 1854 to 1862 of 1988 sought to refute the contentions of Dr. Nagaraja. He submitted that in terms of the appointment orders issued to the applicants when they were given ad hoc appointment as Assistant Compilers, they were not entitled to count ad hoc service for the purpose of seniority in that grade. He admitted that ad hoc appointments are not referred to in the Fundamental Rules, but such appointments are governed by instructions issued by the Department of Personnel and Administrative Reforms and are made under certain conditions set down in these instructions.

Regular appointments could be made only when regular

vacancies were caused by persons already working on

regular basis as Assistant Compilers release such

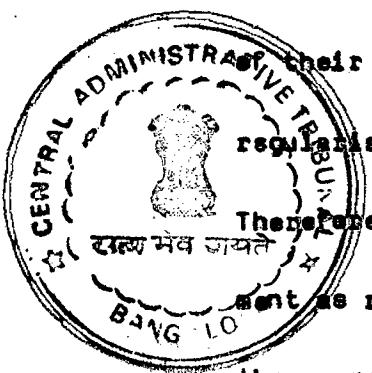
vacancies by being regularised in higher posts. It was

on this basis that the services of the applicants as



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Assistant Compilers were regularised with effect from 8-2-1984. Only persons who are regularly appointed are entitled to figure in the gradation list and the impugned gradation list was rightly prepared by taking into account the dates on which the applicants were regularised. Smt. Lakshmi Devate, whose name appears at Serial No.9 of the impugned gradation list and whose interests would be affected adversely if these applications were allowed to appear as respondent number 3 in the first set of applications and as respondent number 2 in the second set of applications. Shri M.R.Achar, learned counsel, appeared for her. In addition to relying on the arguments of Shri M.V.Rao, he submitted that the applicants should have first challenged the orders conferring regular appointments on them from 8-2-1984 and should have contended that such appointments should have been made from the dates of their initial ad hoc appointments. The substance



of their contention is that service rendered prior to regularisation should also be treated as regular service.

Therefore, when orders were made treating their appoint-

ments as regular from 8-2-1984, they should have challenged

these orders. These orders, not having been challenged at

the time, had become final and they cannot now be allowed

P. J. [Signature]

to plead that service rendered by them before 8-2-1984 was regular service for the purpose of reckoning their seniority.

5. Before examining the arguments of counsel on both sides of the controversy, it would be useful to see what would be the result if the claim of the applicants were to be allowed by us. The applicants admit that they have no claim for seniority over persons appearing at Serial Numbers 1 to 8 and 10 in the gradation list because they held the post of Assistant Compiler whether on ad hoc basis or on regular basis much longer than any of the applicants. Therefore, their claim of seniority could only affect one person shown as senior to them in the gradation list, Smt. G. Lakshmi Devate, at Serial No.9, who is a respondent in all these applications. Smt. Lakshmi Devate was initially appointed as Assistant Compiler in the DCO, Andhra Pradesh, with effect from 1-6-1980 and her appointment was made regular from that date itself. She was transferred to the office of the DCO, Bangalore, with effect from 7-2-1983, at her own request on condition that she would accept bottom seniority in the grade in Bangalore. As on that date, none of the applicants were holding regular posts of



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Assistant Compilers while, as already stated, she was a regular incumbent of that post on the date of her transfer. Her seniority was thus fixed immediately below all persons holding regular posts of Assistant Compiler in the Bangalore charge. The case of the applicants is that her service in the grade of Assistant Compiler should be reckoned only from 7-2-1983 when she came over to the Bangalore charge and since the dates of their initial appointment were earlier to that date, they should be senior to her.

6. We may now examine the position of the applicants vis-a-vis Smt. Lakshmi Devate. The contention of the learned counsel for the applicants is that on regular appointment, earlier ad hoc service should also be counted for seniority. They concede that Smt. Lakshmi Devate held regular appointment as Assistant Compiler in Bangalore charge from 7-2-1983.

