

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 1027/92

Date of Decision: 7-5-99

Mrs. M.M. Malshe & Ors.

Applicant.

Mr. G.K. Masand

Advocate for
Applicant.

Versus

Union of India & Ors.

Respondent(s)

Mr. V.S. Masurkar and

Mr. D.V. Gangal.

Advocate for
Respondent(s)

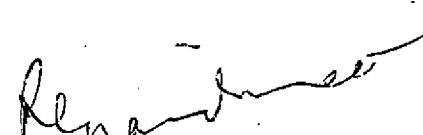
CORAM:

Hon'ble Shri. Justice R.G. Vaidyanatha, Vice-Chairman,

Hon'ble Shri. D.S. Baweja, Member(A).

(1) To be referred to the Reporter or not? NO

(2) Whether it needs to be circulated to other Benches of the Tribunal? ✓


(R.G. VAIDYANATHA)
VICE-CHAIRMAN.

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

GULESTAN BLDG. NO. 6, 4TH FLR, PRESCOT RD, FORT,

MUMBAI - 400 001.

ORIGINAL APPLICATION NO: 1027/92.

DATED THE 7th DAY OF ^{APRIL} ~~APRIL~~, 1999.
^{MAY}

CORAM: Hon'ble Shri Justice R.G. Vaidyanatha, Vice Chairman.

Hon'ble Shri D.S. Baweja, Member (A).

1. Mrs. M.M. Malshe,
2. Shri M.K. Pote,
3. Shri Y.S. Nakashe,
4. Shri K.H. Kelvekar,
5. Shri P.R. Pachkar,
6. Smt. S.R. Sawant,
7. Smt. S.S. Sawant,
9. Smt. J.N. Karanjkar,
10. Shri N.H. Lolekar

All working as Statistical Assistant
in the Office of Director of Census
Operation, Maharashtra State,
Exchange Building, 2nd Floor, Ballard
Estate, Bombay - 400 038.

... Applicants.

By Advocate Shri G.K. Masand

v/s.

1. Union of India, through the
Secretary in the Ministry of
Home Affairs, North Block,
New Delhi - 110 003.
2. Registrar General of India,
Kotah House Annexe, 2/A,
Mansingh Road, New Delhi-110 011.
3. Director of Census Operation
Maharashtra State, Exchange Building,
2nd Floor, Sprott Road,
Ballard Estate, Bombay - 400 038.
4. Dy. Director of Census Operations,
Maharashtra State, Exchange Building,
2nd Floor, Sprott Road,
Ballard Estate,
Bombay - 400 038.

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5. Shri S.B.Adsule,
6. Shri P.B.Yadav,
7. Shri K.C.Shinde,
8. Shri E.D.Morey,
9. Shri L.S.Zodge,
10. Shri R.V.Mandale,
11. Shri R.K.Nandavare,
12. Shri T.K.Maske,
13. Shri W.A.D'Souza,
14. Shri R.R.Kokate,
15. Shri S.S.Poojary,
16. Shri W.A.D'Souza,
17. Shri S.N.Thokale,
18. Shri D.P.Ganvir,
19. Shri R.M.Sonawane,
20. Shri A.N.Sarang,
21. Smt.D.D.Walawalkar,
22. Smt.A.K.Pisat,
23. Smt.J.N.Sawant,
24. Smt.V.V.Paradkar,
25. Shri A.S.Mane,
26. Shri P.N.Mahadik,
27. Smt.Florie Febellow,
28. Shri K.T.Naik,
29. Shri G.S.Karande,
30. Kum.B.S.Sanghavi,
31. Shri K.B.Hathi,
32. Shri A.N.Gaikwad,
33. Shri D.B.Kamtekar,
34. Smt.A.A.Sawant,
35. Smt.S.S.Dabholkar,
36. Shri D.B.Gandhi,
37. Smt.J.A.Pekam,
38. Shri R.S.Sharma,
39. Shri B.B.Kadam,
40. Smt.J.R.Gawade,
41. Smt.A.V.Kale.

