

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.252 of 1998

And

Original Application No.253 of 1998

Date of decision: This the 8th day of June 1999

The Hon'ble Mr Justice D.N. Baruah, Vice-Chairman

The Hon'ble Mr G.L. Sanglyine, Administrative Member

I. O.A.No.252/98

1. Shri Joydeb Deb Barma,
Assistant Compiler,
Directorate of Census Operation,
Tripura, Agartala.
2. Smt Madhumita Choudhury,
Assistant Compiler,
Directorate of Census Operation,
Tripura, Agartala.

II. O.A.No.253/98

1. Shri Bidyut Das,
employed as Computer,
Directorate of Census Operation,
Tripura, Agartala.
2. Smt Uma Das,
employed as Computer,
Directorate of Census Operation,
Tripura, Agartala.

.....Applicants

By Advocates Mr S. Talapatra and Mr M. Chanda.

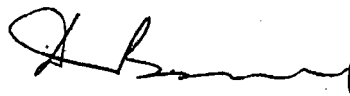
- versus -

1. The Union of India, represented by the
Registrar General, India,
Ministry of Home Affairs,
New Delhi.
2. The Director of Census Operation,
Ministry of Home Affairs,
Agartala, Tripura.

.....Respondents

By Advocate Mr B.C. Pathak, Addl. C.G.S.C.

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O R D E R

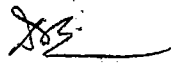
BARUAH.J. (V.C.)

These two applications involve common questions of law and similar facts. Therefore, we propose to dispose of both the applications by a common order.

2. The applicants Shri Joydeb Deb Barma and Smt Madhumita Choudhury in original application No.252/98 were appointed Assistant Compiler in the Directorate of Census Operation, Tripura, Agartala on 31.10.1990 and 21.11.1990 respectively. Initially, their appointments ^{on permanent post} were purely temporary and for a period of one year only. On expiry of one year their services were not terminated. The department made further extension of one year. Thereafter also, further extensions had been granted to them from time to time till the issuance of the impugned Annexure 5 letter dated 3.9.1998.

3. The applicants, Shri Bidyut Das and Smt Uma Das in original application No.253/98 were similarly appointed, initially for a period of one year. Thereafter their term of appointments had been extended from time to time till the impugned Annexure 8 letter dated 3.9.1998 was issued.

4. By the impugned letter dated 3.9.1998 the Deputy Director, Office of the Registrar General, India, Ministry of Home Affairs advised the Deputy Director of Census Operation, Tirpura, Agartala to initiate action in accordance with the instructions and rules to set at right the irregularities. It may be stated here that the applicants were appointed initially on the recommendation of the local Employment Exchange. In para 2 of the impugned letter dated 3.9.1998 it is stated as follows:



".....all the four Assistant Compilers in question were recruited through local Employment Exchange without referring the vacancies to the SSC inspite of the instructions issued by this office letters No.18/44/78-Ad.I dated 21.9.79 and 24.12.79 respectively.

Being aggrieved by the letter dated 3.9.1998 the applicants have approached this Tribunal by filing the present applications.

5. The action had been taken as per the letter dated 3.9.1998 on the ground that the applicants had been appointed and subsequently promoted without referring the matter to the Staff Selection Commission.

6. In due course the respondents have entered appearance and filed written statement. Similar grounds have been taken in the written statement in both the cases.

7. We have heard Mr S. Talapatra and Mr M. Chanda, learned counsel appearing on behalf of the applicants and Mr B.C. Pathak, learned Addl. C.G.S.C. The contention of the learned counsel for the applicants is that they were appointed as far back as 1990, initially for a period of one year and on expiry of the said period the term of appointment had been extended from time to time till the issuance of the impugned letter dated 3.9.1998. Thereafter they had been given ad hoc promotion and later on their appointments had been confirmed. By letter dated 3.9.1998 the authority took a decision to initiate action against their irregular appointment. The learned counsel for the applicants further submits that the proposed action of the authority was not only illegal, arbitrary but also unreasonable and unfair. It is a well established principle of law that an action which is not reasonable cannot be fair. It is also well

established.....



established that the action of the State must be fair and reasonable. Mr Pathak, on the other hand, tries to justify the action of the respondents by submitting that the authority cannot perpetuate an irregular and illegal action. He further submits that if by mistake any illegality was committed it is the duty of the authority to rectify it.

8. On the rival contention of the learned counsel for the parties it is now to be seen whether the action of the respondents can sustain in law. There are various rules and Office Memorandum which probably the applicants may not be aware of. The applicants were initially appointed for a period of one year and on expiry of the said period their term of appointment had been extended from time to time till the impugned letter dated 3.9.1998 was issued by the Deputy Director in the Office of the Registrar General, India, Ministry of Home Affairs. There is no dispute that all appointments should be made in conformity with the rules. It is not known what were the terms and conditions for making such appointments. At the time of appointment certain irregularities had crept in and it escaped the notice of the authority. This, at least ought to have been detected at the time of granting further extension. If the irregularities continued and the extensions had been granted from time to time, surely the applicants had every reason to believe that their appointments were made in accordance with the rules. In this case the authority remained in deep slumber for a long time. This had in all probability made the applicants believe that they were likely to be confirmed in the post in future and in that belief they might not have made any attempt to find out

alternative.....




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alternative job and thus became overaged. If a person is appointed for a considerable period then normally he should not be removed. This is a well established principle. In the case of State of Haryana and others - vs- Pyara Singh and others, reported in (1992) SCC (L & S), the Apex Court observed as follows:

"If for any reason, an ad hoc or temporary employee is continued for a fairly long spell, the authorities must consider his case for regularisation provided he is eligible and qualified according to the rules and his service record is satisfactory and his appointment does not run counter to the reservation policy of the State. Persons continuing in service over a number of years have a right to regularisation and the authorities are under an obligation to consider their case for regularisation in a fair manner."

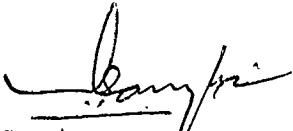
9. In this case the respondents have not stated that the applicants were not qualified for appointment. They have taken only a technical objection that the applicants were not referred to the Staff Selection Commission. We find no reason that the respondents should take up this plea after a lapse of nine years. This plea does not appear to us as fair and reasonable. Therefore, we direct the respondents to consider the case of the applicants. If they are otherwise qualified and eligible they should be appointed notwithstanding the fact that they were initially appointed without referring to the Staff Selection Commission.


10. Regarding the other ground the learned counsel for the applicant draws our attention to a decision of this Tribunal given in original application No.130 of 1996. In that original application the applicants were appointed Assistant Compiler and were given ad hoc promotion to the higher grade and later on it was confirmed. In the present case, at least, the initial appointment of the applicants were of temporary nature. against permanent posts.



Therefore, under the facts and circumstances of the case, applying the same principle, the present applicants should not be deprived from the original post. However, so far their subsequent promotions, which are on ad hoc basis, are concerned we leave the matter to the authority for consideration. The applicants in this regard may submit representation to the authority within a period of one month from the date of receipt of this order giving details of their grievances. If such representation is filed, the respondents shall consider the same and on consideration if they are found eligible for regularisation in the promotional post the respondents shall regularise them within a period of three months thereafter. However, we make it clear that technicalities should not stand in the way of giving the benefit of promotion.

11. The applications are accordingly disposed of. No order as to costs.


(G. L. SANGLIANE)
ADMINISTRATIVE MEMBER


(D. N. BARUAH)
VICE-CHAIRMAN