

50/100

X

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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SECTION OFFICER (Judl.)

6

FROM No. 4
(SEE RULE 42)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:

ORDER SHEET

Original Application No. 242/02
Misc Petition No. _____
Contempt Petition No. _____
Review Application No. _____

Applicants. Borendra Lghosh

-Vs-

Respondant(s) H.O.I. Jony

Advocate for the Appleeant(s) Sri R. Datta

Advocate for the Respondat(s) CASE K. N. Choudhury, Mr. J. Choudhury
Mr. Dept. NO. 2, 3 & 4

A. K. Choudhury Addl. Calk.

Notes of the Registry	Date	Order of the Tribunal
-----------------------	------	-----------------------

1.8.02

Heard learned counsel for the parties.
Application is admitted. Call for records. Returnable by 4 weeks.
List on 29.8.02 for orders.

K. N. Choudhury
Member

A. K. Choudhury
Vice-Chairman

1m

29.8.02

List on 27.9.2002 to enable the Respondents to file written statement.

K. N. Choudhury
Member

A. K. Choudhury
Vice-Chairman

mb

Notice prepared and sent to D. Section for issuing of the same to the respondents through Regd. post with A/D. vide D.O. 2210 to 2213 Dtd. 19.8.02.
B.
6.8.02.

(2)

27.9.02

Written statement has been filed.

The case may now be listed for hearing on 12.11.2002. The applicant may file rejoinder, if any, within two weeks from today.

Member

Vice-Chairman

mb

80-9-02

W/S submitted 13/11. The case is adjourned to 27/11/2002. by the respondents.

W/S

27/11. Division Bench did not sit today. The case is adjourned to 16/12/2002.

29.10.2002

Rejoinder has been filed at 84-103.

W/S
29/10/02

16/12. Division Bench did not sit today. The case is adjourned to 23/1/2003.

23.1.03

Present : The Hon'ble Mr. Justice B.N. Chowdhury, Vice-Chairman.

The Hon'ble Mr. S.K. Hajra, Administrative Member.

Mr. I. Choudhury, learned counsel appearing on behalf of the respondent Nos.2 to 4 stated that he has entered appearance on behalf of the respondent Nos. 2, 3 and 4 and requested some time to obtain necessary instructions on the matter. The case is accordingly adjourned and the matter is posted for hearing on 26.2.2003.

Member

Vice-Chairman

mb

Not of the Registry

Date

Order of the Tribunal

26.2.2003

List on 31.3.2003 for hearing before the Division Bench.

The case is ready for hearing as regard W/s and respondent.


Vice-Chairman

B30
28.3.03

mb

31/3/2003

Division Bench did not sit today. The case is adjourned to 15/5/2003.
M/s
A42

14.5.03

An Additional W/s has been submitted by the Respondents.

As:

14.5.03

Adjourned. List on 3.7.03 for hearing.

By order,

3.7. Court did not sit today. The case is adjourned to 21/8/2003.
M/s
A


8.8.03

Adjourned. List for hearing on 18.9.03.

By order,

18.9.2003

No Division Bench is sitting. Put up again on 21.10.2003 for hearing.


Member

mb

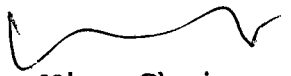
Notes of the Registry

Date

Order of the Tribunal


21.10.2003 Adjourned and again put up on
30.10.2003 for hearing.

The case is ready
for hearing.


Vice-Chairman

bb

30.10.2003 No Division Bench is available.
Put up again on 25.11.2003 for
hearing.

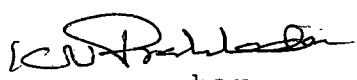

Vice-Chairman

bb

25.11.03 No Bench today.
Adj'd on 16.12.03.

13/0
K

16.12.03 List on 23.1.04 for hearing.


Member

pg

23.1.04 On the prayer of Mr R. Dutta, learned
counsel for the applicant the case is
adjourned to 27.2.04 for hearing.


Member(A)


Member(J)


pg


13.5.2004 Present : The Hon'ble Sri Mukesh Kumar
Gupta, Judicial Member.

The Hon'ble Sri K.V. Prahladan,
Administrative Member.

Adjourned on the request made by
learned counsel for the respondents which
is not objected by the counsel for the
applicant.

List before the next Division Bench.


Member (A)


Member (J)

14.6.2004 Present: Hon'ble Mrs. Bharati Roy,
Judicial Member

Hon'ble Mr. K.V. Prahladan,
Administrative Member

At the request of
Mr. I. Chowdhury, learned counsel for
the respondent nos. 2, 3 & 4 for
getting instruction, matter be posted
on 18.6.2004.

K.V. Prahladan
Member (J)

B.
Member (A)

bb

17.6.04

Hearing concluded.
order reserved.

By order
P. J.

28.7.2004 Judgment delivered in open Court,
kept in separate sheets. The application
is disposed of in terms of the order. No
order as to costs.

K.V. Prahladan
Member (A)

mb

20.8.04
copy of the judgment
has been sent to
the D/Sec. for
issuing the rule
to the applicant as
well as to the L/Adv.
for the Respondt.
E.P.

PUC. -)

Memo No. HC.XXI. 10 691-76 / R.M. 270
2.3.07 received from The Asst. Registrar,
(Indt.), Gauhati High Court, Gauhati.

The order dated ^{20.2.07} passed in WP(c)
No. 8516/2004 may kindly be seen at
PUC.

The Union of Indts has filed
the WP(c) No. 8516 of 2004 against
the judgment and order dtd 28.7.04
passed in OA 242/02. The Hon'ble
High Court has reverted the ~~same~~
judgment and order of this Tribunal on
^{20.2.07} submitted for favour of kind
perusal.

29/3

^{29.3.07}
50(J)

20/3/07
H.C. 10/07

29/3/07

50(J) 29/3/07

(High Court of Assam, Nagaland, Meghalaya, Manipur, Tripura,
Mizoram & Arunachal Pradesh)

Appeal from WPC
Civil Rule

No. 8516 of 2004

union of India 2013

Appellant
Petitioner

Versus

Shri Bhabendra Ghosh

Re: condent

Opposite Party

Appellant Mr. K. N. Chaudhary
For Mr. K. N. Chaudhary
Petitioner

Respondent Mr. K. Paul
For Mr. J. P. Chouhan
Opposite Party Mr. A. Sarma
Mr. A. K. Dey

As the sole respondent.

Noting by Officer or Advocate	Serial No.	Date	Office notes, reports, orders or proceedings with signature
1	2	3	4



Noting by Officer or Advocate	Serial No.	Date	Office notes, reports, orders or proceedings with signature
1	2	3	4

W.P.(C) No. 8516/2004

BEFORE
HON'BLE MR. JUSTICE P.G. AGARWAL
HON'BLE MR. JUSTICE H.N. SARMA

20.2.2007

Heard Mr. K.N. Choudhury, learned Senior Advocate as well as Mr. I. Choudhury learned counsel for the Union of India & Others. Also heard the learned counsel appearing for the respondent/applicant, Shri Barendra Ghosh.

The present writ petition has been filed by the petitioner/ Union of India challenging the impugned judgment and order dated 28-7-2004 passed by the Central Administrative Tribunal, Guwahati in O.A. No. 242/2002.

The facts :

The respondent/applicant, Shri Barendra Ghosh (hereto referred as the applicant) was appointed as a driver on a temporary basis by the Director of Census Operations, Meghalaya vide order dated 20th January, 1981 and thereafter he was appointed as Lower Division Clerk vide order dated 18.8.1981. Subsequently the services of the respondent/applicant, was terminated w.e.f. 10.11.1986. The said order of termination was

Noting by Officer or Advocate	Serial No.	Date	Office notes, reports, orders or proceedings with signature
1	2	3	4
	<p>challenged by the applicant before Central Administrative Tribunal, Guwahati in O.A. No. 218/1990 and the said application was dismissed. The applicant thereafter approached the Hon'ble Supreme Court by filing a Special Leave Petition and the said SLP was dismissed vide order dated 11.7.1995. The applicant again approached the Central Administrative Tribunal, Guwahati in O.A. No. 218/1990 by filing Misc. application for consideration of his case for reemployment wherein certain directions were issued to the writ petitioners. The directions were complied with vide orders dated 21-7-1998 and 17-8-998 and these orders were again challenged in O.A. No. 160/1999 wherein the Tribunal observed that the case of the applicant may be considered against any available vacancy commensurating with his qualification. Vide order dated 23-11-2001 the petitioner was offered appointment as LDC. However, the applicant did not join his duty, instead he approached the Tribunal again by filing O.A. No. 242/2002, praying that a direction should be given to absorb the applicant against a regular vacancy. The Tribunal thereafter passed the impugned order which is as follows :</p>		

Noting by Officer or Advocate	Serial No.	Date	Office notes, reports, orders or proceedings with signature
1	2	3	4
			<p>In view of the above discussion and in view of the earlier orders passed by this Tribunal in O.A. 160/1999 we dispose of this application by directing the respondents to consider the case of the applicant in a fair manner for appointing him in any post under the Census department commensurating with his educational qualification as directed in the earlier OA and pass appropriate order as expeditiously as possible within a period of two months from the date of communication of this order."</p> <p>Shri Choudhury appearing for the writ petitioner has submitted that the matter relates to appointment of ex- census employees after completion of the works of the census operation and as such there cannot be any direction for absorption. So far the regular vacancies of the Census Department are concerned, appointments are required to be made through Staff Selection Commission. The applicant was also offered an opportunity to participate in such a selection process but he failed to qualify. It is also submitted that the law laid down by this Court in the case of Registrar General and Census Commissioner of India and others- Versus- Ratna Bhattacharjee and Others</p>

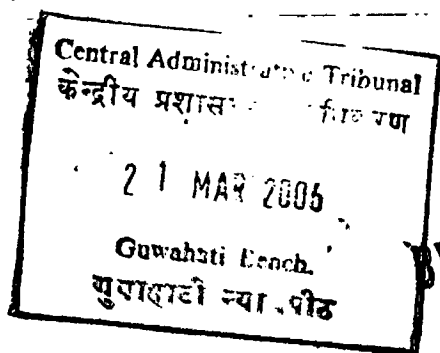
Noting by Officer or Advocate	Serial No.	Date	Office notes, reports, orders or proceedings with signature
1	2	3	4

reported in (2003) 2 GLT 131 is applicable to the present applicant also and the impugned order/~~of~~ direction needs to be quashed and set aside.

The learned counsel for the respondent/applicant has further submitted that the above decisions in **Ratna Bhattacharjee(Supra)** is not applicable to the applicant as the applicant was a regular staff of the Census Department and he was not appointed for a fixed period.

In support of the above the learned counsel has referred to initial appointment order dated 20th January, 1981. The said appointment letter has become non est, as we find that the applicant's services were terminated from 10-11-1986 and the said termination order was challenged in SLP as stated above and the termination order was not interfered with. We thus find that the applicant is out of job since 10.11.1986. Although the applicant was offered job on 23-11-2001, admittedly he refused to join the service.

Considering the nature of job in the Census Department, there cannot be any direction for permanent absorption of an ex census employee.



URGENT

BY SPEED POST

Noting by Officer or Advocate	Serial No.	Date	Office notes, reports, orders or proceedings with signature
1	2	3	4
			The law was laid down by the Apex Court in the case of (<i>Union of India & Ors. -Versus- Dinesh Kr. Sexena</i>) reported in (1995) 3 SCC 401 and it was later on reiterated in the case of (<i>Bhupendra Singh Sahu -Versus- State of Punjab</i>) reported in AIR SC 2535.
			The applicant has not right to claimed appointment on the basis of any scheme prepared either by the Central Census Department or Meghalaya Census Directory.
			The impugned directions given by the Central Administrative Tribunal are unwarranted. Accordingly, this writ petition is allowed and the above directions are set aside.
			Costs easy.

O/- H.P. Ghosh.
JUDGE.

O/- P.L. Teral.
JUDGE.

Memo No.HC.XXI, 10,691-96 /R.M. Dtd. 21/3/07

Copy forwarded for information and necessary action to:-

1. The Union of India, through Secretary to the Ministry of Home Affairs, Govt. of India, New Delhi-1.
2. The Registrar General of India, Ministry of Home Affairs, Govt. of India, 2/A, Mansingh Road, New Delhi- 110011.
3. The Director of Census Operation, Meghalaya, Shillong, Marwin Building, Dhankheti- 793003.
4. The Assistant Director, Census Operation, Meghalaya, Marwin Building, Dhankheti, Shillong- 793009.
5. Shri Barendra Ghosh Son of Late Shri D.K. Ghosh, C/o Shri H.P. Ghosh P.O. Assam Rifles Shillong-11, Meghalaya.
6. The Deputy Registrar, Central Administrative Tribunal, Guwahati Bench, Rajgarh Road, Bhangagarh, Guwahati- 781005. He is requested to acknowledge the receipt of the following records. This has a reference to his letter No.16-3/02/JA/11/6 Date. 3.10.2005.

Enclo:-

1. O.A. 242/2002 Part 'A'

By order

150(5)
N.C.
21.3.07.

M. Samra

Asstt. Registrar (Judl.)
Gauhati High Court, Guwahati.

21/3/07.

14

CENTRAL ADMINISTRATIVE TRIBUNAL : **GUWAHATI** BENCH
AT **GUWAHATI**

No. O.A. 242 of 2002

DATE OF ORDER: 28/07/2004

Shri Barendra Ghosh

Petitioners

Mr. R. Dutta

Advocate for the
Petitioner (s)

Versus

U.O.I. & Ors.

Respondent (s)

Mr. I. Chwdhury

Advocate for the
Respondent (s)

C O R A M :

1. The Hon'ble **Mrs. Bharati Ray, Member (J)**
2. The Hon'ble **Mr. K.V. Prahladan, Member (A)**

1. Whether reporters of local papers may be allowed to see the judgment ?
2. To be referred to the reporter or not ?
3. Whether the judgment is to be circulated to the other Benches ?

Judgment delivered by Hon'ble **Mrs. Bharati Ray, Member (J)**

* * * * *

15

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH

Original Application No. 242/2002

Date of Order : This the 28th day of July, 2004.

The Hon'ble Mrs. Bharati Ray, Member (J)
The Hon'ble Mr. K.V. Prahladan, Member (A)

Shri Barendra Ghosh,
Son of late Shri D.K. Ghosh,
C/o. Shri H.P. Ghosh,
Deptt. of Atomic Energy,
P.O. Assam Rifles,
Shillong-11,
Meghalaya.

.. Applicant

By advocate Mr. R. Dutta

-versus-

1. Union of India,
through
Secretary to the Ministry of
Home Affairs,
Govt. of India,
New Delhi.1
2. The Registrar General of India,
Ministry of Home Affairs,
Govt. of India,
2/A Mansingh Road,
New Delhi 110 011.
3. The Director of Census Operation,
Meghalaya, Shillong
Marwain Building,
Dhankhoti 793 003.
4. The Asstt. Director,
Census Operation,
Meghalaya,
Marwin Building,
Dhankhoti,
Shillong 793 003.

.. Respondents

By advocate Mr. I. Chowdhury

O R D E R

Mrs. BHARATI RAY, MEMBER (J)

8

This application has been filed by the applicant for an order to set aside the letter No.C.18012/1/91-Estt dated 23.11.2001 issued by respondent no.4 and for a further direction to the respondents to absorb the applicant in any existing or future regular vacancy.

2. The applicant was initially appointed as a Motor Driver on 20.1.81 by Director of Census Operation, Meghalaya. He was subsequently appointed as Lower Division Clerk (hereinafter referred to as LDC) in the Regional Tabulation Office under the Directorate of Census Operation Meghalaya vide order dated 18.8.81. The service of the applicant as LDA was however terminated by an order dated 19.11.86 on the strength of communication No. 18/65/84-AD.I dated 10.11.86 received from the Registrar General of India. The applicant submitted his representation and thereafter approached this Tribunal in OA No. 218/90 challenging the termination order which was dismissed on 12.12.1994 as time barred. However, while dismissing the OA the Tribunal has directed the respondents to sympathetically consider the re-employment of the applicant either on ad hoc or temporary basis subject to eligibility conditions under them. The applicant thereafter submitted a representation but as he was not favoured with any reply ² he approached this Tribunal once again in OA 54/98 which was disposed of on 8.6.98 directed¹ the respondents to dispose of the representation within the period specified therein. The respondents by two separate orders by separate agencies rejected the representation of the applicant. By order dated 21.7.98 the Deputy Director² rejecting the representation observed that the service of ad hoc LDCs appointed during 1981 could be regularised after they pass the Special Qualifying Examination conducted by Staff Selection Commission during 1986. Accordingly, the applicant was given opportunity to appear for the examination and since he did not qualify in the

examination the services of the applicant could not be regularised in the grade of LDC. On the other hand the Assistant Director, Census Operation, Meghalaya turned down the representation of the applicant as time barred. Being aggrieved by the said action on the part of the respondents the applicant approached this Tribunal by way of OA 160/99. The Tribunal by its order dated 30.3.2001 quashed the impugned order therein i.e. order dated 21.7.98 passed by the Deputy Director, O/O. Registrar General, New Delhi and directed the Director of Census Operation to consider the case of the applicant afresh in the light of the following observation:

4. We have given our anxious consideration on the matter. From the order as mentioned above did not indicate that it addressed any of the issues discussed above. Considering all the aspects of the matter we are of the opinion that the case of the applicant requires to be considered in a fair manner for appointing him in any post under the Census department commensurating with his educational qualifications. Mr. Dutta has submitted that since there is a post of Driver in the department, the case of the applicant may be considered. Considering all these aspects we feel that the respondents need be considered the case of the applicant for appointment against any vacancy or future vacancy commensurating with his qualification. This consideration need not be confined to only Group D post, the respondents may also consider his case against Group C post against any existing vacancy or any future vacancy that may arise.

3. Pursuant to the above order of the Tribunal dated 30.3.2001, the Asstt. Director, Census Operation, Meghalaya issued the order dated 23.11.2001 enclosed as Annexure A/7, page 26 to the OA.

4. A perusal of the above order shows that the authority concerned after going through the judgment of the Hon'ble Supreme Court followed by the Tribunal come to the conclusion that the case of the applicant has to be considered for the job in the vacancies that would accrue from Census Operations only. There is a resultant vacancy in the post of LDC in the office of the DCO Meghalaya arising due to its incumbent being promoted on adhoc basis against the temporary post of UDC which has been created for Census 2001. Therefore the applicant was re-engaged to the short term vacant post of Lower Division Clerk in the pay scale of Rs.3050-4500 fallen vacant due to promotion of the incumbent to the temporary post of UDC which has been created for a short period due to Census 2001 w.e.f. the date of his joining duty till 28.02.2002 or till the abolition of the post, whichever is earlier.

5. Applicant made a representation to the Asstt. Director of Census Operation, Meghalaya on 18.12.2001 stating therein that although the Tribunal has clearly ordered for his appointment against any existing or future vacancy the applicant has been offered appointment in short term vacancy. Therefore, he has approached this Tribunal seeking the relief stated above.

6. Heard Mr.R. Dutta, learned counsel for the applicant and Mr. I. Chowdhury, learned counsel for the respondents.

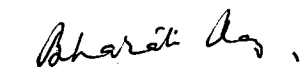
7. After going through the facts of the case and material papers placed before us and the judgments passed by this Tribunal in the earlier OAs, we find that this is fourth round of litigation. Every time this Tribunal while passing its order directed the respondents to consider the applicant for appointment and lastly in the order dated 30.3.2001 this Tribunal expressed its opinion that the respondents are required to consider case of the applicant in a fair manner for appointing him in any post under the Census department commensurating with his educational qualification and this consideration need not be confined to only Group D post. The respondents were advised to consider the case of the applicant also against any existing vacancy or future vacancy that may arise. A plain reading of the order of this Tribunal dated 30.3.2001 would make it clear that by no stretch of imagination it can be said that this Tribunal has any intention to direct the respondents to consider the applicant ^{for appointment} in a short term vacant post. All that the Tribunal ^{int} wanted to direct the respondents is to consider ^{of the applicant} the case ^{for} appointing him in any post under the Census Department commensurating with his educational qualification against any existing vacancy or future vacancy that may arise. We, therefore, find force in the contention of the applicant that the respondents were not justified in offering the applicant the short term vacancy post in which he could continue till 28.02.2002 or till the abolition of the post, whichever is earlier. It appears that since the applicant could not qualify in the Staff Selection Examination he could not be given appointment in the post of LDC. But nowhere it is

mentioned whether the respondents made any attempt to consider the case of the applicant to accommodate in any group D post or in any other Group C post.

8. In view of the above discussion and in view of the earlier orders passed by this Tribunal in OA 160/99 we dispose of this application by directing the respondents to consider the case of the applicant in a fair manner for appointing him in any post under the Census department commensurating with his educational qualification as directed in the earlier OA and pass appropriate order as expeditiously as possible within a period of two months from the date of communication of this order.

9. The OA is disposed of accordingly with no order as to costs.


(K.V. PRAHLADAN)
MEMBER(A)


(BHARATI RAY)
MEMBER (J)

MD

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH :: GUWAHATI.

O.A. No. 242 of 2002

Shri Borendra Ghosh ... Applicant

Versus

Union of India and Others ... Respondents.

List of dates

Date		Annex/Para	Page
20.1.81	The applicant appointed as Motor Driver by the Director of Census Operations, Meghalaya.	Anx. A/1 para 4.2	11 2
18.8.81	The applicant appointed as Lower Division Clerk by the Director of Census Operations, Meghalaya.	Anx. A/2 Para 4.2	12 2
19.11.86	The service of the applicant was terminated by the Assistant Director of Census Operations, Meghalaya	Anx.A/3 Para 4.3	13 3
12.12.94	The Hon'ble Tribunal dismissed the O.A No. 218 of 90 filed by the applicant as barred by limitation but observed that the applicant cannot be said not to have suffered some injustice and left the matter to the sound discretion of the Respondents to sympathetically consider the case of the applicant.	Anx.A/4 Para 4.6	14 to 18 4

21
filed by
B. B. B. B.
Advocate
#24.05.04
14-A-04

- 22
- 2.6.98 The Hon'ble Tribunal disposed of Anx. A/5 19 & 20
O.A No. 54 of 98, filed by the Para 4.7 4
applicant against non consideration
of his case by the respondents, directing
the respondents to consider the case of
the applicant and to dispose of the
applicant's representations.
- 21.7.98 The Deputy Director, Office of the Anx. 10 34
Registrar General of India, New Delhi, of WS of WS
disposed of the representation of the Para 4.8 4 & 5
applicant stating that as the applicant
did not qualify in the Special qualifying
Examination conducted by the Staff Sele-
ction Commission it is not possible to
regularise his service.
- 17.8.98 The Assistant Director, Census Ope- Anx. 11 35
rations, Meghalaya, rejected the of WS of WS
applicant's representation stating Para 4.8 4 & 5
his case to be time barred.
- 30.3.01 The Hon'ble Tribunal disposed of Anx. A/6 21 to 25
the O.A No. 160 of 99, filed by the Para 4.9 5
applicant against rejection of his
claim, observing that the case of the
applicant requires to be considered
in a fair manner for appointing him
in any post under the census depart-
ment against any vacancy or future vacancy
commensurating with his qualifica-
tion and directed the Director, Census
Operations, Meghalaya, to consider the

Contd ...P/3.

210214
23.5.04
14.6.04

- 3 -

case of the applicant afresh in
the light of the observations of the
Hon'ble Tribunal.

- 23.11.01 The Assistant Director, Census Anx. A/7. 26 to 28
Operations, Meghalaya offered to Para 4.10 6
re-engage the applicant as Lower
Division Clerk for the period upto
28.2.02 or abolition of the post
which ~~is~~ ever is earlier with
stipulation that the re-engagement
would not bestow upon the applicant
any right ^{to be} regularisation in the post
^{as} or any other post .
- 18.12.01 The applicant represented to the Anx. A/8. 29
Assistant Director, Census Operations Para 4.11 7
Meghalaya, that offer for appointments
only for 2 months although the Hon'ble
Tribunal clearly ordered for appoint-
ment against any existing or future
vacancy and prayed for appointment
against any existing or future
vacancy.

12 Datta
Advocate
73.55.04.
14.6.04

File by
R. D. 30.7.2002
Adverse

O.A. No. 242 of 2002.

Versus

Union of India & Others Respondents.

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7.	Hon'ble Tribunal's orders dated 30.3.99 in O.A.No. 100/99 p2)	A/6	21 to 25
8.	Assistant Director,Census Operation's letter dated 23.11.2001 offering a re-engagement offer to the applicant for period upto 28.2.2002.	A/7.	26 to 28.
9.	The applicant's representation to the Assistant Director,Census Operation, Meghalaya dated 18.12.98 praying for appointing him against a existing or future vacancy .	A/8	29

Barenendra Ghosh.

Signature of the applicant.

.....

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH :: GUWAHATI

28
File by 17
R.D. 10/10/2002
23/11/2001

(An application u/s 19 of the A.T. ACT, 1985.)

O.A. No. 241 of 2002

Shri Berendra Ghosh, son of late
D.K. Ghosh, resident of Shillong
C/O Shri H.P. Ghosh, Deptt of
Atomic Energy, P.O. Assam Rifles,
Shillong-11, Meghalaya. ... Applicant

Versus

1. UNION of India, represented by the
Secretary to the Ministry of Home
Affairs, Government of India, New Delhi-1.
2. The Registrar General of India, Ministry
of Home Affairs, Govt. of India,
2/A Mansingh Road, New Delhi-110011.
3. The Director of Census Operation,
Meghalaya, Shillong. Pin- Marwain
Building, Dhankheti. Pin- 793003.
4. The Assistant Director, Census
Operation, Meghalaya, Marwin
Building, Dhankheti, Shillong.
Pin- 793003. Respondents.

1. Particulars of the order against which this
application is made.

Letter No. C/18012/1/91-Estt. dated 23.11.2001

B. Ghosh

Contd ...P/2.

issued by the Assistant Director, Census Operation,
Meghalaya, Shillong (Respdt. No. 4). *Annexure A/7*
pt.

2. Jurisdiction :-

The applicant declares that the subject matter of the application is within the jurisdiction of the Hon'ble Tribunal.

3. Limitation :-

The applicant submits that the application is filed within the period of limitation.

4. Facts of the case :-

4.1 That, the applicant is a citizen of India and is entitled to rights and privileges guaranteed under the Constitution of India.

4.2 That, being sponsored by the Employment Exchange, Shillong, the applicant was appointed as Motor Driver on 20.01.81 by the Director of Census Operation, Meghalaya, Shillong. Subsequently as the applicant had the requisite qualification ~~that~~ he was appointed as Lower Division Clerk by the Director of Census Operation, Meghalaya, Shillong under letter No. A 11020/1/41-ESTT/109 A dated 18.08.81 as temporary basis.

Copies of the appointment letters dated 20.01.81 and 18.08.81 are annexed as Annexure A/1 & A/2 respectively.

4.3 That, the applicant was performing his duties continuously and to the satisfaction of his superiors

Contd ..P/3.

B. Ghosh

and was given regular yearly increments. All on a sudden under letter No. A-11109/8/86-ESTT B dated 19.11.86 the service of the applicant was terminated by the Assistant Director, Meghalaya, Shillong without assigning any reason. It may be stated here that the Assistant Director, Census Operation, Meghalaya, Shillong is subordinate to the Director, Census Operation, Meghalaya who is the appointing authority of the applicant

A copy of the letter dated 19.11.86 is annexed as Annexure A/3.

4.4 That, as no disciplinary proceedings were initiated before termination of applicant's service and as the applicant was not appointed as Ad-hoc, the applicant preferred number of representations to the authorities but without any relief. However he was asked to appear in a special qualifying examination in ~~in~~ 1987 to be conducted by the Staff Selection Commission. The applicant appeared along with 2 others of his office but all three were declared not selected.

4.5 That, under No. 18/18/89-Ad. IV dated 9.4.91 instructions were issued from the office of Registrar General of India, Ministry of Home Affairs (Respd. No. 3) to all Directors of Census Operation for forwarding the names of employees recruited against the posts of Cartographers, Lower Division Clerks, Draughtmen and Group D posts during 1981 census for the ~~the~~ purpose of regularisation of service. But the applicant's name was not forwarded as his service was terminated earlier.

4.6 That, getting no justice from his superiors,

Contd ...P/4.

P. G. Kish

the applicant filed an application before this Hon'ble Tribunal, which was numbered O.A No. 218 of 1990, for setting aside the order of termination along with M.P No. 91/1990 for condonation of delay. But due to ill luck of the applicant the delay in filing the application was not condoned and the O.A No. 218/1990 was dismissed. Although the O.A was dismissed, the Hon'ble Tribunal was pleased to observe that the applicant cannot be said not to have suffered some injustice and the respondents may sympathetically consider the case of the applicant. The applicant filed a SLP before the Hon'ble Supreme Court but the same was not entertained.

A copy of the judgement of the Hon'ble Tribunal dated 12.12.94 in O.A No. 218 of 1990 is annexed as Annexure A/4.

4.7 That, the applicant again represented for sympathetic consideration of his case as recommended by the Hon'ble Tribunal in judgement dated 12.12.94 without any reply. Ultimately the applicant again moved the Hon'ble Tribunal by filing O.A No. 54 of 1998. The Hon'ble Tribunal was kind to dispose of O.A No. 54/98 by order dated 8.6.98 directing the respondents to consider the case of the applicant sympathetically and to dispose of the representation of the applicant within 2 months time

A copy of the said order of the Hon'ble Tribunal dated 8.6.98 is annexed as Annexure A/5.

4.8 That, the Deputy Director, office of the Registrar General of India, Ministry of Home Affairs, Government of India, under letter No. 13014/19/98 AD IV dated 21.7.98 disposed of the representation of the

Contd ...P/5.

applicant regretting his prayer . The Assistant Director Census Operation, Meghalaya similarly rejected the representation of the applicant vide letter No. 18012/1/91-ESTT dated 17.8.98. The applicant filed his representation dated 15.9.98 to the ~~Director~~ Registrar General of India (Respd. No. 2) with copy to the Director Census Operation, Meghalaya, Shillong but no reply was received by the applicant.

4.9 That, finding no alternative the applicant again moved the Hon'ble Tribunal by filing O.A. No. 160 of 1999 for implementation of the order of the Hon'ble Tribunal for sympathetic consideration of the case. The Hon'ble ^{Tribunal} by order and judgement dated 30.3.2001 was kind to dispose of the case with direction for consideration of the applicant ~~for~~ against any Group C or Group D post against any existing or future vacancy commensurating to his qualification . While delivering the direction the Hon'ble Tribunal was kind to point out the law laid down by the Hon'ble Supreme Court in Government of Tamilnadu and another vs G. Md. Ammendeen and others ~~199~~ (1999) 7 SCC 499 wherein the Supreme Court was kind to decide; that it would be appropriate to absorb the census employees in appropriate employments as the retrenched employees of the census employees lost both their employment and also their queue in the Employment Exchange.

A copy of the Hon'ble Tribunal's Judgement and orders dated 30.3.2001 in O.A. No. 160/99 is annexed as Annexure A/6.

Contd ...P/6.

B. Ghosh

4.10 That, in its orders and judgement dated 30.3.2001 in O.A No.160/99 the Hon^{ble} Tribunal directed to pass necessesary orders expeditiously within a period of four months from the date of receipt of the order ^{but} no action was taken and the applicant requested for a ^{22.} quick action vide a letter from his advocate on 8.6.2001. Ultimately on 23.11.2001, the Assistant Director, Census Operation, Meghalaya, Shillong (Respdt. No.4) vide letter No.C. 18012/1/91-Estt. dated 23.11.2001 ordered to re-engage the applicant for a short term vacancy of Lower Division Clerk for short period upto 28.2.2002 or till the abolition of the post, whichever is earlier. It was also stipulated that the re-engagement would be by the following terms and conditions :-

"(1) His re-engagement willnot bestow upon him any right for regularisation in the post in which he is appointed and in any other post and his services shall be terminated at any time without assigning any reason thereof

(2) As the post of U.D.C is created to attend to the additional work of Census of India 2001 and likely to be discontinued on or before 28.02.2002 his services shall stand terminated on the discontinuation/abolition of the temporary post created for Census of India 2001 and the Govt shall have no liability thereafter."

It was also stated in the letter dated 23.11.2001 that in view of the Judgement of the ~~Hon'ble~~ Hon'ble Supreme Court of India in Govt of Tamilnadu and another versus G.Md.Ammenudeen (1999)7 SCC499 followed by the Hon'ble Tribunal x the applicant has to be considered for job in the vacancies that would accrue from census operation

B. Ghosh.

Contd ...P/7.

(for census operation)only

A copy of the said letter Dated 23.11.2001
is annexed as Annexure A/7.

4.11 That, the applicant after receipt of the letter dated 23.11.2001 represented to the Assistant Director, Census Operation, Meghalaya that the Hon'ble Central Administrative Tribunal in its order clearly ordered for ~~payment~~ applicant's appointment against any existing or future vacancy but offer only has been made ~~only~~ for appointment for 2 months. The applicant therefore requested for his appointment against any existing or future vacancy. Although this representation was received in office on 18.12.2001 yet no reply, whatsoever, has been given by the Assistant Director, Census Operation.

A copy of the representation dated 18.12.2001
is annexed as Annexure A/8.

4.12 That, the applicant submits that there were/
are vacancies under the respondents to accomodate the applicant.

5. Ground for Relief :

5.1 That, the Hon'ble Supreme Court of India has clearly laid down in Government of Tamilnadu and another VS G. Md Ammenudeen and others (1999) 7 SCC 499 has clearly laid down for permanent absorption of the retrenched employees of the census department and not for short term vacancies of 2 to 3 months. The Hon'ble Supreme Court also directed for exploring the possibility of absorbing the retrenched employees not only against the against the Government service but also against the vacancies in local authorities, quasi-government organisations or government companies.

B. Ghosh.

Contd...P/8.

5.2 That, the Hon'ble Central Administrative Tribunal in its orders dated 30.3.2001 ordered for absorption of the applicant against any existing or future vacancy and not for absorption against vacancies of short duration .

5.3 That, the respondents mis interpreted the judgement of the Hon'ble Supreme Court in Govt of Tamilnadu and another vs G.Md. Ammeenudeen and others (1999) 7 SCC 499 and the orders and direction of the Hon'ble Tribunal dated 30.3.2001 in O.A.No.160/99. Therefore the letter dated 23.11.2001 (Annexure A/7) is clearly violative of the orders of the Hon'ble Supreme Court and the Hon'ble Tribunal.

5.4 That, the respondents did not acted fairly and issued the letter dated 23.11.2001 only to deprive the applicant from being absorbed against regular vacancy.

6. Details of the remedy exhausted.

The applicant represented against the injustice caused to him by representation dated 18.12.2001 but did not get any remedy or reply.

7. Particulars of Previous application filed if any:

That, the applicant filed before this Hon'ble Tribunal O.A No.218/90 which was dismissed as barred by limitation but the Hon'ble Tribunal observed for sympathetic consideration of the applicant case and as the consideration was not done the applicant filed O.A. No. 54/98 which was disposed by the Hon'ble Tribunal on 8.6.98 directing the respondents to consider sympathetically the case of the applicant but the applicant case was not considered sympathetically so he again filed

Contd ...P/9.

B. Ghosh.

O.A No. 160/99 which was disposed of by the Hon'ble Tribunal on 30.3.2001 with specific direction for absorption of the applicant against any existing or future vacancy but this was also by passed by offering the applicant a short time vacancy of only 2/3 months. Hence this fresh application. The applicant also filed C.P No.32 of 2002 which is pending before the Tribunal.

8. Relief Sought :

Under the circumstances stated above the applicant humbly prays that the Hon'ble Tribunal may be kind enough to call for the records and after hearing parties set aside the letter ~~mak~~ No. C.18012/1/91-Estt dated 23.11.2001(Annex. A/7.) issued by respondent No 4 and issue direction to the respondents to absorb the applicant any existing or future regular vacancy and or such other orders as the Hon'ble Tribunal may deem fit.

And for this act of kindness the applicant as duty bound shall ever pray.

9. Interim Relief :

NIL

10 Particulars of application fees.

Indian Postal Order No 7457656 dated 30.7.2002 for Rs.50/- (fifty) is enclosed.

11. List of Enclosures:

As in index.

VERIFICATION

Contd ...P/10.

B. G. Ghosh

VERIFICATION.

I, Shri Borendra Ghosh, son of late Digendra Kumar Ghosh, aged about 48 years, resident of Shilleng C/O Shri H.P. Ghosh, Department of Atomic Energy, Atomic Mineral Division, P.O. Assam Rifles, Shilleng- 793011 Meghalaya, do hereby verify that the statements made in paras 2,3,4.1 to 4.11,6 and 7 are true to my knowledge and the statement made in para 4.12 are true to my information which I believe to be true and I have not suppressed any material fact.

And I sign this verification on this 27th day of July 2002 at Guwahati.

Date 27.7.2002

Place. Guwahati.

Borendra Ghosh.
Signature of the applicant.

.....

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A/1

ANNEXURE

No.A.11019/ 2/80-ESTT

Government of India

Ministry of Home Affairs

Office of the Director of Census Operation, Meghalaya

Shillong the 20th Jan, 1981

ORDER

Shri Barendra Ghosh is hereby appointed as Driver in the scale of R.250-6-290-EB-6-326-8-350/- P.M. plus dearness and other allowances as admissible from time to time under the Central Government Rules with effect from 20th January, 1981.

The appointment is purely temporary and liable to be terminated at any time without notice and without assigning any reason thereof.

Sd/- J. Tayeng

Director of Census Operation
Meghalaya

Memo No. A.11019/2/80-ESTT dated Shillong the 20th Jan'81

1. The Pay & Accounts Officer (Census), Ministry of Home Affairs, A.G.C.N. Building, New Delhi-110002.
2. The Accountant
3. Personal File
4. Shri Barendra Ghosh, Rilbong, Shillong.

Sd/- L. Kharpuria

By Director of Census Operation,
Meghalaya.

Contd. P/(16).

All the
D. 10/1/81

ANNEXURE-B A/2

No.A.11020/1/81-ESTTB/109

GOVT OF INDIA
MINISTRY OF HOME AFFAIRS
OFFICE OF THE DIRECTOR OF CENSUS OPERATION:MEGHALAYA

Shillong the 18th August,1981

O R D E R

Subject to the production of medical certificate and subsequent satisfactory Police verification reports Shri Barendra Ghosh is hereby appointed as Lower Division Clerk in the Regional Tabulation Office under the Directorate of Census Operations, Meghalaya Office under the Director of Census Operations, Meghalaya in the scale of Rs.260-6-290-EB-6-326-3-450/- P.M. plus dearness and other allowances as admissible from time to time under the Central Government Rules with effect from the date of joining. He should report for duty within ten days from the date of issue of this letter failing which the appointment will be treated as cancelled.

The applicant is purely temporary and liable to be terminated at any time without assigning any reason thereof.

Sd/- J. Tyong

Director of Census Operations
Meghalaya

Memo - No. A.11020/1/81-ESTTB/109-A 19th August,1981

Copy forwarded to :-

1. The Pay and Accounts Officer(Census), Ministry of Home Affairs, A.G.C.B. Building, New Delhi-110002
2. The Accountant
3. Shri Barendra Ghosh
4. Personnel file.

AKH
N. TONG

...Gentl. RZ(17)

2. GENL. (A800018)
3. GENL. (A800018)

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ANNEXURE -D A/3

NO.A.11019/8/86-ESTTB

GOVERNMENT OF INDIA
MINISTRY OF HOME AFFAIRS
OFFICE OF THE DIRECTOR OF CENSUS OPERATIONS, MEGHALAYA

19th November, 1986

OFFICE ORDER

In pursuance of the letter No.18/65/84-AD.I
Dated 10.11.86 from the Registrar General, India, the
service of the following ad-hoc L.D.C.'s of this
Directorate are hereby terminated with immediate effect
i.e. 19.11.86 (A.N)

1. Shri C. Pandey, LDC
2. Shri B. Ghosh, LDC
3. Shri M. Thangkhiew, LDC

Sd/- K.S. Lyngdoh
ASSTT. DIRECTOR OF CENSUS OPERATIONS
MEGHALAYA

Memo No.A.11019/8/86-ESTTB B

Dated 19th November, 1986

Copy forwarded to :

1. The Registrar General, India 2/4 Manishnigh Road,
New Delhi-110011.
2. The Pay & Accounts Officer (Census) Ministry of
Home Affairs, AGCR Building, New Delhi-110002
3. The Accountant. The salary for one month with
effect from 20.11.86 may be paid to them immediately.
4. Person concerned with Form II (3 copies)
5. Personal file of concerned staff (3 copies)

Sd/- K.S. Lyngdoh

Asstt. Director of Census Operations
Meghalaya.

*Allen S
D. Thangkhiew*

...Dated P/19.

*S. Datta. (Advocate)
Bachchan, Guwahati-781012*

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Annexure A

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.218 of 1990
(With M.P.No.91/90)

Date of decision: This the 12th day of December 1994.

The Hon'ble Justice Shri M.G. Chaudhari, Vice-Chairman

The Hon'ble Shri G.L. Sanglyine, Member (Administrative).

Shri Barendra Ghosh
C/o Shri Haripada Ghosh
Department of Atomic Energy,
Assam Rifles, Mineral Division,
Shillong.

.... Applicant

By Advocate Shri B.C. Das, and
Shri J. Deb.

-versus-

1. The Union of India
through the Secretary to the
Government of India,
Ministry of Home Affairs,
New Delhi
2. The Registrar General of India
Ministry of Home Affairs,
New Delhi
3. The Director of Census Operation
Meghalaya, Shillong
4. The Deputy Director,
Census Operation, Meghalaya
Shillong
5. The Assistant Director of Census Operation,
Meghalaya, Shillong.

.... Respondents

By Advocate Shri G. Sarma, Addl. C.G.S.C.

.....

ORDER

CHAUDHARI, J. V.C.

The original application was filed on 7.12.1990
challenging the order of termination of service of the
applicant dated 19.11.1986, Annexure-D. The applicant was

Alexis
N. D. N. N.

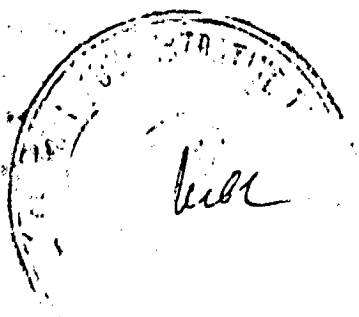
Handwritten signature and circular stamp.

Annexure A/4
Contd.
no

initially appointed as a Driver in the office of the Director of Census Operation, Meghalaya, under the Ministry of Home Affairs, Government of India, on 20.1.1981, Annexure-A, on a purely temporary basis. It was stipulated in the appointment order, Annexure-A, that his service was liable to be terminated at any time without assigning any reason thereof. Subsequently the applicant was appointed as Lower Division Clerk(LDC) in the Regional Tabulation Office under the same authority by order dated 18.8.1981, Annexure-B. It was stipulated in that order also that the appointment was purely temporary and liable to be terminated at any time without assigning any reason. According to the applicant he continuously worked ever since his initial appointment on 20.1.1981. However, his service was terminated by order dated 19.11.1986, Annexure-D, with immediate effect without assigning any reason issued by the Assistant Director of Census Operation, Meghalaya. The applicant, thereafter, filed a statutory appeal to the appellate authority, i.e. the Registrar General of India, Ministry of Home Affairs, New Delhi, on 27.1.1987. Prior to that appeal and even thereafter, he sent representations and reminders to the appellate authority and other various authorities including to the Minister, Labour Department, Government of India, in the year 1987, but no reply was received to the appeal or to the representations. Thereafter, he filed the instant application praying that the order of termination may be set aside and it be declared that he is a regular Central Government Employee and also prayed for reinstatement with all benefits together with interest at the rate of 18% with effect from 18.11.1986. The

principal.....

Alkesh
RTO



Annexure A/4cmtd

principal contention of the applicant is that having regard to his continuous length of service he should be deemed to have acquired status of regular employee and in any event his termination simpliciter without any notice of termination is bad in law. Mr B.C. Das, the learned counsel for the applicant, drew our attention to a circular issued by the office of the Registrar General of India, Ministry of Home Affairs, Government of India, No.18/18/89-AD.IV dated 9.4.1991 and submitted that having regard to the spirit and object behind that policy the higher authorities of the respondents to whom the representations were filed ought to have acted on same lines and should not have rejected the case of the applicant simply by remaining silent. According to the applicant in the circumstances he has been put to great hardship and great injustice has been done to him. It is also contended by the applicant that it is wrong to describe him as an adhoc employee. He submits that he must be deemed to have acquired status of a temporary employee and his service, therefore, could not be terminated without notice.

2. The contentions urged by the applicant would have merited consideration, but for the fact that the application is barred by limitation ^{and} it is not open to us to interfere with the order of termination at this stage. As stated earlier the order of termination was dated 19.11.1986, ^{when} and the Administrative Tribunals Act had already come into force. The period of limitation prescribed under Section 21 of the Act is one year. Even liberally construing the circumstances the limitation expired at the end of six months from the date of filing of the statutory appeal to the appellate authority on 27.1.1987. Since that was not

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R. Tonk

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disposed of, merely filing repeated representations does not save the running of the period of limitation. Even from expiry ^{of} for a period of six months from the date of filing of the appeal the application as was filed on 7.12.1990 is hopelessly barred by time. In the application ^{MPA/40} for condonation of delay, the applicant has stated that he was ^{pursuing} ~~pressing~~ his remedies with the higher authorities and he being a low paid Grade III employee was not aware of the provisions of law nor did he get proper advice from any quarters and that by chance when he happened to meet a friend of his on his visit to Guwahati he sought legal advice from Advocate, Shri J. Deb and thereafter filed the application and in the circumstances having regard further to the fact that he was unemployed ^{and} it took some time to collect the required funds, the delay that has occurred may be condoned. It is indeed difficult to condone the delay ^{on this grounds.} ~~on this circumstance.~~ It is difficult to imagine that the applicant could not have thought or could not be advised by anybody whom he consulted till he met the learned Advocate ^{or} that he was unaware of the fact that a court of law could be approached. Even with illiterate and backward people the knowledge that a court of law exists and can be approached has to be reasonably presumed. After a long lapse of time the applicant has thus taken a chance of approaching this Tribunal. We, therefore, are constrained to hold that the application is barred by limitation and is not maintainable and must be dismissed only on that ground. We have also referred to some facts in detail and noted the contentions of the applicant. We have done so to emphasise that [✓] having regard to the length of service of the applicant and the policy of the Government of India as disclosed in the circular dated 9.4.1991 and as an opportunity....

A. K. S.
N. T. S.

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opportunity was lost to the applicant to agitate legal contentions before a court of law the applicant cannot be said not to have suffered some injustice. Since we are not able to grant him any relief according to law we leave it ^{to the sound} ~~on some~~ discretion of the respondents to sympathetically consider if the applicant could be re-employed whether on adhoc or temporary basis subject to other conditions of eligibility in any post under them if possible to do so. It may not be out of place to mention that the applicant has served the Census Department and now with the ensuing elections there may be need for recruiting temporary employees. We do not know whether such an avenue is indeed available or not, but we are just indicating that the respondents may adopt an open mind and show sympathy to the applicant if they are in a position to do so. We are making it clear that as we are dismissing the application no order of the Tribunal to the above effect has been passed and the above observations are ^{aimed at} ~~made~~ for consideration of the matter sympathetically by the respondents to the extent possible for them. ✓

3. The Misc. Petition is dismissed. Consequently the original application is dismissed as being not maintainable being barred by limitation.

4. No order as to costs.

TRUE COPY

Sd/- VICE CHAIRMAN

Sd/- MEMBER (ADMN)

Section Officer (A)

17/11/95

17/11/95

Annexure 24
A/S

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI Bench, GUWAHATI.
OA No. 54/1998

Shri B. Ghosh Applicant

Versus

union of India & Ors Respondents

P R E S E N T

THE HON'BLE JUSTICE SHRI D.N. BARUA, VICE-CHAIRMAN

THE HON'BLE SHRI G.L. SANGLYINE, MEMBER (A)

For the Applicant: Mr. R. Dutta,
Miss G. Dutta, Advocates.

For Respondents : Mr. G. Sarma,
Addl. C.G.S.C.

8.6.98 In view of the order passed in
Misc. Petition No. 66/98 the ori-
ginal Application No. 54/98 is
treated as being filed within time.

We have heard Mr. R. Dutta,
learned counsel appearing on behalf
of the applicant and Mr. G. Sarma
learned Addl. C.G.S.C. Mr. Dutta
submits that this Tribunal by
order dated 12.12.90 passed in
C.A. No. 218/90 dismissed the said
original Application as not main-
tainable being barred by limitation,
However, gave a direction to the
respondents to consider the case
of the applicant. But this has not

Amr
R. Dutta

R. Dutta, (Advocate)
Guwahati, Guwahati-781019.

Contd/-

20-

Annexure/1/5/1

O.A.54/98

8.6.98. been done up till now. We direct the respondents to consider the case of the applicant sympathetically and to dispose of the representation filed by the applicant within 2 months time. Within 15 days the applicant may file fresh representation. If such representation is filed by the applicant within 15 days the respondents shall dispose of the representation also.

Accordingly this O.A. is disposed of. No Costs.

sd/ VICE CHAIRMAN

sd/- MEMBER.

Memo No. 1594

dated 15.6.98.

Copy for information and necessary action to:

1. Shri Barendra Ghosh, S/O late Digendra Kr, Ghosh, C/O H.P.Ghosh, Deptt. of Atomic Energy, Shillong-11.
2. Secretary to the Govt. of India, Ministry of Home Affairs, New Delhi.
3. The Registrar General of India, Ministry of Home Affairs, New Delhi-110011.
4. The Director of Census Operation, Meghalaya, Shillong.
5. The Deputy Director, Census Operation, Meghalaya, Shillong.
6. The Assistant Director, Census Operation, Meghalaya, Shillong.
7. Mr. R. Dutta, Advocate, Gauhati High Court, Gauhati.

sd/-

Section Officer (I)

- 21 -

SL. No. 258

Anne's A/16

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 160 of 1999.

Date of Order : This the 30th Day of March, 2001.

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

The Hon'ble Mr K.K.Sharma, Administrative Member.

Shri Barendra Ghosh,
son of Shri Digendra Kumar Ghosh,
C/O Sri H.P.Ghosh,
Deptt. of Atomic Energy,
Shillong-11 (Meghalaya) . . . Applicant

By Advocate Sri R.Dutta.

- Versus -

1. Union of India
represented by the Secretary to
the Govt. of India,
Ministry of Home Affairs,
New Delhi.
2. The Registrar General of India,
Ministry of Home Affairs,
2/A Mansingh Road,
New Delhi-110011.
3. The Director of Census Operation,
Meghalaya, Shillong.
4. The Deputy Director,
Office of the Registrar General of India,
2/A Mansingh Road, Ministry of Home Affairs,
New Delhi-1100011.
5. The Asstt. Director,
Census Operation,
Shillong, Meghalaya. . . . Respondents.

By Advocate Sri A.Deb Roy, Sr.C.G.S.C.

ORDER

CHOWDHURY J.(V.C)

This is third round of litigation. The applicant was initially appointed as a Motor Driver on 20.1.81 by Director of Census Operation, Meghalaya. He was subsequently appointed as Lower Division Assistant in the Regional Tabulation Office under the Directorate of Census Operation

Alleged
Dr. D. Deb Roy
(Advocate)
Shillong, Guwahati-781001

contd..2

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Meghalaya vide order dated 18.8.81. The service of the applicant as LDA was however terminated by an order dated 19.11.86 on the strength of communication No. 18/65/84-AD.I dated 10.11.86 received from the Registrar General of India. The applicant submitted representations and thereafter assailed the order termination by way of Original Application No.218/90 before this Tribunal. By order dated 12.12.94 the application was dismissed as time barred. Though the application was dismissed on the ground of limitation, the Tribunal in the aforementioned O.A. has gone into the merits of the claim and entrusted the subject at the sound discretion of the respondents to sympathetically consider the re-employment of the applicant either on ad hoc or temporary basis subject to eligibility conditions under them. The applicant submitted a representation which was since remain undisposed. The applicant again moved the Tribunal by way of O.A.54/98. By order dated 8.6.98 passed in O.A.54/98, the Tribunal directed the respondents to dispose of the representation within the period specified. The respondents by two separate orders by separate agencies rejected the representation of the applicant. By order dated 21.7.98 the Deputy Director rejecting the representation observed that the services of ad hoc L.D.Cs appointed during 1981 could be regularised after they pass the Special Qualifying Examination conducted by Staff Selection Commission during 1986. According the Deputy Director the applicant was given opportunity to appear in the above examination and since he did not qualify in the examination it was not possible to regularise his service in the grade of LDC. As per the existing instructions of the Government the regular appointment to the post of LDC was to be made only through S.S.C. The Assistant Director, Census Operation Meghalaya on the other hand turned down the representation of the applicant as being time barred. Hence this application

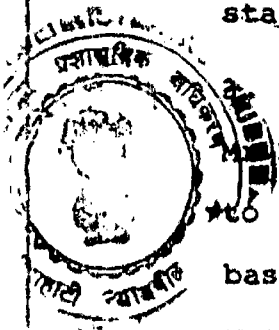


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P.25

Annexure A/6
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assailing the legality and validity of the order of rejection.

2. The respondents have filed written statement. According to the respondents the order of the Tribunal was assailed by the applicant by way of a S.L.P and the S.L.P was dismissed on 11.7.95. As regards the direction issued by the Tribunal for considering the case of the applicant in the light of the direction issued in O.A.218/90 it was informed that the final decision could not be taken by the respondents due to awaiting for Staff Inspection Unit's report of manpower assessment. On the basis of the said report it was necessary to retrench the surplus staffs staff.



We have heard counsel for the parties at length. Mr. R. Dutta, learned counsel for the applicant referring to the communication dated 10.11.96 submitted that the basis of the purported order of termination dated 19.11.86 was the above mentioned communication dated 10.11.96. He further submitted that the said order was patently illegal, so much so the contents of the order dated 10.11.86 even remotely could not be connected with the termination of the applicant. The said letter of the respondents was issued on a different context by the Joint Registrar General of India and the Assistant Director, Census Operation, Meghalaya on irrelevant consideration issued the termination order. We are afraid that we cannot go into the aforesaid issue since the said termination order was already assailed by the applicant in O.A.218/90 and which was finally dismissed as time barred. This proceeding is limited to the direction issued by the Tribunal, more

Att. to
R. Dutta

(S. Dutta ... 10/11/96)

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particularly, the direction issued in O.A.54/98 for considering the case of the applicant. As per Deputy Director each case could not be regularised on the strength of ad hoc appointment during 1981 since he did not qualify in the examination. The Assistant Director on the other hand rejected the same as time barred. ^{of} None of the reasonings cited by the respondents can be accepted. The order of the Tribunal was made for considering the case of the applicant. Consideration was not confined to regularisation alone. In the first order the Tribunal referred to the facts in detail to emphasise the length of service of the applicant under the policy of the Government of India as per Circular dated 9.4.91. Thereafter also a number of office memoranda were issued by the Government from time to time, for providing a fair consideration in the matter of employment. The applicant was terminated on 19.11.86. On the face of the order of the Tribunal dated 12.12.94 in O.A.218/90 the question of regularisation of the service did not arise. What was available to the respondents was to consider the case of the applicant for appointment against any vacancy in the light of existing policy. Following the judgment rendered in Government of Tamilnadu and another vs. G.Md. Ammendeen and others (1999) 7 SCC 499 the Tribunal in a number of cases directed the respondents to absorb the applicants served in the Census Department in vacancies that would accrue for the Census Operation.

4. We have given our anxious consideration on the matter. From the order as mentioned above did not indicate that it addressed any of the issues discussed above. Considering all the aspects of the matter we are of the opinion that the case of the applicant requires to be

considered in a fair manner for appointing him in any post under the Census department commensurating with his educational qualifications. Mr Dutta has submitted that since there is a post of Driver in the department, the case of the applicant may be considered. Considering all these aspects we feel that the respondents need be considered the case of the applicant for appointment against any vacancy or future vacancy commensurating with his qualifications. This consideration need not be confined to only Group D post, the respondents may also consider his case against Group C post against any existing vacancy or any future vacancy that may arise.

5. For the foregoing reasons we set aside the order dated 21.7.98 passed by the respondent No.4. We accordingly direct the respondent No.3, Director of Census Operation, Meghalaya to consider the case of the applicant afresh in the light of the observations/made above and pass necessary orders to that extent as expeditiously as possible within a period of four months from the date of receipt of a certified copy of this order.

The application is accordingly disposed of to the extent indicated. There shall, however, be no order as to costs.

Certified to be true Cop.
प्रमाणित प्रतिलिपि

Sd/ VICE CHAIRMAN

Sd/ MEMBER (Adm)

Section Officer (J),
आनुमान अधिकारी (न्यायिक शाखा)
Central Administrative Tribunal
केन्द्रीय प्रशासनिक अधिकारी
Guwahati Bench, Guwahati
गुवाहाटी बेंच, गुवाहाटी

A. K. Dutta
R. Dutta (Attorney)
M. J. 300, Guwahati-781011

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Registered A/10

Signature 6/1/7

तार : मेघरेन्सरा

TELEGRAM : MEGHCENSUS



Telefax : 0364-224249

Telephone/दूरभाष : 0364-222331

: 0364-224049

E-mail: deomegha@shillong.meg.nic.in



No./सं- C.18012/1/91-Estt

भारत सरकार

GOVERNMENT OF INDIA

गृह मंत्रालय

MINISTRY OF HOME AFFAIRS

जनगणना कार्य निदेशालय, मेघालय

OFFICE OF THE DIRECTOR OF CENSUS OPERATIONS, MEGHALAYA,

मारवेइन बिल्डिंग, धानखेती, शिलोंग - 793003.

'MARWEIN BUILDING', DHANKHETI, SHILLONG - 793003.

23 NOV 2001

Dated/दिनांक:-

ORDER

At the time of decennial census 1981 and 1991 in the country, the Regional Tabulation Offices (RTOs) were opened in States/ Uts to cope up with the extra work arising from the census operations. These RTOs were closed after the census work was completed. To run the RTOs, some temporary posts were created and appointments against these posts were made purely on temporary and adhoc basis and the services of the persons appointed were terminated on abolition of these post.

Shri Barendra Ghose was appointed as Lower Division Clerk (LDC) in the RTO, Meghalaya vide Order No.A.11020/1/81-Estt (B)109 dated 18.8.81 issued by the Office of Directorate of Census Operation (DCO), Meghalaya. It was clearly mentioned in that order that the appointment was purely temporary and his services were liable to be terminated at any time without assigning any reasons thereof. The Services of Shri Ghose were terminated w.e.f. 19.11.86 granting him one month's pay in lieu of one month's notice as per the terms and conditions of the appointment.

According to Govt. instructions, the services of adhoc LDCs appointed during 1981 Census could be regularized after they passed the special qualifying examination conducted by the Staff Selection Commission (SSC) during 1986-1987. Accordingly, Shri Ghose was given an opportunity to appear in the above examination. As Shri Ghose was not able to qualify in the said examination, it was not possible for the DCO Meghalaya to regularize his service in the grade of LDC. Shri Ghose assailed the termination order by way of O.A. No.218/1990 before the Central Administrative Tribunal (CAT), Guwahati Bench. The Hon'ble Tribunal was pleased to dismiss the O.A. vide its order dated 12.12.94 as time-barred. Though the O.A. was dismissed on the grounds of limitation, the Hon'ble Tribunal going into the merits of the claim, directed the respondents to sympathetically consider re-employment of the applicant either on adhoc or temporary basis subject to eligibility conditions. Shri Ghose filed a Special Leave Petition (SLP) No.11095 before the Supreme Court against the above order of the Hon'ble Tribunal and the said SLP was dismissed on 11.07.95 by the Supreme Court.

The applicant again moved the Hon'ble Tribunal by way of an O.A. No.54/98 in the CAT, Guwahati Bench. The O.A. was disposed of by the Hon'ble Tribunal vide its order dated 8.6.98 directing the respondents to dispose of the representation of Shri Ghose. The representation of Shri Ghose was considered by the Office of Registrar General, India and the same was rejected vide order dated 21.7.98 holding that the services of Shri Ghose could not be regularized as he was not able to pass the special qualifying examination conducted by the SSC during 1986-1987. The representation of Shri Ghose was rejected vide another order dated 17.8.98 passed by the Asstt. Director of Census Operations (ADCO), Office of DCO Meghalaya. In this Order, the ADCO stated thatI am to inform you that the case of your reinstatement/re-employment in this Directorate has been duly considered with an open mind and

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12/10/01

Alkesh
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P. Duma. (Astrocat)
12/10/01, Guwahati-781011

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sympathy towards you from every angle, but it is regretted to mention that as your case is barred by the limitations of the terms and conditions in the Recruitment Rules, prescribed by the Government for appointment to any post, this office is not in a position to consider your case.

The applicant again went to the Hon'ble Tribunal with O.A. No.160/99. In the said matter, the Hon'ble Tribunal observed that "...Following the judgement rendered in Government of Tamil Nadu and another Vs G. Md. Ammenudeen and others (1999) 7 SCC 499 the Tribunal in a number of cases directed the respondents to absorb the applicants served in the Census Department in vacancies that would accrue for the Census Operations." The Hon'ble Tribunal further observed that "Considering all these aspects we feel that the respondents need be considered the case of the applicant for appointment against any vacancy or future vacancy commensurating with his qualifications. This consideration need not be confined to only Group 'D' post, the respondents may also consider his case against Group 'C' post against any existing vacancy or any future vacancy that may arise.

The Hon'ble Tribunal also set aside the order dated 21.7.98 passed by the Deputy Director in the Office of the RGI, New Delhi. The Hon'ble Tribunal has directed the DCO Meghalaya to consider the case of the applicant afresh in the light of the observations made by the Hon'ble Tribunal and pass necessary order to that extent.

It is relevant to note here that in para 3 at page 4 of the judgement, the learned Tribunal took a view as follows:-

"Following the judgement rendered in Government of Tamil Nadu and another Vs G. Md. Ammenudeen and Others (1999) 7 SCC 499 the Tribunal in a number of cases directed the respondents to absorb the applicants served in the Census Department in vacancies that would accrue for the Census Operations.

Thus, from the above it is apparent that in view of the judgement of the Hon'ble Supreme Court followed by the Hon'ble Tribunal, Shri B. Ghose has to be considered for job in the vacancies that would accrue from Census Operations only. Further, in para 4 at page 5 also, the Hon'ble Tribunal has viewed that Shri Ghose may be considered for appointment in any post under the census department commensurating with his qualifications. The observations/directions made by the Hon'ble Tribunal in para 3, 4 and 5 have to be read together. As in the judgement of Govt. of Tamil Nadu Vs. G. Md. Ammenudeen case which has been followed by the Hon'ble Tribunal in para 3 of its judgement which has been reproduced above, the direction is to consider him for his adjustment against census operations post.

It would be worthwhile to note here that due to increased workload because of census operations, certain regular incumbents of the post of LDC have been required to perform the function of UDCs. Although they are retaining the lien in the post of LDC and the post could not be called vacant. Still, for the time being, the resultant vacancy is there temporarily. It may be therefore, appropriate to accommodate Shri Ghose in such a post for the time being. However, it may be made clear that as the regular incumbents who are retaining their lien in the post, are reverted to their regular post. Shri Ghose will have to vacate the post.

In the observations/directions of the Hon'ble Tribunal in its order dated 30.03.01, the Govt. has been directed to consider the applicant against any existing vacancy or future vacancy that may arise against the temporary posts created for Census 2001 commensurating with his qualifications. There is one resultant vacancy in the post of LDC in the office of the DCO Meghalaya arising due to its incumbent being promoted on adhoc basis against the temporary post of UDC which has been created for Census 2001. Therefore, as per the directions of the Hon'ble Tribunal, Shri B. Ghose is hereby re-engaged to

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(...3...)

the short term vacant post of Lower Division Clerk in the pay scale of Rs.3050-4590, fallen vacant due to promotion of the incumbent to the temporary post of UDC which has been created for a short period due to Census 2001 w.e.f. the date of his joining duty till 28.02.2002 or till the abolition of the post, whichever is earlier.

The re-engagement of Shri Ghose will be bound by the following terms and conditions :-

- (1) His re-engagement will not bestow upon him any right for regularization in the post in which he is appointed and in any other posts and his services shall be terminated at any time without assigning any reason thereof.
- (2) As the post of U.D.C. is created to attend to the additional work of Census of India 2001 and likely to be discontinued on or before 28.02.2002, his services shall stand terminated on the discontinuation / abolition of the temporary post created for Census of India 2001 and the Govt. shall have no liability thereafter.

(A. ROY CHOUDHURY)
ASSTT. DIRECTOR OF CENSUS OPERATIONS
MEGHALAYA.

Memo No. C.18012/1/91-Estt

Copy forwarded for information to :-

Dated, the 23 NOV. 2001

1. The Registrar General, India, 22/A, Mansingh Road, New Delhi - 110011.
2. The Pay & Accounts Officer (Census), Ministry of Home Affairs, A.G.C.R. Building, New Delhi - 110002.
3. The Accounts Section, Directorate of Census Operations, Meghalaya.
4. Shri Barendra Ghosh, C/o Shri H.P. Ghosh, Deptt. of Atomic Energy, Shillong - 4 (Meghalaya).
He is to report to the undersigned immediately. The offer of appointment to be considered and implemented as per Registrar General, India's direction vide his letter No.A.28011/29/2001-Ad.II dt.7.11.2001.
5. Personal File of the person concerned.

(A. ROY CHOUDHURY)
ASSTT. DIRECTOR OF CENSUS OPERATIONS
MEGHALAYA.

True copy
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A. K. Bhatta (Advocate)
Shillong, Meghalaya - 791011

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Annexure A/8

18.12.2001,

Date. 12-12-2001.

To.

The Assistant Director Of Census Operation,
Meghalaya, Shillong-3. Marwein Building,
Dhankheti, Shillong-3.

Sir:-

Sub: Implimentation Of CAT/GHY'S Orders IN OA No. 160/99.

Ref: Your No.C/18012/1/91 Estt dated 23-11-2001.

The Hon'ble CAT/Guwahati in order dated 30-03-2001 dearly ordered for my appointment against any existing or future vacancy But in your orders communicated under No.C/18012/1/91 Estt dated 23-11-2001.

You have only offered an appointment for 2 months. As such this is in clear violation of the Hon'ble CAT's order dated 30-03-20 in OA No.160/99.

I would therefore request you to be kind to appoint me against an existing or future vacancy for which act of kindness.

I Shall remain ever great ful with regards.

Yours faithfully

Barendra Ghosh

(Shri Barendra Ghosh)

C/O. H.P. Ghosh,
Deptt. Of Atomic Energy.
NER, Shillong-11.

18/12/2001
Asstt. Director of Census Operations
Meghalaya, Shillong.

Alksh
R. D. D. R.

18/12/2001
Asstt. Director of Census Operations
Meghalaya, Shillong.

- 30 -

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH : GUWAHATI**

O.A. No. 242 of 2002

Filed by

27/9/02
(A. DEB ROY)
Sr. C. G. S. C.

C. A. T., Guwahati Bench

Shri B. Ghosh

.....Applicant

Versus

Union of India & Others

....Respondent

- And -

In the Matter of :

Written statement submitted by the respondents.

MOST RESPECTFULLY SHOWETH :

PRELIMINARY OBJECTIONS

- a) The original application is barred by resjudicata. The applicant had filed OA No.160/1999 before the Hon'ble Tribunal making the same prayer as has been made in present OA No.242/2002. The said OA of the applicant was disposed of by this Hon'ble Tribunal by order dated 30th March 2001. A copy of the order is placed on record by the applicant along with the OA. As far as challenge to letter dated 23rd Nov 2001 is concerned the same does not give any cause of action to the applicant as the same was issued giving offer of appointment to the applicant against a short term vacant post of lower divisional clerk in the pay scale of Rs 3050-4500 and the applicant did not accept the said offer. The main prayer in the OA is for direction to the respondents to absorb the applicant in any existing or future regular vacancy which was his prayer in the earlier OA mentioned above.

- b) The original application is hit by principle of promissory estoppel. The applicant was offered the appointment against a short term vacancy of LDC, but he did not take appointment so offered. Thus by his conduct of not taking appointment offered to him the applicant is estopped from claiming appointment in respondent department, now at this stage.
- c) The original application made by the applicant contains self contradictory prayer, thus the OA is not maintainable. It is respectfully submitted that in the first part of the prayer the applicant has challenged the letter by which a short term vacancy of LDC was offered to him and in the second part of the prayer he is seeking direction to respondents to give him appointment against any vacancy. When the applicant is aggrieved by the offer of appointment given to him he cannot seek direction against the respondents to give him appointment against available vacancy.
- d) That the reliance by the applicant on the decision of Hon'ble Supreme Court in the case of G Ameenudin Vs State of Tamil Nadu is misplaced. It is respectfully submitted that in the case of Bhim Rao and Ors Vs UOI the similar issue came up for consideration before the Bangalore Bench of the Hon'ble Tribunal and from the order of the Hon'ble Tribunal the matter had gone to Hon'ble Karnataka High Court in WP No.15071-15073/2002. In the said petitions the Hon'ble Karnataka High Court viewed that the G Ameenudin case applied only in such cases where the policy of Tamil Nadu Government was involved and not in the cases where relief is prayed against the office of RGI (Censes Department). Hon'ble High Court also viewed that the order being consent order does not lay down any principle. In view of the said interpretation given by the Hon'ble High Court to the application of the judgment of Hon'ble Supreme Court in the cases like present one the present OA deserved to be dismissed. The relevant portion of the judgment

of the Hon'ble High Court of Karnataka, Bangalore is extracted below:-

"Para 7. The Supreme Court has time and again held that, contract employment in connection with any project for a specific period of about one year or fifteen months will not entitle such employees for regularization or other relief. The petitioners submit that they are not seeking regularization but only seeking some priorities and concessions in employment by giving complete age relaxation, as was granted by the Supreme Court in GOVERNMENT OF TAMIL NADU Vs G MOHAMMED AMMENUDEEN (1999 Lab. I.C.3570).

Para 8: That case related to census employees who had similarly worked in Tamil Nadu during 1991-92. In Tamil Nadu, the government had adopted a policy of absorbing temporary census employees and had absorbed such employees in 1971 and 1981. The same policy of absorbing the temporary employees was applicable even during 1991-92, but on account of a ban on recruitment, the said contract census employees were not absorbed in spite of the policy of the government. In those circumstances, the persons aggrieved approached the Tamilnadu Administrative Tribunal, seeking relief, in the year 1995. The said Tribunal allowed the said applications and held that the applicants therein were entitled to absorption and directed the State government to consider their cases for absorption. Feeling aggrieved, Tamilnadu Government filed an appeal before the Supreme Court. When the matter came up for consideration, Tamilnadu government submitted that it had taken a decision to grant certain relief by giving the said employees priority and age relaxation. **The matter was disposed of on the submission made by the counsel for the government by giving certain further concessions. The said decision relates to the special facts of that case, in particular the policy of the Tamilnadu Government and on the consent**

of that Government for grant of relief. Therefore the petitioner are not entitled to any relief based on the said decision. No principle is laid down in regard to the absorption of no such contract employees.

Para 9: We, therefore, do not find no reason to interfere with the order passed by the tribunal. We therefore dismiss these petitions making it clear that the dismissal of the petition will not come in the way of Government of India or State government granting any relief if they so deem fit."

- e) The services of the applicant were terminated with effect from 19-11-1986. He was given opportunity to appear in the examination conducted by SSC in accordance with recruitment rules for selection the post of LDC. Since he could not qualify the exam/selection he could not be given fresh appointment. The termination of the applicant was challenged by him in the Tribunal by way of OA No.218/1990 but the said OA was dismissed. The order of Hon'ble Tribunal was challenged by him before Supreme Court unsuccessfully. Thus when the termination of the applicant has been upheld by the Hon'ble Tribunal and also by Hon'ble Supreme Court on the basis of service rendered by him prior to termination the applicant cannot pray for fresh appointment as LDC. He can also not seek re-instatement. In seeking the relief contained in the OA the applicant is asking this Hon'ble Tribunal to go behind its earlier order and also behind the order of Hon'ble Supreme Court which he is not permitted to do under the law.

The respondents beg to submit Brief History of the Case, which may be treated as a part of written statement.

Shri B. Ghosh was initially appointed on purely temporary basis to the post of Driver w.e.f. 20.01.81 in the office of the Director of Census Operations, Meghalaya Shillong (Annexure – 1)

Subsequently, Shri B. Ghosh was appointed as Lower Division Clerk in the Regional Tabulation Office, which was functioning exclusively to cope with the extra work arising for the 1981 census enumeration. The office was purely temporary and usually functioned only for a few years after census. All the posts created / sanctioned for the tabulation office were purely temporary and the office were to be abolished when the work in connection with census enumeration was completed.

Therefore as stipulated in both the appointment orders, Shri Ghosh was appointed on a purely temporary / adhoc basis and his services was liable to be terminated. Consequently his service was terminated w.e.f. 19.11.1986 (AN) with one month pay in lieu of one months notice. Vide order No. A-11019/8/86 – Estt. Dated 19.11.86 (Annexure – 3) under direction of the RGI, New Delhi vide his letter No. 18/6584 – Ad.I dated 10.11.1986 (Annexure – 4). In accordance to the letter No. 18/97/86 – Ad. I dated 06.01.1987 from the RGI, New Delhi, the eligible staff on purely temporary or adhoc basis willing to appear in the examination conducted by the Staff Selection Commission may be forwarded. Accordingly the application of Shri B. Ghosh with the application of Sarvashri H. Thangkhiew and Shri C. Pandey who were also LDCs appointed on purely temporary basis had been forwarded to the Staff Selection Commission. But they could not come out successful (Annexure – 5).

As per instruction of the Govt. the regular appointment to the post of LDC is made through Staff Selection Commission. The applicant was already given an opportunity to appear and qualify the special qualifying examination conducted by SSC. Since he did not pass the above examination, his service could not be either regularised or reappointment made under the conditions prescribed in the recruitment rules.

Thereafter, Shri Ghosh filed on 07.12.1990, an original application (OA No. 218 of 1990 with MP No. 91/90 for condonation of delay) praying that the order of termination may be set aside and

his service regularised and reinstated with all benefits and interest there in w.e.f. 19.11.1986.

The Hon'ble Tribunal dismissed the application on the ground of being barred by limitation with an observation to consider the case of the applicant sympathetically, vide order dated 12.12.1991 (Annexure - 6),

Shri Ghosh filed a special leave petition numbering 11095 against the order of dismissal by the Tribunal before the Supreme Court and the said leave petition was dismissed on 11.07.1995 (Annexure - 7).

The delay in considering the case of the applicant as desired by the Hon'ble Tribunal in its order dated 12.12.1994 passed in OA No. 218 of 1990 is due to awaiting of the Staff inspection units report of Assessment of Manpower requirements for the Directorate of Census Operations Meghalaya, Shillong. The Assessment report in respect of this office was provisionally discussed on 25.01.1996 and the final decision had only been received by Directorate of Meghalaya on 29.12.1997 (Annexure - 8). Consequently, Shri Ghosh filed an application numbering OA No. 54/1998 (with MP No. 66/98 for condonation of delay on MP 122/98 Additional statement of facts) against the delay to consider for reemployment etc. and failure to show sympathy towards Mr. Ghosh.

The Hon'ble Tribunal dismissed the application on 08.06.1998 with a direction to the respondent to consider the case of the applicant sympathetically and to the representation filed by him within two months time (Annexure - 9).

In responding to Shri Ghosh's representation dated 21.06.1998 addressed to the Registrar General India, New Delhi and the Director of Census Operations Meghalaya, Shillong replies were issued to him by the Deputy Director of Census Operations vide their letter Nos.

13014/19/98 – Ad. IV dated 21.07.1998 and No. G-18012/1/91 – Estt.
Dated 17.08.1998 respectively (Annexure – 10 and 11). 60

Subsequently Shri Ghosh filed on May 1999 application numbering OA No. 160 of 1999 against letter above issued by the Deputy Director and Assistant Director for turning down the applicant's representation for setting aside the order of termination and not considering the case in his favour.

Hon'ble Tribunal dismissed the application on 19.07.2001 with a direction to consider the case of the applicant afresh for appointment against any vacancy or future vacancy commensurating with his qualifications. It has further been instructed that this consideration need not be confined to only Group 'D' post, Respondents may also consider his case in any Group 'C' post against any existing vacancy or any future vacancy that may arise (Annexure – 12).

The Respondents beg to submit para-wise comments as follows: -

Para 1. The contents of para 1 of the OA are misconceived and misleading and hence the same are denied. The letter dated 23rd Nov 2001 issued by the respondents giving offer of appointment to the applicant does not give him any cause of action. Further if the applicant is aggrieved by the offer of appointment given to him, he cannot make a prayer for giving him appointment.

Para 2 & 3. Need no reply.

4.1 & 4.2. That with regard to para – 4.1 & 4.2, the Respondents beg to offer no comments.

4.3. That with regard to para – 4.3 of OA, the Respondents beg to state that Shri B. Ghosh was initially appointed on purely temporary basis to the post of Driver with effect from

20.01.1981 in the office of the Director of Census Operations, Meghalaya, Shillong (Annexure - I). The post of Driver was created for a temporary period for 1981 census operations only.

Subsequently, Shri B. Ghosh was appointed as Lower Division Clerk in the Regional Tabulation Office under the same authority (Annexure - II) vide order No. A. 11020/1/81 - Estt. (B) 109, dated 18.08.1981 issued by the Director of Census Operations, Meghalaya, Shillong. Similarly, the post of LDC was also created for a temporary period exclusively for 1981 census in the Regional Tabulation office.

The Regional Tabulation office was established exclusively to cope with the extra work arising for the 1981 Census enumeration. The office itself was purely temporary and usually to function for a few years after census. All the posts created / sanctioned for the tabulation office were purely temporary and the office was abolished when the work in connection with the census enumeration was completed. Therefore, as stipulated in both the appointment orders, Shri Ghosh was appointed on a purely temporary basis and his service was liable to be terminated.

It is mentioned in para - 4.3 that "All on sudden under letter No. A. 11109/8/96 - Estt. Dated 19.11.1986 the service of the applicant was terminated by the Assistant Director, Meghalaya, Shillong without showing any reason". But the facts remains that it was clearly mentioned in the appointment order that the appointment was purely temporary and his service was liable to be terminated at any time without showing any reason thereof. As the Regional tabulation office, against which Shri Ghosh was appointed w.e.f. 19.11.86 vide Registrar General India's letter No. 18/65/84 - Ad.I dated 10.11.86 (Annexure - III), granting him one months pay in lieu of one month's notice as per term and condition of the appointment.

According to Government instructions, the services of Lower Division Clerks appointed temporarily during 1981 Census could be regularised after they passed the special qualifying examination conducted by the Staff Selection Commission (SSC) during 1986-87.

As per order No. 6/14/86 -CS-II dated 30.09.86 (Annexure - IV) from the Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, Government of India, New Delhi, in which it was made clear that it was entirely irregular to make appointments in Group 'C' posts without the recommendation of the Staff Selection Commission. A special qualifying examination had been decided to be held in order to regularise the services of the eligible adhoc / purely temporary appointees. Specific instructions were also issued in the Office Memorandum that the services of the persons who had been appointed on adhoc / purely temporary basis to Group 'C' posts should be terminated if the employee do not qualify after having taken the examination.

4.4 That with regard to para - 4.4, the respondents beg to state that in accordance with the letter No. 18/97/86 - Ad. I dated 06.01.1987 from the Registrar General India, New Delhi, the eligible staff on purely temporary or adhoc basis willing to appear in the examination conducted by the Staff Selection Commission may be forwarded. Accordingly the application of Shri B. Ghosh with the applications of Sarvashri H. Thangkhiew and Shri C. Pandey, who were also LDCs appointed on purely temporary and adhoc basis had been forwarded to the Staff Selection Commission. But all the three candidates, including Shri Ghosh were not able to qualify in the said examination (Annexure - V). As such it was not possible for the DCO, Meghalaya to regularise the service of Shri B. Ghosh.

4.5 That with regard to para - 4.5 of the petition, the respondent beg to state that as per instructions of the Government, the

regular appointment to the post of LDC is made through Staff Selection Commission. The applicant was already given an opportunity to appear and qualify the special qualifying examination conducted by the SSC. Since he did not pass the above examination, his name could not be forwarded for regularization under the conditions contained in the recruitment rules.

4.6 to 4.10. That with regard to para – 4.6 to 4.10, the respondents beg to offer no comments.

4.11. That with regard to para – 4.11, the Respondents beg to state that the offer of appointment was made for the post meant for 2001 Census, which was sanctioned till 28.02.2002.

4.12 That with regard to para – 4.12, the respondents beg to state that there were vacancies created only for the 2001 Census operations and the applicant was duly accommodated as LDC commensurating with his qualifications as the Hon'ble Tribunal has directed that he may be appointed in any post under the Census department commensuration with his qualification in vacancies that would accrue for census operation.

5. GROUND RELIEF

5.1 That with regard to para – 5.1, the respondents beg to state that the Hon'ble Supreme Court of India has not directed for permanent absorption to Government of Tamilnadu. The Hon'ble Supreme Court has directed the Tamil Nadu Government, and not the Census Directorates for absorbing the retrenched employees in various organizations under the control of the State Government. The respondent beg to enclose a copy of judgement dated 3rd April, 2002 (Annexure – 13) of Hon'ble High Court of Karnataka in Writ Petition No. 15071-15073 of 2002 (Bhimara & Others Vs Union of India &

Others) wherein Hon'ble High Court has held in paras 8 & 9 of the judgement as under: -

"Para 7. The Supreme Court has time and again held that, contract employment in connection with any project for a specific period of about one year or fifteen months will not entitle such employees for regularization or other relief. The petitioners submit that they are not seeking regularization but only seeking some priorities and concessions in employment by giving complete age relaxation, as was granted by the Supreme Court in GOVERNMENT OF TAMIL NADU Vs G MOHAMMED AMMENUDEEN (1999 Lab. I.C.3570).

Para 8: That case related to census employees who had similarly worked in Tamil Nadu during 1991-92. In Tamil Nadu, the government had adopted a policy of absorbing temporary census employees and had absorbed such employees in 1971 and 1981. The same policy of absorbing the temporary employees was applicable even during 1991-92, but on account of a ban on recruitment, the said contract census employees were not absorbed in spite of the policy of the government. In those circumstances, the persons aggrieved approached the Tamilnadu Administrative Tribunal, seeking relief, in the year 1995. The said Tribunal allowed the said applications and held that the applicants therein were entitled to absorption and directed the State government to consider their cases for absorption. Feeling aggrieved, Tamilnadu Government filed an appeal before the Supreme Court. When the matter came up for consideration, Tamilnadu government submitted that it had taken a decision to grant certain relief by giving the said employees priority and age relaxation. The matter was disposed of on the submission made by the counsel for the government by giving certain further concessions. The said decision relates to the special facts of that case, in particular the policy of the Tamilnadu Government and on the consent of that Government for grant of relief. Therefore the petitioner are not entitled to any relief based on the said decision. No

principle is laid down in regard to the absorption of no such contract employees.

Para 9: We, therefore, do not find no reason to interfere with the order passed by the tribunal. We therefore dismiss these petitions making it clear that the dismissal of the petition will not come in the way of Government of India or State government granting any relief if they so deem fit.

5.2 That with regard to para – 5.2, the respondents beg to state that the order of the Hon'ble Tribunal has been duly implemented by offering an existing vacancy of Census post created in connection with 2001 Census, as there was no other post available at that time commensurating with the qualification.

5.3 That with regard to para – 5.3, the respondents beg to state that the order of the Hon'ble Supreme Court and the Hon'ble Tribunal have been duly obeyed.

5.4 That with regard to para – 5.4, the respondents beg to state that the Hon'ble Tribunal has not directed for a regular vacancy but to consider him for any vacancy or future vacancy under the Census Department commensurating with his educational qualification.

DETAILS OF THE REMEDY EXHAUSTED

6. That with regard to para – 6, the respondents beg to state that since the applicant declined to accept the offer of appointment, it was felt not necessary to reply his representation dated 18.12.2001.

7. That with regard to para – 7, the respondents beg to state that CP No. 32 of 2002 was dismissed by the Hon'ble Tribunal on 23.08.2002.

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8. That with regard to para – 8, the respondents beg to state that as the applicant failed to qualify in the examination conducted by the SSC, he is not eligible for regular vacancy that may be arise in future as per Government rules / directives. The OA is misconceived and devoid of merits hence deserve to be dismissed.

9 – 12. Need no reply.

In view of the above it is prayed that the OA may be dismissed with cost.

Nishi Kanta Laskar
RESPONDENTS

Director
Census Operations, Meghalaya
Shillong,

VERIFICATION

I, Shri Nishikanta Laskar presently working as Director of census operations, Meghalaya be duly authorized and competent to sign this verification do hereby solemnly affirm and declare that the statements made in para _____ are true to my knowledge and belief, these made in para _____ are true to my information derived therefrom and rest are my humble submission before the Hon'ble Tribunal, I have not suppressed any material facts.

And I sign this verification on 24th September the day of September '2002.

Nishi Kanta Laskar,
RESPONDENT

Director
Census Operations, Meghalaya
Shillong,

14 -43- ANNEXURE (1)
NO. A.11019/2/80-ESTT
GOVERNMENT OF INDIA
MINISTRY OF HOME AFFAIRS

OFFICE OF THE DIRECTOR OF CENSUS OPERATIONS, MEGHALAYA

Shillong, the 20th Jan. 1981

ORDER

Shri Barendra Ghosh is hereby appointed as Driver in the scale of B.260-6-290-EB-6-326-8-350/-P.M plus dearness and other allowances as admissible from time to time under the Central Government Rules with effect from 20th January, 1981.

The appointment is purely temporary and liable to be terminated at any time without notice and without assigning any reason thereof.

Sd/-J.TAYENG,
DIRECTOR OF CENSUS OPERATIONS,
MEGHALAYA.

Memo.No.A.11019/2/80-ESTTB Dt.Shillong, the 20th Jan, 1981

1. The Pay & Accounts Officer (Census), Ministry of Home Affairs, A.G.C.R. Building, New Delhi-110002.
2. The Accountant.
- ✓ 3. Personal file.
4. Shri Barendra Ghosh, Rilbung, Shillong.

(L.KHARPURIA),
DY.DIRECTOR OF CENSUS OPERATIONS,
MEGHALAYA.

L.L.

15
ANNEXURE (2)
-44-68

NO. A.11020/1/81-ESTTB/109
GOVERNMENT OF INDIA
MINISTRY OF HOME AFFAIRS
OFFICE OF THE DIRECTOR OF CENSUS OPERATIONS, MEGHALAYA

Shillong, the 18th August, 1981.

ORDER

Subject to the production of medical certificate and subsequent satisfactory Police Verification reports Shri Barendra Ghosh is hereby appointed as Lower Division Clerk in the Regional Tabulation Office under the Directorate of Census Operations, Meghalaya in the scale of Rs. 260-6-290-EB-6-326-8-366-
~~EB-8-390-10-400/-~~
~~2-250/-~~ P.M. plus dearness and other allowances as admissible from time to time under the central Government Rules with effect from the date of joining. He should report for duty within ten days from the date of issue of this letter failing which the appointment will be treated as cancelled.

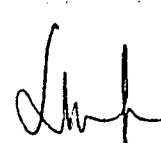
The appointment is purely temporary and liable to be terminated at any time without assigning any reason thereof.

Sd/- J. TAYENG,
DIRECTOR OF CENSUS OPERATIONS,
MEGHALAYA.

Memo.No. A.11020/1/81-ESTTB/109-A 18th August, 1981.

Copy forwarded to :-

1. The Pay and Accounts Officer (Census), Ministry of Home Affairs, A.G.C.R. Building, New Delhi-110002.
2. The Accountant.
3. Shri Barendra Ghosh.
- ✓ 4. Personal File.


(L. KHERPURIA)
DY. DIRECTOR OF CENSUS OPERATIONS,
MEGHALAYA.

16
Annexure 3
-45-
6
H.C.A.11019/8/96-ESTD
GOVERNMENT OF INDIA
MINISTRY OF HOME AFFAIRS

OFFICE OF THE DIRECTOR OF CENSUS OPERATIONS, MEGHALAYA

Shillong, the 19th Nov. 1986.

OFFICE ORDER

In pursuance of the letter No.18/65/84-AD.I dated 10.11.86 from the Registrar General, India, the services of the following ad-hoc L.D.Cs of this Directorate are hereby terminated with immediate effect i.e. 10.11.86 (A.N.).

1. Shri C.Pandey, L.D.C.
2. " B.Shosh, L.D.C.
3. " H.Thangidiew, L.D.C.

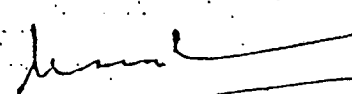
(K.S. INGEDOH),
ASSTT.DIRECTOR OF CENSUS OPERATIONS,
MEGHALAYA.

Memo.No.A.11019/8/96-ESTD

Shillong, the 19th Nov.1986.

Copy forwarded :-

1. The Registrar General, India, 2/1, Barseigh Road, New Delhi-110011.
2. The Pay & Accounts Officer (Census), Ministry of Home Affairs, A.C.C.S. Building, New Delhi-110002.
3. The Accountant. The salary for one month with effect from 20.11.86 may be paid to them immediately.
4. Persons concerned with form II (3 copies).
5. Personal files of concerned staff (3 copies).


(K.S. INGEDOH),
ASSTT.DIRECTOR OF CENSUS OPERATIONS,
MEGHALAYA.

No.18/65/84-Ad.I

Government of India

Ministry of Home Affairs

OFFICE OF THE REGISTRAR GENERAL, INDIA

2/A, Man Singh Road,
New Delhi, 10.11.86

To

All Heads of Offices (By Name)
in Census Directorates in States and Union Territories.Sub: Termination of service of ad-hoc L.D.Cs and ad-hoc
Junior Stenos.

Sir,

As you are aware, a Special Qualifying Examination was conducted by the Staff Selection Commission on 28th July, 1985 for ad-hoc Lower Division Clerks and Junior Stenographers. All ad-hoc Lower Division Clerks and Junior Stenographers working against Core/Plan posts were required to appear in the Special Qualifying Examination vide this Office letter No. 18/65/84-Ad.I dated 12.3.85 read with letter dated 11.4.85. Subsequently it came to the notice of this office that some of the persons working as Lower Division Clerks and Junior Stenographers against 1981 Census posts also were allowed to take this Special Qualifying Examination.

Subsequently, instructions were issued in Department of Personnel & Training's O.M.No. 6/14/86-CS.II dated 1st August, 1986, circulated through this office letter No. 18/77/86-Ad.I dated 2nd August, 1986 about a Supplementary Qualifying Examination to be held by the Staff Selection Commission in early 1987 and the Directorates were advised that the examination was open to those who are working against Core/Plan posts but could not or did not appear in the earlier examination held on 28.7.85. The Department of Personnel & Training have now clarified through their O.M.No. 6/14/86-CS.II dated 30th September, 1986, (a copy of which is enclosed for reference) that the Supplementary Special Qualifying Examination to be held in early 1987 is open only to those Lower Division Clerks and Junior Stenographers as did not or could not take the Special Qualifying Examination, 1985 because of age and service qualifications but would have been eligible by the revised interpretation, i.e., those who were within the age limit at the time of their initial appointment as daily rated clerks through employment exchanges, followed by appointment as ad-hoc Lower Division Clerks, and had completed one year continuous service as on 01.01.85 including (a) service as daily rated clerks (ignoring the periods of technical breaks) and (b) service as ad-hoc Lower Division Clerks etc.,

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47- : 2 :
Thus, the Supplementary Special Qualifying Examination to be held by Staff Selection Commission in early 1987 is not open to those Lower Division Clerks and Junior Stenographers of Census Organisations working against Core/Plan posts who could not or did not appear in the earlier examination held by Staff Selection Commission on 28.7.85. The Department of Personnel & Training have directed that services of all such ad-hoc Lower Division Clerks and Junior Stenographers who could not or did not appear in the said Special Qualifying Examination held on 28.7.85 may be terminated forthwith by paying one month's emoluments in lieu of notice. You are therefore, requested to terminate the services of the under-mentioned category of employees by paying them emoluments in lieu of one month's notice:-

- (i) Ad-hoc Lower Division Clerks and Junior Stenographers working against Core/Plan posts who appeared in the Special Qualifying Examination held in July, 1985, but could not qualify.
- (ii) Ad-hoc Lower Division Clerks and Junior Stenographers working against Core/Plan posts who, although eligible to appear in the Special Qualifying Examination and were also allowed to so appear, but did not take the examination.
- (iii) Ad-hoc Lower Division Clerks and Junior Stenographers working against 1981 Census posts who were inadvertently allowed to appear in the Special Qualifying Examination and who did appear therein but who could not qualify in the examination.

It has been checked up from the Staff Selection Commission that the result of the qualified candidates have already been communicated by them. It may therefore, be presumed that all those candidates who appeared in the examination but in whose case the Commission have not communicated the result, have failed to qualify the examination and their services are to be terminated.

The services of the concerned employees may be terminated under Rule 5 (1) of the Temporary Service Rules, 1965 by an order in the prescribed form without indicating any reason etc.,. A specimen copy of the notice to be issued is enclosed herewith for your information and necessary action.

It will be your personal responsibility to read these instructions carefully and implement these strictly. No case is to be left out and there should not be unnecessary queries to delay the implementation of these orders.

The particulars of persons whose services are terminated and those who are retained in services because they are working against 1981 Census posts and have not been allowed a chance to appear in the said examination may be furnished separately.

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This issues with the approval of the Registrar
General, India.

Please acknowledge receipt. Hindi version will
follow.

Enclo: As above

Yours faithfully,

V.P. Pandey
(V.P. Pandey)

Joint Registrar General, India

19 -49- 79

FORM II

ORDER OF TERMINATION OF SERVICE ISSUED UNDER THE
PROVISO TO SUB-RULE (1) OF RULE 5 OF THE CENTRAL
CIVIL SERVICES (TEMPORARY SERVICE) RULES, 1965.

In pursuance of the Proviso to sub-rule (1) of
Rule 5 of the Central Civil Services (Temporary Service)
Rules, 1965, I _____

(Name and Designation)

hereby terminate forthwith the services of Shri/Shrimathi/
Kumari _____ and direct that he/she
shall be entitled to claim a sum equivalent to the amount of
his/her pay plus allowances for the period of notice at the
same rates at which he/she was drawing them immediately
before the termination of his/her service, or, as the case
may be, for the period by which such notice falls short of
one month.

Station:

Date:

Signature of Appointing Authority.

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-50-
MOST IMMEDIATE

No.6/14/86-CS.II
Government of India
Ministry of Personnel, Public Grievances and
pensions
Department of Personnel and Training.

New Delhi-1, the 30th September, 1986

Sub: Ad-hoc employees in the grade of LDCs, Telephone Operator, etc, and Stenographers Grade 'D' in the various Central Government Offices- regularisation of--

...

The undersigned is directed to refer to this Department's O.M.No. 6/60/84-CS.II dated the 22nd May, 1985, in which it was made clear that after the establishment of the Staff Selection Commission, it was entirely irregular to make appointments to Group 'C' posts except on the recommendations of that Commission. A Special Qualifying Examination had been decided to be held in order to regularise the service of the eligible ad-hoc appointees. (This examination was held in July, 1985). Specific instructions were also issued in the said O.M. that the services of the persons who had been appointed on ad-hoc basis to Group 'C' posts should be terminated in the following stages:

- 1981
Census
- (i) the services of those ad-hoc employees who are not eligible to take the ensuing Examination and also those who are eligible but did not apply for the Examination, should be terminated from the date of receipt of this Office Memorandum;
 - (ii) the services of those ad-hoc employees who are eligible to take the Examination and have applied for the Examination, but did not appear in the Examination, should be terminated immediately after the date of Examination, and;
 - (iii) the services of those ad-hoc employees who do not qualify having taken the Examination, should be terminated after the results are announced.

2. It has, however, come to the notice of this Ministry that despite these instructions, the services of the ad-hoc employees are still being continued in certain cases fresh ad-hoc appointments have also been made despite instructions contained in the aforesaid letter. After careful

... 2/-

consideration, it has been decided in supersession of the instructions contained in the O.M. dated the 22nd May, 1985, referred to above, that the services of all LDCs, Telephone Operators, Hindi Typists and Stenographers Grade 'D' who are employed on ad-hoc basis should, without fail be terminated with effect from 30th September, 1986, where necessary, by giving pay in lieu of one months' notice.

3. The financial Advisers attached to the Ministries and Controller General of Accounts are in particular expected to ensure the compliance of these orders, by dis-allowing the release of pay of the ad-hoc employees beyond 30th September, 1986, except to the extent the pay in lieu of one month's notice has to be allowed.

4. In this connection, attention is also drawn to this Ministry's O.M.No.6/14/86-CS.II dated the 1st August, 1986 under which rules were issued for holding of Supplementary Special Qualifying Examination for regularisation of the services of such ad-hoc LDCs, Telephone Operators, Hindi Typists and Stenographers Grade 'D' as did not or could not take the Special Qualifying Examination, 1985 because of age and service qualifications but would have been eligible by the revised interpretation i-e- these who were within the age limit at the time of their initial appointment as daily rated clerks through the Employment Exchanges followed by appointment as ad-hoc LDCs and had completed one year's continuous service as on 1.1.1985 including (a) service as daily rated clerks (ignoring the periods of technical breaks) and (b) services as ad-hoc LDC etc.

5. It has been observed that some of the ad-hoc employees have been left out of the scope of the said examination, the Government have, therefore, decided that the ad-hoc employees of the categories mentioned above who have completed one year's ad-hoc service during the period from 1.1.1985 to 30.9.1986 including those ad-hoc appointees whose services were terminated during the period from 1st January, 1985 to the 30th September, 1986 for reasons not connected with misconduct or general unsuitability and who had rendered at least one year's adhoc service before such termination, may also be allowed to appear at the aforesaid Examination. A revised scheme to the ensuing Special Qualifying Examination is being issued separately.

6. It has also further been decided to rescind this Department's OM Nos.6/5/82-CS.II dated the 7th August, 1982 No.6/7/83-CS.II dated the 17th August, 1983 and No.6/60/84-CS.II dated 28th February, 1985.

7. Hindi version will follow.

Sd/-

(S. Regunathan)

Joint Secretary to the Govt. of India

21
COPY - 1X
ANNEXURE-5
Regd. 52-46
(86)
No.23/10/87-Exam(HQ)
Government of India
Staff Selection Commission
Department of Personnel & Training.,
.....

Block No.12, C.G.O. Complex,
Lodhi Road, New Delhi-110003.

Dated: 10.12.87

To

Sh. K-S. Lyngdoh.
Asst. Director (Tech.)
Dte. of Census operations
Meghalaya, Shillay.

Subject:- Special Qualifying Examination for ad-hoc employees,
1987.
.....

Sir,

I am directed to say that the candidate(s) Sh. H. Thakur Khiew

Sh. B. Ghosh Sh. C. Pandey

bearing Roll Number(s) 4210006, 4210005, 4210007

sponsored by you has/have not been declared successful in the
said examination conducted by the Commission.

Yours faithfully,

जनगणना, विदेश का
कार्यालय, मेघालय
दिनांक 28/12/87
तारीख 15/12/87
कार्ड नं.

Karan Singh
(KARAN SINGH)
SECTION OFFICER

.....

17/12

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL;
GUWAHATI BENCH

Original Application No.218 of 1990
(With M.P.No.91/90)

Date of decision: This the 12th day of December 1994.

The Hon'ble Justice Shri M.G. Chaudhari, Vice-Chairman

The Hon'ble Shri G.L. Sanglyine, Member (Administrative).

Shri Barendra Ghosh
C/o Shri Haripada Ghosh
Department of Atomic Energy,
Assam Rifles, Mineral Division,
Shillong.

.... Applicant

By Advocate Shri B.C. Das, and
Shri J. Deb.

-versus-

1. The Union of India
through the Secretary to the
Government of India,
Ministry of Home Affairs,
New Delhi
2. The Registrar General of India
Ministry of Home Affairs,
New Delhi
3. The Director of Census Operation
Meghalaya, Shillong
4. The Deputy Director,
Census Operation, Meghalaya
Shillong
5. The Assistant Director of Census Operation,
Meghalaya, Shillong.

.... Respondents

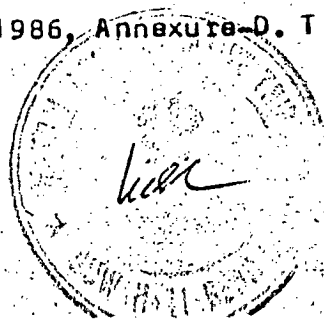
By Advocate Shri G. Sarma, Addl. C.G.S.C.

.....

ORDER

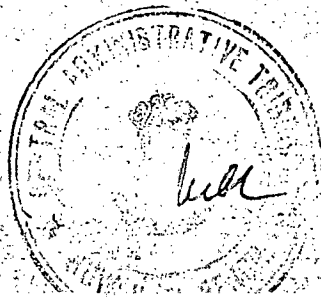
CHAUDHARI.J. V.C.

The original application was filed on 7.12.1990
challenging the order of termination of service of the
applicant dated 19.11.1986, Annexure-D. The applicant was



initially appointed as a Driver in the office of the Director of Census Operation, Meghalaya, under the Ministry of Home Affairs, Government of India, on 20.1.1981, Annexure-A, on a purely temporary basis. It was stipulated in the appointment order, Annexure-A, that his service was liable to be terminated at any time without assigning any reason thereof. Subsequently the applicant was appointed as Lower Division Clerk(LDC) in the Regional Tabulation Office under the same authority by order dated 18.8.1981, Annexure-B. It was stipulated in that order also that the appointment was purely temporary and liable to be terminated at any time without assigning any reason. According to the applicant he continuously worked ever since his initial appointment on 20.1.1981. However, his service was terminated by order dated 19.11.1986, Annexure-D, with immediate effect without assigning any reason issued by the Assistant Director of Census Operation, Meghalaya. The applicants, thereafter, filed a statutory appeal to the appellate authority, i.e. the Registrar General of India, Ministry of Home Affairs, New Delhi, on 27.1.1987. Prior to that appeal and even thereafter, he sent representations and reminders to the appellate authority and other various authorities including to the Minister, Labour Department, Government of India, in the year 1987, but no reply was received to the appeal or to the representations. Thereafter, he filed the instant application praying that the order of termination may be set aside and it be declared that he is a regular Central Government Employee and also prayed for reinstatement with all benefits together with interest at the rate of 18% with effect from 18.11.1986. The

principal.....



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principal contention of the applicant is that having regard to his continuous length of service he should be deemed to have acquired status of regular employee and in any event his termination simpliciter without any notice of termination is bad in law. Mr B.C. Das, the learned counsel for the applicant, drew our attention to a circular issued by the office of the Registrar General of India, Ministry of Home Affairs, Government of India, No.18/18/89-AD.IV dated 9.4.1991 and submitted that having regard to the spirit and object behind that policy the higher authorities of the respondents to whom the representations were filed ought to have acted on some lines and should not have rejected the case of the applicant simply by remaining silent. According to the applicant in the circumstances he has been put to great hardship and great injustice has been done to him. It is also contended by the applicant that it is wrong to describe him as an adhoc employee. He submits that he must be deemed to have acquired status of a temporary employee and his service, therefore, could not be terminated without notice.

2. The contentions urged by the applicant would have merited consideration, but for the fact that the application is barred by limitation^{and} it is not open to us to interfere with the order of termination at this stage. As stated earlier the order of termination was dated 19.11.1986, ^{when} and the Administrative Tribunals Act had already come into force. The period of limitation prescribed under Section 21 of the Act is one year. Even liberally construing the circumstances the limitation expired at the end of six months from the date of filing of the statutory appeal to the appellate authority on 27.1.1987. Since that was not

disposed....



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disposed of, merely filing repeated representations does not save the running of the period of limitation. Even from expiry ^{of} for a period of six months from the date of filing of the appeal the application as was filed on 7.12.1990 is hopelessly barred by time. In the application M.P. 91/40 for condonation of delay, the applicant has stated that he was ^{pursuing} pressing his remedies with the higher authorities and he being a low paid Grade III employee was not aware of the provisions of law nor did he get proper advice from any quarters and that by chance when he happened to meet a friend of his on his visit to Guwahati he sought legal advice from Advocate, Shri J. Deb and thereafter filed the application and in the circumstances having regard and further to the fact that he was unemployed/it took some time to collect the required funds, the delay that has occurred may be condoned. It is indeed difficult to condone the delay on this ^{grounds} circumstance. It is difficult to imagine that the applicant could not have thought or could not be advised by anybody whom he consulted till he met the learned Advocate ^{or} that he was unaware of the fact that a court of law could be approached. Even with illiterate and backward people the knowledge that a court of law exists and can be approached has to be reasonably presumed. After a long lapse of time the applicant has thus taken a chance of approaching this Tribunal. We, therefore, are constrained to hold that the application is barred by limitation and is not maintainable and must be dismissed only on that ground. We have also referred to some facts in detail and noted the contentions of the applicant. We have done so to emphasise that having regard to the length of service of the applicant and the policy of the Government of India as disclosed in the circular dated 9.4.1991 and as an opportunity....

hll

opportunity was lost to the applicant to agitate legal contentions before a court of law the applicant cannot be said not to have suffered some injustice. Since we are not able to grant him any relief according to law we leave it ^{to the sound} ~~on some~~ discretion of the respondents to sympathetically consider if the applicant could be re-employed whether on adhoc or temporary basis subject to other conditions of eligibility in any post under them if possible to do so. It may not be out of place to mention that the applicant has served the Census Department and now with the ensuing elections there may be need for recruiting temporary employees. We do not know whether such an avenue is indeed available or not, but we are just indicating that the respondents may adopt an open mind and show sympathy to the applicant if they are in a position to do so. We are making it clear that as we are dismissing the application no order of the Tribunal to the above effect has been passed and the above observations are ^{made} ~~made~~ for consideration of the matter sympathetically by the respondents to the extent possible for them.

3. The Misc. Petition is dismissed. Consequently the original application is dismissed as being not maintainable being barred by limitation.

4. No order as to costs.

TRUE COPY

Sd/- VICE CHAIRMAN

Sd/- MEMBER (ADMN)

Section Officer (J)

Contest: August 1st - 31st 2014

GUW 100714Z FEB 68 C 100000-5

गैव हंटी यं यं पीठं गुर्वहं पीठं

Telegram : "RECOMMENDED"

BY SPEED POST

Ref/No.

3/1/96-Ad. II

भारत सरकार
GOVERNMENT OF INDIA

गृह मंत्रालय
MINISTRY OF HOME AFFAIRS/GRIH MANTRALAYA

भारत के गृह रजिस्ट्रार का कार्यालय
OFFICE OF THE REGISTRAR GENERAL, INDIA

गोपनीय
CONFIDENTIAL

59-

2/A, Mansingh Road,

नई दिल्ली, भारत
New Delhi, India

December 8, 1997

To

Shri A. Medhi,
Assistant Director of Census Operations,
Meghalaya, Shillong.

Subject: Sanctioned strength of Group B, C and D posts in the Directorate of Census Operations after the implementation of the SIU report.

Sir,

I am directed to refer to this office letter No. 13/5/96-SIU dated 9.5.1996 enclosing a copy of the SIU's Report in respect of your Directorate and to say that w.e.f. 15.12.1997 the sanctioned strength for each cadre in your Directorate shall be as per the details given in the enclosed Annexure. It may be ensured that the total appointments in your Directorate for each cadre shall be within the sanctioned strength now intimated. Necessary action for restricting the appointments to the sanctioned strength for each post may be taken immediately in accordance with the Government instructions relating to the appointments, reversions and surplus staff. If it becomes necessary to retrench any of the surplus staff the same may be done immediately by paying salary in lieu of the notice period as applicable in each case in accordance with the service conditions applicable. Action in this regard should be completed by 15.12.1997 positively. It may be noted that it would not be possible to keep any additional post in excess of the sanctioned strength and the

cont'dp...2...

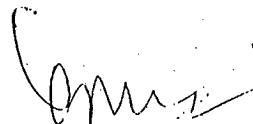
Office of the Director of	
Census Operations, Meghalaya	
By No	1227
Date	31 Dec 1997
File No	

Heads of Office shall be personally responsible to ensure this strictly as no budget provision shall be available for drawing the pay and allowances for any employee in excess of the sanctioned strength.

2. This disposes of all the pending references from the DCOs on this subject and no further correspondence in this regard will be entertained.

3. This issues with the approval of the Registrar General, India.

Yours faithfully,



(K. VIVEKANAND)
DEPUTY DIRECTOR
TEL.No. 3383136

ENCL.: As Above.

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-61-
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SANCTIONED STRENGTH OF GROUP 'B', 'C' AND 'D' POSTS,

OFFICE OF THE DCO, Meghalaya.

(Annexure to letter No. 23/1/96-Ad. II dated 0.12.1997)

SL.NO.	NAME OF THE POST	SANCTIONED STRENGTH	
		W.E.F.	15.12.1997
1.	Office Superintendent		1
2.	Investigator		3
3.	Cartographer		-
4.	Artist		2
5.	Senior D'man		1
6.	Head Assistant		1
7.	Senior Stenographer		1
8.	Assistant		3
9.	Statistical Assistant		9
10.	Computer		14
11.	Jr. Steno		1
12.	UDC		4
13.	Draftsman		3
14.	LDC		4
15.	Librarian		1
16.	Assistant Compiler		3
17.	Driver		1
18.	Jr. Gestetner Operator		1-1
19.	Daftry		3
20.	Peon		6
21.	Chowkidar		3 + 3 = 6
22.	Sweeper		1
23.	Parash		(3 + 1)

69

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Annexure - 7

ANNEXURE-C

86
- 62

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI.
OA No. 54/1998

Shri B.Ghosh Applicant
Versus
union of India & Ors Respondents

P R E S E N T

THE HON'BLE JUSTICE SHRI D.N.BARUA, VICE-CHAIRMAN

THE HON'BLE SHRI G.L.SANGLYINE, MEMBER(A)

For the Applicant: Mr. R.Dutta,
Miss G.Dutta, Advocates.

For Respondents : Mr. G.Sarma,
Addl.C.G.S.C.

8.6.98

In view of the order passed in
Misc.Petition No. 66/98 the ori-
ginal Application No.54/98 is
treated as being filed within time.

We have heard Mr. R.Dutta,
learned counsel appearing on behalf
of the applicant and Mr.G.Sarma
learned Addl.C.G.S.C.Mr.Dutta
submits that this Tribunal by
order dated 12.12.90 passed in
O.A.No. 218/90 dismissed the said
Original Application as not main-
tainable being barred by limitation,
However,gave a direction to the
respondents to consider the case
of the applicant. But this has not

Contd/-

63
O.A.54/98

8.6.98. been done up till now. We direct the respondents to consider the case of the applicant sympathetically and to dispose of the representation filed by the applicant within 2 months time. Within 15 days the applicant may file fresh representation. If such representation is filed by the applicant within 15 days the respondents shall dispose of the representation also.

Accordingly this O.A. is disposed of. No Costs.

sd/ VICE CHAIRMAN

sd/- MEMBER.

Memo No. 1594

dated 15.6.98.

Copy for information and necessary action to:

1. Shri Barendra Ghosh, S/O late Digendra Kr, Ghosh, C/O H.P.Ghosh, Deptt. of Atomic Energy, Shillong-11.
2. Secretary to the Govt. of India, Ministry of Home Affairs, New Delhi.
3. The Registrar General of India, Ministry of Home Affairs, New Delhi-110011.
4. The Director of Census Operation, Meghalaya, Shillong.
5. The Deputy Director, Census Operation, Meghalaya, Shillong.
6. The Assistant Director, Census Operation, Meghalaya, Shillong.
7. Mr. R. Dutta, Advocate, Gauhati High Court, Gauhati.

Sd/-
Section Officer(J)

Teletype : "TELETYPE"

31 - 31 -

BY REGISTERED POST

गो/नो. 13014/19/98.Ad.IV
GOVERNMENT OF INDIA

गृह मंत्रालय
MINISTRY OF HOME AFFAIRS/GRIH MANTRALAYA
भारत के महा रजिस्ट्रार का कार्यालय
OFFICE OF THE REGISTRAR GENERAL, INDIA

2/A Mansingh Road,
21.7.98

नई दिल्ली, भारत
New Delhi, India

To

Sh. B. Ghosh C/O,
Sh. H.P. Ghosh,
Deptt. of Atomic Energy,
Atomic Mineral Division,
P.O. Assam Rifles, Shillong,
Meghalaya-793011.

Subject: Implementation of CAT's Order dated 8.6.98 in M.P.
No.66/98 in O.A. No.54/98 regarding.

Sir,

I am directed to say that representation dated 21.6.98 submitted by you has been considered carefully. According to Govt. instructions, the services of ad hoc L.D.C.s appointed during 1981 could be regularised after they pass the Special Qualifying Examination conducted by Staff Selection Commission during 1986. Accordingly you were given opportunity to appear in the above examination. As you did not qualify the said examination, it was not possible for DCO, Meghalaya to regularise your services in the grade of LDC. As per existing instructions of the Govt., a regular appointment to the post of LDC is made only through S.S.C., it is regretted that your request to set aside the order of termination of your services issued by the DCO, Meghalaya can not be acceded to.

Yours faithfully,

Sharma
(SUMAN PRASHAR)
DEPUTY DIRECTOR

No. G.18012/1/91-8attb
Government of India,
Ministry of Home Affairs

Office of the Director of Census Operations
Meghalaya.

Dated, Shillong the 17 AUG 1998.

To
Shri B. Ghosh, C/O
Shri H.P. Ghosh
Department of Atomic Energy,
Atomic Mineral Division,
P.O. Assam Rifles, Shillong.
Meghalaya-793011.

Sub:- Implementation of Central Administrative Tribunal's
order dated 8.6.1998 in MP No. 66/98 in O.A No.
64/98-regarding

Shri Ghosh,

In ~~reference~~ response to your representation dated
21.06.1998, and in honouring the observations of the Central
Administrative Tribunal, Guwahati Bench Guwahati, in order
dated 12.12.1994, passed in O.A No. 818 of 1990 (with M.P. No
91/90) and its subsequent judgement/order, dated 08.06.1998
in M.P. No. 66/98, arising out of O.A. No. 64/98, I am to inform
you that the case of your re-instatement /re-employment in
this Directorate has been duly considered with an open mind
and sympathy towards you from every angle, but it is regret-
ted to mention that as your case is barred by the limita-
tions of the terms and conditions in the Recruitment Rules,
prescribed by the Government for appointment to any post,
this office is not in a position to consider your case.

Yours faithfully,

Sd/- A. Medhi
Asstt. Director of Census Operations,
Meghalaya

Copy forwarded for information to the Deputy Director,
(Ad. IV Section) C/O The Registrar General, India, 2/a, Man
Singh Road, New Delhi-110011.

Sd/- A. Medhi
Asstt. Director of Census Operations
Meghalaya.

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Resd. 1.
12
Resd No. 3
89
-66-
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:.....GUWAHATI.

27/7/2001
T. Guan. CL
DESPATCH NO. CAT/GHY/JUDL/

2551

DATED GUWAHATI, THE 13.7.2001

ORIGINAL APPLICATION NO : 160/99

MISC. PETITION NO. :

CONTEMPT PETITION NO. :

REVIEW APPLICATION NO. :

TRANSFER APPLICATION NO.:

Shri Barendra Ghosh

APPLICANT(S)

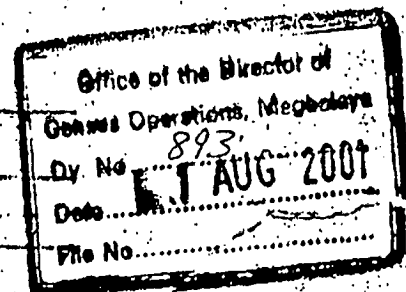
VERSUS

U.O. I. v ors

RESPONDENT(S)

To

The Director,
Census Operation,
Meghalaya, Shillong.



Please find herewith a copy of Judgment/Order dated 30.3.2001/-
passed by the Bench of this Hon'ble Tribunal comprising of Hon'ble Justice
Shri D.N. Chowdhury Vice-Chairman and Hon'ble Shri
K.K. Sharma Member, Administrative in the above noted
case for information and necessary action, if any.

✓ Please acknowledge receipt of the same.

BY ORDER,

Enclo : As stated above.

A.K. Jany
DEPUTY REGISTRAR
13/7/2001
19/7/2001

(32)

-67-

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 160 of 1999.

Date of Order : This the 30th Day of March, 2001.

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

The Hon'ble Mr K.K. Sharma, Administrative Member.

Shri Barendra Ghosh,
son of Shri Digendra Kumar Ghosh,
C/O Sri H.P. Ghosh,
Deptt. of Atomic Energy,
Shillong-11 (Meghalaya)

. . . Applicant

By Advocate Sri R. Dutta.

- Versus -

1. Union of India
represented by the Secretary to
the Govt. of India,
Ministry of Home Affairs,
New Delhi.

2. The Registrar General of India,
Ministry of Home Affairs,
2/A Mansingh Road,
New Delhi-110011.

3. The Director of Census Operation,
Meghalaya, Shillong.

4. The Deputy Director,
Office of the Registrar General of India,
2/A Mansingh Road, Ministry of Home Affairs,
New Delhi-1100011.

5. The Asstt. Director,
Census Operation,
Shillong, Meghalaya.

. . . Respondents.

By Advocate Sri A. Deb Roy, Sr. C.G.S.C.

ORDER

CHOWDHURY J. (V.C)

This is third round of litigation. The applicant was initially appointed as a Motor Driver on 20.1.81 by Director of Census Operation, Meghalaya. He was subsequently appointed as Lower Division Assistant in the Regional Tabulation Office under the Directorate of Census Operation

90 68-

Meghalaya vide order dated 18.8.81. The service of the applicant as LDA was however terminated by an order dated 19.11.86 on the strength of communication No. 18/65/84-AD-I dated 10.11.86 received from the Registrar General of India. The applicant submitted representations and thereafter assailed the order termination by way of Original Application No.218/90 before this Tribunal. By order dated 12.12.94 the application was dismissed as time barred. Though the application was dismissed on the ground of limitation, the Tribunal in the aforementioned O.A. has gone into the merits of the claim and entrusted the subject at the sound discretion of the respondents to sympathetically consider the re-employment of the applicant either on ad hoc or temporary basis subject to eligibility conditions under them. The applicant submitted a representation which was since remain undisposed. The applicant again moved the Tribunal by way of O.A.54/98. By order dated 8.6.98 passed in O.A.54/98, the Tribunal directed the respondents to dispose of the representation within the period specified. The respondents by two separate orders by separate agencies rejected the representation of the applicant. By order dated 21.7.98 the Deputy Director rejecting the representation observed that the services of ad hoc L.D.Cs appointed during 1981 could be regularised after they pass the Special Qualifying Examination conducted by Staff Selection Commission during 1986. According the Deputy Director the applicant was given opportunity to appear in the above examination and since he did not qualify in the examination it was not possible to regularise his service in the grade of LDC. As per the existing instructions of the Government the regular appointment to the post of LDC was to be made only through S.S.C. The Assistant Director, Census Operation Meghalaya on the other hand turned down the representation of the applicant as being time barred. Hence this application

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assailing the legality and validity of the order of rejection.

2. The respondents have filed written statement. According to the respondents the order of the Tribunal was assailed by the applicant by way of a S.L.P and the S.L.P was dismissed on 11.7.95. As regards the direction issued by the Tribunal for considering the case of the applicant in the light of the direction issued in O.A.218/90 it was informed that the final decision could not be taken by the respondents due to awaiting for Staff Inspection Unit's report of manpower assessment. On the basis of the said report it was necessary to retrench the surplus staffs staff.



3. We have heard counsel for the parties at length. Mr R.Dutta, learned counsel for the applicant referring to the communication dated 10.11.96 submitted that the basis of the purported order of termination dated 19.11.86 was the above mentioned communication dated 10.11.96. He further submitted that the said order was patently illegal, so much so the contents of the order dated 10.11.86 even remotely could not be connected with the termination of the applicant. The said letter of the respondents was issued on a different context by the Joint Registrar General of India and the Assistant Director, Census Operation, Meghalaya on irrelevant consideration issued the termination order. We are afraid that we cannot go into the aforesaid issue since the said termination order was already assailed by the applicant in O.A.218/90 and which was finally dismissed as time barred. This proceeding is limited to the direction issued by the Tribunal, more

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particularly, the direction issued in O.A.54/98 for considering the case of the applicant. As per Deputy Director each case could not be regularised on the strength of ad hoc appointment during 1981 since he did not qualify in the examination. The Assistant Director on the other hand of rejected the same as time barred. None of the reasonings cited by the respondents can be accepted. The order of the Tribunal was made for considering the case of the applicant. Consideration was not confined to regularisation alone. In the first order the Tribunal referred to the facts in detail to emphasise the length of service of the applicant under the policy of the Government of India as per Circular dated 9.4.91. Thereafter also a number of office memoranda were issued by the Government from time to time, for providing fair consideration in the matter of employment. The applicant was terminated on 19.11.86. On the face of the order of the Tribunal dated 12.12.94 in O.A.218/90 the question of regularisation of the service did not arise. What was available to the respondents was to consider the case of the applicant for appointment against any vacancy in the light of existing policy. Following the judgment rendered in Government of Tamilnadu and another vs. G.Md. Ammendeen and others (1999) 7 SCC 499 the Tribunal in a number of cases directed the respondents to absorb the applicants served in the Census Department in vacancies that would accrue for the Census Operation.

4. We have given our anxious consideration on the matter. From the order as mentioned above did not indicate that it addressed any of the issues discussed above. Considering all the aspects of the matter we are of the opinion that the case of the applicant requires to be

considered in a fair manner for appointing him in any post under the Census department commensurating with his educational qualifications. Mr Dutta has submitted that since there is a post of Driver in the department, the case of the applicant may be considered. Considering all these aspects we feel that the respondents need be considered the case of the applicant for appointment against any vacancy or future vacancy commensurating with his qualifications. This consideration need not be confined to only Group D post, the respondents may also consider his case against Group C post against any existing vacancy or any future vacancy that may arise.

5. For the foregoing reasons we set aside the order dated 21.7.98 passed by the respondent No.4. We accordingly direct the respondent No.3, Director of Census Operation, Meghalaya to consider the case of the applicant afresh in the light of the observations made above and pass necessary orders to that extent as expeditiously as possible within a period of four months from the date of receipt of a certified copy of this order.

The application is accordingly disposed of to the extent indicated. There shall, however, be no order as to costs.

TRUE COPY

प्रतिलिपि

Sd/VICE CHAIRMAN
Sd/MEMBER (Adm)

Section Officer (A),
जनसंख्या अधिकारी (न्यायिक शाखा)
Central Administrative Tribunal
देशीय प्रशासनिक अधिकरण
Jewaher Borch, Guwahati
गुवाहाटी न्यायिक, प्रशासनिक

A. K. Jha

19/7/2001

19/7/2001

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Annexure-13

-72-

as

MOST IMMEDIATE
COURT CASE

Government of India/Bharat Sarkar
Ministry of Home Affairs/Grih Mantralaya

Jaisalmer House, Mansingh Road,

20.8.02

Dy.No. 2643/2002-Judl

Subject:-W.P. Nos. 15071-15073 of 2002 - In the High Court of Karnataka at Bangalore - Shri Bhimarao and others Vrs.Union of India and others.

-0-

The copy of the judgement received from the High Court of Karnataka at Bangalore is the concern of the office of the Registrar General & Census Commissioner of India. They may please take over the receipt for further necessary action.

2. The above mentioned communication has not been acknowledged.

(Signature)

(MEENAKSHI ARORA)
DIRECTOR(JUDL.)

The Registrar General and Census Commissioner
of India,
2-A Man Singh Road, New Delhi.

MHA ID NO. 23/2/2002-Judl. dated 20-8-2002.

Immediately

*Kindly examine
this case.
is also
case.*

*This
a copy*

27/8/2002

MSC ADT

*6066/RG-RG(1)
RGF-on leave
JRA(E)*

*24/8/2002
27/8*

IN THE HIGH COURT OF KARNATAKA,
BANGALORE

DATED THIS ON THE 3RD DAY OF APRIL 2002

BEFORE

THE HON'BLE MR. JUSTICE R.V.RAVEENDRAN

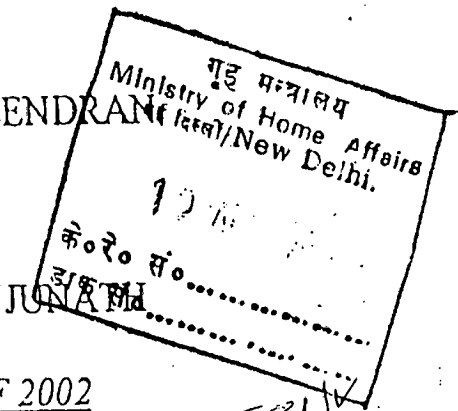
AND

THE HON'BLE MR. JUSTICE K.L.MANJUNATH

WRIT PETITION No. 15071-15073 OF 2002

BETWEEN

- 1 BHIMARAO
S/O DEVAPPA
VAJANTRI @ KANGRALI
50 YRS, R/O H NO 4022/1,
GANACHARI GALLI,
BELGAUM
- 2 SHIVANAND
S/O BALAPPA PATIL
46 YRS, R/O H NO 352,
III CROSS, MAHADWAR ROAD
BELGAUM
- 3 ABDUL HUSSAIN SAB MUJAWAR
S/O HUSSAINSAB, 48 YRS
H NO 3793, KOTWAL GALLI



DBT 3581
31/7/02

(38)

(96)

-73-96

10700-57
Jude 16/8
N. J. J.
CSM
M. J. J.
T. J. J.
13/8

A. C.
16/8

No. 2643-2002-8nd
19/8/02

P. G.

BELGAUM

... PETITIONERS

(By Sri VIGHNESHWAR S SHASTRI, Adv.,)

AND:

- ✓ 1 THE UNION OF INDIA
REPRESENTED BY ITS
SECRETARY
MINISTRY OF HOME AFFAIRS
NEW DELHI
- 2 THE REGISTRAR GENERAL
AND CENSUS COMMISSIONER,
2-A, MANSING ROAD
NEW DELHI
- ✓ 3 THE DIRECTOR OF
CENSUS OPERATION
IN KARNATAKA,
KENDRIYA SADAN
7 FLOOR, F WING,
KORAMANGALA
BANGALORE
- 4 THE DEPUTY DIRECTOR OF CENSUS
REGIONAL TABULATION OFFICE
BELGAUM
- 5 THE DEPUTY DIRECTOR OF CENSUS
REGIONAL TABULATION OFFICE
DHARWAD ... RESPONDENTS

(39)

~~39~~

-75-98

(By Sri ASHOK HARANAHALLI, Sr. CGSC.,)

THESE WRIT PETITIONS FILED PRAYING TO QUASH THE ORDER DT. 22.6.2001 BY THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL, BANGALORE IN APPLICATION NO.1821/2000 VIDE ANN-B AND ETC.,

THESE WRIT PETITIONS ARE COMING ON FOR PRELIMINARY HEARING, THIS DAY, *RAVEENDRAN J.*, MADE THE FOLLOWING:

ORDER

Sri Ashok Haranahalli, learned Senior Central Government Standing Counsel, is directed to take notice for respondents. The matter is heard finally with consent and disposed of by this order.

2. Petitioners claim that they were employed as contract basis ^{as} census employees by the government of India between March-April, 1991 and 30-6-1992, on a consolidated salary of Rs 900/- per month. According to petitioner, the Central Government had issued several circulars for absorption of

Rme

99-76-

retrenched census employees in alternative employment through local employment exchanges, by extending them certain concessions. Petitioners claim that they and other similarly situated persons sought some relief by way of concessions/priorities in appointment. When that was not extended, they approached the Central Administrative Tribunal, Bangalore Bench in Application Nos 284, 318 and 40 of 1992. When the matter came up for hearing, a memo^{was} filed by the Joint Director of census operations, Karnataka stating that a rehabilitation cell will be opened in Bangalore to monitor the absorption of unemployed retrenched census employees by implementing various relaxations and concessions accorded by the Government of India and Government of Karnataka. The tribunal disposed of the said Applications by order dated 8-9-1993, with the following observations:

"In the facts and circumstances of the case, the highest that we can do is no more than asking Government of India to deal with the

RNR

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-77-100

cases of there people with earnestness and see that they are gainfully employed in some discipline maintained by Government... We, therefore, make an order directing Government to abide and implement memo filed before us today in the matter of finding alternative employment to the applicants meaning thereby such of them who have still remained unemployed and although it may not be very much within our ambit; we nonetheless take this opportunity to impress upon government to ensure that whenever opportunities for employment open up into which these applicants can be steered, if any hurdles like age restriction etc., crop up Government in that event should find ways and means of overcoming such hurdles so that these people or atleast some of them are able to find a permanent place in some Governmental institution or organization. We do hope that Government will lose no time in rehabilitating these people and avail of the utmost expedition in resettling all of them to the extent possible.

RMR

3. Petitioners claim that they have not been given any relief or employment inspite of the said order. They were also not selected for the census 2001 work. Therefore, the petitioner, along with other similarly situated persons and the Karnataka State Contract Based Census Employees Association, again approached the Central Administrative Tribunal, in ~~an~~ application Nos 1821, 1830-1840 of 2000, for the following reliefs:

- a) a direction to the respondents [Union of India, Registrar General and Census Commissioner, Director of Census Operations in Karnataka, Deputy Director of Census, Regional Tabulation Office, Belgaum and Deputy Director of Census, Regional Tabulation Office, Dharwar] to give preference to them at the time of regular recruitment in the census department or other central or state

RMR

21 (88/7)
-79-102
government departments and to extend age relaxation; and

- b) a direction to the respondents to give them preference over fresh candidates at the time of ensuing census work scheduled to be started during February, 2001

4. The Respondents contended that the contract appointment from 1991 till 30-6-1992 were on fixed salary specifically for tabulation work and the Regional Tabulation Offices were closed on 30-6-1992; and ^{that} in regard to census 2001, it was decided to take Group 'C' and 'D' employees on deputation and ^{to} not employ anyone afresh. The said applications were disposed of by the Tribunal by order dated 22-6-2001, holding that no relief can be granted to the petitioners even by giving a direction to the government to give them age relaxation and that it is however open to the respondents to consider any request of the petitioners.

Rm

5. Feeling aggrieved, the petitioners have filed ~~this~~ petitions and sought quashing of the order of the tribunal and for grant of the relief as prayed in their applications before the tribunal.

6. At the outset, it should be noticed that the petitioners had approached the tribunal earlier in Application Nos 284, 318 and 400 of 1992 and those petitions were disposed of with certain observations. The petitioners did not choose to challenge the said order. If the petitioners were not satisfied with the said order, they should have challenged it. The petitioners having accepted the said order and having taken the chance of getting some relief in pursuance of it cannot file fresh Applications eight years thereafter for a similar relief, on the ground that they did not get relief on the basis of the earlier order. The petitions are virtually barred by the principles of constructive res judicata.

Rme

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- 81- 104

7. The Supreme Court has time and again held that, contract employment in connection with any project for a specific period of about one year or fifteen months will not be entitled such employees for regularization or other relief. The petitioners submit that they are not seeking regularization but only seeking some priorities and concessions in employment by giving complete age relaxation, as was granted by the Supreme Court in *GOVERNMENT OF TAMILNADU vs G MOHAMMED AMMENUDEEN* [1999 Lab.I.C 3570].

8. That case related to census employees who had similarly worked in Tamil Nadu during 1991-92. In Tamilnadu, the government had adopted a policy of absorbing temporary census employees and had absorbed such employees in 1971 and 1981. The same policy of absorbing the temporary employees was applicable even during 1991-92, but on account of a ban on recruitment, the said contract census employees were not absorbed in spite of the policy of the government. In

RMR

92-
those circumstances, the persons aggrieved approached the Tamilnadu Administrative Tribunal, seeking relief, in the year 1995. The said Tribunal allowed the said applications and held that the applicants therein were entitled to absorption and directed the State government to consider their cases for absorption. Feeling aggrieved, Tamilnadu Government filed an appeal before the Supreme Court. When the matter came up for consideration, Tamilnadu government submitted that it had taken a decision to grant certain relief by giving the said employees priority and age relaxation. The matter was disposed of on the submission made by the counsel for the government, ^{by} giving certain ^{further} concessions. The said decision relates to the special facts of that case, in particular the policy of the Tamilnadu Government and on the consent of that Government for grant of relief. Therefore the petitioner are not entitled to any relief based on the said decision. No principle is laid down in regard to the absorption of no such contract employees.

RMR

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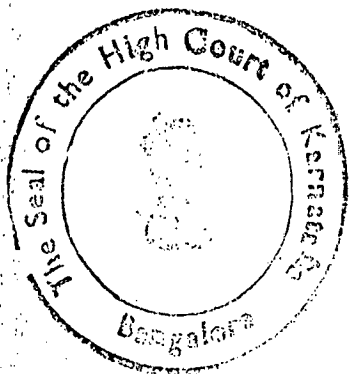
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9. We, therefore, do not find no reason to interfere with the order passed by the tribunal. We therefore dismiss these petitions making it clear that the dismissal of this petition will not come in the way of Government of India or State government granting any relief if they so deem fit.

Sri Ashok Haranahalli is permitted to file memo of appearance within six weeks.



Sd/-
Judge

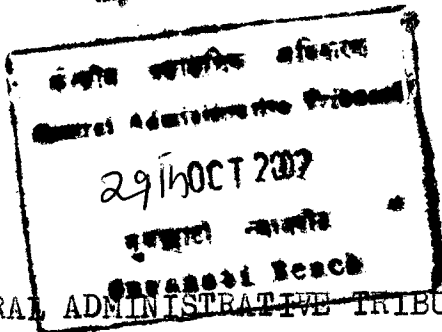
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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH :: GUWAHATI.

IN THE MATTER OF:

O.A. No. 242 of 2002

Shri Berendra Ghosh Applicant

VERSUS

Union of India and others ... Respondents.

-AND-

IN THE MATTER OF:

Rejoinder to the Original Application
in response to the written statement
submitted by the respondents.

The applicant humbly begs to submit as under:-

1. That, the applicant ^{has} gone through the written statement filed by the respondents and understood the contents thereof.
2. That, in respect of preliminary objections raised in paras a) to d) the applicant submits that these are based on ^{misinterpretation of} Hon'ble Tribunal's earlier orders and judgements and also of Hon'ble Supreme ^{Co.} Court's judgement and also of Hon'ble Karnataka High Court. The Hon'ble Karnataka High Court's judgement in WP No 15071-15073/2002 cannot be applied in the case of the applicant as the petitioner

Contd ...P/2.

Filed by the applicant
through R. Dutta, Adv.
R. Dutta, Adv.
M. Dutta, Adv.

B. Ghosh

before the Hon'ble Karnataka High Court were appointed on contract basis whereas the applicant in the present O.A was appointed was appointed as a temporary employee duly through Employment Exchange. Thus the decision of the Hon'ble Supre Court in Govt. Of Tamilnadu VS G. Ammenudeen applicable in case of the applicant. The applicant also begs to submit that the O.A. is neither barred by limitation nor Res-judicata as contended by the respondents in the written statement

2. That, in similar cases of the Census department pertaining to 1991 census where similar conditions were given by the ~~same group of~~ respondents as has been given to the applicant vide letter No. C/18012//19 91-ESTT dated 23.11.2001(Annex. A/7) this Hon'ble Tribunal allowed the applications by a common judgement dated 19.8.2002 in O.A Nos. 62/2002, 68/2002, 2/2002, 69/2002, 70/2002 and 151/2002 allowed the application after observing that the earlier judgement of the Hon'ble were not properly appreciated and issued direction for absorption of the applicants and all similarly placed persons. This judgement and orders of the Hon'ble Tribunal is fully applicable to this applicant as the facts and circumstances are similar.

A copy of the judgement and orders dated 19.8.2002 is annexed as Annexure A/9.

3. That, save and except what has been stated in this rejoinder and earlier applications, the applicant donot admit anything of the written statement.

Contd..P/3.

V E R I F I C A T I O N

I, Shri Berendna Ghosh, son of late Digendra Kumar Ghosh, aged about 49 years, resident of Shillong C/O shri H.P. Ghosh, Department of Atomic Energy, Atomic Mineral Division, P.O. Assam Rifles, Shillong-793011, Meghalaya, do hereby verify that contents of para of the rejoinder is true to my information which I believe to true and the rest are my submissions before the Hon'ble Tribunal.

And I sign this verification on this 27th day October, 2002 at Guwahati.

Date. 27-10-02

Place. Guwahati

Barendna Ghosh
27.10.02

Signature of the applicant.

.....

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.62 of 2002

Original Application No.68 of 2002

Original Application No.2 of 2002

Original Application No.69 of 2002

Original Application No.70 of 2002

And

Original Application No.151 of 2002

Date of decision: This the 19th day of August 2002

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

The Hon'ble Mr K.K. Sharma, Administrative Member

O.A.No.62/2002

1. Smt Usham Kamila Devi
2. Md. Abdul Kalam Shah
3. Sri Thokchom Basanta Singh

All are working as Computer in the
Office of the Directorate of Census Operations,
Manipur, Imphal.

.....Applicants

By Advocates Mr B.K. Sharma, Mr S. Sarma,
Mr U.K. Nair and Ms U. Das.

- versus -

1. The Union of India, represented by the
Secretary to the Government of India,
Ministry of Home Affairs,
New Delhi.
2. The Registrar General of India,
New Delhi.
3. The Director of Census Operations,
Manipur, Imphal.
4. The Assistant Director of Census Operations,
Manipur, Imphal.

.....Respondents

By Advocates Mr A. Deb Roy, Sr. C.G.S.C.,
Mr K.N. Choudhury, Mr I Chowdhury and Mr B.C. Das.

O.A.No.68/2002

1. Shri Bimalananda Das,
S/o Shri Amalananda Das,
Resident of Village Mirza,
P.S.- Palashbari, Kamrup, Assam.
2. Shri Nagen Rabha,
S/o Shri Bipin Rabha,
Village- Shar Khari, P.O.- Loharaghat,
P.S. Palashbari, Kamrup, Assam.
3. Shri Arjun Baruah,
S/o Shri Arjun Baruah,
P.O. & Village- Arikuchi,
Nalbari, Assam.

.....Applicants

By Advocates Mr M. Chanda, Mrs N.D. Goswami
and Mr G.N. Chakraborty.

- versus -



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27/08/02
R. Dutta, 1st Officer
(Signature)

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1. The Union of India, through the Secretary to the Government of India, Ministry of Home Affairs, New Delhi.
 2. The Registrar General of Census Operations, New Delhi.
 3. Shri J.K. Banthia, Registrar General of Census Operations, New Delhi.
 4. The Director Census Operations, Assam, G.S. Road, Guwahati.
 5. The Deputy Director of Census Operations, Assam, G.S. Road, Guwahati.
 6. Shri N.C. Sen, Deputy Director of Census Operations, Assam, G.S. Road, Guwahati. Respondents
- By Advocates Mr A. Deb Roy, Sr. C.G.S.C.,
Mr K.N. Choudhury, Mr I. Chowdhury and Mr B.C. Das.

O.A.No.2/2002

Shri Bikul Chandra Hazarika,
S/o Late Bhanashyam Hazarika,
P.S. Kampur, District- Nagaon, Assam. Applicant

By Advocates Mr M. Pathak and Mr D. Barua.

- versus -

1. The Union of India, through the Secretary to the Government of India, Ministry of Home Affairs, New Delhi.
 2. The Registrar of Census Operations, New Delhi.
 3. The Director of Census Operations, Assam, G.S. Road, Guwahati.
 4. The State of Assam, represented through the Secretary to the Government of Assam, Personnel (B), Dispur, Guwahati. Respondents
- By Advocates Mr A. Deb Roy, Sr. C.G.S.C.,
Mr K.N. Choudhury, Mr I. Chowdhury and Mr B.C. Das.

O.A.No.69/2002

Shri Tara Charan Kalita,
S/o Shri Samudra Kalita,
Resident of Village No.1 Jiakur,
P.O.-Kukurmara, District- Kamrup, Assam.

By Advocates Mr M. Chanda, Mrs N.D. Goswami and
Mr G.N. Chakraborty.

- versus -

1. The Union of India, through the Secretary to the Government of India, Ministry of Home Affairs, New Delhi.
 2. The Registrar General of Census Operations, New Delhi.
 3. Shri J.K. Banthia, Registrar General of Census Operations, New Delhi.
 4. The Director of Census Operations, Assam, G.S. Road, Guwahati.
 5. The Deputy Director of Census Operations, Assam, G.S. Road, Guwahati.
 6. Shri N.C. Sen, Deputy Director of Census Operations, Assam, G.S. Road, Guwahati. Respondents
- By Advocates Mr A. Deb Roy, Sr. C.G.S.C.,
Mr K.N. Choudhury, Mr I. Chowdhury and Mr B.C. Das.

O.A.No.70/2002

1. Smt Ratna Bhattacharjee
2. Shri Karuna Ram Das

Working as Computer/Assistant Compiler respectively in the Office of the Director of Census Operations, Assam, Guwahati (since terminated).

.....Applicants

By Advocates Mr M. Pathak and Mr D. Barua.

- versus -

1. The Union of India, Through the Secretary to the Government of India, Ministry of Home Affairs, New Delhi.
 2. The Registrar General of India, New Delhi.
 3. The Director of Census Operations, Assam, G.S. Road, Guwahati.
 4. The Deputy Director of Census Operations, Assam, G.S. Road, Guwahati.
 5. The Assistant Director of Census Operations, Assam, Guwahati.
-Respondents
- By Advocates Mr A. Deb Roy, Sr. C.G.S.C., Mr K.N. Choudhury, Mr I. Chowdhury and Mr B.C. Das.

O.A.No.151/2002

Shri Indrajit Das,
S/o Late Jitendra Lal Das,
C/o Miss Chandana Das,
Bishnupur, Guwahati.

.....Applicant

By Advocates Mr M. Chanda, Mrs N.D. Goswami and Mr G.N. Chakraborty.

- versus -

1. The Union of India, through the Secretary to the Government of India, Ministry of Home Affairs, New Delhi.
 2. The Registrar General of Census Operations, New Delhi.
 3. The Director of Census Operations, Assam, G.S. Road, Guwahati.
 4. The Deputy Director of Census Operations, Assam, G.S. Road, Guwahati.
 5. Shri N.C. Sen, Deputy Director of Census Operations, Assam, G.S. Road, Guwahati.
 6. The Assistant Director of Census Operations, Assam, Office of the Director of Census Operations, Assam, G.S. Road, Guwahati.
-Respondents
- By Advocates Mr A. Deb Roy, Sr. C.G.S.C., Mr K.N. Choudhury, Mr I. Chowdhury and Mr B.C. Das.



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A. Dutta (Advocate)
Guwahati, Assam, 781001

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ORDER

CHOWDHURY. J. (V.C.)

All these applications were taken up together for consideration, since it involves commonality both in facts and law as well.

2. The basic issue pertains to absorption of retrenched Census employees of 1991. All the applicants were engaged during the Census Operations and they were retrenched when the Census Operation was over.

3. The three applicants in O.A.No.62 of 2002 are working as Computer in the Office of the Director of Census Operations, Manipur. The three applicants knocked the door of this Tribunal for their absorption under the respondents on commencement of 2001 Census. They preferred three separate applications before this Tribunal which were registered and numbered as O.A.No.89 of 2000, O.A.No.363 of 1999 and O.A.No.51 of 2000. It was pleaded that those O.A.s were disposed of by this Tribunal with the direction on the respondents for appointment of the applicants against available vacancies. The respondents submitted Review Applications and sought for review of the Judgment and Order of the Tribunal. By order dated 11.1.2001 all the Review Applications were dismissed. The respondents thereafter preferred Writ Petitions before the High Court assailing the order of the Tribunal. By a common Judgment and Order dated 7.6.2001 the High Court dismissed all the seven Writ Petitions. The full text of the operative part of the Judgment and Order dated 7.6.2001.....

"While dismissing the writ petitions, we hereby direct the petitioners to carry out the directions given by the CAT within two weeks. However, we, as a matter of abundant caution, make it clear that the petitioners would offer the vacancies to the retrenchees according to their length of service. A person with longer length of service in a particular category would be offered the job first and then the other retrenchees in that order. After exhausting the retrenchees, if there are still more vacancies available, those may be filled by any other method provided under the Rules. These directions would be applicable to all the retrenchees irrespective of whether or not they were applicants before the CAT."

"1) Their re-engagement 'will not bestow upon them any right for regularisation in the posts in which they are appointed and in any other posts and their services shall be terminated at any time without assigning any reason thereof;

2) As the posts are created to attend to the additional work of Census of India 2001 and likely to be discontinued on or before 20.2.2002 their services shall stand terminated on the discontinuation/abolition of the temporary posts created for Census of India 2001 and the Govt. shall have no liability thereafter.

3) The re-engagement is given strictly as per seniority as per the directions of the Hon'ble High Court in the aforesaid order against the available vacancies."

Being aggrieved by the action of the respondents for engaging them for limited period instead of regularising them, the applicants moved this Tribunal assailing the legitimacy of the action of the respondents.

