

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:: HYDERABAD BENCH AT

HYDERABAD

O.A.No. 13 of 1993

Between:

1. N.Sita Kumari,
W/o K.Basava Rao,
Aged 35 years, Statistical
Assistant, Office of the Regional
Deputy Director of Census Operations,
Region II, Moulali, Hyderabad.
2. S.Khader Vali, S/o S.Mohiuddin Sahib,
Aged 34 years, Statistical Assistant,
Office of the Director of Census Operations,
Somajiguda, Hyderabad.

The address for services of notices and processes on
the applicants is that of their Counsel M/s Sri Y.Suryanarayana
Meherchand Nori, P.Naveen Rao and V.Ravichandran, Advocates,
40 MIGH., Mehdiapatnam, Hyderabad. ... Applicants

AND

1. Government of India represented
by Secretary to Government,
Ministry of Home Affairs,
Secretariat, New-Delhi-110001.
2. The Registrar General India,
Ministry of Home Affairs,
Government of India,
2/A Mansingh Road,
New-Delhi-110001.
3. The Director of Census Operations,
Andhra Pradesh, Ministry of
Home Affairs, Govt. of India,
Hyderabad.
4. Smt.P.Vijaya D/o Not known
Aged about 36 years
5. Sri N.p.S.p.Naidu S/o Not known
Aged about 37 years
6. Sri K.Samson S/o Not known
Aged about 30 years
7. Sri K.Anil Kumar Chowdary,
S/o Not known, Aged 36 years
8. Sri K.Elijah S/o Not known
Aged 36 years.

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9. Smt.N.Alivelumanga
Husband's name not known
Aged 35 years
10. Smt.T.Balatripura Sundari,
Husband's name not known,
Aged 36 years.
11. Sri S.Suresh Rao Naik,
S/o Not known, Aged 35 years
12. Sri B.Jagapathi S/o Not known,
Aged 39 years
13. Smt.G.Eather Rani,
Husband's name not known,
Aged 36 years
14. Sri S.V.S.Srinivasa Murthy,
S/o Not known,
Aged 36 years.
15. Sri B.Jaya Raju S/o Not known
Aged 38 years.
16. Sri B.Nadevaiah S/o Not known
Aged 35 years
17. Sri G.Venkateswara Rao
S/o Not known,
Aged 35 years
18. Smt.M.Indira Bhavani,
Husband's name not known,
Aged about 34 years.
19. Sri B.V.S.S.Jaganadham
S/o Not known,
Aged 35 years
20. Sri P.R.L.Sastry S/o Not known,
Aged about 34 years
21. Sri D.V.D.S.prasad S/o Not known,
Aged about 34 years.
22. Sri L.Sudhish Mitra,
S/o Not known,
Aged about 36 years.
23. S.H.A.Qureshi,
S/o Not known, Aged about 34 years
24. Sri M.Makatlal S/o Not known,
Aged about 39 years.
25. Sri V.V.Suresh S/o Not known,
Aged about 34 years
26. Sri C.Rangachary S/o Not known,
Aged about 33 years

27. ~~Sri Babu Rao R. Patil,~~
~~Aged 45 years, S/o Not known,~~
~~Statistical Assistant~~
28. K. Malleshwar Rao,
Aged 34 years, S/o Not known
Statistical Assistant
29. Sri P. L. N. Sarma,
Aged 35 years S/o Not known,
Statistical Assistant.
30. Sri K. Surapu Naidu,
Aged 34 years S/o Not known
Statistical Assistant.
31. Sri M. Sudhakar aged 34 years,
S/o Not known,
Statistical Assistant.
32. Sri A. Anjaneyulu, Aged 35 years,
S/o Not known,
Statistical Assistant.
33. Sri M. Krishna Sai, Aged 33 years,
S/o Not known, Statistical Assistant
34. Sri P. Sudhakar Babu, Aged 33 years,
S/o Not known, Statistical Assistant
35. Sri R. Madhusudhan Rao,
Aged 34 years, S/o Not known
Statistical Assistant
36. Smt. P. Lakshmi, Aged 34 years,
Husband's name not known,
Statistical Assistant.
37. Sri N. Vijaya Babu, Aged 32 years,
Father's name not known,
Statistical Assistant.
38. Sri P. Gopal, Aged 38 years,
Father's name not known,
Statistical Assistant.
39. Sri D. Ramesh, aged 32 years,
Father's name not known,
Statistical Assistant.
40. Sri D. S. R. Murthy, aged 35 years,
Father's name not known,
Statistical Assistant.
41. Sri N. Ramesh aged 36 years,
Father's name not known
Statistical Assistant.

Sri. A. C. Thirupattu
Aged 32 years. Father name not known
Statistical Assistant

42. Sri D.Seshagiri Rao, Aged 36 years,
Father's name now known,
Statistical Assistant.
43. Sri M.N.V.S.V.Prasad,
Aged 35 years,
Father's name not known,
Statistical Assistant.
44. Sri B.Krishna Mohan,
Aged 37 years,
Father's name not known,
Statistical Assistant.
- ~~45. Sri R.C.Thirupalu,
Aged 32 years,
Father's name not known,
Statistical Assistant~~
- ~~46. Sri S.Subba Rao,
Aged 48 years,
Father's name not known,
Statistical Assistant.~~

Respondents

Respondents & 5 44 are working as Respondents

Statistical Assistants in the O/o the Director of Census operations

DETAILS OF APPLICATION: A.P., Hyd.

1. PARTICULARS OF THE ORDER AGAINST WHICH APPLICATION IS MADE:-

The applicants are questioning the legality and validity of the action of the Official respondents in denying the benefit of adhoc service for the purpose of regularisation and seniority and are aggrieved by the said action and the consequential loss of placing in the seniority list in proceeding No.A 23011/2/91-Estt(Camp) dated: 14-2-1992 and having been pushed down below the unofficial respondents.

2. JURISDICTION OF THE TRIBUNAL:

The applicant states that the subject matter of the above O.A. is amenable to the Jurisdiction of this Hon'ble Tribunal as envisaged under section 14 of the Administrative Tribunal Act, 1985 (Act 13 of 1985).

3. LIMITATION:

The applicant declares that the above application is well within the period of Limitation as provided in Section 21 of the Administrative Tribunals Act, 1985 (Act 13 of 1985) as what is challenged in the above O.A. is the Impugned proceedings dated: 14-2-1992.

4. FACTS OF THE CASE:

- a) The first applicant was appointed as Asst. Compiler with effect from 4-1-1980 on adhoc basis having been sponsored by Employment Exchange ~~retrospectively~~ and her services as Asst. Compiler are regularised retrospectively with effect from 4-1-1980 vide proceedings No. A.12031/1/85-Estt of the Deputy Director of Census Operations dated: 8-2-1989. While working as Asst. Compiler the applicant was promoted as Computer with effect from 12-11-1980. The applicant's services as Computer were regularised with effect from 6-8-1990 vide proceedings No. A 12027/1/76-Estt (Camp) of the Office of the Director of Census Operations, Hyderabad dated: 9-1-1991. The applicant was further promoted on adhoc basis as Statistical Assistant w.e. from 1-4-1991 and is working in the said category.
- b) The second applicant was sponsored by the Employment Exchange for the post of Asst. Compiler in the year, 1980 and the second applicant was appointed on adhoc basis with effect from 17-4-1980. The second applicant was further promoted as Computer on adhoc basis with effect from 12-11-1980. The second applicant's services as Asst. Compiler were regularised retrospectively with effect from 17-4-1980 vide

proceedings No.A 12031/1/85-Estt of the Deputy Director of Census Operations Office of the Director of Census Operations, A.P.Hyderabad dated: 8-2-1989. The applicant's services as Computer are regularised with effect from 6-8-1990 vide proceedings No.A/12027/1/76-Estt of the Director of Census Operations, A.P. Hyderabad dated: 9-1-1991. ^(Annexure-E) The applicant was further promoted as Statistical Assistant on adhoc basis with effect from 1-4-1991. The second applicant is working in the said post.

c) The applicant's were initially appointed as Asst. Compilers through direct recruitment from the open market having been sponsored by the Employment Exchange and after undergoing a process of Selection and though the order of appointment says as temporary and adhoc, the said appointment must be deemed to have been a regular one. However, the 3rd respondent regularised the services of the applicants as Assistant Compilers retrospectively from the date of initial appointment vide orders dated: 8-2-1989. The applicants and several others were promoted as Computers on adhoc basis in the year, 1980. Except for the applicants the services of all the other persons who were promoted on adhoc basis as Computers along with the applicants were regularised with effect from 12-9-1983. However, for the reasons ~~not~~ best known to the Official respondents the services of the applicants as Computers were not regularised along with other similarly situated persons and the services of the applicants as Computers were regularised only with effect from 6-8-1990 vide proceeding of the 2nd respondent dated: 9-1-1991.

d) The applicants were promoted on adhoc basis as Computers in the year, 1980. At the time of their promotion the rules governing the service conditions of the post of Computers were the 1979 rules entitled the Office of the Director of Census Operations, A.P (Group C and Group D posts) Recruitment (Amendment) Rules, 1979. According to the 1979 Rules the method of recruitment to the post of Computers is i) 75% by way of promotion from out of the eligible Assistant Computers and ii) 25% by transfer from the category of U.D.C. The eligibility for promotion is 3 years regular service as Assistant Computer. No direct recruitment is contemplated for the post of Computers. While this being the legal position, the respondents recruited several persons through direct recruitment from the open market on adhoc basis in the year, 1981. These emergency direct recruitee computers CONTINUED on adhoc basis for a long time. In the year, 1984, the president of India in exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, framed new set of rules regulating the method of recruitment to the posts of Computers of the Offices of the Directors of Census Operations in the States and other Offices. The rules are titled as the Office of the Registrar General, India and ex-officio Census Commissioner of India and the Offices of the Director of Census Operations in States and Union territories (Computer) Recruitment Rules, 1984. These rules were issued in supersession of all the existing rules on the subject. Rule 4 read with Schedule of the said rules prescribe method of recruitment and qualifications. According to the schedule appended to the rules the method of recruitment is by Promotion from the category of Assistant compilor

failing which by transfer on deputation/ transfer and failing both by direct recruitment. It can therefore, be seen that since 1979 the direct recruitment is not a mode of appointment to the post of Computers in the Office of the 3rd respondent and according to 1984 rules direct recruitment can be resorted to only when the other two modes of recruitment are not available. The applicants submit that as per the 1979 Rules, the applicants have completed the requisite service of 3 years to be eligible for promotion as Computers by 4-1-1983., and 17-4-1983 respectively and were fully qualified and eligible for promotion as Computers from the said dates. It is further submitted as with regard to other promoted adhoc Computers their services were regularised as Computers in the year, 1983 and 1984 on completion of three years of regular service in the lower grade. This benefit is denied to the applicants.

e) It is further submitted that the 2nd respondent had published a seniority list of Computers (Group C) working as on 1-5-1988 in his proceedings No.A 23011/1/84-Estt dated: 3-5-1988. While updating the seniority list the names of the applicants were added at S.Nos 84 and 85 of the said list.
(Annexure C)

f) While so, some of the emergency direct recruits Computers filed O.A. 108/90 in this Hon'ble Tribunal seeking for regularisation of their services from the date of their initial appointment with all consequential benefits including the seniority. The Hon'ble Tribunal by its Judgement dated: 4-12-1990 allowed the O.A. directing the respondents to regularise the services of the applicants therein from the date

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of their initial appointment and to confer on them all consequential benefits such as Seniority etc. The applicants are not parties to the above O.A. Some more O.A.s were filed by other adhoc direct recruits and they were also allowed following the above judgement. (Annexure - B)

g) In compliance of the orders of the Hon'ble Tribunal dated: ~~4-12-1990~~, the III respondent regularised the services of the emergency direct recruitee computers from the date of their initial appointment vide his Office proceedings No.C. 18013/1/90-Estt dated: 6-3-1991 and C.1801/3/91-Estt dated: 9-10-1991. (Annexure A and B) Consequent to their regularisation a fresh provisional seniority list of officials in the grade of computer and in the grade of Assistant Compiler as on 1-2-1992 is circulated in the III respondent proceedings No.A.23011/2/91-Estt(Camp) dated: 14-2-1992, in supersession of all earlier seniority lists. (Annexure - F) In view of their retrospective regularisation of services of Emergency direct recruitee Computers from the date of their initial appointment, all of them were shown above the applicants. It is relevant to note that the 3rd respondent had notified a seniority list of Officers working as Computers and Assistant Compilers in his proceeding No. A.23011/1/84-Estt dated: 30-4-1984 and the same is updated vide proceedings of even number dated: 3-5-1988 of the officials in the grade of computers (Group-C) working as on 1-5-1988. (Annexure - C) The names of adhoc Computers were not shown in the above list. The names of applicants were shown at x's Serial numbers 84 and 85. In the revised seniority list the applicants are shown at S.No.59 and 60 and for not counting the adhoc service as Computers for the purpose of regularisation and seniority.

Aggrieved by the said revision of seniority as Computer for the purpose of regularisation and Seniority all the applicants have represented to the III respondent not to alter their ^(Annexures G and H) Original seniority. The applicants have also taken a specific plea that their adhoc service prior to their regularisation as Computers should also be counted for the purpose of fixation of Seniority. It is stated that the direct recruitee adhoc Computers who were appointed after their promotion as Computers and who were appointed contrary to the service Rules are given the benefit of entire adhoc service and were regularised from the date of initial appointment whereas they were denied the same benefit. The applicants have laid emphasis on the letter No.18/18/90-Ad.IV dated: 13-3-1991 of the Registrar General, India and the Judgements of the Supreme Court of India in support of their contention for counting the adhoc service. The representations of the applicants are rejected by the III respondent in his proceedings No.A 23011/ ^(Annexure - J) 2/91-Estt(Camp) dated: 24-7-1992. It is stated that in view of the Judgement of this Hon'ble Tribunal the seniority of the direct recruitees is fixed above these applicants and it is further stated that in view of the Clarification issued by the 2nd respondent, the applicants are not entitled for counting of adhoc service for fixation of seniority.

h) It is respectfully submitted that the retrospective regularisation of services of direct recruitee computers from the date of their initial appointment over and above the applicants is highly arbitrary and illegal.

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i) The applicant is working as Statistical Assistant on adhoc basis with effect from 1-4-1991 and in view the retrospective regularisation of services of respondents 4 to 44 and consequential seniority assigned to them retrospectively the applicants may be reverted to the post of Computer, and when a direction is issued to continue the applicants as Statistical Assistant, the applicants would suffer irreparable loss and hardship.

5. GROUND FOR RELIEF WITH LEGAL PROVISIONS:-

- a) The retrospective regularisation of services of adhoc computers from the date of their initial appointment and placing them over and above the applicants in the seniority and not extending the same benefit to the applicants is wholly illegal, arbitrary and violative of Articles 14 and 16 of the Constitution of India.
- b) The adhoc appointments to the post of Computers by way of direct recruitment was made in violation of the rules as existing on that date and even according to the present rules the direct recruitment can be resorted to only when no eligible candidate is available in the lower category for appointment by deputation. Therefore, this illegal appointments cannot be ratified by subsequent regularisation. In I.N.Nanjundappa Vs T.Thimmaiah AIR 1972 SC 1767, the Supreme Court has held as follows:-

" If the appointment itself is in infraction of the rules or if it is in violation of provisions of the Constitution, illegality cannot be regularised".

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c) The retrospective regularisation of services of adhoc appointees from the date of initial appointment without notice or opportunity to the regular employees is wholly illegal and arbitrary. That is more so when their seniority is affected by such retrospective regularisation.

d) It is highly arbitrary and Unconstitutional to count adhoc service to one set of people and deny the same to others like the applicants. This is more so when clear instructions are issued by the second respondent in his Letter No. 18/18/90-Ad.IV dated: 13-3-1991 to count the adhoc service also.

e). The Judgement and directions of this Hon'ble Tribunal dated: 4-12-1990 in O.A. 108/90 are not binding on the applicants in as much as the applicants are not parties to the above case. It is settled law that a decision effecting the rights of persons without ~~having~~ hearing them cannot be enforced against them. In the decisions reported in 1975 (2) ANWR 300, AIR 1990 SC 1354 (Paras 3,5 and 6) AIR 1974 SC 1471 at 1478 para 15 and also at page 1479 (Para 18) add AIR 1964 SC 40, the principle laid down is that no one shall be condemned unheard and that a decision given without having is a nullity.

f) Any other grounds urged during the course of the arguments with the permission of this Hon'ble Tribunal.

g) The applicant were fully qualified and eligible for regular appointment. However, for the reasons best known to the

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~~esstest~~ Official respondents their regularisation is held up for a long time and is being given effect to only prospectively.

h) In the conspectus of facts and circumstances of the case though the Official respondents have stated the promotion of applicants as Computers as on adhoc basis the said promotions be treated as a regular promotion. Otherwise, the said promotion would be regularised atleast from the date of completion of three years prescribed service in the lower grade i.e. as Assistant compiler.

6. DETAILS OF REMEDIES EXHAUSTED:-

The applicants had represented against revision of their seniority and placing respondents 4 to 44 above the applicants in the seniority list dated: 14-2-1992 and also sought for counting of adhoc service for the purpose of their seniority and the representation are rejected vide Memo.No.23011/2/91-Estt(Camp) dated: 24-7-1992 by the III respondent in consultation with the 1st respondent. The applicants have no other alternative except to invoke the jurisdiction of this Hon'ble Tribunal.

7. MATTER NOT PENDING WITH ANY OTHER COURT:-

The applicant declares that he has not filed any application, writ petition or Suit regarding the same subject matter and no application, writ petition or Suit is pending before any other Court or Tribunal regarding the same subject matter.

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8. MAIN RELIEF:-

It is therefore prayed that this Hon'ble Tribunal in the interest of justice be pleased to call for the records relating to and connected with Memo.No.23011/2/91-Estt(Camp) dated: 24-7-1992 of the III respondent quash or set aside the same as arbitrary and unconstitutional and consequently to direct the Official respondents to count the adhoc service rendered by the applicants as Computers prior to their regularisation for the purpose of seniority and antecedent benefits and to direct the respondents to confer the seniority to the applicants over and above respondents 4 to 44 ^{in the senority list dt 14-2-1992 of Computers} and pass such other order or orders as may be deemed fit and proper in the circumstances of the case.

9. INTERIM RELIEF:-

It is further prays that this Hon'ble Tribunal in the interest of justice be pleased to direct the official respondents to continue the applicants as Statistical Assistants pending disposal of the O.A. and pass such other order or orders as may be deemed fit and proper in the circumstances of the case.

10. Particulars of the Postal Order in respect of Application fee:-

- i) Number of Indian postal order: 804 83041484 15 4628 577126018
 ii) Name of the Issuing post Office: 6 777 613 92892 804 6227927
 iii) Date of postal order: 29/11/92
 iv) Post Office at which payable: 50/- 25
 195/25

11. Details of Index:- An index in duplicate containing the details of documents to be quoted upon is enclosed.

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42- VERIFICATION:-

We, the below signed applicants N.Sita Kumari W/o K.Basa-
va Rao aged, 35 years, Statistical Assistant, S.Khader Vali
S/o S.Mohiuddin Sahib, Aged 34 years, Statistical Assistant,
Office of the Regional Deputy Director of Census Operations,
Region II, Moulali, O/O Director of Census Operations, Somaji--
guda, Hyderabad respectively, do hereby verify that the conten-
ts from 1 to 12 are true to our personal knowledge and belief
and that we are not suppressed any material facts.

Hyderabad

✓ N. Sita Kumari
(N. SITA KUMARI)

dt: 30-12-1992

✓ S. Khader Vali
(S. KHADER VALI)

(Signature of the Applicants)

To

The Registrar,
Central Administrative Tribunal,
Hyderabad Bench at Hyderabad.

y. L.

(Counsel for Applicant)