Respondents Nos. 5 to 9 and 12 working as Statistical Assistant and Respondent Nos. 10, 11 and 13 to 41 working as Computers in the office of Dy.Director of Census Operations, Maharashtra State, Exchange Building, 2nd Flr, Sprott Road, Ballard Estate, Bombay - 400 088.

... Respondents.

By Advocate Shri V.S.Masurkar for R-1 to 4.

By Advocate Shri D.V.Gangal for R-5 to 41.

I O R D E R I

(Per Shri R. G. Vaidyanatha, Vice Chairman)

This is an application filed under section 19 of the Administrative Tribunals Act. The official respondents and some of the private respondents have filed their reply. We have heard Shri G. K. Masand, the learned counsel for the applicants, Shri V. S. Masurkar, the learned counsel for official respondents and Shri D. V. Gangal, the learned counsel for some of the private respondents.

2. The applicants case is as follows:-

(i) All the applicants are now working as Statistical Assistants in the Census Department. Among the private respondents 5 to 41, some are working as Statistical Assistants and the remaining are working as Computers. The grievance of the applicants is about the dispute regarding seniority between the applicants who are promotees and private respondents, who are direct recruits.

The applicants were initially appointed as Assistant Compilers on different dates between 1978 and 1980, on being sponsored by the Employment Exchange, Bombay. For the purpose of 1981 Census operation, the existing posts of Assistant Compilers were upgraded as Computers and accordingly all the applicants came to be promoted as Computers in the upgraded post. Respondent Nos. 5 to 41 were appointed as direct recruits for the post of Computers. The promotion of applicants as Computers is prior to the appointment of private respondents by way of direct recruitment as Computers. The applicants promotion as Computers was shown as adhoc. It is further stated that though they had not completed 3 years of service as Assistant Compilers, the promotion as Computers was made by relaxing the recruitment rules. Even the appointments of private respondents as Computers by way of direct recruitment was also temporary and on adhoc basis. Therefore the private





respondents cannot also have the benefit of adhoc service for the purpose of seniority and promotion to the next post. Subsequently, the promotion of the applicants came to be regularised on the recommendation of DPC. The adhoc promotion of applicants 1 to 6 was regularised by order dated 1/7/87. Similarly, the adhoc promotion of applicants 7 to 10 were regularised by order dated 28/3/90. The Government took a policy decision and communicated by order dated 11/3/91 that decision has been taken to regularise the services of adhoc appointees as Statistical Assistants or as Computers who also should get the benefit of the prior adhoc service for the purpose of seniority, promotion, etc. Accordingly, the adhoc appointment of the private respondents came to be regularised with prospective effect namely with immediate effect by order dated 22/4/91. But however, they have been given the benefit of previous adhoc service for the purpose of seniority as well as eligibility for promotion to higher grade.

3. The applicants were even further promoted as Statistical Assistants again on adhoc basis. Now, for the first time, the department has issued a seniority list dated 5/8/91 in which the applicants are shown as juniors to private respondents 5 to 34 and the name of private respondents 35 to 41 are not shown in the gradation/seniority list. Though the direct recruits have been given the benefit of the earlier adhoc service for the purpose of eligibility for promotion and for purpose of seniority such benefit has not been extended to the adhoc promotees like the applicants. It is therefore alleged that the Government has shown discrimination between the direct recruits on the one hand and the promotees on the other hand. The applicants made a representation against this discrimination but the Government has rejected the representation on the ground that the applicants were not entitled to be promoted as Computers unless they have put in 8 years regular service as Assistant Compilers. The applicants

