

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH : JAIPUR

Date of Decision : 5-08-04

Original Application No.326/2003.

Om Prakash Badaya S/o Shri N. L. Badaya, aged about 45 years, r/o 503, Govind Rajaji Ka Rasta, Chandpole Bazar, Jaipur.

... Applicant.

v e r s u s

1. Union of India through the Registrar General, Ministry of Home Affairs, Government of India, 2-A, Man Singh Road, New Delhi 110 011.
2. The Director, Census Operations Rajasthan, 6-B, Jhalana Doongari, Jaipur.

... Respondents.

Mr. Anupam Agarwal proxy counsel for
Mr. Manish Bhandari, counsel for the applicant.
Mr. N. C. Goyal counsel for the respondents.

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Hon'ble Mr. M. L. Chauhan, Judicial Member.
Hon'ble Mr. A. K. Bhandari, Administrative Member.

: O R D E R :
(per Hon'ble Mr. M. L. Chauhan)

The applicant has filed this Original Application thereby praying for the following reliefs :-

"(i) by an appropriate order or direction, the impugned orders dated 6.5.2003 and 6.6.2003 (Annexure A/1 & A/2, respectively) may kindly be quashed and set aside.

(ii) to issue an appropriate order or direction, by which the respondents may kindly be commanded with a direction that the pay of the applicant should not be affected and no recovery should be made in pursuance to the impugned orders.

(iii) any other appropriate order or direction, which this Hon'ble Tribunal may deem just and proper in the facts and circumstances of the case, may also kindly be passed in favour of the applicant.

iv) Cost may also be awarded to the applicant."

2. The applicant was initially appointed as Assistant Compiler purely on temporary and ad hoc basis on which post he joined w.e.f. 05.05.1980 and subsequently confirmed vide order dated 26.05.1989. The applicant along with four other employees was promoted to the post of Computer purely on temporary and ad hoc basis, on which post they worked from 20.08.1990 to 28.02.1991. After completion of census work in 1991, the applicant along with seven other employees were reverted from the post of Computer to Assistant Compiler w.e.f. 31.12.1993 vide order dated 30.12.1993. This reversion order dated 30.12.1993 was challenged filing separate OAs which were registered as OA Nos 13/94, 14/94, 26/94 and 17/94 before this Tribunal. These Original Applications were decided by this Tribunal by a common order dated 24.01.1994, thereby allowing the OAs and the Tribunal did not agree with the explanation given by the respondents that 76 posts have been abolished and as such the reversion of the applicant was on account of that fact, as these posts were created temporarily in order to carry out the census work. The applicant who was also affected by the same order of reversion dated 30.12.1993 had also subsequently filed OA before this Tribunal which was registered as OA No.37/1994. The said OA was decided vide order dated 24.03.1994 along with another OA No.133/1994. Photo copy of the said order has been placed on record as Annexure R/2. From the perusal of the order dated 24.03.1994 passed by this Tribunal in earlier OA, it is clear that the OA was disposed of on the basis of statement made by the learned counsel for the parties that the matter is squarely covered by the decision rendered by this Tribunal in earlier OA NO.13/1994 alongwith other original applications which were disposed of on

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24.01.1994. Thus, the Tribunal also granted the same relief as was granted to Tara Chand Sharma i.e. the applicant in OA No.13/1994. Against the judgement of this Tribunal dated 24.01.1994, SLP was filed before the Hon'ble Supreme Court which was granted and subsequently Civil Appeal No.9572-75/1995 came to be registered. The said Civil Appeal was decided by the Apex Court vide order dated 19.10.1995 whereby the order passed by the Tribunal dated 24.01.1994 was quashed and set aside. The photo copy of the said judgement has been placed on record as Annexure R/3. The Hon'ble Supreme court has categorically observed that " - In any event, that fact of abolition of posts is now established by document produced before us, namely, the letter of Registrar General of India dated 30.11.1993 extracted above. In view of the established position that the posts temporarily created to which posts respondents were temporarily promoted having been abolished, the respondents cannot raise any objection for the consequential reversion orders. We answer the question posed in the beginning in the negative. Thus the common order passed by the Tribunal is set aside and the appeals are allowed." Since the judgement in OA No.13/1994 and three other matters decided by a common judgement dated 24.01.1994 was set aside by the Apex Court thereby justifying the reversion of the persons from the post of Computer to that of Assistant Compiler vide order dated 30.12.1993 and such reversion was justified on account of the abolition of posts, all the persons who were allowed to continue work against the post of Computer by virtue of decision rendered by this Tribunal in different OAs, the respondents issued impugned order dated 6.6.2003 thereby reverting the applicant to the post of Assistant Compiler w.e.f. 01.01.1994 and fixing his pay accordingly vide impugned order Annexure A/2 and also another memorandum dated 06.05.2003 thereby issuing seniority list of Assistant Compiler as on 01.01.1994. It is against these orders the applicant has filed this OA thereby praying for the aforesaid reliefs.

