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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH

O.A. 68/99

Date of decision:

23-10-2000

Between:

M. Hanuma Naik

.. Applicant

A N D

1. The Registrar General of India,  
Ministry of Home Affairs,  
Govt. of India, 2/A. Mansing Road,  
New Delhi.
  2. The Regional Director of Census operation  
A.P. Ministry of Home Affairs,  
Govt. of India,  
Hyderabad.
  3. Ramsurath,  
Asstt. Director of Census Operations,  
C/o. Director of Census Operations,  
Lucknow, Uttar Pradesh.
  4. Jaswantlal,  
Asstt. Director of Census Operation,  
C/o. Director of Census Operation,  
Union Territory,  
Chandigarh.
  5. Smt. V.R. Khanna,  
Asstt. Director of Census operations,  
C/o. O.R.G.I.
  6. Dilip Kumar Dey,  
Asstt. Director of Census Operations,  
C/o. Director of Census Operation,  
Guwahati,  
Assam.
- ... Respondents

Counsel for the applicant : Mr. P. Kishore Rao

Counsel for the respondents: Mr. B.N. Sharma for Mr. V. Bhimanna  
for official respondents

Coram:

Hon. Shri R. Rangarajan, Member (A)

Hon. Shri B.S. Jai Parameshwar, Member (J)

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(Per Hon. Shri B.S. Jai Parameshwar, Member(J)

Heard Mr. P.Naveen Rao for Mr. P.Kishore Rao  
learned counsel for the applicant and Mr. B.N.Sharma  
for Mr. V. Bhimanna, learned counsel for the  
official respondents. Notice issued to private  
**Served.**  
respondents 3 to 6. / Called absent.

2. At the time of hearing the Joint Director,  
New Delhi was present with relevant record. Perused  
the same.
3. The applicant herein was initially appointed  
as Asstt. Compiler w.e.f. 1-4-1968. He was promoted  
as Computer w.e.f. 28-4-1970, as Statistical Assistant  
w.e.f. 16-9-1976, as Tabulation Officer on adhoc  
basis in January, 1980 and as Tabulation Officer on  
regular basis w.e.f. 1-1-1984. He was promoted as  
Asstt. Director(Technical) on adhoc basis w.e.f.  
10-10-1991. He was regularly promoted as Asstt.  
Director w.e.f. 31-3-1997.
4. The respondents published a provisional  
seniority list of Asstt. Directors(Technical) on  
22-12-1997. In the said seniority list the name  
of the applicant was shown at Sr. No. 57.
5. Aggrieved by his placement at Sr.No.57 in  
the provisional seniority list the applicant submitted  
a representation to the respondent No.1 on 28-12-1997.

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6. The Respondent No.1 by his letter dt.20-7-98  
(Annexure A-IX page 34) informed the applicant as under:

"The representation dated 28-12-97 submitted by Sh.Hanuma Naik, ADCO(T) has been considered. In this regard he is informed that he was promoted to the post of ADCO(T) on regular basis as per the recommendations of the DPC held on 3rd & 4th February, 1997. In the earlier DPCs his name does not appear in the normal as well as extended zone of consideration and as such he could not be promoted to the post of ADCO(T) on regular basis. Shri R.R. Meena(ST) whose name is appearing dated SlNo.37 of seniority list of ADCO(T) is a direct recruit ADCO(T) and he was not appointed by promotion. As regards the promotion of Smt. B. Rajyalakshmi (SC) he is informed that as per eligibility cum seniority list of Investigators as on 1-4-91, she was senior to him and as per the recommendations of the DPC was promoted to the post of ADCO(T).

Further the period of the adhoc service rendered by him in the post of ADCO(T) is not to be counted for the purpose of seniority in the grade of ADCO(T). He was appointed to the post of ADCO(T) on regular basis w.e.f. 31-3-97 and has been placed at an appropriate place in the seniority list of ADCO(T) as on 1-11-97. "

7. By proceedings No.2/5/97-Ad.III dt. 21-7-1998  
(Annexure A-X page 35) the seniority list of Asstt. Director(Technical) as on 1-11-1997 was finalised.

