OA 953/92

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Applications
No. 947/92, 948/92, 949/92,
951/92, 953/92 and 955/92

947/92

Smt. Pratiba M. Patil

948/92

Smt. Udeshna A. Vasudeo

949/92

Smt. Alka B. Raut

951/92

Smt. Samela S. Raje

953/92

Smt.Pratima R. Lagu

955/92

Smt. Radhika R. Tanksale

.. Applicants

Vs.

1. Director of Census Operations,
   Exchange Building,
   Ballard Estate, Bombay 400 038.

2. Union of India, through
   Registrar General - India
   Ministry of Home Affairs
   New Delhi - 110 011.

.. Respondents

CORAM : 1. Hon'ble Shri.B.S.Hegde, Member (J)
2. Hon'ble Shri.M.R.Kolhatkar, Member (A)

Appearances

Shri. L.M. Nerlekar
Advocate
for the applicants

Shri.V.S.Masurkar
Advocate
for the respondents

JUDGMENT DATED : 11.8.1995

I Per. Shri. M.R.Kolhatkar, Member (A) I

In all these Original Applications, facts are substantially identical, hence we are passing

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a common order. There are two cases, however, namely O.A. 951/92 (Smt. Samela S. Raje) and O.A. 949/92 (Smt. Alka B. Raut) in which additional reliefs are claimed and we pass supplementary orders in respect of those two cases.

2. The applicants are working in the Census office, Bombay as Computors (Smt.U.S.Vasudeo & Smt.P.M.Patil), Statistical Assistants (Smt.R.R.Tanksale & Smt.P.R.Lagu) and Investigators (Smt.S.S.Raje & Smt.A.B.Raut). The charge against them is that they have refused to perform field work assigned to them in connection with the first pre-test of 1991 Census by the Head of Office. The charge was held to be proved and they were penalized by way of stoppage of two increments without cumulative effect. This order is dated 30.10.1991. Against this order, the employees went in appeal to the Registrar General. The Registrar General had rejected the appeal by his order dated 18.6.1992.

3. The order of penalty and the appellate order had been impugned by the applicants on several grounds. First of all, it is contended that the proper procedure of enquiry was not followed by the enquiry officer. The applicants were all examined and cross-examined by E.O in the very first instance without leading any evidence in support of the charges, notwithstanding that they had denied the charges levelled against them. Copies of Notes of Evidence are enclosed in purported support of this contention. It is next contended that the respondents have exercised discrimination in punishment in relation to six other employees who had tendered apology. These six

employees were let-off with a warning whereas the remaining six employees viz. Applicants were singled out for a harsher punishment mentioned above. The applicants claim to have enclosed copies of notes of evidence recorded in respect of six employees, however, on perusal of the records, notes of evidence of only five employees are a-vailable, namely (1) Smt. S.G.Potar, (2) Smt. A.M. Sawant, (3) Smt. R.K. Abhanj (4) Smt.S.R. Sawant and (5) Smt. P.S. Kalkse. Thirdly, it is contended that both the enquiry officer and the disciplinary authority were biased. The enquiry officer is stated to be biased as two of his sons and one daughter have been employed by the Disciplinary Authority in the same office and the enquiry officer is under the obligation and hence he should not have been appointed as the Enquiry Officer. The Disciplinary Authority is stated to be biased because of discrimination exercised by him.

4. The reliefs claimed by the applicants are to quash and set-aside the orders of Appellate Authority confirming the orders of Disciplinaty Authority and to direct the respondents to regularise the service of the applicants and assign seniority of the applicants in preference to juniors.

5. The respondents have resisted the claims of the applicants. According to them, the Census Department is a small Department which is confronted with urgent type of work periodically at the time of Census. Therefore, it is required to deploy the staff appropriately, especially permanent and experienced staff like the applicants in the exigencies of service. In connection with the Census of '91, the Registrar General had initially instructed to undertake the first pre-test in 5 Rural and 5 Urban blocks but later-on the number of blocks was increased to 20 Rural and 10 Urban Blocks

Taking into consideration of increased work, the Department was required to take the help of female Statistical Assistants and Computors for conducting pre-test alongwith the male employees because there are more female employees in the grade of Statistical Assistants and Computors. Preliminary training was imparted on 16.11.88 and final training was imparted on 18.11.88. When the training was over, allotment letters of field work were delivered. However, 12 female employees including the six applications refused to proceed on tour for diverse domestic reasons, hence substitutes were required to be deployed. The field work was distributed fairly and equitably among female and male employees and since the applicants have refused the field work, inspite of necessary arrangements relating to drawal of TA/D.A etc., they were proceeded against by the Department. However, six employees, namely Smt. S.G. Palav, Smt. A.M. Sawant, Smt. R.K. Abhang, Smt. M.M. Malshe, Smt. S.R. Sawant and Smt.R.P. Malik apologized for their action by their application dated 23.6.89. Thus, they in fact accepted the charge and therefore the question of further enquiry did not arise and a lenient view was taken against them and only warning was issued. So far as the present applicants are concerned, they chose not to apologize but gave their written explanations and after conducting the enquiry according to CCS (CCA) Rules, action was taken. It is denied that there was any irregularity in the conduct of the departmental enquiry. So far as the allegation of bias is concerned, one son of enquiry officer has been employed through Employment Exchange and after completing normal formalities of selection. In the light of the circumstances under which lenient view was taken

in respect of six employees who have apologized the allegation of bias against the Disciplinary Authority is also denied.

