

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO. : 60/95

Date of Decision : 31-12-2001

Smt.N.M.J.Gonsalves & Ors. Applicant

Shri P.A.Prabhakaran Advocate for the
Applicant.

VERSUS

Union of India & Ors. Respondents

Shri R.R.Shetty for Advocate for the
Shri R.K.Shetty Respondents

CORAM :

The Hon'ble Shri S.L.Jain, Member (J)

The Hon'ble Smt.Shanta Shastri, Member (A)

- (i) To be referred to the reporter or not ? *yes*
- (ii) Whether it needs to be circulated to other *No*
Benches of the Tribunal ?
- (iii) Library *yes*

S.L.Jain
(S.L.JAIN)
MEMBER (J)

mrj.

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.60/95

Dated this the 31st day of December 2001.

CORAM : Hon'ble Shri S.L.Jain, Member (J)

Hon'ble Smt.Shanta Shastri, Member (A)

1. Smt.Nisha Merry John Gonsalves
2. Smt.Trupiti T.Joshi
3. Smt.Nilima A.Gadre
4. Kum.Manjula R.Panchal
5. Vijay V.Kadam
6. Smt.Sheetal S.Dahibavkar
7. Smt.Vidua R.Ambekar
8. Smt.Anuradha D.Dhuri
9. Smt.Shalaka S.Shinde
- 10.Smt.Smita S.Shetye
- 11.Smt.Deepa V.Pandit
- 12.Smt.Sneha S.Sawant
- 13.Pradeep N.Gudmeti
- 14.F.M.Mestri
- 15.Kum.Kiran Bhalerao

...Applicants

All are working as U.D.C./L.D.C.
in the Office of the Directorate
of Census Operations, Maharashtra
Bombay.

By Advocate Shri P.A.Prabhakaran

vs.

1. Union of India
through the Secretary,
Ministry of Home Affairs,
New Delhi.
2. Registrar General of India,
2/A, Mansingh Road,
Kotha House Annexe,
New Delhi.
3. Director of Census Operations,
Maharashtra, Exchange Building,
2nd Floor, Sprott Road,
Ballard Estate, Bombay.

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4. Staff Selection Commission,
Lodhi Road, New Delhi
through the Secretary.

...Respondents

By Advocate Shri R.R.Shetty
for Shri R.K.Shetty

O R D E R

{Per : Shri S.L.Jain, Member (J)}

The applicants have filed this OA. on 23.1.1995 seeking the direction to the respondents to regularise their services and confirm them from the date they have completed 3 years. By an amendment, permitted by the Tribunal by order dated 21.4.1998, the relief sought is that the impugned order No.A.63001/01/93-94(387)Vol.II dated 10.9.1996 reverting the applicant Kum.M.R.Panchal from Upper Division Clerk to Lower Division Clerk be quashed and cancelled, she be continued to pay salary and allowances attached to the post of UDC from 10.9.1996 onwards, if not paid so, with the direction to the respondents to consider the other three applicants to be promoted as UDC on the dates the respective vacancies arose and they are found fit.

2. The Census Department came to existence in or about the year 1960. It conducted census in 1961, 1971, 1981, 1991 and the further process of census is a continuous work.

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3. There was an offer of appointment as Lower Division Clerk to all the applicants. The details in respect of the applicants regarding the dates of orders of appointment, promotion, reversion and further promotion are given in Annexures - 'A', 'A-1', 'A-2', 'A-3' and 'A-4'. The applicants were sponsored through the Employment Exchange. In the offer of appointment in respect of all the applicants except Applicant No.1, some of the terms were as under :-

"(i) The appointment is purely temporary until further order and will not confirm any right to permanent employment.

(ii) The usual clause that the employments may be terminated at any time by a month notice given by either side.

(iii) Other conditions of service will be governed by the relevant rules and orders in force from time to time. In the case of Applicant No.1, one more condition was laid down that her services can be replaced by candidates approved by Staff Selection Commission."