8. The applicant submits that he is governed by the Assistant Director of Census Operations(Technical) Recruitment Rules, 1976(Annexure A-I page 11 to the OA.) He submits that the post of Asstt. Director is to be filled by the <sup>method</sup> ~~method~~ of promotion to the extent of 75%

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and by direct recruitment through UPSC to the extent of 25% of the vacancies. The feeder category for the post of Asstt. Director is the Tabulation Officer. He submits that the total cadre strength of Asstt. Director is 150. On that basis he submits that approximately 110 posts have to be reserved against promotion quota and considering the rule of reservation for the candidates belonging to SC & ST community atleast 11 posts are to be earmarked for the ST category. The applicant belongs to ST community. Out of 11 posts reserved for ST community he submits that 8 posts are to be earmarked against promotion quota. The minimum requirement for promotion to the post of Asstt. Director is that a Tabulation Officer must complete 5 years of service to acquire eligibility. Thus the applicant submits that he was promoted to the post of Tabulation Officer in January, 1980 and was regularised in the said category w.e.f. 1-1-1984. Thus he submits that he had completed the minimum qualifying years of service in January, 1985 if his adhoc service is counted or in January '89 otherwise. Thus he submits that he was fully eligible for consideration for promotion to the post of Asstt. Director by January '89.


9. According to him during 1991 several promotions were made to the category of Asstt. Director wherein he was also promoted as per his turn of seniority and

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as a ST candidate. However, the said promotion was on adhoc basis only on the ground that it is intended pending recruitment through <sup>the</sup> UPSC. He further submits that by proceedings dt. 30-8-1994 several officers <sup>who</sup> were promoted on adhoc basis in the year 1991 along with him were regularised. He cites an ~~instance~~ of one Mr. S. Kispotta who also belonged to ST community. At the time of regularisation during August, 1994 he was left out.

10. The applicant submits that then he made a representation dt. 26-9-94 seeking regularisation of his services and sent reminders thereafter. However, his representations for regularisation evoked no response.

11. On the basis of the provisional seniority list dt. 22-12-1997 he was placed at Sl.No.57. Against his placement he submitted a representation and the said representation has been replied by the respondent by the impugned letter dt. 20-7-1998 (Annexure A-IX page 34 to the OA) He submits that he was not claiming seniority over Smt.B. Rajyalaxmi who was senior to him and was promoted against SC quota and also over Mr. R.R.Meena who was shown at Sr.No.37 as he was appointed against direct recruitment quota. He submits that he should have been considered for regularisation as he was promoted to the post of Asstt. Director on adhoc basis w.e.f. October, 1991 and should have been regularised along with those



officers on 30-8-94. This aspect has not been considered by the respondents in their impugned letter dt. 20-7-98.

12. He <sup>has</sup> challenged the letter dt. 20-7-98 on the following grounds :

- (a) The action of the respondents in not considering his claim for regularisation of services w.e.f. 10-10-1991 as per the <sup>the reservation rules for</sup> reservation rules is against <sup>the</sup> the ST community;
- (b) The respondents failed in their obligations to comply with the rules of reservation and denied the claim for promotion as Asstt. Director on regular basis after January, 1989;
- (c) The respondents issued two advertisements in December, 1993 and April, 1994 for filling up the post of Asstt. Director by direct recruitment wherein 39 + 6 posts respectively were notified. In the first advertisement 3 posts and in the second advertisement 4 posts were earmarked for the ST candidates. He submits that if these 45 posts were notified against the 25% quota and the 7 posts of ST were notified against 25% quota then there would have been large number of vacancies earmarked <sup>for</sup> for the ST candidates. Thus as on the date of regularisation of service of other Asstt. Directors by proceedings dt. 30-8-94 there were vacancies earmarked for the candidates belonged to ST Communities and

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thus his services could have been regularised along with others by the proceedings dt. 30-8-1994. The contention of the respondents that he had not come up as per his seniority and turn for regular promotion either in 1991 or in 1994 is contrary to the records and the rule of reservation.

- (d) He submits that as there was a vacancy earmarked for ST candidate and as he was eligible and qualified to be promoted on regular basis as on 10-10-1991, though his promotion was treated as temporary or adhoc such adhoc/temporary services was continued un-interruptedly and resulted in regularisation of service by an order issued in 1997 and thus a vacancy earmarked for ST candidate remained unfilled as on 10-10-1991 and the promotion of the applicant from the date be treated as a regular promotion and thus he is entitled to count the entire service as Asstt. Director right from 10-10-91 for the purpose of seniority in the category of Asstt. Director. This particular aspect was raised by him in his representation and the same has not been properly answered by the respondents.
- (e) Thus his placement at Sr.No.57 in the provisional seniority list dt. 22-12-97 is arbitrary, illegal and unconstitutional. That, for all purposes he shall be deemed to have been promoted on

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regular basis as Asstt. Director w.e.f. 10.10.1991 and accordingly his position must be properly shown in the seniority list of Asstt. Directors.

(f) The applicant submits that the persons shown at Sl. No. 10 to 12 are impleaded in the application in a representative capacity as he is seeking a placement as per rule of reservation and roster point somewhere between Sl. No. 9, 10 and 11 being SC candidates. The applicant is also seeking to implead OC candidates shown at Sl. No. 12 and 13 in the representative capacity; and

(g) Thus he submits that in all probability, he can be placed around Sl. No. 9 and thus private respondents are impleaded in a representative capacity.


12(a). The applicant has filed this application for the following reliefs :-

(i) To call for the records relating to and connected with the office memorandum no. 2/5/97-Ad. III dated 20.7.1998 and office memorandum no. 2/5/97-Ad. III dated 21.7.1998 of the 1st respondent and declare the same as illegal, arbitrary and unconstitutional.

(ii) To declare that the applicant is entitled to fix his seniority in the seniority list of Asstt. Directors, communicated through office memorandum no. 2/5/97-Ad. III dated 21.7.1998 as per rule of reservation and roster points for ST candidates, if necessary, by declaring that the applicant is deemed to be promoted on regular basis w.e.f. 10.10.1991 as Asstt. Director, with all consequential benefits.


13. The respondents have filed reply dated 1.6.1999 on 11.6.1999. The applicant has filed rejoinder dated 31.10.1999. Alongwith M.A. 537/2000, the applicant filed additional rejoinder dated 2.7.2000 on 3.7.2000. The respondents filed reply to the rejoinder dated 27.8.2000 on 28.8.2000.

14. The respondents contend that certain vacancies against direct recruitment quota as well as promotion quota were available pending regular appointment by the DFC/UPSC and keeping in view exigencies of the work, ad-hoc appointments to the grade of Asstt. Director ( Technical )





were made during the year 1991. The period of ad-hoc service rendered by the officer in the higher grade is not counted for the purpose of seniority in the higher grade and this was clearly stipulated in the order of promotion. Further while making promotion on adhoc basis the aggregate vacancies as available were reckoned and accordingly the applicant was given the benefit of promotion to the cadre of Asstt. Director (Technical) on adhoc basis being Scheduled Tribe officer though he was quite junior in the all India seniority-cum- eligibility list as on 1-4-1991 (Annexure R-III). However, while making regular appointment the DPC made yearwise panel and appointments were made from among the eligible officers within the respective zone of consideration and for the purpose of reservation the zone of consideration could exceed only 5 times and in the DPC held in ~~June~~ June, 1994 the name of the applicant being lower in the all India eligibility-cum-seniority list of Investigators was not considered. In fact six reserved vacancies (2 for SC and 4 for ST) were available against promotion quota for different recruitment years between 1986 and 1993. However, there was not a single eligible SC/ST officer including the applicant available in the feeder cadre even in the extended zone of consideration. Therefore, those vacancies were temporarily diverted to the direct recruitment quota



as per the rules. The name of the applicant was considered and recommended for regular appointment in the cadre of Asstt. Director(Technical) by the DPC held in February 1997 against the vacancies for the year 1994-95 and accordingly he was promoted to the post of Asstt. Director (Technical) and in the seniority list of Asstt.Directors(Technical) his name was shown at Sr.No.57; that the seniority list dt. 22-12-97 was prepared as on 1-11-1997 and accordingly the applicant was placed at Sr.No.57 in accordance with his eligibility, seniority and rules. All the officers above the applicant were appointed prior to him or had been ranked senior to him by the DPC.

