07-4-94

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: :BANGALORE

ORIGINAL APPLICATION NOS. 659 & 733/93; 763/93 AND 985/93

WEDNESDAY, THE TWENTY THIRD DAY OF MARCH, 1994

Shri V.Ramakrishnan, Member (A)
Shri A.N.Vujjanaradhya, Member (J)

1. M.S.Nagaraj,
Aged 50 years,
S/o M.R.Subbaraya,
Working as Investigator,
O/o the Director of Census,
Mission Road,
Bangalore-27. ..Applicant in OA 659/93

2. K.V.Parthasarathy,
Aged 51 years,
S/o Late K.S.Varadarajan,
Working as Investigator,
O/o the Director of Census,
Mission Road,
Bangalore-27. ..Applicant in OA 733/93

3. B.S.Gopala Rao,
S/o B.S.Rao, Major,
Investigator,
O/o the Director of Census,
21/1 Mission Road,
Bangalore-27. ..Applicant in OA 763/93

4. L.Ramachandra,
Aged 53 years,
Working as Investigator,
O/o the Director of Census,
No.21/1 Mission Road,
Bangalore-27. ..Applicant in OA 985/93

Advocate by Shri S.Narayana for Applicants 1,2 and 4
Shri M.R.Achar for Applicant No.3.

Versus

1. The Joint Director/Director of Census,
21/1 Mission Road,
Bangalore-560 027

2. The Registrar General of India,
Ministry of Home Affairs,
2/A Mansingh Road,
New Delhi-110 001. ...Respondents

Advocate by Shri M.Vasudeva Rao, C.G.S.C. in OAs 659 & 733/93
And 763/93
Shri M.S.Padmarajaiah, S.G.S.C. in OA 985/93

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O R D E R

Shri V.Ramakrishnan, Member (A)

As ~~All~~ the issues that requres determination in all these cases is common, we propose to dispose of the same by a common order.

2. There is a delay in filing all these applications. We condone the delay and proceed to dispose of the same on merits.

3. The controversy herein relates to the seniority of the applicants in the cadre of Statistical Assistants in the Census Organisation. There have been a number of rounds of litigation on the subject, but it is sufficient for us to notice the following facts. The applicants were promoted as Statistical Assistants on an ad-hoc basis from 5.7.1971 by an order as at Annexure A3 bearing the same date in OA NO.659 & 733/93. (All references to Annexures are as in OA No.659 & 733/93). They were appointed as Statistical Assistants on regular basis subsequently. In 1970 one Shri Raja Rao, who was admittedly junior to the applicants in the cadre of Computor was promoted as Statistical Assistant on the basis of the recommendations of the Departmental Promotion Committee in its meeting in 1970. The applicants were not considered for such promotion in the meeting of the DPC held in 1970 as the DPC took the view that they were not ~~considered~~ eligible for such consideration. In 1971, however, they were promoted on ad-hoc basis as Statistical Assistants

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at which level they got regularised at a later date. We are informed that on the basis of court decision in a case filed by Shri Ramachandra (the applicant in OA 985/93), the department had re-opened the question of seniority, promotion etc., and by an order dated 27.2.89, which is produced at Annexure A5, the applicants were deemed on the basis of the recommendations of the DPC held on 25.2.1989 to have been promoted as Statistical Assistant w.e.f. 24.7.1970, the date on which Shri Raja Rao, who was junior to them in the cadre of Computor was given promotion. The department also issued another OM dated March 21st, 1989, which refixed the seniority of the applicants in the cadre of Statistical Assistants as on 1.3.1975 showing them as seniors to Shri Raja Rao (as at Annexure A6). After the promulgation of the revised seniority list dated 21.3.1989 as at Annexure A6 some others, who were in the cadre of Statistical Assistants approached this Tribunal in OA 869/89 challenging the said seniority list. The Tribunal by its order dated 19th January, 1990 had directed the department to convert the seniority list dated 21.3.1989 as provisional seniority list and stipulated further that all the concerned officials should be given an opportunity to represent and file objection before the seniority list in the cadre of Statistical Assistant can be finalised. A copy of the judgment is at Annexure A9 in OA 659 & 733/93. Accordingly, the department had taken action as per direction of the Tribunal dated 19.1.1990 and by an OM dated 1.6.90 as at Annexure A12 struck down the seniority list issued