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3. Notice of this application was given to the respondents and they have filed the reply. In the reply, the respondents have stated that the impugned order Annexure A/1 and A/2 were issued persuant to the decision dated 19.10.1995 rendered by the Apex Court in Civil Appeal No.9572-75/1995, whereby the reversion of persons similarly situated to that of applicant vide order dated 30.12.1993 was justified. Since the applicant was also granted the relief on the basis of decision rendered in different OAs as in OA No.13/1994, Tara Chand, OA No.26/94 Smt. Asha Saxena, and two Ors. vs. Union of India & Ors., which were decided vide common order dated 24.01.1994 and the said decision has been quashed and set aside by the Hon'ble Apex Court, the applicant was liable to be reverted in view of the law laid down by the Apex Court.

4. We have heard the learned counsel for the parties and gone through the material placed on record.

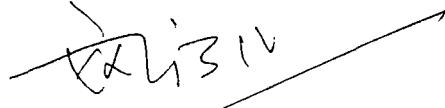
5. The fact that vide order dated 30.12.1993, 7 persons including the applicant were reverted from the post of Computer to that of Assistant Compiler and the reversion was effected solely on the ground that the post of Computer was created temporarily for the purpose of 1991 Census work and some posts were abolished, which resulted in the reversion of the 7 persons from the posts of Computer to that of Assistant compiler cannot be disputed. It is also not in dispute that against this common order of reversion different OAs were filed before this Tribunal. The first decision which was rendered by the Tribunal is dated 24.01.1994 whereby 4 OAs were allowed by this Tribunal thereby coming to the conclusion that the respondents have failed to establish the fact that the reversion of the applicants therein was on account of abolition of posts. As such the reversion of the

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applicants were set aside. The present applicant also subsequently filed OA No.37/1994. The same was decided on 24.03.1994 relying upon the judgement of this Tribunal dated 24.01.1994. SLP was filed against the judgement dated 24.01.1994. The said SLP was allowed and Civil Appeal arising out of the SLP was also allowed by the Hon'ble Supreme Court vide order dated 19.10.1995 thereby holding that the reversion of the respondents therein was on account of abolition of posts and this fact has now been established by the document produced by the Registrar General of India. In view of this finding given by the Apex Court, the respondents were justified in issuing the impugned order Anexure A/1 and A/2. Since the applicant is also beneficiary of the order dated 24.01.1994 and his OA was decided solely on the basis of the decision rendered by this Tribunal dated 24.01.1994 which was subsequently set aside by the Apex Court, as such, the applicant cannot be heard to say that since his case was not carried before the Supreme Court as such the judgement of Apex Court is not binding qua him. The matter on this point is no longer *res-integra*. It is settled position that when many persons are involved in a case it is not necessary to take all decision to the court. In the light of the decision of the Apex Court, the decision rendered by this Tribunal in the case of the applicant which is based on a decision which has been quashed by the Apex Court can no longer said to be a good law. This is the view which has been taken by the Apex Court in the case of Director of Settlements A.P. v. M. R. Apparao, AIR 2002 SC 1598, whereby the Apex Court has held that the decision of the High Court that was followed and subsequently reversed by the Supreme Court, right that has accrued to the party is lost as according to the Apex Court the law declared by the Supreme Court under Article 141 has binding effect on all the parties and no right can be based on a judgement which has been reversed by the Supreme Court. The ratio laid down by the Apex Court in the case of M. R. Apparao (supra) is squarely applicable to the facts of instant

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case. Accordingly we are of the view that this application is bereft of merit and is accordingly dismissed.


(A. K. BHANDARI)

MEMBER (A)


(M. L. CHAUHAN)

MEMBER (J)