15. They submit that earlier there were 120 posts of Asstt. Director of Census Operation(Technical) in the organisation till 1994. After implementation of the work study report of SIU the total strength of Asstt. Directors was reduced to 113. The recruitment rules for the post of Asstt. Director(Technical) provides for promotion to 75% quota of vacancies from among the Investigator/Investigator(SS) with five years regular service in the respective grade and possessing atleast a degree of recognised university or equivalent with Statistics/Maths/Sociology or Anthropology as one of the subjects; that the rules provide for regular service, if any, rendered in the grade of Tabulation Officer, Senior Technical Assistant

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and STA(SS) in the grade of Investigator/Investigator(SS) will also be counted towards qualifying service for promotion. The remaining 25% of the posts were to be filled up by direct recruitment. Though the benefit of counting the regular service rendered by the official in the grade of Tabulation Officer/STA etc. towards the prescribed minimum qualifying service of five years for promotion to the grade of Asstt. Director(Technical) was given yet they have to be promoted first as Investigator/Investigator(SS) to become eligible for consideration to the post of Asstt. Director (Technical). The assumption of the applicant that the post has to be filled up on the basis of all India seniority of officers working in the cadre of Tabulation Officer is not correct. It is only while finalising the seniority list of the Investigator/ Investigator(SS) that the regular service rendered in the grade of Tabulation Officer is taken into consideration while determining the interse seniority and also the placement in the All India eligibility-cum-seniority list. The post of Investigator/ Investigator(SS) forms decentralised cadre each DCO in the States/Union Territories and office of the Registrar General of India having its own cadre. While the post of Asstt. Director(Technical) is having a centralised cadre on all India basis and for promotion to the post of AD(Technical) a common seniority-cum-eligibility list of all eligible Investigator/Investigator(SS)

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is drawn up for consideration of the DPC.

Accordingly the final seniority-cum-eligibility list of Investigator/Investigator(SS) in the office of the Registrar General and the Directorates of Census Operation in the States/Union Territories as on 1-4-1991 was prepared and the applicant was shown at Sr.No. 155(Annexure R-III).

16. During 1994 there were 67 posts of Asstt. Director(Technical) vacant. Among them 39 posts were identified as belonging to direct recruitment quota and remaining 28 were required to be filled up by promotion as per the vacancy register and reservation roster maintained in the office. The yearwise breakup of 28 vacancies is as under :

YEARWISE VACANT AND RESERVATION POSITION

Year	Total vacancies	Break up of the vacancies		
		General	SC	ST
1986	1	-	1	-
1987	4	-	2	2
1989	6	5	1	-
1.1.90 to 31-3-91	12	9	2	1
1.4.91 to 31-3-92	1	1	-	-
1.4.92 to 31.3.93	4	2	1	1
	<u>28</u>	<u>17</u>	<u>7</u>	<u>4</u>

17. While preparing the proposal to fill up 28 vacancies yearwise in the grade of Asstt. Director (Technical) by promotion it was noticed that 2SC and 4 ST vacancies could not be filled up by promotion as the eligible SC/ST vandidates were not found found

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within the extended zone of consideration being quite low in the seniority cum-eligibility list of Investigator/Investigator(SS). Those reserved vacancies of Asstt. Director(Technical) were to be filled up by promotion by temporarily diverting towards direct recruitment quota as per the provisions envisaged in the Recruitment Rules and instructions envisaged in Department of Personnel and Training No.AB-14017/30/89 Estt.RR dt. 10-7-1990 (Annexure R-IV & V).

18. Out of 22 vacancies filled by promotion 5 vacancies were filled up by SC candidates. The applicant had rendered five years regular service for becoming eligible for promotion. But mere completion of qualifying service cannot be considered against the post unless he comes within the zone of consideration. The applicant did not even come in the extended zone of consideration against the five vacancies as his name in the all India eligibility-cum-seniority list appeared at Sr.No.155. Hence the applicant was not considered even though he fulfilled the eligibility criteria and qualifying service.