On the arguments made on behalf of the applicants, she is not to be allowed to count her earlier continuous service for the purpose of seniority. As already stated, she was

appointed as Assistant Compiler from 2-5-1980 i.e. before any of the applicants were so appointed. That being so, the applicants' claim for seniority over Smt. Lakshmi Devate is, on the face of it, unjust.

7. When Smt. Lakshmi Devate joined Bangalore charge on 7-2-1983, her seniority was fixed below all persons in the charge holding that post on a regular basis. It seems



P. J. Fricker

to us, again, unfair that the seniority as fixed should be altered merely because in 1984 the services of the applicants were regularised. It is no doubt true that the Supreme Court has held in the context of recruitment from two independent sources, that continuous efficiation in the grade should be the basis for determining the inter se seniority, where no seniority rule promulgated under Article 309 of the Constitution was in existence. Here, Smt. Lakshmi Devate, and all the applicants came from the same source of recruitment, i.e. direct recruitment and what is more, Smt. Lakshmi Devate, held a regular appointment as Assistant Compiler in the Bangalore charge from 7-2-1983 as against 8-2-1984 by the applicants. When comparing the cases of persons recruited from the same source, we see no reason to ignore the dates from which they held regular appointments for determining their inter se seniority. As already pointed out, even on considerations of equity, Smt. Lakshmi Devate, who has a longer length of continuous service than the applicant if one takes into account her earlier service in Andhra Pradesh and whose position of seniority was already fixed when she came on transfer to the Bangalore charge deserves her position of seniority vis-a-vis the applicants to be left undisturbed.

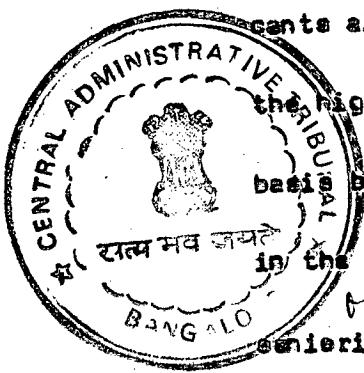


P. J. *[Signature]*

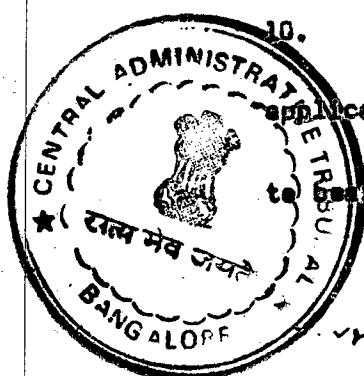
8. In the view that we have taken above, we do not consider it necessary to discuss the considerable case law cited by Dr.Nagaraja because the decision rendered in each case essentially turns on the facts of that case. We are satisfied on the facts of this case, that the relative seniority assigned to Smt.Lakshmi Devate and the others was right and just and should not be disturbed.

9. In the course of argument, the main thrust of Dr.Nagaraja was that for promotion to higher posts, there is often ^M a prescription of minimum service in the lower grade and his apprehension was that if the ad hoc service rendered ~~by~~ ^M by the applicants prior to their regular appointment, were to be ignored for such purposes, their promotion to higher posts might be delayed. It was thus not so much their relative seniority vis-a-vis Smt.Lakshmi Devate, but the ~~possible~~ ^M possible delay in their promotion to higher grades by not reckoning their ad hoc service for the purpose that is worrying the applicants. We find that some of the applicants along with Smt.Lakshmi Devate have been promoted to the higher post of Computer albeit on a purely ad hoc basis by an order dated 1-10-1984. The names appearing in the said order appear to be in the order of their seniority for the post of Assistant Compiler. From this it seems to us that the apprehension is not well founded.

P. J. K.



Even if it were well founded, a grievance would arise to the applicants only when they are denied promotion to higher posts on the ground that they did not have the minimum service required for the purpose and in coming to this conclusion, their ad hoc service is excluded. That is altogether a different issue which we cannot decide here.



10. In the light of the above, we dismiss all the applications. But in the circumstances of the case, parties

to bear their own costs.

Sd/-

VICE CHAIRMAN

12/1/74

TRUE COPY

Sd/-

MEMBER(A)

[Signature]
SECTION OFFICER
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE