IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH

J A I P U R.

O.A. No. 1017/92 Date of decision: 12.10.93

VIJAY KUMAR : Applicant.

VERSUS

UNION OF INDIA & ORS : Respondents.

O.A. No. 1013/92

PURSHOTTAM LAL : Applicant.

VERSUS

UNION OF INDIA & ORS

O.A. No. 1053/92

SHANKAR SINGH : Applicant.

VERSUS

UNION OF INDIA & ORS

O.A. No. 1000/92

MAHAVEER PRASAD : Applicant.

VERSUS

UNION OF INDIA & ORS

O.A. No. 991/92

OM PRAKASH SHARMA : Applicant.

VERSUS

UNION OF INDIA & ORS

O.A. No. 992/92

GOPAL LAL : Applicant.

VERSUS

UNION OF INDIA & ORS

Mr. J.K. Kaushika : Counsel for the applicants.

Mr. U.D. Sharma : Counsel for respondents 1-3.

Mr. Mahendra Shah : Counsel for respondents 3&4.

CORAM:

Hon'ble Mr. Justice D.L. Mehta, Vice-Chairman

Hon'ble Mr. P.P. Srivastava, Administrative Member

PER HON'BLE MR. JUSTICE D.L. MEHTA, VICE-CHAIRMAN:

In all these six OAs, similar question of facts and common question of law is involved. As such, all of them are disposed of with a common judgment. It is necessary to go into the brief facts of one case to under stand the position.

2. Vijay Kumar, petitioner in OA No. 1017/92 was appointed as Assistant Compiler in the year 1970. He was confirmed as Assistant Compiler vide Annexure A-2 and was promoted on the post of Computer on 1.12.77. He was appointed vide Annexure A-4, order dated 9.1.81 as Statistical Assistant w.e.f. 26.12.80. Vide Order, Annexure A-5, dated 20.10.84, all the applicants including Vijay Kuma were appointed as regular persons w.e.f. 28.7.84. The applicant and other

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10 persons were appointed on regular basis w.e.f. 28.7.84. The order was passed in favour of 16 persons including the six applicants.

3. Annexure A-6, order was passed on 28.5.86 which is under challenge. It has been stated in that order that consequent upon the repatriation of Shri P.L. Meena, Junior Supervisor to the post of Statistical Assistant w.e.f. 28.5.86(AN), Shri Vijay Kumar Punjabi, Statistical Assistant is hereby reverted to the post of Computer w.e.f. 28.5.86(AN). Other five applicants are also similarly placed and they were promoted in the year 1980 as Statistical Assistants on different dates. However, vide Annexure A-5, order dated 20.10.84, other five applicants were appointed as regular appointees against the temporary posts and they were all reverted on different dates on the ground that some persons have been repatriated to their parent Departments, as such, they are reverted. In some cases, no specific mention about the repatriation has been made in the order of reversion.

4. As far as Respondent no. 4, Shri K.C. Gupta and Respondent no. 5, Shri Hasan Khan are concerned, it is an admitted position that they were appointed on adhoc basis without following the process of selection by the Staff Committee. In ground (k) of the plaint, it has been mentioned specifically that Hasan Khan was over-age at the time of his appointment.

5. The applicant has submitted that only the persons can be appointed through the Staff Selection Commission and he has invited our attention to the circular dated 19.2.80, marked R-1. In the circular, in para 1, the provision was made for adhoc appointment, however, it has been mentioned in sub-para (1) that whenever appointment by direct recruitmen are made, the Census Directorate will have to make retrenchmen of staff after the main tasks of the 1981 Census Operations are over. In sub-para (3), it has been mentioned that the Staff Selection Commission, while granting exemption, as a special case, from making direct recruitment through their agency, to short term (purely temporary) vacancies in Group 'C' non-technical posts which have been specifically created in connection with the 1981 Census Operations (which in effect permits the Census Organisation to make direct recruitment through other permissible channels, i.e., the employment exchanges), have made the stipulation that such direct recruitment could only be made on a purely adhoc basis and that in the event of the posts being continued beyond 1982-8 i.e., on a long-term basis, the adhoc appointments will have

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to be got regularised by the Staff Selection Commission. Again in para 2, there is a reference that the three broad situations in which promotions on adhoc basis may become necessary are - (i) the officials in the respective feeder grades have not yet put in the requisite qualifying service to be eligible for consideration for regular, temporary promotion; (ii) the statutory recruitment rules/executive instructions provide for a specific quota for appointment by transfer(e.g. Computer) but candidates are not forthcoming, and (iii) the statutory recruitment rules/executive instructions prvodie for a specified quota for direct recruitment (e.g. Statistical Assistant) to which it is not proposed to make direct recruitment even on adhoc basis, in order to minimise post 1981 Census retrenchment. It may be relevant to mention in this context that whenever an appointment is made on adhoc basis the fact that the appointment is adhoc and that such an appointment will not bestow on the person concerned a claim for regular appointment should be clearly spelt out in the order of appointment. Again in Annexure R-1, there is a reference that a separate recruitment roster has to be maintained for each of the different grades/categories of posts. It is not necessary to indicate adhoc appointments in the recruitment roster for regular appointments. An account of adhoc appointments to the different grades may be kept separately so as to keep track of vacancies and appointments thereto, from time to time. In the seniority list for a particular grade, adhoc appointees should be shown en block at the end in the order of their adhoc appointments below all persons regularly appointed to that grade. Annexure R-4 has also been referred to which provides that the recruitment to all the Group 'C' posts for which requisition has already been placed on them should be made through the Commission only as the vacancies reported are regular ones in the existing offices and not in the post which are to be created for the future Census work. Therefore, the existing vacancies in the post of Statistical Assistant in various Directors have been shown in Annexure A- for Rajasthan, unreserved vacancy was one and the reserved vacancy for the Scheduled Caste persons was also one. Thus, there were two vacancies at the time of the issuance of this circular, as per Annexure R-4.

6. Mr. Kaushik, appearing on behalf of the applicants, submitted that if regularly appointed persons are available, then their services can only be terminated or they can only be reverted after the reversion or termination of the services of adhoc employees. He submits, admittedly, on the date of

the passing of reversion order, Annexure A-6, all the applicants were regularly appointed persons and the respondent nos. 4 and 5 were adhoc appointees. As such, the question of reversion of the regularly appointed persons does not arise at all. Only the adhoc persons are reverted or their services are terminated. Mr. Kaushik further submits that the appointment of the respondents nos. 4 and 5 was basically illegal and in any case, it was irregular. He further submits that in the light of the circular, referred to above, the services of the respondents nos. 4 and 5 should have been terminated on 31.3.83 as the circular does not direct the retention of adhoc employees, after 31.3.83.

7. Mr. U.D. Sharma, appearing on behalf of the respondents (Union of India) and the Census Department, submits that the process of regularisation of respondents nos. 4 and 5 started in 1983 though they were regularised in the year 1991, though this fact has not been mentioned in the reply submitted before this Court in these cases. However, we take it for the sake of judgment that the services of respondents nos. 4 and 5 were regularised in the year 1991.

8. Mr. Sharma submits, in alternative, that if it is considered that the respondents' services were illegally continued by the Department then the same applies in the cases of the applicants whose services were also continued beyond 31.3.83. He submits that the regularisation process of both the groups of persons started in 1983, however, the orders of regularisation for the applicants were passed in the year 1984 as the question of getting the approval of Staff Selection Commission was not there. However, the matter of the respondents nos. 4 and 5 took time for more than 8 years as the question of regularisation of the direct recruitment was concerned and the Staff Selection Commission was to be consulted and further more, the question of relaxation of the age limit at the time of the appointment was also involved.

9. Mr. Sharma submits that as the persons who were senior have been repatriated, so the applicant were reverted.

10. Mr. Shah, appearing on behalf of the respondents nos. 4 and 5, submitted that his clients were selected through the process of employment exchange and they were on adhoc basis; they continued in employment for 12 years and they were regularised in 1991, as such, the question of terminating their services does not arise now.