19. The representation dt. 26-9-1994 was received in the office through a Member of Parliament and the matter was examined in greater detail and a reply was sent to the Member of Parliament as per the Annexure R-VII. The applicant again sent a representation dt. 28-12-1997 against the provisional seniority list

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dt. 22-12-97(as on 1-11-97) and a speaking reply was given to him by the impugned letter dt. 20-7-1998 (Annexure R-I). The services of an officer in the grade of Asstt. Director(Technical) can be regularised only when his name is recommended for promotion by the duly constituted DPC in the UPSC. Since applicant's name was not considered for promotion for the regular post of Asstt. Director(Technical) he being a very junior in the seniority-cum- eligibility list of Investigator/Investigator(SS) he could not have been promoted on regular basis earlier to February, 1997. The procedure followed is within the framework of the rules and the DOPT's instructions. The case made out by the applicant is not tenable. Mere completion of qualifying service for promotion does not automatically confer on the official a right for promotion unless he comes in the normal or extended zone of consideration and he was considered and recommended by the DPC. Accordingly the case of the applicant for regular promotion to the post of Asstt. Director(Technical) came up for consideration in the year 1997 and accordingly he was promoted regularly to the post of Asstt. Director(Technical) w.e.f. 31-3-97.

20. They submit that Sri R.R. Meena(ST) whose name appears at Sr.No.37 of the seniority list is a direct recruit Asstt. Director(Technical) and has been placed in the seniority list as per the merit provided by the UPSC.

21. As regards Smt. B. Rajya Lakshmi(SC) it is submitted that she is senior to the applicant and her name is appearing at Sr.No.110 whereas the name of the applicant is at Sr.No.155. The name of the applicant appeared in the extended zone of consideration for the vacancies of 1994-95 and he was promoted to the post of Asstt. Director(Technical) on regular basis as recommended by the DPC held in February, 1997. The claim of the applicant that he should have been promoted to the post of Asstt. Director(Technical) in October, 1991 is not a bonafide and he was not within the zone of consideration before the DPC met in February, 1997.

22. The applicant cannot claim regular promotion to the post of Asstt. Director(Technical) against reserved vacancies for the ST as his name was far below in the eligibility-cum- seniority list. They have not violated any of the recruitment rules or the constitutional obligation. As there is no provision to promote a person immediately on becoming eligible unless he comes within the zone of consideration including the extending zone. The ~~ad hoc~~ promotion was a benefit given to the officer in the exigencies of work though he was junior. In his adhoc promotion order it was clearly stated that the said promotion would not confer on him any claim for regular

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appointment in the grade of Asstt. Director(Technical) and the services rendered by the applicant as Asstt. Director (Tebhnical) on adhoc basis will not count for the purpose of seniority and eligibility for the next higher grade (Annexure R-IX). Therefore the applicant cannot claim regular promotion to the cadre of Asstt. Director(Technical) w.e.f. October, 1991.

23. During 1994 six vacancies earmarked for reserved quota (2 for SC and 4 for ST) could not be filled up by promotion as no eligible SC/ST official was not coming within the zone of consideration. They submit that upto July, 1997 the running reservation roster was in operation and the vacancies were identified on the basis of the vacancy register maintained for the purpose. As regards the promotion of Shri S.Kispotta he was very senior in the seniority-cum-eligibility list and his name was considered in the extended zone against the vacancies for the year 1985 and a review DPC convened in June, 1994 and accordingly he was promoted. Even though vacancies were available for the reserved community candidates no SC/ST official was within the zone of consideration. Hence he was not considered for promotion.

24. As regards issue of advertisement forfilling up vacancies through direct recruitment it was clear that those vacancies were backlog vacancies against direct recruitment quota. Those vacancies also included

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vacancies reserved for SC/ST communities in addition to the six vacancies which were diverted to the direct recruitment quota. Thus the diversion of vacancy from one mode to another mode of recruitment is permissible under the recruitment rules. Hence they have not ~~violated~~ committed any irregularity in this regard.

25. Accordingly the applicant has been placed at Sr.No.57 in the seniority list dt. 22-12-97. He has been given suitable reply to the representation by the impugned letter dt. 20-7-1998.


26. The applicant has filed rejoinder stating that the respondents have failed to adhere to the reservation rules; that he was eligible for promotion to the cadre of Asstt. Director(Technical) w.e.f. 11-5-1990; that vacancies reserved for STs have to be considered from among the candidates belonging to the said community; that the contention of the respondents that there was no candidate belonging to ST community in the zone of consideration from 1986 to 1993 is not correct; that when he was promoted on adhoc basis in the year 1991 he should have been considered from that date, that the averment made by the respondents in diverting the reserved category posts to the direct recruitment is contrary to the policy on reservation; that he is eligible to count the period of adhoc service in the cadre of Asstt. Director(Technical) w.e.f. 10-10-1991; that the respondents have applied different set of

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principles to Sri Kispotta and the same is arbitrary and illegal that he was eligible for consideration irrespective of his position in the general category.

27. Further he has filed additional rejoinder relying upon the eligibility-cum-seniority list of Investigating Officer/Investigator(SS) prepared as on 1-4-91. The said list is dt. 19-3-93. Relying on the said list the applicant submits that he was shown at Sr.No. 151 and 19 officers above him in the said list were retired or left department or ~~dead~~. Thus he was at Sr.No.132 and as per the extended zone of consideration the last number would be 140 and therefore he was within the zone of consideration; that between March,1993 and February,1994 there were further reduction in the eligibility list hence the contention of the respondents that he was not within the zone of consideration for considering his claim in the DPC held in February,1994 is not correct and that his case <sup>is</sup> have been deliberately excluded from consideration by the DPC held in February,1994.

28. The respondents have filed reply statement contending that the final seniority-cum-eligibility list as on 1-4-1991 was sent to the UPSC as per the DPC proforma particulars; that in the said seniority list, names of four officials were included in compliance with the directions of the C.A. T. Bangalore Bench in



O.A. 447/92; that the applicant's name was shown at Sr.No. 155 in the final eligibility-list placed before the DPC; that the DPC was not convened between 87 and 93 that whenever the DPC meets after a number of years it has to follow the following procedures :

- (a) Determine the number of vacancies that arose in each of the previous years and in the current year separately;
- (b) consider in respect of each of the years those officers only who would be within the field of choice with reference to the vacancies of each year starting with the earliest year onwards;
- (c) prepare a select list by placing the select list of earlier years above the one for the next year and so on;
- (d) while evaluating the merit of the officers, the scrutiny of the records should be limited to the records that would have been available had the DPC met at the appropriate time.

As per the rule position <sup>the</sup> for ~~four~~ vacancies available during the year 1987 the normal zone of consideration is 12 and in respect of filling the reserved vacancies the extended zone was 20. Likewise for 12 vacancies available in the year 1990-91 the zone of consideration to fill up the general vacancies available in the year 28 and the extended zone was upto 60. The DPC ~~met~~ made yearwise panel, appointments were made among the eligible officers within the respective zone of consideration that in the DPC held in February '94 the vacancies as detailed above had occurred and the total 28 vacancies which fell to different years could not be clubbed together for the purpose of determining the

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zone of consideration. Therefore the contention of the applicant in this behalf is not correct that the zone of consideration is determined yearwise depending upon the number of vacancies available in each year that the minutes of the DPC held in February '94 and 1997 will be produced at the time of hearing.

29. Thus they submit that the applicant is not eligible for any of the reliefs claimed in the OA.

30. After hearing learned counsel for the parties and after going through the pleadings the following points arise for our determination:

- (a) Whether the applicant is eligible to count the adhoc service as Asstt. Director(Technical) from 10-10-91 to 30-3-97 for purpose of regularisation/seniority ?
- (b) Whether the applicant was eligible for regularisation as Asstt. Director(Technical) by proceedings dt. 30-8-1994 ?
- (c) Whether the respondents have contravened the rule in the matter of regularisation in the cadre of Asstt. Director(Technical); ?
- (d) Whether the placement of the applicant in the seniority list of Asstt. Director(Technical) as on 1-1-97 at Sr.No.57 calls for interference ?
- (e) To what order ?

31. Findings:

- (a) No
- (b) No
- (c) No
- (d) No
- (e) as under :

Reasons:

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Point (a)

Facts relating to the applicant are not at all

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in dispute." The applicant was promoted to the cadre of Asstt. Director(Technical) on adhoc basis w.e.f. 10-10-1991. The letter of appointment dt. 10-10-91 is at Annexure A-II (page 16 to the OA). The condition stipulated in paragraph-3 is reproduced below :

"3. The adhoc appointment in the grade of Assistant Director of Census Operations(Technical) will not confer on them any claim for regular appointment in the grade and the service rendered by them on adhoc basis will not count for the purpose of seniority and for eligibility for the next higher grade. "

33. His case for regularisation was not considered during the year 1994.

34. However, the case of the applicant for regularisation in the cadre of Asstt. Director (Technical) was considered by the DPC met in February, 1997 and was regularly promoted to the said cadre w.e.f. 31-3-97.