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on 21.3.1989 and restored the earlier seniority list, which was issued on 17.8.1988. In the said seniority list dated 17.8.1988 which got restored by OM dated 1.6.1990, the applicants' position got altered to their dis-advantage. The applicants moved this Tribunal in OA 428 to 430/90 and challenged the order dated 1.1.90. The Tribunal by its judgment rendered on 27.3.1991 had disposed of this application by giving certain directions. We may, with advantage extract the operative portion of the judgment:-

> "In the circumstances, we think that the interests of justice would be served by quashing the impugned order No. ADM 1 EST 88 dated 1.6.1990 (Annexure A9) in so far as the applicants are concerned and giving a direction to the respondents to issue a speaking order as regarding how their retrospective promotion from 1970 vide the order dated 27.2.1989 and the seniority assigned to them vide the letter dated 21.3.1989 have been dealt with and we accordingly do so. After all, the seniority list of 1988 must satisfactorily bear the imprint of their promotion and seniority . Their promotion and seniority cannot be wished away particularly because the orders of 1989 have been not specifically cancelled. We are not inclined to quash the impugned order as a whole, but only quashing the order in so far as it relates to the applicants, so that the respondents can issue a revised order indicating in detail how they have dealt with the cases of the applicants for retrospective promotion as Statistical Assistants and their seniority in accordance with law. This should be done within a period of two months from the date of receipt of the copy of this order."

On receipt of this direction, the department had issued an order dated 4.6.1991, which is reproduced as Annexure A15. It is relevant to mention at this stage that the statutory rules regulating the recruitment to the various cadres in the Census Organisation issued in 1974 were promulgated on 16.11.1974. As per these rules for promotion to the level of Statistical Assistant, the requirement was that an official should have put in 3 years of service at the level of Computor. The educational qualification required as applicable to direct recruitment,

was not made applicable to the promotees by the statutory rules. Prior to the promulgation of the statutory rules, the department had formulated a set of draft rules, which they were following for filling up posts in the different cadres of the Census Organisation. These draft rules, which was circulated by a letter dated 16th November, 1974 (copy of the same is taken on record) states that the method of recruitment to the level of Statistical Assistant would be by deputation of UDC in the Central Secretariat Clerical Service/by promotion of Computors/Compilers of the office of the Registrar General, failing which by direct recruitment. The draft rules further laid down that the candidate for appointment as Statistical Assistant must be a graduate with atleast 3 years of experience in the Census Organisation. These draft rules further provided that these qualifications were relaxable in the case of persons in the lower cadre, who were in the promotion line and in case of others in exceptional circumstances. The department had taken a view that for filling the post of Statistical Assistant, the instructions contained in the draft rules shall be followed, as there were no statutory rules in force prior to 1974. Accordingly, in the DPC, which met in 1970, the draft rules were kept in view by the members of the DPC, but they however decided that in view of the non-availability of eligible candidates in all respects for promotion to the level of Statistical Assistant, some relaxation of qualification was required, but the same should be kept to the minimum. The order of the department issued on 4.6.91 as at Annexure A15 drew attention to these factors. This order

struck down the seniority list issued on 21.3.89 in the grade of Statitital Assistant and directed that the seniority list issued as on 17.8.1988 was final. Against this order of the department, three of the applicants namely S/Shri Gopal Rao, Nagaraj, Parthasarathy approached the Tribunal again in OA 543/91. This Tribunal disposed of the application on 22.5.92 with the following observation:-

> "As we find that matters not contemplated in the order of the Tribunal dated 27.3.1991 have been taken into account, the impugned order suffers from induction of extraneous matters not contemplated in the order of the Tribunal and even otherwise and there is no satisfactory explanation for the same. It was not the intention of the Tribunal in the order that matters referred to in the office notes should all be reopened. To enable the official respondents, therefore, to go into and pass a speaking order as already contemplated in our orders dated 27.3.91, the impugned order No.ADM 25 CAT/89-90 dated 4.6.91 is quashed and the matter remitted to the official respondents for compliance in terms of the orders we have passed on 27.3.91. Two months time is allowed from date of receipt of order. The OA is disposed of accordingly with no order as to costs.

Shri Ramachandra has approached this Tribunal in OA 19/92 and got an order dated 16.6.1992, which directed that following the decision in OA 543/91 dated 22.5.1992, the impugned order dated 4.6.91 was quashed and that the matter was remitted to the official respondents.

In compliance with this direction as also the other directions, the department issued an order No. ADM/9/LR/91-92 dated 5th July, 92, which is at Annexure A17. After setting out an eloborate pre-amble and stating the position in detail, the department stick to their earlier stand to the effect that the provisional seniority list dated 21.3.1989 was cancelled and the

seniority list of Statistical Assistant dated 17.8.1988 is to be considered as final seniority list. The order dated 27.2.1989 giving retrospective promotion to the applicants with effect from 27.7.1990 was also caneelled by this order. The applicants naturally felt aggrieved by this order as they did not get what they had been asking for. They approached this Tribunal again by a CP No.37/92, where, they submitted that the action of the department was not in compliance with the directions of this Tribunal and the department had committed contempt. This matter was heard by this Tribunal and it was disposed of on 26.5.1993, where it was held that the respondents had not committed any contempt and that the Tribunal was satisfied with the reasons given by the respondents. Accordingly the Contempt Petition was dismissed.

4. The applicants are again before us challenging the order of 5th July, 1992. The applicants have challenged the ~~velocity~~ veracity of the department's s tatement that two conditions were required to fulfilled, namely a degree and 3 years experience in the lower level for promotion as Statitical Assistant. They also contend that even though they were not graduates, they were promoted in 1971 on adhoc basis but not in the preceding year. They also submit that some others, who had not fulfilled either of these two conditions were promoted as Statistical Assistant in 1971.

5. We have heard Shri Narayana and Shri Achar for the applicants and Shri M.Vasudeva Rao & Shri M.S.Padmarajaiah for the respondents. We have also perused the

relevant documents, in particular the draft rules and the proceedings of the DPC held in 1970. These were also shown to the learned counsel for the applicants.

6. The main arguments advanced by the learned counsel for the applicants seeking to quash the order of 5th July, 1992 are the following: There were no recruitment rules in 1970, as the statutory rules were promulgated only in November, 1974. Shri Achar conceded that in the absence of the statutory rules, it will be in order for the department to take action on the basis of executive instructions. But he argues that the draft rules, which were circulated, were neither in the nature of statutory rules nor in the nature of executive instructions. As such, the department was in error in seeking to follow the so called draft rules. The department should have gone strictly on the basis of seniority in the absence of any other condition for recruitment to Statistical Assistants, as the draft rules should be totally disregarded. Even if it is taken that the draft rules can be followed, the counsel ~~further~~ contends conceds that the department's assumption that there was a requirement for the candidate to be a graduate was not supported as even the draft rules did not make any such stipulation. The DPC held in 1970 relaxed some of the conditions which were laid down in the draft rules. The Review DPC, which met on 25.2.1989 also had the competence to make relaxation of any condition for recruitment. There was no direction from the Tribunal to review the action on the basis of the findings of the review DPC held on 25.2.1989 and the department also did not have the power to conduct a second review

DPC. No notice was given to the applicants before their seniority was altered to their dis-advantage by an order dated 1.6.1990, which was subsequently elobarated by the order dated 5th July, 1992.

6. It is imporatnt to take note of the fact that the CP filed by the applicants in CP 37/92 was dismissed by the Tribunal by order dated 26.5.1993. Para 8 of this order reads as follows:-

> "Having heard the submission of all the parties and also gone through the order dated 5.7.1992 carefully. We find the respondents have not committed the mischief of contempt in trying to wilfully disobey the orders of this Tribunal. We are satisfied with the reasons given by the respondents contained in their orders dated 5.7.1992. In the light of the above, we find no merit in this contempt petition. Accordingly, this contempt petition is dismissed and the respondents, the alleged contemners are discharged."

In view of the dismissal of the CP, it is clear that the order dated 5th July, 1992 has not defied in any way, the directions of this Tribunal. The earlier orders of the Tribunal are not required to be gone into at this stage. What we are concerned at this point of time is to see whether the reasons given in this order of 5.7.92 are supported by relevant materials.

7. The main thrust of the order is that at the relevant period ie. in 1970, two conditions were required for promotion as Statitical Assistant from the lower level namely (1) a degree from a recognised university and (2) three years of service as Computor. The order goes on to say that the Director can relax one of the conditions if there were no eligible candidates available.

8. So far as the qualifications are concerned, we have seen from the draft rules that what is stated in the order dated 5.7.1992 was in fact the correct position. As regards the contention of Shri Achar, the learned counsel for the applicant that there were no rules at all in 1970 and the draft rules cannot be taken even as executive instructions, we are unable to agree with this stand. It is a fact that statutory rules were promulgated much later, but the department had framed a set of instructions namely the draft rules, which they had circulated and which they were following at the relevant time. We are also unable to see any material distinction between executive instructions and draft rules. In the absence of statutory rules, it was entirely right for the department to act on the basis of such executive instructions as contained in the draft rules. Col.6 of the Schedule of draft rules specifies the requirements and other qualification as follows:-

> " A 2nd class M.A. in Statistics or in Mathametics/ Economics with Statistics as one of the subjects or a post graduate degree in Statistics from a recognised University or Graduate with atleast 3 years Census experience.

Again Col.8 as to whether the educational qualification prescribed for direct recruitment will apply to the promotees, the relevant entry is as follows:-

> "Qualification relaxable in case of persons in the lower grade who are in the direct line of promotion and in case of others in exceptional circumstances.

In otherwards a degree from a recognised University is the required qualification for appointment to the post of Statistical Assistant, which can however, be "relaxed".

As regards promotion, Col. 9 of the Schedule clearly stipulates that the employee must have put in atleast 3 years of service in the lower grade before being considered for the post of Statistical Assistant.

9. In view of the above, the statement made in the order dated 5th July, 1992 that two conditions were required to be fulfilled before promotion as Statistical Assistant has been borne out by the records made available to us.

10. As regards the provision for relaxation, it is seen that the educational qualification can be relaxed in the case of persons in the lower grade. This means that in the normal course, even for a promotee, it is expected that he should fulfill the educational qualification, but the same can be "relaxed". The order dated 5th July, 1992 makes a statement that only one of the qualification can be relaxed by the Director. We have asked the learned standing counsel to produce any document, which has laid down that the Director can relax one of the conditions but not both. He, however, has not been able to produce any formal order of any delegation, even though the reply statement (in para 3) in OA 763/93 states as follows:-

> "Prior to 1974 the notified C&R Rules were not in existence for any of the cadres in the office of the Director of Census Operations, Karnataka, Bangalore. The promotional operations were based on the draft C&R Rules. Certain discretionary powers over and above the draft C&R Rules were delegated to the Appointing Authority."

The learned standing counsel however made available to us the proceedings of the DPC held on 24.7.1970. The

relevant extracts were shown to the learned counsel for the applicants. This meeting considered the candidates for promotion to the level of Statistical Assistant. Para 7 of the proceedings reads as follows:-