4. After the medical examination, in the appointment order it is specifically mentioned that the applicants were sponsored by Employment Exchange to the temporary vacancies of L.D.C. In case of Applicant No.1, Smt.Gonsalves, an additional condition was mentioned that her appointment will be for short term duration and her services would be dispensed with after the work for which she has been appointed is over. By Memorandum dated 14.8.1986, the applicants were extended the benefit of CCS (Leave) Rules, 1992 on the ground that though they were adhoc, they have

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continued beyond the period of three years without break. They were adhoc only technically. All the applicants were allowed to cross the Efficiency Bar. They were also asked to exercise option in terms of IVth Pay Commission and after the exercise of such option, their pay was revised as per the recommendations of the 4th Pay Commission. All the applicants submitted their applications for appearing in S.S.C. examination. The respondents delayed their applications in sending them for S.S.C. examination on the ground that they were of the opinion that the applicants have put in service for more than a decade were not required to appear in the examination and have crossed the Efficiency Bar. As they were received late in the office of S.S.C., permission was not accorded. Application of Smt. Rajani Mahale (Not the applicant) reached a day earlier in the S.S.C. office and as such she was granted permission and fortunately she passed also. Special Qualifying Examination was held in 1993. All the applicants along with Miss Ann Menezes (Not the applicant) who was Steno-Typist by qualification appeared in the examination held. Each one was required to put the name of the candidate and Department on the Answer-book and question-paper were taken back. The Department was of the opinion that the posts are temporary and sanction is being taken from time to time and in that process they had terminated the services of some of the employees in December, 1993 who were recruited in 1991 for the census of that year. In view of the said opinion, on the consideration if the applicants do not pass the test, it would be difficult to continue in the Department and this has resulted in the failure of all the applicants en-mass except Kum. Menezes.

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5. The grounds on which the reliefs sought are that they have put in 14 years service, became over age, passed the prime time of life in the Department, throwing them out of employment would be unjust, as they are sponsored by Employment Exchange, their case is covered by the decision of State of Haryana vs. Piyara Singh, 1992 (3) SLJ 34(SC), they are efficient enough and crossing of Efficiency Bar amounts to regularisation, some of them are also promoted and continued in the promotional post, their work is satisfactory, work exists, only technically the appointment is adhoc, benefit of CCS (Leave) Rules, 1972 is extended to them, the confirmation is delinked from the existence of the permanent post, The respondents always considered that it is not necessary for the applicants to pass S.S.C. examination. There was no condition in the offer of appointment that they would be replaced from the candidates selected from the S.S.C. except in case of Applicant No.1. In her case, the said condition did exist. Failure of the applicants in Special Qualifying Examination is on account of malafides exhibited by the respondents. Their case is similar to the case of S.S. Dalvi & Ors. OA.NO.162/91 decided on 22.4.1993. After their appointment, the respondents have informed the Employment Exchange about their employment as such the Employment Exchange have struck off their names, if the applicants go back to the Employment Exchange, they would be treated over age/they will lose the earlier seniority resulting the doors of their future employment are closed for ever. Hence, this OA. for the above said reliefs.

6. Respondents No.1 to 3 have filed a separate written statement admitting the fact that all the applicants were initially recruited through the Employment Exchange as Adhoc LDCs in the Directorate during the years 1980-1983, out of which 4 were subsequently promoted as adhoc UDCs in the year 1990 by giving them temporary benefit in order to cope up with the urgent census work of 1991.

7. The defence of the respondents is that the post of LDC falls under the purview of SSC. The vacancy was short term. In the event of the posts being continued beyond 1982-83, the adhoc personnel were required vide D.O.P.T's O.M.No.28036/10/92-Estt(D) dated 2.8.1993 (Ex-'R-1') either to pass the relevant examination of the Staff Selection Commission or an examination specially organised by the SSC for the purpose of their regularisation against permanent posts. Those who failed to clear the examination were supposed to face retrenchment. Short term posts created for 1981 Census continued till that date. They were made aware of this fact either through offer of appointment, order of appointment, issuing separate office memo since 1980 to 1993. Apart from the general competitive examination of SSC, Special Qualifying Exams were conducted by the SSC in the years 1983/1985-1987/1991/1993. All the 15 applicants appeared for Special Qualifying Examination conducted by SSC in December 1993 but none of the 15 applicants qualified in the said examination in the result declared on 16.11.1994 (Ex-'R-2'). Those who failed, their services are required to be terminated forthwith in