35. The applicant belongs to ST community and submits that the respondent authorities have not followed the rule of reservation in the matter of consideration of his case for promotion. He submits that when he was promoted on adhoc basis w.e.f. 10-10-91 then the department had a post of Asstt. Director(T) meant for a reserved community and therefore they should have considered his case for regularisation as w.e.f. the date of his initial appointment on adhoc basis i.e. from 10-10-1991.

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36. Thus, he submits that his placement in the seniority list dated 22.12.1997 issued as on 1.11.1997 at serial no.57 is not correct. He had cited instances of Shri R.R.Meena and Smt.B.Rajyalakshmi. However, the applicant submits that he is not claiming seniority over those persons. However, he is claiming seniority meant for ST candidates.

37. The respondents submit that the applicant was promoted on ad-hoc basis due to administrative exigencies in the year 1991. They further submit that at that time while <sup>making</sup> working, ad-hoc <sup>postings</sup> appointments were made on the aggregate vacancies available. Further, they submit that the applicant was far below in the seniority list even for considering him for posting on ad-hoc basis. Thus, they submit that the case of the applicant was considered for promotion on ad-hoc basis as he happened to be a ST candidate even though he was far below in the eligibility-cum-seniority list.

38. Thus they submit that the applicant is not entitled to count the ad-hoc service. In fact, the order dated 10.10.1991 clearly stipulates that ad-hoc service of the applicant, cannot be considered for the purpose of seniority. When the respondents categorically stated that the applicant was far more junior at the time he was considered for appointment on ad-hoc basis, the applicant has not disputed the said fact. Further, they specifically state that even though a candidate may become eligible by completing the requisite years of service, but promotion must be given only on the basis of eligibility. Mere completion of qualifying service is not the criteria for a person to be promoted. In that view of the matter, the applicant cannot claim his ad-hoc service between 10.10.1991 to 30.3.1997.

39. Hence, point (a) is answered against the applicant.

Points (b) & (c)

40. After the applicant was promoted to the cadre of ADCO (T) from 10.10.1991 for the first time, the DFC met in June, 1994. At that time, the case of the applicant was not considered. The applicant submits that he has made a representation on 26.9.1994.



However, the respondents submit that the said representation was made by a Member of Parliament and the Member of Parliament was given a suitable reply. Be that as it may, the respondents have given reasons as to why the case of the applicant could not be considered for regularisation during the DPC held in the month of June, 1994. In fact, they submit that between 1986 and 31.3.1993, the DPC had never met to consider the case of promotion ~~to the cadre of~~ <sup>to the cadre of</sup> ADCO (T). They have given the vacancy position ~~of the applicant to~~ <sup>as</sup> were available during each year. The DPC which met in June, 1994, considered the cases of 28 officers for regularisation. They submit that the applicant was not within the zone of consideration or in the extended zone of consideration to consider the case of the reserved community candidates. The applicant belongs to <sup>T</sup> SC Community. Further, they submit that 6 posts, 4 SC and 2 ST were diverted to the direct recruitment quota due to non-availability of reserved community officials within the zone of consideration. They submit that they did so in accordance with necessary rules and instructions of the DOPT contained in O.M. No. AB-14017/30/89-Estt. RR dated 10th July, 1990 (annexure-R/V to the reply). Thus, they justify the action taken by the respondents and explain the circumstances under which the case of the applicant could not be considered for regularisation in the DPC held in June, 1994. The respondents have produced the proceedings of the DPC.

41. It is their case that as per the seniority list/eligibility list of officers, the applicant stood at serial no. 155 and the extended zone of consideration for considering 28 posts was 140 and, therefore, he was not within the zone of consideration. Further, they have stated that as per the directions of the Bangalore Bench of CAT, 4 officers were added for consideration of the DPC and, therefore, the applicant was not within the zone of consideration.

42. The applicant compared his case with the case of one Mr. S. Kispotta. The respondents submit that Mr. S. Kispotta was considered against the vacancy of the year 1985. They submit



that the said Mr. Kispotta was at serial no. 134 of the eligibility list. He was promoted as per the recommendations of the DFC as per order dated 30.8.1994. Further, they submit that UPSC recommended his name in the place of candidates recommended by the DFC held on 7.9.1987 mentioned therein. Thus, they submit that the applicant cannot compare his case with Mr. S. Kispotta.

43. The applicant further attempted to compare his case with Smt. B. Rajyalakshmi, a SC candidate. The respondents submit that the said Rajyalakshmi was senior to the applicant in the eligibility list and she was within the zone of consideration as she belonged to the SC Community.

44. The applicant attempted to compare his case with Shri R.R. Meena, who was at serial no. 37. The respondents submit that the said official was a direct <sup>recruit</sup> ADCO (T) and, therefore, the applicant cannot compare his case with him.

45. Even though the applicant compared his case with these officials, in the rejoinder he specifically stated that he was not claiming seniority above these officers, but only <sup>stated that as</sup> a reserved community officer (ST) <sup>he</sup> should have been considered. His further theory is that when he was promoted on ad-hoc basis w.e.f. 10.10.1991, then for all intents and purposes, ~~when~~ a post for SC candidate was available and when he was continued uninterruptedly till 30.3.1997, he should be deemed to have been promoted regularly from 10.10.1991.

46. As per the recruitment rules, regularisation has to be done only on the recommendation of the DFC. Merely appointing on ad-hoc basis, cannot be considered as regular appointment. The respondents submit that though the applicant was far junior, due to administrative exigencies, in the year 1991, his case was considered and he was promoted as ADCO (T) on ad-hoc basis. Whether the applicant was far junior or not is not the point for consideration. The fact that the applicant was promoted in the year 1991 on ad-hoc basis and was continuing uninterruptedly till 30.3.1997, his case was considered in the DFC held in February, 1997 and accordingly the DFC recommended the case of



the applicant. He was promoted on regular basis w.e.f. 31.3.1997. Therefore, we are of the opinion that the respondent-authorities have not violated any reservation rules.

47. The applicant has not filed any rejoinder as to the various rule position and factual position made out by the respondents in their reply as well as in the additional reply. His main contention is that he being a ST officer, should have been given promotion while considering promotion to the cadre of ADCO (T).

48. We are unable to accept the said contention. Merely because he had become eligible for promotion to the cadre of ADCO (T) and he belonged to the ST Community, he cannot claim promotion out of turn. He has to wait for his seniority and on the basis of the recommendation made by DPC, he has to be considered for regularisation. Therefore, we do not find any violation of the rules by the respondent-authorities in ~~not~~ considering the case of the applicant for regularisation in the cadre of ADCO (T) in February, 1997 and regularising the applicant w.e.f. 31.3.1997.

49. For the reasons stated above, we hold points (b) and (c) against the applicant.

Point (d) -

50. In the seniority list completed as on 22.10.1997, the applicant was shown at serial no.57. The seniority list was published as on 1.11.1997. The respondents took into consideration only the regular promotion recommended by the DPC. According to the respondents, the case of the applicant was considered for regularisation in the DPC held in February, 1997 and was recommended. Accordingly, he was regularly promoted as ADCO (T) w.e.f. 31.3.1997.

51. As already observed, there is some mistake in the date of entry into the cadre of Assistant Director of Census Operation (Tech. against the name of the applicant. It is not in dispute that the applicant was promoted in the cadre w.e.f. 31.3.1997 on regular basis.

52. The respondents have clearly stated in their reply, the

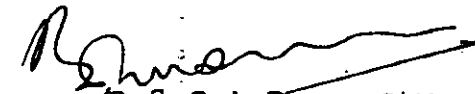
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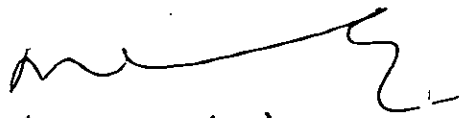
circumstances under which the case was considered and the applicant was placed at serial no. <sup>57</sup>26. We find no reason to disagree with the records produced by the respondents. The placement of the applicant at serial no. 57 is quite in order.

53. In that view of the matter, we find no merit in the O.A. and the O.A. is liable to be dismissed.

54. Accordingly, the O.A. is dismissed. No order is made as to costs.

55. The DPC proceedings and other connected records produced by the respondents have been perused and returned.

  
(B.S. Jai Parameshwar)  
Member (A)  
23.10.2000

  
(R. Rangarajan)  
Member (A)

DATED THE 23<sup>rd</sup> OCTOBER, 2000

MD / r.s.