6. We have considered the pleadings and arguments of both the parties. So far as the allegation of bias against the Enquiry officer is concerned, we consider that the applicants have not laid any adequate factual foundation for substantiating the allegation of bias. The mere fact that one son of the enquiry officer is employed in the same department cannot be said to have him made biased against the applicant. So far as the averment regarding departmental enquiry having been conducted irregularly in which the enquiry officer led by asking questions, we have carefully gone through the notes of evidence. According to us, the Enquiry Officer was within his rights to ascertain certain facts from the delinquent officers before asking the presenting officer to present evidence which he has done. No prejudice can be said to have been caused to the applicants by the procedure adopted by the enquiry officer. Regarding the discrimination in the penalty between the two sets of employees, namely those who apologized and those who did not apologize, we do not consider it to be a case of discrimination. Apology would entail the acceptance of charge and taking account of acceptance of the charge and remorse expressed by them, the Disciplinary Authority was within its right to modulate the penalty. In this connection, the applicants have quoted the observations of the Hon'ble Supreme Court without giving any citation of the same. These observations as quoted in the rejoinder are reproduced below :

> "Whenever it is said that something has to be done within the discretion of the Authority, then that something has to be done according to the Rules of reason and justice and not according to private opinion; according to law and not humour. It is to be not arbitrary, vague and fanciful, but legal and regular and it must be exercised within the limit to which honest man in discharge of his office ought to find himself. Discretion means sound discretion, guided by law. It must be governed by rule, not by humour. It must not be arbitrary, vague or fanciful."

7. According to us, these observations of the Supreme Court do not apply to the discretion exercised by the Disciplinary Authority in awarding a lower penalty to the six employees who had apologized.

8. On consideration of all pleadings and arguments, we are of the view that no case has been made out by the applicants for interfering with the penalty awarded which was confirmed in appeal. We therefore, dismiss all the six applications so far as penalty aspect of the O.A is concerned. So far as second relief is concerned, namely relief of regularisation, the respondents have contended that in view of the pendency of departmental proceedings, result is kept in sealed cover. We therefore direct the respondents to open the sealed cover and regularise the applicants on the basis of recommendations therein, if not already done.

SUPPLEMENTARY ORDER IN O.As 949/92 & 951/92

9. In these O.As additional relief is claimed. That relief is to quash and set aside the order of reversion dated 23/24.9.91 and to restore the applicants to their original post with consequential relief. On perusal of records, we notice that by office order dated 3.12.90 which appears at page 55, the applicants at Sl.No. 32 & 33 who appear at

of the list promoted as Investigators alongwith 61 others on a purely temporary and adhoc basis for a period of one year. The applicants were reverted vide order dated 24.9.1991 at page 59 of the Registrar General, with immediate effect, without giving any reason. In this connection, we notice that the penalty of withholding increments was imposed on 30.10.91 and the order of reversion has been issued just prior to the issue of order of pena lty of withholding of two increments. These two applicants viz. Smt. S.S.Raje and Smt.A.B.Raut were singled out for such reversion. We further notice that there is no specific averment in this regard in the O.A. No. 949/92 in respect of Smt. Raut but there is a specific averment in this regard and specific relief claimed in O.A. 951/92 in respect ofSmt. Raje. All the same, we proceed on the basis that relief of quashing the reversion order is claimed both by Smt.S.S.Raje and Smt.A.B.Raut. In O.A. 951/92 specific averments have been made and specific relief claimed. Respondents have not controverted the averment but on the other hand they have stated in Written Statement with reference to para 4.11 that the contents therein are substantially correct. The applicants have contended that they have been subjected to double jeopardy by imposing a second punishment on them for the same offence. We are inclined to accept this contention. We are also not inclined to accept the defence of multiplicity of reliefs. We therefore quash the reversion order dated 24.9.1991 in respect of both the Applicants and further direct that the applicants should be given all consequential benefits including arrears of pay and restoration of seniority and consideration for promotion within four months of passing of this order. There would be no orders as to costs.

(M.R.KOLHATKAR)
MEMBER (A)

(B.S.HEGDE)
MEMBER (J)