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view of DOPT's order No. 28036/10/92-Estt(D) dated 2.8.1993. Action for termination of the services of the above 15 applicants was completed on 23.1.1995. On the said date, none of the applicants were present in the office. Therefore, orders were issued under Certificate of Posting and by Registered Post. Thereafter, in view of interim relief of Status-quo, they are continuing. Crossing of Efficiency Bar has nothing to do with regularisation against the post of LDC. Similarly, promotion of 4 applicants to the post of UDC on adhoc basis to cope up with the urgent 1991 Census work has no relevance with their regularisation against the post of LDC. Accordingly, their services were terminated in view of O.M. dated 2.8.1993 (Ex.'R-1'). On 31.12.1993 termination of services ~~were~~^{was} made on account of expiry of sanction for the posts created for 1991 Census.

8. The Respondent No.8 has filed a separate written statement alleging the fact that as no relief is sought against him, the OA. deserves to be dismissed with cost. It is further alleged that Respondent No.4 is only the authority under the Constitution to select the persons and recommend it to the departments of Government of India, and therefore the Respondent No.4 is not the appointing authority for anybody, as such the application is misconceived and on this ground also the application should be dismissed with cost. In reply to parawise comments, it is being stated that the applicants have applied for appearing in the special qualifying examination¹ conducted by the Respondent No.4 in the year 1993. Miss N.Menses appeared in the

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special qualifying examination of 1993 which was held on 26.12.1993 along with the applicants. 11 applicants in the present case have qualified in the above examination for regularisation of their services as LDC. 4 of the applicants have failed along with Miss N.Menses^{who} failed in Stenography test but was to be regularised as LDC subject to availability of vacancy. The said examination was conducted in accordance with the instructions contained in the Government of India, Ministry of Personnel, Public Grievances and Pension (Deptt. of Personnel & Training) O.M. dated 2.8.1993 (Ex.'R-1'). One of the conditions as stipulated in the said O.M. was that he/she must be working as LDC/Stenographer Grade III on adhoc/daily wages/casual basis against any sanctioned post of LDC/Stenographer Grade III in any office of the Government of India. Those who qualified in the said special qualifying examination were to be regularised from the date of announcement of the result of the said examination by the Government in the same post and in the same office in which they are working. The candidatures of 11 candidates who were later on declared successful were earlier kept as provisional for want of information/clarification from the Directorate of Census Operation from Bombay who went on changing its stand on the vacancy position as Census have been cleared and the dossiers of the 11 qualified candidates sent to the Department of Census Operation to Bombay on 1.3.1995 for further action with regard to regularisation of their services as LDC. The Respondent No.3 vide its letter dated 21.2.1994

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categorically stated that all those who appeared in the above examination would be regularised in the same post and that they have equal number of posts of LDC/Steno Grade III/Jr. Stenographer to accommodate in the Directorate. It was on the basis of this, the result of candidates of Census Department, Bombay was processed and the candidature of 11 candidates which was earlier kept as provisional was finally cleared (Ex.'R-2').

9. The learned counsel for the applicant relied on an order passed by Central Administrative Tribunal, Jaipur Bench in OA.NO.2424/86 decided on 5.7.1993, the operative part of the order is as under :-

"In such circumstances, the respondents are directed to consider the case of the applicant for regularisation with other equally situated persons within a period of 4 months. They should finalise the scheme of regularisation and should implement it immediately so that the persons who have been working for more than a decade can get the benefit of long service rendered by them to the Govt. The T.A. is disposed of accordingly. No order as to costs."

10. The respondents preferred SLP 7617/94 which is dismissed on 9.5.1994 by the following order :-

" The Special Leave Petition is dismissed."

11. He further argued that in compliance of the order of C.A.T. Jaipur Bench which has been affirmed by the Apex Court while dismissing SLP the applicants have been regularised from the date of issue of the order, i.e. 27.7.1994.