have questioned as to who the direct recruits who were regularised as Computers in 1991 could get seniority over the applicants whose adhoc promotion was regularised in 1987 itself. As per the 1973 recruitment rules ~~only~~ 3years of regular service was required for ~~A~~ Assistant Compiler to get promotion as Computer~~s~~. Though the applicants had not put in 3years at the ~~time~~ of their adhoc promotion as Computers, it is stated that the promotion was done by relaxing the rules. The applicants main grievance is that when direct recruits were regularised and their previous adhoc service is taken into consideration for purpose of seniority and for eligibility such benefit has not been extended to the promotees. Infact, the Government had issued a letter dated 25/2/93 calling for particulars for extending similar benefit to the promotees but no action has been taken till now. The applicants assert that they are entitled to get seniority and regularisation from the date of their initial adhoc promotion and not from the date of their actual regularisation. The applicants have therefore approached this Tribunal praying for a declaration that their promotion as Computers during 1980-81 be declared as regular promotion on the basis of relaxing of recruitment rules, for quashing the seniority list published by letter dated 14/5/92, for a direction to the respondents to give seniority to the applicants ~~from~~ the date of their initial promotion on adhoc basis as Computers and consequently a direction to respondents to revise the seniority list.

4. The official respondents 1 to 4 have filed a reply opposing the application. While admitting that applicants came to be promoted on adhoc basis as Computers, it is stated that the order of promotion itself is bad since applicants had not put in 8years regular service in the feeder cadre. Since the applicants were not qualified to be Computers as per the recruitment rules ~~at~~ the relevant time their promotion was made purely on adhoc basis and hence they cannot get the benefit of adhoc service for the purpose

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of seniority, eligibility for promotion, etc. As far as direct recruits are concerned, it is stated that though their appointment was adhoc, their appointment was valid since they had all the qualifications for regular appointment as Computers. Therefore, the Government extended the benefit of treating adhoc service for the purpose of seniority since the initial adhoc appointment is as per rules. But such benefit cannot be extended to promotees namely the applicants since their very adhoc promotion itself was contrary to the rules. It is stated that as soon as the applicants became qualified and eligible for promotion as per recruitment rules, their adhoc promotion was regularised in 1987 regarding 6 applicants and in 1990 regarding other four applicants. It is therefore stated that the applicants were not entitled to any other relief.

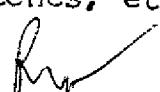
5. The private respondents have filed two sets of replies. One reply is filed by one set of respondents namely respondents 5, 13, 15, 17, 20, 21, 23, 25, 28 to 31, 37 and 39. The other reply is filed by another set of private respondents namely respondents 6 to 9, 26, 27, 32, 33 and 38. Other private respondents have remained unrepresented. Though two sets of replies are filed, the defence is common.

The common defence of the private respondents is that their appointment as direct recruits was as per recruitment rules. They had all the qualifications and eligibility as per the recruitment rules though their appointment was typed as adhoc. Since their appointment was as per rules, the Government has rightly treated the adhoc service as regular service when the regularisation order was issued in 1991.

As far as the applicants are concerned, it is stated that their very promotion on adhoc basis as Computers was contrary to the rules. The applicants had not put in the required qualifying service in the feeder cadre for promotion. When their initial adhoc promotion itself was contrary to recruitment rules they cannot get the benefit of adhoc promotion for the purpose of seniority, promotion, etc. Further, they

say that there is delay and latches on the part of applicants in approaching the Tribunal. It is also alleged the claim of the applicants is barred by limitation. The applicants' initial adhoc promotion was also not processed through DPC. It is denied that the applicants adhoc promotion was made by relaxing the rules. Since the very initial adhoc promotion of the applicants was contrary to the rules, the applicants cannot claim any parity with the direct recruits and therefore the applicants cannot get the benefit of adhoc service for the purpose of seniority, etc.

6. The learned counsel for the applicants contended that the Government has shown discrimination towards the promotees. It is argued that when both the direct recruit appointees and the promotion of applicants were shown as adhoc and when subsequently the Government has treated adhoc service of direct recruits as regular service, the Government has exhibited hostile discrimination in not extending the same benefit and in not applying the same yardstick so far as the applicants, namely the promotees are concerned. He even questioned the very legality of the appointment of direct recruits on the ground that there is no provision for direct recruitment under the relevant rules during 1980-81. On the other hand the learned counsel for the official respondents and the learned counsel for private respondents contended that the very adhoc promotion of the applicants was dehors the rules and they did not have the required minimum service in the feeder cadre, the promotion itself was irregular and illegal and hence the applicants cannot get the benefit of adhoc service for the purpose of seniority, etc. Therefore, it was submitted that the applicants cannot claim seniority ^{over} with the direct recruits. Then arguments were addressed on the question of delays and latches, etc.



7. The sole question for consideration whether the applicants are entitled to count their service on ad-hoc promotion as regular service for the purpose of seniority and for the purpose of eligibility for next promotion and if not as to from what date the applicants are entitled to count their ad-hoc service, if any, for the purpose of seniority and eligibility to next promotion?

8. Admittedly, all the 10 applicants were appointed as Assistant Compilers in the Census Department. It is also an admitted case that all the applicants came to be promoted on different dates as Computers on ad-hoc basis. No doubt, the order clearly says that it is an ad-hoc promotion, temporary and liable to be terminated at any time and the said service will not count for the purpose of seniority or eligibility for next promotion.

It may also be noted that even the Private Respondents 5 to 41 came to be appointed by direct recruitment as Computers and their appointments were also similar to the case of applicants.

Any how, it is common ground that the promotion of applicants as Computers was on ad-hoc and temporary basis and similarly, the appointment of Respondents 5 to 41 by way of direct recruitment as Computers was also on ad-hoc and temporary basis. But, what the government has done is it has regularised the services of the direct recruits from a prospective date, but however, gave them the benefit of the prior ad-hoc and temporary service for the purpose of seniority, as well as, eligibility for promotion to higher grade; this could be found from the order dt. 22.4.1991 under which 36 Computers who were appointed on ad-hoc basis as Computers by direct

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recruitment were regularised with prospective effect, but with the condition mentioned above viz. that prior service will count both for seniority and also for eligibility for promotion to higher grade.

But, the government has not conceded the claim of the promoted ad-hoc Computeros for regularisation of their ad-hoc service for the purpose of seniority and eligibility for next promotion.

The learned counsel for the applicant is therefore right in his submission that when dealing with Computeros as a body a hostile discrimination is made as against promotee Computeros and favourable treatment to direct recruit Computeros. On the one hand, the promotees are denied the benefit of ad-hoc service and on the other hand, the direct recruits are given the benefit of ad-hoc service for the purpose of seniority and eligibility for the next promotion. We do not find any rationale behind this discrimination between promotees and direct recruits. On the face of it this discrimination is irrational, arbitrary and not supported by any reasoning. Even the official respondents in their reply have not pointed out any special grounds or special reasons for giving a favourable treatment to direct recruits and not extending the same treatment to the promotees. Therefore, we are satisfied that on the face of it, this is a case of discrimination among two sets of Computeros viz. promotees and direct recruits. The government can take a policy decision whether the ad-hoc service should be counted for seniority and eligibility or not. Whatever decision is taken whether to count the service or not must equally apply to both the promotees and direct recruits. But, it is not necessary to go into this

question in detail since we find that subsequently the Government has also realised this mistake and has taken some step to give the benefit of ad-hoc service to the promotees also.

9. It is the case of the official respondents both in the pleadings and also in some documents that applicants had not put in 8 years service as Assistant Compilers to get the promotion of Computers. This reasoning is based on the 1984 Recruitment Rules, which no doubt provides that an Assistant Compiler must have 8 years regular service to become a Computer. The applicants' promotion was in 1980-81. The 1984 Rules, cannot be applied to applicants since they got a right of promotion prior to 1984.

As per the 1973 Recruitment Rules as amended from time to time including the 1979 Amendment, an Assistant Compiler has to put in 3 years regular service for promotion to next cadre viz. Computer. The applicants' came to be appointed as Assistant Compilers, some of whom were appointed in 1978, some in 1979 and some in 1980. But, all of them came to be promoted as Computers, some in 1981, some in 1982 and some in 1983. It is conceded by the applicants themselves in the O.A. that they had not completed 3 years when they got this ad-hoc promotion, but they say that the promotions were given by relaxing the Rules, but no documents are produced to show that any such relaxation was done before giving ad-hoc promotion to the applicants and that too before completion of 3 years as Assistant Compilers. The learned counsel for the official respondents and the learned counsel for the private respondents are therefore right in their contentions that applicants cannot get the benefit

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of ad-hoc service which was dehors the rules, for the purpose of seniority etc. If the ad-hoc promotion can be brought within the recruitment rules, then there is no difficulty to treat the ad-hoc service for the purpose of seniority etc. as given to direct recruits.

For example, the first applicant Smt.M.M.Malshe was appointed as Assistant Compiler on 14.4.1978. As per the Recruitment Rules then in force she must have minimum 3 years service to get next promotion. Therefore, she would be entitled to next promotion after expiry of 3 years viz. from 14.4.1981 and onwards. But, she has been given ad-hoc promotion on 16.8.1980 without completing 3 years of service. Similarly, all the 10 applicants had not completed three years service when they got their ad-hoc promotion as Computors. To that extent, the ad-hoc promotion should be deemed valid ad-hoc promotion after the expiry of 3 years from the date of initial appointment. That means Smt.M.M.Malshe though she was given ad-hoc promotion on 16.8.1980, she will get valid ad-hoc promotion only from 14.4.1981 after the completion of 3 years from the date of initial appointment as Assistant Compiler.

Similarly, Mr.M.K.Pote the second applicant who was appointed as Assistant Compiler on 25.4.1978 and he would be entitled to get valid promotion only from 25.4.1981 and onwards, but he has been given ad-hoc promotion on 16.8.1980 which is dehors the rules. Same reasoning holds good for all the applicants.

Therefore, in the circumstances of the case, this ad-hoc promotion given before the completion of 3 years should be treated as valid ad-hoc promotion not from the date of actual ad-hoc promotion, but from the

date after expiry of 3 years from the initial appointment as Assistant Compiler.

In this connection, we are fortified by the Judgment of the Hyderabad Bench which has been relied on by the official respondents in this case in O.A.108/90. In that case, the direct recruit Computeros had filed the application for treating their ad-hoc service as regular service as Computeros. In that case, the promotees came on record as interveners and they questioned the very initial appointments of the Direct Recruits as dehors the rules, since after 1979 amendment, Computeros could not have been appointed as Direct Recruits and the mode of recruitment was either by promotion or transfer. The Tribunal went into that question and held that the initial appointment of direct recruit Computeros was contrary to the Recruitment Rules and hence not valid. On that ground the Tribunal could have dismissed the O.A. filed by the direct recruits, but taking an equitable view and in order to do justice between the parties, the Hyderabad Bench of the Tribunal held that since subsequently the Recruitment Rules were amended in 1984 which provided again for direct recruitment, the appointments of those direct recruits should be held to be valid at least from 1984 and onwards. In that way, the ad-hoc service was treated as the regular service from 1984 and onwards. The Judgment of the Hyderabad Bench is at page 214 of the paper book.

By adopting the same reasoning and in order to do complete justice between the parties and taking an equitable view, we feel that the initial promotion of the applicants was before completion of 3 years and contrary

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to Recruitment Rules, their ad-hoc promotion should be treated as valid ad-hoc promotion after the expiry of 3 years from the initial appointment as Assistant Compilers.

The argument that the ad-hoc promotion was not on the recommendation of DPC also need not detain us. Subsequently, the ad-hoc promotion has been regularised by a DPC. The question is whether the benefit of ad-hoc service should be given to the promotees for the purpose of seniority etc. or not.

10. As already stated, even the government had a re-thinking on the subject and wanted to extend the same benefit as given to direct recruits to the promotees. This could be gathered from letter dt. 25.2.1993 which is at page 89 of the paper book which is a letter written by the Deputy Director in the Office of the Registrar General of India and addressed to all the Directors of Census Operations in India. The letter says that the government's decision about treating the ad-hoc service of direct recruits for the purposes of seniority etc. has already been conveyed to all concerned. As a result of that decision representations are received from promotees claiming the same benefit of treating ad-hoc service for the purpose of seniority. Accordingly, the letter says, to remove the anomalous situation and for taking a decision as a one time measure which has been decided to treat the ad-hoc service of promotees as regular. The Directors were called upon to furnish names of the promotee individuals and their dates of ad-hoc promotion etc. for passing final orders. Therefore, this letter gives a clear indication that in 1993 the Government had made up its mind to consider

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as a one time measure to give the same benefit of treating ad-hoc service of promotees for the purpose of seniority like the benefit given to Direct Recruits.

11. Then, we come to another important letter dt. 1.2.1995, which is at page 184 of the paper book. This is a letter written by the Joint Director in the office of the Registrar General of India to the Deputy Director of Census Operations at Ahmedabad. The learned counsel for the Private Respondents commented that this letter is written to Ahmedabad and cannot be applied to the Computers at Bombay. In our view, this argument has no merit. We are concerned with the question about the policy decision of the Government. If the government has communicated its policy decision to Ahmedabad it cannot be said that the policy decision will not apply to Bombay or any other State.

In this letter dt. 1.2.1995, it is clearly mentioned that the Direct Recruit Computers have been given benefit of the earlier ad-hoc service for the purpose of seniority and promotion. It is stated that if the direct recruit is entitled to ad-hoc service for the purpose of requisite eligibility service for next promotion, the same benefit must be given to promotee provided he has completed the probation period satisfactorily. The letter further provides that if necessary the rule may be relaxed if there is a provision for relaxation in the Rules. Then, it is further mentioned that if there is no such provision in the Recruitment Rules, then in the case of promotees their ad-hoc service may be counted towards eligibility service, in such case whether their junior direct recruits are eligible for consideration for promotion. In pursuance

of a direction given by the Bench, an additional affidavit was filed by Mr.A.K.Biswas, the Joint Director of Census Operations dt. 13.1.1998 which is at page 197 of the paper book. Here in this affidavit the officer has reiterated the stand of the Government as per the terms of the letter dt. 1.2.1995 mentioned above. It is clearly stated that in view of the letter dt. 1.2.1995 action has to be taken by extending the benefit of ad-hoc service to promotees for the purpose of seniority and eligibility and no further clarification is required by the Government.

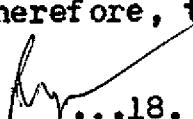
12. The learned counsel for the Private Respondents was very vehement in contending that the applicants promotion was dehors the rules and therefore their ad-hoc service cannot be counted for the purpose of seniority etc. In reply to this, the learned counsel for the applicants maintained that the very appointment of the private respondents as Computors by way of Direct Recruitment was itself illegal and contrary to statutory rules and therefore, they cannot get any benefit of ad-hoc service and their very appointment is illegal. Reliance was placed on the Judgment of the Hyderabad Bench of the Tribunal viz. Judgment dt. 11.2.1997 in OA 108/98 which we have already referred to.

The Private Respondent Nos. 5 to 41 came to be appointed after 1979. The Recruitment Rules ~~were~~ amended in 1979. As per the 1973 Recruitment Rules as amended in 1979 there was no provision for direct recruitment for Computors. Therefore, *prima facie* the appointments of private respondents No.5 to 41 was dehors the service rules. This is the finding recorded by the Hyderabad Bench in the above Judgment. We may also note that the Rules were again amended in 1984 which again provides for direct recruitment for Computors, that is why Hyderabad Bench

