

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Second Floor,
Commercial Complex,
Indiranagar,
Bangalore-560038.

Dated: 10 SEP 1993

APPLICATION NO(S) 314 of 1993.

APPLICANTS: Smt.S.Lakshmi v/s. RESPONDENTS: Director of Census
Operation in Karnataka and Others.

TO.

1. Sri.M.Raghavendra Achar,
Advocate, No.1074&1075,
Fourth Cross,
Sreenivasanagar II Phase,
Banashankari I Stage,
Bangalore-50.
2. Sri.M.Vasudeva Rao,
Central Govt.Stng.Counsel,
High Court Building,
Bangalore-1,
3. Dr.M.S.Nagaraja,
Advocate, No.11,
Second Floor,
Sujatha Complex,
First Cross,
Gandhinagar,
Bangalore-9.

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Subject:- Forwarding of copies of the Order passed by
the Central Administrative Tribunal, Bangalore.

Please find enclosed herewith a copy of the
ORDER/STAY/INTERIM ORDER, passed by this Tribunal in the
above said application(s) on 30th August, 1993.

[Handwritten signature]
DEPUTY REGISTRAR
JUDICIAL BRANCHES.

10/9/93

gm*

Issued
[Handwritten signature]

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH : BANGALORE

DATED THIS THE 30TH DAY OF AUGUST, 1993

PRESENT

HON'BLE JUSTICE MR. P.K. SHYAMSUNDAR .. VICE CHAIRMAN
HON'BLE MR. V. RAMAKRISHNAN .. MEMBER (A)

APPLICATION No.314/93.

Smt.S. Lakshmi,
W/o. T.V. Venkateshan,
Junior Supervisor,
O/o the Director of
Census Operations,
Bangalore Division,
Bangalore.

... Applicant

(Shri M.R. Achar .. Advocate)

Vs.

1. The Director,
O/o the Director of
Census Operations in Karnataka,
No.21/1, Mission Road,
Bangalore - 560 027.

2. W. Muradappa,
Junior Supervisor,
O/o the Director of
Census Operations,
Bangalore Division,
Bangalore.

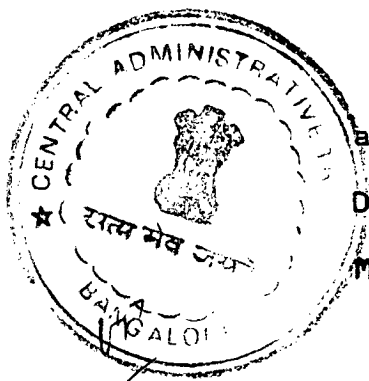
... Respondents

(Shri M. Vasudeva Rao .. Advocate)
(Dr. M.S.Nagaraja..Advocate for R-2)

This application, having come up before this
Tribunal, today for orders, Hon'ble Mr. V. Ramakrishnan,
Member (A), made the following :

ORDER

The applicant, Smt.S. Lakshmi, was initially
appointed as Assistant Compiler in the office of the
Director of Census Operations on 27.5.1970. Shri N.
Marudappa, Respondent No.2 was appointed as such on



22.6.1970. The applicant was confirmed in the grade on 17.8.1977 whereas R-2 was confirmed on 24.11.1980. According to the seniority list circulated as on 7.4.1982, the applicant's position was No2 at the level of Assistant Compilers whereas Shri Muradappa, R-2, was shown as Sl.No.15. Shri Muradappa was promoted to the post of Computer on 5.12.1979 on adhoc basis. The applicant, apparently declined adhoc promotion at that time, but later on was promoted as Computer on 25.3.1981 on adhoc basis. Both the applicant and the R-2 were regularly promoted to the post of Computer on 30.1.1985. On setting up of the direct data entry system in 1982, the applicant, Shri Muradappa along with a few others were appointed as Operators by transfer on deputation basis on 9.6.1982 and 15.6.1982 respectively. Later on, they were permanently transferred to the post on 1.12.1982. It is not in dispute that initially, when the inter-se seniority of Computers who were transferred as Operators was fixed, the applicant was considered as senior to Shri Muradappa and she was also promoted to the next higher grade of Junior Supervisor on the recommendations of the DPC held on 31.12.1986. On the basis of representation from Shri Muradappa dated 8.11.1991, the Director of Census Operations, Karnataka (Director Census for short) later on changed the inter-se seniority in respect of the applicant and Shri Muradappa showing Shri Muradappa as senior to the applicant in the grade of Junior Supervisor. This was done by an order dated 30.12.1992 as at Annexure-A7. The reason given for such change was that it had become incumbent upon the Director to take into account the adhoc service rendered

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by Shri Muradappa as Computer in view of the directions given by the C.A.T., Bangalore. In this context, we may refer to para 2 of the order which reads as follows:

"The Central Administrative Tribunal, Bangalore Bench in its judgement in Original Application No.591-599/89 filed by Sri H.R. Gopalaswamy and Others Vs. Director of Census Operations, Karnataka, has held that when an official has put in continuous ad-hoc service followed by regularisation, the ad-hoc services should be reckoned for the purpose of seniority in that grade. The benefit was also required to be extended to all the similarly placed officials. Therefore it was decided to take into account the ad-hoc services followed by regularisation in the grade of Computer in respect of Operators while fixing their inter-se seniority in the grade of Operator."