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12. Government of India, Ministry of Personnel, Public Grievances & Pension (Department of Personnel & Training) has issued Circular No.28036/10/92-Estt.(D) dated 2.8.1993 - the subject being Regularisation of adhoc/daily rated/casual LDCs/ Stenographers Grade III/'D' in various Central Government offices - reg. We have perused the said circular and we are of the opinion that in pursuance of the said circular Special Qualifying Examination was held, in which applicants appeared and 11 applicants were successful but 4 could not qualify the same. Thereafter, SSC issued a letter No.23/1/93-EHQ/5010090/IV, dated 16.11.1994 to the Director of Census Operations, Exchange Building, 2nd Floor, Sprott Road, Ballard Estate, Bombay.

13. The learned counsel for the applicant relied on an order passed in OA.No.303/86, D.M.Walve & Anr. vs. Union of India & Ors. decided on 13.2.1990 by this Bench and the operative part of the order is as under :-

"On the basis of the foregoing discussion, the applicants do not succeed. We would, however, suggest that in respect of the present applicants also, the respondents should implement the direction given in the above judgement dated 30.1.1987 of the Ahmedabad Bench that the respondent-Government should take urgent steps for giving opportunity to the petitioners who satisfy the criteria for direct appointment and, if necessary, consider invoking the powers to relax the rules so that such eligible adhoc employees get a fair chance for regular absorption, and also consider further increase in regular posts as may be justified. In fact, since the applicants in the present case have already rendered continuous service, though on

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ad hoc basis, for seven to ten years, we would even go one step further and direct specifically that the age limit for direct recruitment should be relaxed to the extent of continuous service rendered by those of the otherwise eligible applicants, if at the time of their initial appointment, they were within the prescribed age limit for such appointment."

14. The said order was subject of Civil Appeal No.3031/90 and the Apex Court has decided the said appeal on 27.1.1999 and the order passed is as under :-

"This matter can be disposed of without examining the several contentions raised before us. The claim made by the appellants is that they had been employed in the Directorate of Census Operations, in the State of Maharashtra and that they should be regularised in the service. When an identical matter came up for consideration before this Court in Civil Appeal Nos.1078-82 of 1988, it was disposed of on 27.10.1993, by stating as follows :

"It is brought to our notice that since the filing of these appeals, the Government of India has issued certain orders providing for regularisation of employees situated like the appellants herein. Indeed, it is brought to our notice that some of employees have already been regularised. The learned counsel for the appellants, Sri Dave, states that the Government is bound to consider the case of the appellant also in accordance with the said circulars, and as directed by the Tribunal in the order under appeal. the learned counsel seeks to withdraw these appeals with a view to make a representation to the Director general of Census Operations for appropriate relief.

The appeals are accordingly disposed of as withdrawn. No costs."

We can do no better than what this Court had done earlier. Therefore, we direct the respondent to consider the case of the appellants in terms of the circulars, orders, or Rules made by respondents in this regard. It is brought to our notice that the appellants had been continuing in the service in view of the interim order of this Court. That position may continue until respondents finalise these matters."

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15. The learned counsel for the applicant relied on 1998 SCC (L&S) 302, Vijay Goel (SMT) & Ors. vs. Union of India & Ors. decided on 21.10.1997.

16. There was no mention in the orders of appointment that they were Adhoc. Initial appointment was in accordance with Rules.

17. The learned counsel for the applicant further relied on (1997) 36 ATC 621 - N.P.Sivaprasad Naidu & Ors. vs. Union of India & Ors. decided by CAT Hyderabad which lays down the proposition as under :-

"Regularisation - Claim for - Temporary, ad hoc employees working as Computers in Census Department - Appointments dehors the rules - Applicants covered by 1979 amended rules under which no provision for direct recruitment - Applicant, held, not entitled to get regularisation from the date of initial appointment under the rules - Applicants initially held educational qualifications for regular appointment, and sponsored through Employment Exchange, were duly selected - sufficient posts were available - Respondents having no serious objection of administrative difficulty in regularisation - Considering their long experience and length of service and reintroduction of direct recruitment of computers by 1984 Rules - Appointments made on 17.12.1984 and thereafter would not dehors the rules and can be taken into account for regularisation - Hence, granted benefit of regularisation in equity, w.e. f.18.12.1986 with all consequential benefits including seniority - Office of the Director of census Operations and Rx Officio Superintendent of Census Operations, A.P. (Class III and Class IV posts) Recruitment Rules, 1973 - Office of the Director of Census Operations and Ex Officio Supdt. of Census Operations, A.P. (Group 'C' and Group 'D' Posts) Recruitment (Amendment) Rules, 1979 - Registrar General and Ex Officio Census Commissioner for India and the Offices of the Directors of census Operations in States and UNION Territories (Computer) Recruitment Rules, 1984 - Constitution of India, Art. 309."