held that though the very initial appointment of direct recruits was illegal it could be validated from the year 1984 onwards after the amendment of Recruitment Rules. In our view, in the present case we need not decide upon the validity or otherwise of the appointments of Respondents No.5 to 41. Their appointments were done in 1981 and nobody has challenged their appointments for the last 18 years. Now we are in 1999. In the O.A. the applicants have not challenged the appointments of Respondents No.5 to 41 and no relief is asked to quash their appointments. Both the official respondents and private respondents have not been called upon to meet this new case now made out at the time of arguments about the validity of the appointments of direct recruits. If such a plea had been taken in the O.A. and a proper prayer had been asked in the application, then both the official respondents and the private respondents could have met the same. They might have pointed out if there was any relaxation in rules or they could have pointed out that the notification for appointment was issued prior to 1979 amendment etc. Since there are no pleadings and no prayer on the legality and validity of the appointments of Respondents No.5 to 41, we cannot go into this question in the present O.A. We are only pointing out that when *prima facie* the very appointment of Respondents No.5 to 41 is not valid or contrary to the Recruitment Rules, they cannot urge that applicants promotion is dehors the Rules and not entitled to seniority etc. In a way, we are concerned both the promotees and the direct recruits are standing on the same footing. The promotion and the direct recruitment are both contrary to the Recruitment Rules. No-body has challenged the appointment of the applicants of their promotion till now. Similarly, nobody has challenged

the appointments of Respondents 5 to 41. Both of them have put in number of years of service in the department. Their promotions or appointments have been subsequently regularised by the department. We are only concerned with the question whether ad-hoc appointment or ad-hoc service should count for seniority or not.

13. We have already pointed out that the Government in the initial stages exhibited discrimination against the promotees vis-a-vis the direct recruits. We have already pointed out that both are placed in the same situation and there cannot be any preferential treatment to one than the other. Either all of them should get benefit of ad-hoc service or none should get it. Therefore, the earlier decision or view of the government that promotees will not get the benefit of ad-hoc service, but only the direct recruits should get their benefit cannot be sustained on the touch-stone of Article 14 of the Constitution of India. In addition to this, we have already seen how the Government took the policy decision which is indicated in the two letters dt. 25.2.1993 and 1.2.1995 regarding taking of one time measure to extend the same benefit of ad-hoc service to the promotees also. Therefore, in the circumstances of the case, we find that the valid ad-hoc service of promotees should be treated for the purpose of seniority and eligibility in service. We have already indicated that though the initial ad-hoc promotion was dehors the rules, the ad-hoc promotion should be treated as valid only on the expiry of three years from the date of initial appointment as Assistant Compilers. For this reasoning, we have already drawn sustinance from the view of the Hyderabad Bench in O.A. 108/90, Since that Judgment has become final and the government has implemented that Judgment. Therefore, the


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applicants' ad-hoc service on promotion as Computer should be treated as valid only on the expiry of three years from the date of their initial appointment as Assistant Compilers.

14. The learned counsel for the official respondents invited our attention to a Judgment of the Supreme Court in the case of Union of India vs. Tara Chand Sharma & Ors. reported in (1998 (4) SCALE 519) in support of his contention that the promotees are not entitled to claim seniority over the direct recruits. In our view, the said decision has no bearing on the facts of the present case. No doubt, that decision also pertain to a dispute about seniority between the promotees and direct recruits. From the facts of that case, we find that Respondents No.1 to 4 before the Supreme Court were promotees as Computer and Respondents No.5 to 37 were the direct recruits. But the Supreme Court pointed out that Respondents 1 to 4, the promotees, were no longer holding the promotion post of Computer since they had already been reverted and the reversion was upheld by the Tribunal and by the Supreme Court in the previous round of then litigation and since Respondents 1 to 4 are no longer working as Computer. In view of their reversion, the question of their claiming seniority over direct recruit computers would not arise at all.

But, in the present case as on date of the O.A. and as on to day the applicants and respondents 5 to 41 are working as Computer and we have to decide their seniority.