"However, below the last of these persons there are 6 more persons working in the posts of Computors or in other equivalent posts viz., Accountant (Rs.130-300) and Proof Readers (Rs.150-240) from dates ranging from 1.6.67 to 1.5.68. Besides, there are 12 persons who were promoted recently as Computors on the basis of the proceedings of the last meeting held on 6th May, 1970. Out of all these, it was felt desirable firstly to consider for promotion by relaxation of rules, only those persons who are in the direct line of promotion to these posts i.e., working as Computors, and secondly, to keep the relaxation to the minimum possible extent particularly in regard to qualifications. It was accordingly decided to consider for such relaxations the cases of persons who are atleast graduates. As for the relaxation of the minimum period of service, it was felt undesirable to consider the case of 12 recently promoted Computors for further promotions as Statistical Assistants, since they have hardly put in about 2 months of service as Computors. However, in their category there are 3 cases of Writ Petitioners viz., M.S.Singamma, Smt. N.Tripuramba and Shri L.Ramachandra, all of whom though promoted recently might get earlier dates in these grades on restoration of their seniorities in the Assistant Compilers' grade and review of their promotions on that basis. Even so, all the three are non-graduates and they cannot therefore be considered for further promotions by relaxation of rules in view of the principle adopted for the purpose as indicated above. As a result, there will be only two persons who can be considered for promotion, as under:

		Qualification
1. Smt. P.V.Vanajabai, Computor	1.5.68	B.Sc
2. Shri Raja Rao "	1.5.68	B.A.

These two cases were accordingly taken up for consideration and their confidential records for 1968 and 1969 were looked into. Both their work and conduct were found to be satisfactory and there have been no adverse remarks against them. The shortfall in the minimum period of service is just about 9 months. They are also

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working in the direct line as Computors from the dates mentioned above against their names. It was therefore decided to promote these two officials as Statistical Assistants after relaxing the requirements of qualification and experience in their cases.

It is seen from the above that the committee decided to keep the relaxation to the minimum possible extent particularly in regard to qualification. In the case of Shri Raja Rao, he fulfilled ~~the~~ one of the requirements namely graduation, but had not fulfilled the other requirement namely 3 years of service in the lower level. In the case of the applicants, they did not fulfill either of the qualifications. The DPC had decided to relax only one of the two conditions. The applicants were neither graduates nor had they put in three years service in the lower level. We see nothing wrong in the principles followed by the DPC with regard to vacancies available as on 24.7.1970. It is true that subsequently in 1971, the applicants were promoted even though they had not fulfilled the educational qualification which the DPC held on 24.7.1970 had laid down as essential. We are not concerned with what has happened in 1971 or in the later year as long as the DPC followed a consistant stand in respect of the vacancies required to be filled when they met in 1970 ~~and~~ Their decision to keep the relaxation to the minimum and not to relax the educational qualification, cannot be termed as arbitrary. We accordingly hold that the reasons given by the department in its order dated 5th July, 1992 as at Annexure A17 stands substantiated and the same cannot be considered as arbitrary or unreasonable.

11. Shri Achar contended that there was no direction to the department to review again the decision of the review DPC held on 25.2.1989 nor does the department have any power to do so. So far as orders of the Tribunal are concerned, we do not propose to go into the same as the matter stands concluded in the light of the directions of this Tribunal in the CP 37/92, where the CP was dismissed. As regards the competence of the department to go into the corrections of the proceedings of the review DPC, the department has the power to rectify any error, which might have occurred in the proceedings of the review DPC held on 25.2.1989, particularly when the action taken on the basis of recommendation of this DPC namely giving retrospective promotion to the applicant w.e.f. 27.7.1990 which resulted in their gaining in seniority was challenged before the Tribunal and certain directions were issued by the Tribunal. We find no merit in this contention of Shri Achar. The department had in its order dated 5.7.1992 reiterated its stand taken earlier vide order dated 1.6.1990 which was challenged by the applicants in OA 543/91 and 19/92. This order dated 5.7.1992 was issued in compliance with the directions of this Tribunal. The applicants were fully aware of the developments and cannot plead lack of notice.

12. In the light of the foregoing, we find that the order of the department dated 5.7.1992 does not suffer from any illegality and the applications are devoid of merit. We accordingly dismiss the applications with no orders as to costs.

sd-

(A.N.VUJJANARADHYA)
MEMBER (J)

sd-

(V.RAMAKRISHNAN)
MEMBER (A)

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SECTION OFFICER
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE

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