2. We have heard Shri Achar for the applicant and Shri M.Vasudeva Rao, for Respondent No.1 and Dr. M.S. Nagaraja for Shri Muradappa, R-2. Shri Achar contends that the entire approach of the Director Census that adhoc service as Computer rendered by Shri Muradappa should be counted for the purpose of seniority is illegal when both the applicant and Shri Muradappa were appointed later on regular basis by way of transfer and the decision to count such adhoc service of Shri Muradappa for the purpose of seniority should be struck down. He has also referred to the judgment of the Supreme Court in State of West Bengal Vs. Aghore Nath Dey and Others reported in 1993(2)SLR 528 where it was held "on the facts of that case that a period spent on adhoc appointment cannot be counted for seniority and that seniority should be reckoned from the date of regularisation of services." The respondents have argued that continuous and unbroken adhoc services



should be taken into account for determining seniority. They have primarily relied on the judgment of this Tribunal in O.A.591-599/89 filed by Shri H.R.Gopalaswamy and Others Vs. Union of India and O.A.No.717-722/89 filed by Shri K. Kotrabasappa and Others Vs. Union of India. In particular, they have referred to para 4 of the judgment in O.A.No.591-599/89 where there was a direction to count the continuous and unbroken ad-hoc service rendered by the applicants in that application as Assistant Compilers or Computers immediately before their regularisation in those posts for determining their seniority in those posts and their eligibility for promotion to higher posts. There was a further direction that this benefit has to be extended to all employees of the Respondents similarly situated as the applicants. It is also clear from the order of the Director of Census Operations dated 30.12.1992 as at Annexure-A7 referred to supra that she has changed the seniority solely on the ground of the judgment of this Tribunal in O.A.No.591-599/89.

3. The contention that the continuous and un-interrupted adhoc service should count for seniority on the basis of decisions of Supreme Court would be relevant in a situation where inter-se seniority has to be determined between promotees and the direct recruits. In the present case, both the applicant and R-2 are promotees and belong to the same class and the respondents have subsequently taken into account adhoc service rendered by Shri Muradappa as Computer to unsettle the seniority earlier determined between the applicant and Shri Muradappa.

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4. The respondents have referred to the decision of this Tribunal in O.A.No.591-599/89 rendered on 14.3.1990 as also 717-722/89 (Shri K.Kotrabasappa and 5 Others Vs. The Director of Census Operations in Karnataka, Bangalore and another) rendered on 23.5.1990. In the ~~letter~~ case, the Tribunal had inter-alia observed:

"This apart, the fact, that the applicants have been kept in suspense, for so long on account of their ad-hoc promotion, as Computers till 17.5.1988 and even thereafter, regularised in that grade in a temporary capacity, leads to an irresistible inference, that the respondents have acted with whim and caprices and with avoidable tardiness in the matter, thereby jeopardising the career of the applicants. They have not satisfactorily explained as to why regularisation of the applicants as Computers, has taken so inordinately long."

The Tribunal held that the case was on all fours as the case of H.R.Gopalaswamy Vs. Union of India in O.A.No.591-599/89 and following the judgment in Gopalaswamy's case directed as follows:

...²². In the light of the foregoing, we order and direct as under:

ORDER

- (i) We hereby annul order dated 17.5.1988 (Ann.A5) by R-1, in so far as it gives effect to promotion of the applicants as Computers, on a regular basis, with effect from 17.5.1988.
- (ii) We direct the respondents to regularise the adhoc service of the applicants, in the grade of Computers from the dates they have been working in that capacity continuously.
- (iii) We further direct them to revise the Final GL of Computers at Ann.A4, under proper procedure, in so far as the applicants are concerned, by notifying all concerned, by including the names of the applicants therein, in accordance with their seniority as ACs, at Annedure A3, duly taking into account regularisation of their ad-hoc service, as Computers, as directed above.
- (iv) This order be complied with, within a period of three months of its receipt.

5. In the present case, there is no dispute that applicant is senior to R-2 in the grade of Assistant Compiler and there is nothing to show that the applicant was duly notified before bringing down her seniority as at Annexure-A7.

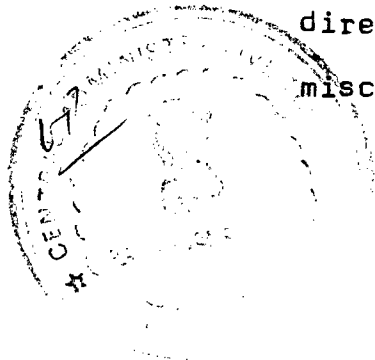
6. In O.A.No.591-599/89, the Tribunal was of the opinion that in view of the long period taken to regularise adhoc services, it would not be fair to ignore the services rendered prior to regularisation for the purpose of promotion. It had also observed that such adhoc service may be taken into account for determining their seniority. It is relevant to mention here that the respondents in this case submitted a review petition before the Tribunal in R.A.No.37-45/90 seeking review of the order dated 14.3.1990 in the case of Shri H.R.Gopalaswamy Vs. Union of India. One of the grounds taken in that case was that the applicants in that case were the seniormost persons and none of their juniors had been considered for promotion nor is there any likelihood for consideration of their juniors for promotion and hence there cannot be any grievance for the applicants if their adhos service was not counted for seniority. The Tribunal while rejecting the review application by its order dated 7.9.1990 in R.A.No.37-45/90 had observed in para 7 as follows:

... "7. The review applications were that the applicants in O.A.591 of 1989 are the seniormost persons and ~~nor~~ their juniors have been considered for promotion nor is there any likelihood of considering their juniors for promotion. Hence there cannot

be any grievance for, the applicants if their ad-hoc service is not counted for the purpose of seniority.* From this averment, one thing is clear, viz., that our order disposing of the O.As will cause no embarrassment to the respondents therein. By directing that adhoc service rendered by them be treated as regular service for the purpose of relevant rule of promotion, we have in effect, not altered their seniority vis-a-vis others in the posts held by them from time to time; as a consequence, our order does not also amount to a direction that persons shown as junior in the posts of Assistant Compilers or Computers prior to our order be promoted above their seniors. All that our order sought to be reviewed did was to enable the respondents in those OAs to consider the applicants for promotion as Statistical Assistants in the order of their admitted seniority on their (applicants') being regularised as Computers if by that time they had put in continuous and unbroken service both before and after the date of regularisation in the post of Computer for the required period of five years, if vacancies of Assistant Statisticians arise at the time.*

It is abundantly clear from the above that the Tribunal had categorically stated that its order does not amount to a direction that persons shown as juniors in the posts of Assistant Compilers or Computers prior to 14.3.1990 should be promoted above their seniors. In other words, the inter-se seniority was not to be disturbed in cases like the present one.

8. We, therefore, find that the impugned order as at Annexure-A7 which unsettles the seniority of the applicant and respondent No.2 to be detriment of the applicant and which is purported to be based on the direction of the Tribunal in O.A.No.591-599/89 is misconceived and based on incorrect understanding of



the Tribunal's direction. Accordingly, we quash the same in so far as it adversely affects the seniority of the applicant. We also quash the endorsement dated 9.2.1993 as at Annexure-A8 which rejects the representation of the applicant made in January, 1993. The application succeeds and is allowed. Respondent No.1 will take appropriate steps in the light of our direction within three months from the date of receipt of a copy of this order. No costs.

Sd/-
39/99
MEMBER (A)

Sd/-
VICE CHAIRMAN



TRUE COPY

Mr. [Signature]
SECTION OFFICER
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE
10/9/93

(7) 12

No. ADM 69 FST 85
Government of India
Ministry of Home Affairs
Office of the Director of Census Operations, Karnataka

No.21/1, Mission Road
Bangalore - 560 027

Date: 02-02-1985

Official Memorandum

Sub: Promotion of Assistant Compilers of this office as Computers on regular basis as recommended by the Departmental Promotion Committee of this office.

-oOo-

The following Assistant Compilers of this office are promoted as Computers in the scale of pay of Rs.330-560, on a regular basis, in a temporary capacity with effect from 30-01-1985 and until further orders in this office.

Sri/Smt.

Sri/Smt.

- ✓ 01. S.Keshava Rao
- ✓ 02. S.Lakshmi
- ✓ 03. A.Rosaline
- 04. H.A.Geetha
- 05. V.Muniyappa
- 06. N.F.Basavarajaiah
- ✓ 07. N.Shantha Kumari
- 08. R.Mangalam
- 09. Ponnammamma Abraham

- 10. C.P.Chandrika Devi
- 11. Siddaramaiah
- 12. Abraham Verghese
- 13. Gopinath Kaimal
- 14. N.Murudappa
- 15. G.Prakash
- 16. M.S.Krishna Murthy
- 17. K.Balamani
- 18. S.M.Varadaiah

B. S. Narasimha Murthy
(B.S.NARASIMHA MURTHY)
JOINT DIRECTOR OF CENSUS
OPERATIONS, KARNATAKA

To

All the officials concerned.

Copy to: Pay Bill/Cash/Accounts/Personal file of the official/
Spae.

R.Y. Rao
for JOINT DIRECTOR OF CENSUS
OPERATIONS, KARNATAKA 2 II 85