We have already pointed out the circumstances which are in favour of the applicants and in view of the discussion made above we hold that all the applicants are entitled to count their ad-hoc service from the date of their "deemed valid ad-hoc promotion" for the purpose of seniority and eligibility for next promotion.

15. Another argument on behalf of official respondents and private respondents is that the claim is barred by limitation,

delay and laches.

It is true that if we go by the date of promotion of applicants being 1980 to 1981 and the date of filing the present O.A. in 1992 the claim appears to be barred by delay. But, we must find out as to what is the date of cause of action? Now, the grievance is about seniority. The applicants are aggrieved because the direct recruits are given the benefit of ad-hoc service for seniority and such benefit is not given to the applicants. Therefore, the cause of action accrued to the applicants when they came to know that the direct recruits were given the benefit of ad-hoc service by passing orders dt. 11.3.1991 and 17.6.1991. Then what is more, on the basis of these two orders a draft seniority list was published on 14.5.1992 where applicants are shown as juniors to the direct recruits. Therefore, the serious dispute or cause of action arose because of the order in favour of private respondents giving the benefit of ad-hoc service for the purpose of seniority in 1991 and again cause of action arose in 1992 when final seniority list was published when placing the direct recruits above the applicants. Since the cause of action arose either in 1991 or 1992, the present O.A. filed in 1992 is perfectly within time.

16. In view of our above discussion, we hold that on the expiry of three years from the initial date of appointment of the applicants as Assistant Compilers they must be deemed to have been given valid ad-hoc promotion, though ad-hoc promotion had been given to them from earlier dates. The applicants are therefore, entitled to deemed date of valid ad-hoc

promotion as mentioned in Column No.(v) in the following chart:

Sl. No. of applicants	Name of	Appointment	Actual ad-hoc	Deemed date of
		as Assistant Compiler	promotion as Computer	valid ad-hoc promotion as per this Judgment
(i)	(ii)	(iii)	(iv)	(v)
1.	Mrs. M.M.Malshe	14.04.78	16.08.80	14.04.1981
2.	M.K.Pote	25.04.78	16.08.80	25.04.1981
3.	Y.S.Nakashe	01.06.78	16.08.80	01.06.1981
4.	K.H.Kelvezkar	12.10.78	16.08.80	12.10.1981
5.	P.R.Pachkar	15.05.79	16.08.80	15.05.1982
6.	Mrs. S.R.Sawant	01.06.79	16.08.80	01.06.1982
7.	Mrs. S.S.Soman	12.12.79	03.03.81	12.07.1982
8.	S.S.Sawant	24.12.79	03.03.81	24.12.1982
9.	Mrs.J.N.Karanjkar	25.04.80	01.09.81	25.04.1983
10.	N.H.Lolekar	20.05.80	01.09.81	20.05.1983

17. In the result, the O.A. is allowed as follows.

- (1) All the applicants are deemed to have been validly appointed on ad-hoc basis as Computers from the dates as mentioned in column No.(v) in para 16 above.
- (2) In the same way as the benefit of ad-hoc service given to the direct recruits as per Government orders dt. 22.4.1991 (page 115) and Government letter dt.11.3.91 (page 117 of the paper book), the applicants who were promoted on ad-hoc basis, are also entitled to the same benefit of ad-hoc service both for the purpose of seniority and eligibility for next promotion.
- (3) The seniority list of Computers shall be corrected by interpolating the names of the applicants at the relevant slots having regard to their deemed date of valid ad-hoc promotion as mentioned in column (v) of para 16 above.
- (4) The official respondents should comply with the directions of this Judgment within two months from the date of receipt of copy of this order.
- (5) In the circumstances of the case, there will be no order as to costs.

D.S.Baweja
(D.S.BAWEJA)
MEMBER(A)

R.G.Vaidyanatha
7-5-99
(R.G.VAIDYANATHA)
VICE-CHAIRMAN

A/B.

After corrections made by J.C. on the order passed by me on 11.6.2005/2006
R.G. 26/6/2006