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18. The learned counsel for the applicants also relied on 1992 SCC (L&S) 965 - M.B.Hiregoudar vs. State of Karnataka & Ors. decided on 29.10.1991 which relates to seniority - reckoning of regular service during absence of Recruitment Rules. We have carefully perused the reliefs sought and we are of the considered opinion that there is no relief regarding seniority. As such this authority being not relevant to the issue, is of no assistance to the applicant.

19. In view of Baijnath Yadav vs. Union of India & Ors. decided by this Bench on 24.12.1998, if the initial appointment is against a regular post, the seniority counts from the date of initial appointment and not from the date of regularisation. In the case in hand, initial appointment was not against a regular post and the question of seniority is not in dispute, as such the said authority does not help the applicant.

20. In view of P.R.G.Kurup & Ors. vs. Union of India & Ors., decided on 10.12.1998 by this Bench - if the initial promotion though termed as adhoc but was as per Rules, then the seniority should be fixed from the date and not from the date of regularisation. This being not a case of promotion, the question of seniority is not in dispute, as such this authority does not help the applicant.

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21. The learned counsel for the respondents relied on 1998 SCC (L&S) 611 - B.S.Bajwa & Anr. vs. State of Punjab & Ors. and argued that concession extended by Additional Advocate General being a concession of law, was not binding on the State. Hence, it was rightly withdrawn by the State by filing a review petition. The concession, further held, did not bind the other individuals whose seniority was adversely affected. We have carefully perused the order passed in C.A.No.3031/90 and we are of the conclusive opinion that the appeal was not decided based on concession but it is the finding of the Apex Court, as such this authority does not help the respondents.

22. The learned counsel for the respondents relied on 1998 SCC (L&S) 730 - Dr.Meera Massey (MRS), Dr.Abha Malhotra, Dr.S.C. Bhadwal & Ors. vs. Dr.S.R.Mehrotra & Ors. and argued that Ad hocism is deprecated and regularisation must only in accordance with the procedure laid down under the relevant law. We agree with his submission in this respect.

23. The last order of the Apex Court in Civil Appeal No.3031/90 is as under :-

"It is brought to our notice that since the filing of these appeals, the Government of India has issued certain orders providing for regularisation of employees situated like the appellants herein. Indeed, it is brought to our notice that some of employees have already been regularised. The learned counsel for the appellants, Sri Dave, states that the Government

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is bound to consider the case of the appellant also in accordance with the said circulars, and as directed by the Tribunal in the order under appeal. the learned counsel seeks to withdraw these appeals with a view to make a representation to the Director general of Census Operations for appropriate relief."

24. As stated earlier, 11 applicants were successful and only 4 applicants could not qualify in the Special Qualifying Examination. As such, the case of 4 applicants (Applicants No. 4; 8, 11 & 14) remains to be considered.

25. The reliance of the learned counsel for the applicant on the case of B.S.Bajwa & Anr. vs. State of Punjab 7 & Ors. is not well founded as the case was decided not based on concession but in view of the earlier decision recording a finding therefor.

26. We agree with the submission of the learned counsel for the respondents in view of the case of Dr.Meera Massey & Ors. that regularisation must ^{be} only in accordance with the procedure laid down under the relevant law.

27. The case of N.P.Sivaprasad Naidu & Ors. relates to officials working as Computers in Census Department and not to LDC working in Census Department.

28. OA.NO.2424/86 decided on 5.7.1993 by CAT, Jaipur Bench against which S.L.P.No.7617/94 was decided on 9.5.1994 cannot be taken to be a precedent for the reason that SLP was dismissed without recording and going into the merits of the case.

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