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11. Mr. Kaushik has invited our attention to Annexure A-7, the letter of the Deputy Director, Census Operations, Rajasthan, Jaipur, addressed to Mr. Rajesh Kumar Mittal, dated 18.8.80. In the said letter, Mr. Rajesh Kumar was informed that in June, 80, he applied for the post of Statistical Assistant lying vacant in the Directorate. However, the department has decided not to fill up this post now by direct recruitment as per instructions received from the Government of India. He was, however, offered the post of Computer.

12. Mr Kaushik wants to point out from this letter dated 18.8.80 (Annexure A-7) that the department has already taken a decision not to recruit any direct person but to promote the persons who are holding the post of Computer. As such, the appointmentwas also arbitrary in the case of Respondents nos. 4 and 5.

However, Mr. Sharma submits that respondents nos. 4 and 5 were appointed on 31.3.80 and it is possible that such decision, as referred to in Annexure A-7, might have been taken at a later date though in the reply nothing has been said when such decision was taken by the respondents. The respondents should have come forward with a specific date that the decision, which has been referred to in Annexure A-7, not to recruit the persosns by way of direct recruitment was taken subsequent to the appointment of respondents nos. 4 and 5. However, they have miserably failed in not giving specific answer to the plea taken by the applicants.

13. In the light of the submissions made by the parties, the question arises whether while retaining an adhoc person, can a person who has been regularly appointed be reverted on the grounds, referred to by the respondents. Even from the Annexures produced by the respondents, it has been mentioned therein in specific terms that seniority list for particular grade, the adhoc appointees should be shown en block in the order of their appointment below all persons and they should be shown below to all persons regularly appointed in the grade. Thus, the retention of the adhoc persons and reversion of regularly selected persons is an arbitrary act of the Department and is violative of Articles d 14 and 16 both. Once a regularly selected person is available t for holding a post and if there is a shortage of post, may be on account of a policy, repatriation or for any other reasons, then the principle is that the adhoc person will go first and if more persons have to be reverted then,

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within the regular persons, 'last come first go' doctrine will be applied. However, in the instant case, the adhoc appointees, respondents nos. 4 and 5 were retained when the reversion orders were passed in relation to the applicants in the year 1984. Mere saying that the department moved for regularisation of the services of the respondents nos. 4 and 5 does not create any right and they do not fall within the purview of 'regularised persons'. The authorities may regularise or may not regularise and to take it for granted that the authorities will regularise and condone all illegalities committed by the department is against the general principles of Jurisprudence and the action of the department was not justified in reverting the applicants who were regular appointees and continuing in service. For the reasons mentioned above, the order of reversion of all the six applicants is liable to be quashed and is hereby quashed.

14. The other ground on which the order of reversion is bad is that once a person has been regularised he cannot be reverted without following the due process of law. If by way of penal action, any action is to be taken then he should be heard and necessary orders should be passed. But here, the case of the department is not for taking any action on account of disciplinary proceedings. The applicants were regularised in 1984 and they were reverted in the year 1985, after the completion of 22 months' service.

15. Before reversion, it was the duty of the respondents to hear the applicants and to follow the principles of natural justice which they have not followed. Apart from that there is one important aspect of the case is that once a person is regularised, the order of regularisation can be recalled if there is a mistake and that too, after giving proper opportunity of hearing to the party who is likely to be affected adversely. In the instant case, once the applicants have been regularised, the question of reversion does not arise because if the person is on deputation then he continues to have a lien in the department on that post and no person can be appointed on regular basis if the lien is there. So to say that to adjust the persons who were repatriated means to say that the order passed by the department regularising the applicants was bad in law. So on this count also, the order of revision is bad. Thus, taking the conspicuous picture of the case and for the reasons mentioned above, we are of the view that the reversion

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orders passed against the applicants on various dates in OAs bearing nos. 1017/92, 1013/92, 1053/92, 1000/92, 991/92 and 992/92 be quashed and are, therefore quashed and the applicants will be entitled for all consequential benefits.

16. As far as the question of terminating the services of respondents nos. 4 and 5 is concerned, we would not like to pass any order, particularly taking into account the fact that their services have been regularised in 1991.

17. In the result, the OAs are disposed of accordingly. The respondents nos. 1,2 and 3 should pay Rs. 500/- as costs.

(P.P. SRIVASTAVA)
Administrative Member

(D.L. MEHTA)
Vice-Chairman