5. In O.A.No.68 of 2002 the three applicants were engaged by the respondents in connection with the 1991 Census work. They continued to work in the department and their services were terminated in December 1993. They assailed the order of termination before the Tribunal in O.A.No.269 of 1993. The Tribunal by Judgment and Order dated

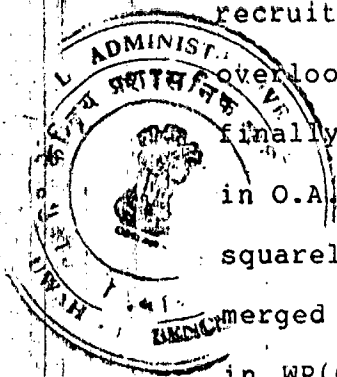
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5.6.1998 disposed of said O.A. directing the respondents to act as per law enunciated by the Apex Court in Union of India Vs. Dinesh Chandra Saxena, reported in 1995 (29) ATC 585. The applicants made representation before the authority. Failing to get appropriate remedy all the applicants including applicant Nos.1 and 2 again moved the Tribunal by filing O.A.No.161 of 1999. By Judgment and Order dated 16.2.2000 the Tribunal directed the respondents to absorb the applicants in vacancies that would occur for census operations of 2001. Similarly, the applicant No.3 also preferred O.A.No.76 of 2000 before the Tribunal, which was also disposed of on 25.2.2000 in similar fashion. The respondents, however, took steps for appointing persons by transfer on deputation to fill up the posts available for census of India 2001. At that stage, the three applicants alongwith one Harish Chandra Rabha moved the Tribunal assailing the methodology of recruitment for filling up vacancies of the 2001 Census overlooking their case for absorption. The matter was finally disposed of by Judgment and Order dated 6.2.2002 in O.A.No.142 of 2000. The Tribunal held that the case was squarely covered by the decision of the Tribunal finally merged in the decision rendered by the Gauhati High Court in WP(C) Nos.2531/2001, 2532/2001, 2533/2001, 2534/2001, 2535/2001, 2536/2001 and 2537/2001 on 7.6.2001. By the impugned order dated 28.2.2002 the applicants' services were discontinued with effect from the afternoon of 28.2.2002. Hence the three applicants moved the O.A.No.68/2002 assailing the legitimacy of the order dated 28.2.2002.



6. The other four applications namely, O.A.No.2/2002, O.A.No.69/2002, O.A.No.70/2002 and O.A.No.151/2002 are also factually similar. Therefore, further discussions on these cases are not made.

7. The respondents contested the case and submitted their written statements. In the written statements the respondents pleaded that as per the order of the Tribunal, the applicants were ordered to be appointed against Census related posts and they were appointed against Census posts only and their services were terminated as soon as the Census Operation was over.

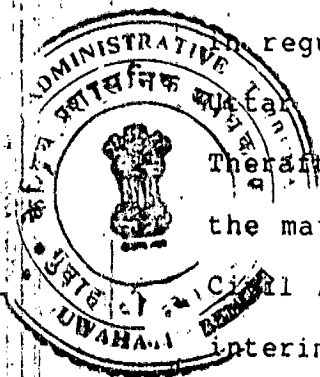
8. We have heard the learned counsel for the parties at length. After the decision rendered by the High Court in WP(C) Nos.2531, 2532, 2533, 2534, 2535, 2536 and 2537 of 2001 vide Judgment and Order dated 7.6.2001, the matter stood concluded. All the decisions rendered by the Central Administrative Tribunal got merged in the decision of the High Court. The High Court upheld the decision of the Central Administrative Tribunal and concurred with the reasoning adopted by the Tribunal. The matter did not end there. The High Court further directed the respondents to offer vacancies to the retrenchees according to length of service. The person with longer length of service in a particular category was to be offered job first than other retrenchees. After exhausting the retrenchees, if more vacancies came to surface, the authorities were directed to fill up the posts by other methodology provided by the Recruitment Rules. The High Court clarified that order and stated that the Judgment and Order of the High Court dated 7.6.2001 would be applicable

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to all the retrenched irrespective of whether or not they were applicants before the Tribunal. Retrenched mean persons who were retrenched in 1991 Census. The Tribunal, more particularly the High Court also referred to the decision rendered by the Supreme Court in Government of Tamil Nadu and another Vs. G. Mohamed Ammenudeen and others, reported in (1997) 7 SCC 499. As per the letter and spirit of this decision, the retrenched were to be absorbed in terms of the direction issued by the High Court in conformity with the principles laid down in Md. Ammenudeen (Supra). In Dinesh Chandra Saxena (Supra), on the fact situation the Supreme Court was not inclined to issue a direction for framing any scheme for regularisation of those persons, more so since they were engaged on contract basis for a limited period on a fixed pay. Nevertheless, the Supreme Court directed the Directorate of Census Operations, Uttar Pradesh to consider the retrenched employees for direct recruitment regular posts in the Directorate of Census Operations, Uttar Pradesh in the manner indicated in the judgment. Thereafter the Supreme Court had the occasion to deal with the matter in G. Mohamed Ammenudeen and others (Supra) in Civil Appeal No.810 of 1998. The Supreme Court passed an interim order on 11.3.1999 directing respondent authority to frame a scheme to absorb the respondents (in C.A.810/1998) and other employees who were retrenched and who were similarly placed. The Supreme Court in the aforesaid order noted the peculiarity of service of the Census employees who were engaged for a limited duration and thereafter they were retrenched on completion of the project, thereby losing both the employment and their position in the queue in the employment exchange. The respondent authority was.....



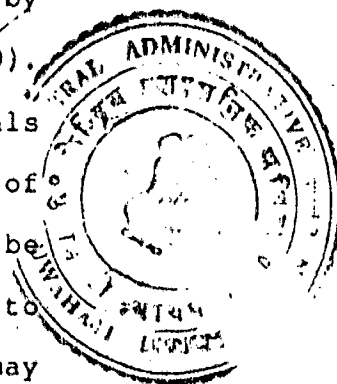
was accordingly directed to work out a scheme for their absorption. The record of the proceedings of the Supreme Court dated 11.3.1999 in C.A.No.810/1998 was reported in 2001 (9) SCC 750. Sequel to the order of the Supreme Court, the State of Tamil Nadu prepared a scheme and submitted before the Supreme Court. The Government O.M. No.144 dated 11.8.1999 was brought to the notice of the Supreme Court, which reads as follows:

i) Retrenched employees of the Census Organisation in Tamil Nadu with not less than six months' service were placed in priority (iii) list under Group III for employment assistance through employment exchanges.

ii) A period of three years was ordered to be excluded in computing their age for appointment through the Tamil Nadu Public Service Commission and the employment exchanges, provided they had rendered temporary service of at least six months in the Census Organisation of this State.

iii) The rule of reservation was to be followed in making the appointment of retrenched census employees."

The matter was finally disposed of by the Supreme Court by Judgment and Order dated 28.9.1999 ((1999) 7 SCC 499). The Supreme Court, on consideration of all the materials on record found that clauses (i) and (ii) of aforementioned O.M. would cause hardship and would not be workable and accordingly directed the State Government to delete these two conditions and ordered that all that may be insisted upon was that retrenched employees of Census Department could be placed in Group IV and the condition relating to the exclusion of three years from their age was to be deleted. The matter again came up before the Supreme Court in Contempt Petition (C) No.103 of 2000 etc. (in CA No.810/1998) in N. Palani Vs. Thiru A.P. Muthuswami and another, reported in (2001) 9 SCC 748. The Supreme Court as per order of the Supreme Court issued Notification.....



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Notification to the following effect vide GOMs No.144,
P&AR dated 11.8.1999:

"(a) All the retrenched employees of Census Organisation shall be placed in priority (iii) list under Group IV for employment assistance through employment exchanges for sponsoring against the vacancies arising in State Government, local bodies and public undertakings.

(b) The retrenched employees of Census Organization shall be shall be exempted from the age-limit prescribed in the relevant Service Rules governing the posts in which they are to be appointed. This concesssion shall apply only to the retrenched employees of 1991 Census."

The Supreme Court found that clause (a) was not justified, by asking that ex-employees were to be sponsored again by employment exchanges and that condition would not be in conformity with the order of the Supreme Court. The Supreme Court accordingly directed that the proper course would be to consider their cases as retrenched employees in a separate category and work out a scheme to fit them against appropriate posts. It may be mentioned that all the aforesaid cases relate to appointment made by the State Governments for the purpose of assisting and conducting the census and in that context the Supreme Court directed the State Government.

9. Admittedly, the applicants in these applications were engaged by the respondents alone. The directions were issued for absorption of the retrenched employees. We find no justification for giving any narrow, constricted, rabid and abtruse restrictions to the judgment of the court. The respondents sought to mean as if the directions were confined for vacancies of Census Operation of 2001. Whatever misgivings could have been there was cleared by the decision of the High Court in WP(C) Nos.2531, 2532, 2533, 2534, 2535, 2536 and 2537 of 2001. The High Court referred to the decision of G. Mohamed Amenudeen and others (Supra) and directed to offer vacancies to retrenchees.....



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retrenchees according to their length of service and only after exhausting retrenchees if there were still vacancies available those could be filled as per the Recruitment Rules. Appointment by Recruitment Rules itself means regular appointment and not appointment by way of stop-gap arrangement. The contention of the respondents that the claim of the applicants was to be confined to the Census posts alone and therefore, the judgment was not meant to be used for regular absorption, in our view is an ultra-technical attitude. In this connection it would be appropriate to recall the observation of Bose, J. in State of U.P. Vs. Mohd. Nooh, reported in 1958 SCR 595 (613 and 614), where he observed :

".....Justice should, in my opinion be administered in our courts in a common sense liberal way and be broad-based on human values rather than on narrow and restricted considerations hedged round with hair-splitting technicalities....."

10. The High Court direction was not confined only to the applicant, but to all retrenched employees irrespective of whether they were applicants before the Tribunal or not. The order was made for absorption of the Census retrenched employees in the light of the judgment rendered by the Apex Court in Mohamed Ammenudeen (Supra).

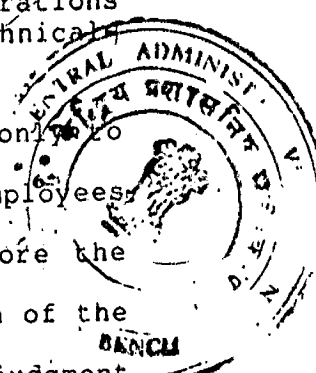
11. As stated earlier the decision of the Tribunal was subject to judicial review under Article 226. The respondents went for such judicial review before the High Court and judgment was rendered by the High Court at the instance of the respondents. The Judgment and Order rendered by the Tribunal was merged with the decision of the High Court, alone and is subsisting and operative and therefore, capable of enforcement. The Constitution Bench in Collector of Customs, Calcutta Vs. East India Commercial Co. Ltd, reported in (1953) 2 SCR 563 (568)

made.....

Atk. No. 5
D. Datta

R. Datta, (Advocate)

Baranagar, Calcutta-700017



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made the following observation:

" The question therefore turns on whether the order of the original authority becomes merged in the order of the appellate authority even where the appellate authority merely dismisses the appeal without any modification of the order of the original authority. It is obvious that when an appeal is made, the appellate authority can do one of the three things, namely, (i) it may reverse the order under appeal, (ii) it may modify that order, and (iii) it may merely dismiss the appeal and thus confirm the order without any modification. It is not disputed that in the first two cases where the order of the original authority is either reversed or modified it is the order of the appellate authority which is the operative order and if the High Court has no jurisdiction to issue a writ to the appellate authority it cannot issue a writ to the original authority. The question therefore is whether there is any difference between these two cases and the third case where the appellate authority dismisses the appeal and thus confirms the order of the original authority. It seems to us that on principle it is difficult to draw a distinction between the first two kinds of orders passed by the appellate authority and the third kind of order passed by it. In all these three cases after the appellate authority has disposed of the appeal, the operative order is the order of the appellate authority whether it has reversed the original order or modified it or confirmed it. In law, the appellate order as an appellate order of reversal or modification."



The Supreme Court interpreted the aforesaid case in the light of Sections 96, 100 and 115 of the Civil Procedure Code, 1908. The Doctrine of Merger is applicable in the case of a decision rendered by a Tribunal resolved by the decision of the superior court. Powers of adjudication ordinarily vested in courts are now being exercised under the law by Tribunals and other constituted authority. In S.S. Rathore Vs. State of M.P., reported in (1989) 4 SCC 582, it was, in fact held that there was no justification for bringing any distinction between Courts and Tribunals with regard to the principle of merger.

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12. In view of the clear pronouncement by the Tribunal and subsequently upheld by the High Court we asked Mr K.N. Choudhury, learned counsel for the respondents as to whether the matter could be resolved by the authority. Mr K.N. Choudhury in course of hearing placed before us a communication sent by Deputy Registrar General of India, vide Memo dated 15.7.2002. The full text of the communication is reproduced below:

"I am directed to refer to your letter No.DCO(E)175/2000/5782 dated 5.7.2002 and to say that the following concessions are already available to those employees who were temporarily engaged purely on ad-hoc and temporary basis against the short term posts created in connection with the Census and whose services were terminated after abolishing the temporary posts.

1. As per the judgement of the Hon'ble Supreme Court of India, dated 24.02.1995 in Civil Appeal No.73169 of 1991 Union of India & Ors. Versus Dinesh Kumar Saxena & Ors. the retrenched Census employees are entitled to be considered along with general candidates for appointments in any regular vacancies if such employees are otherwise qualified and eligible for the posts. For this purpose the length of temporary service of such employees in the Census department shall be considered for relaxing the age for such appointment.
2. In terms of the order dated 7th June, 2001 passed by the Hon'ble High Court, Guwahati in Writ petition No.2531/2001 to 2537/2001, the retrenched Census employees are entitled to be temporarily re-engaged against the vacant temporary posts created in connection with Census, 2001 in the order of their seniority i.e. a person with longer length of service in a particular category would be offered the job first and then the other retrenchees in that order.

It is also submitted that the applicants to the aforementioned OAs can not be regularized against the regular vacancies in view of the following as per the advice from Deptt. of Personnel & Training:-

1. Recruitment to the regular posts is made in accordance with the Recruitment Rules which are framed under Article 309 of the Constitution of India. The recruitment rules for regular appointment can not be dispensed.....

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R.D. Datta

Deputy Registrar General
Guwahati, Assam

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dispensed with for regularising the persons engaged for short-term work. Any relaxation would have far-reaching adverse implications in several Ministries/Departments under the Government and in other parts of the country.

2. Appointment to the regular posts is made through the prescribed channels viz. Staff Selection Commission. Further, presently recruitment to the regular vacant posts can not be done without obtaining clearance from the Screening Committee of the concerned Ministry. Besides this, the other formalities in the direct recruitment procedure are also to be complied with viz. following the post-based roster, etc.
3. Government policy is to right-size manpower. It would not be proper to provide regular jobs without work.
4. Regularization of the short-term employees bypassing the recruitment rules and Staff Selection Commission, etc. would be violation of Art. 16 of the Constitution.

In view of the above circumstances, it will not be possible to appoint directly the applicants of the above mentioned O.A.s in regular vacancies. You may accordingly apprise the position to the Hon'ble Tribunal through the concerned Govt. counsel."

13. It seems the authority decided to re-write the judgment of the Tribunal merged with the decision of the High Court. In our view the respondents acted in a most illegal fashion in attempting to sit over the judgment of the Tribunal that merged with the judgment of the High Court. The respondents acted contumaciously in its bid to circumvent the judicial decisions. Seemingly, the respondents acted to stonewall a judicial decision obdurately contrary to the scheme of the Constitution and the spirit of the Rule of Law. The administration is not to sit in an appeal against a judicial order nor should it attempt to emend or revise a judicial decision. The functional utility of the Constitutional edifice is needed to be ensured and not to be downgraded. The High court order in clear terms observed that only after exhausting the.....

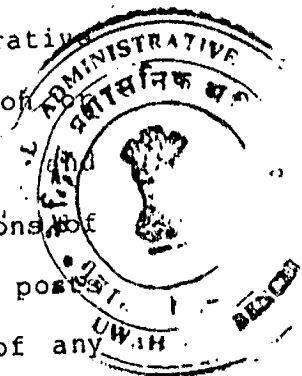


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the retrenchees, if there are still more vacancies available, those may be filled by any other method provided under the Rules. Rules mean Recruitment Rules. A judicial decision given by a competent court was not meant to be flouted in this fashion.

14. A Government and for that matter the public officials under the Indian Constitution are not above Law. A Government is not the Government of men, but of law. The maxim "The King can do no wrong" is anathema to the Constitutional Scheme. There is equality before the Law and equal protection of laws. The Government and the public authorities are subject to jurisdiction of Courts and Tribunals. They are not immune from the ordinary legal process.

15. The Indian Parliament enacted the Administrative Tribunals Act, 1985 to provide for the adjudication of disputes by Administrative Tribunals of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State. The decision of the Tribunal is final and binding subject to judicial review by the higher constitutional courts. To permit the Executive to review or to reverse such decision would amount to interference with the exercise of judicial function. It would amount to subjecting the decision of the Tribunal and Court to the scrutiny of the Executive which does not countenance with the scheme of independence of the judiciary and rule of law. The Executive is to obey the judicial decision. The Judgments and Orders of the Tribunal in these cases were upheld by the High Court and the same attained finality.




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16. When the High Court had passed an order which attained finality, question of obtaining clearance from the Screening Committee of the concerned Ministry or dispensation and/or approbation from the concerned Ministry do not arise.

17. The plea raised by the respondents to avert the decision of the court is incompatible and anthithetic to rule of law. The plea of administrative expediency will not provide lee way on the authority to bye pass the decision of the competent court. Needless to state that those who, rouse the hornet's nest should not complain of being stung as was observed by O. Chinnappa Reddy J. in B. Prabhakar Rao and Ors. Vs. State of Andhra Pradesh and Others 1985 (Supp) SCC 432. In this context it would be apt to recall the statement of Lord Denning M.R. in Bradbury Vs. London Borough of Enfield (1967) 3 All England Report 434:



"It has been suggested by the chief education officer that, if an injunction is granted, chaos will supervene. All the arrangements have been made for the next term, the teachers appointed to the new comprehensive shools, the pupils allotted their places and so forth. It would be next to impossible, he says, to reverse all the arrangements without complete chaos and damage to teachers, pupils and public. I must say this : if a local authority does not fulfil the requirements of the law, this Court will see that it does fulfil them. It will not listen readily to suggestions of "chaos". The department of education and the council are subject to the rule of law and must comply with it, just like be obeyed; but I do not think that chaos will result. The evidence convinces me that the "chaos" is much overstated.... I see no reason why the position should not be restored, so that the eight schools retain their previous character until the statutory requirements are fulfilled. I can well see that there may be a considerable upset for a number of people, but think it far more important to uphold the rule of law....."

18. If the authority acts incongruously in disregarding the direction of the court law is not debilitated and the court will not be unnerved in compelling the authority to abide by the law upholding the rule of law is no less important.

19. For all the reasons stated above we set aside the orders dated 28.2.2002 passed by the respondents in the above O.A.s and direct the concerned authority to take appropriate measure to absorb the applicants including the other retrenched employees as per the direction of the High Court expeditiously and preferably within four months from the date of receipt of the order.

20. The applications are accordingly allowed. The respondents are ordered to pay cost of Rs.1000/- (Rupees one thousand only) each to the applicants.



Sd/ VICE CHAIRMAN
Sd/ MEMBER (ADM)

Certified to be true copy
प्रमाणित प्रतिलिपि

[Signature]
23/8/02

Section Officer (A)
आपूर्ति अधिकारी (आपूर्ति शाखा)
Joint Administrative Tribunal
संयुक्त प्रशासनिक न्यायिक निकाय
Guwahati, Assam.

[Signature]
23/8/02

Joint Administrative Tribunal
Guwahati, Assam.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: GUWAHATI BENCH
GUWAHATI

IN THE MATTER OF :

O.A. NO. 242/2002

Sri Birendra Ghosh .. APPLICANT

-Vs-

Union of India & Ors. .. RESPONDENTS

- AND -

IN THE MATTER OF :

An additional written statement on
behalf of the Respondents.

1. That the Respondents respectfully beg to state that in exactly similar circumstances pertaining to Census Retrenchees of the Directorate of Census Operation, Assam and Manipur wherein this Hon'ble Tribunal in the respective Original Application had issued direction to absorb the Applicants, the Registrar General and Census Commissioner of India and the respective Directorate had preferred Writ Petitions before the Hon'ble Gauhati High Court which were registered as W.P.(C) Nos. 7132 - 7137/2002. The Hon'ble Gauhati High Court while allowing the said Writ Petitions held that no principles of law were laid down by the Apex Court in the case of G.Mohammad Aminuddin and the Apex Court gave directions when the State of Tamil

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Clerk Master

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Filed By: THE Respondents
THROUGH:

MR. INDRANEE CHODHURY
ADVOCATE
14/05/03

Nadu offered to make certain Schemes. The relief or concessions, if any, was available under the said Schemes. The Scheme adopted by the State of Tamil Nadu cannot be made applicable to the State of Assam or to the employees of the Union of India unless the said scheme is adopted by the State or Union of India. Moreover, the Hon'ble Gauhati High Court also distinguished and explained the earlier Judgment of the High Court in W.P.(C) Nos. 2531 - 2537/2001 and held that the directions so issued in the said Writ Petitions were confined to 2001 Census vacancies. Having arrived at such findings, the Hon'ble High Court held that the Retrenchees are not entitled to any relief as claimed in the Original Application.

A copy of the Judgment and Order dated 31.1.2003 passed by the Hon'ble Gauhati High Court in W.P.(C) Nos. 7132 - 7137/2002 is annexed herewith and marked as ANNEXURE - ~~A~~.

2. That in view of the Judgment and Order dated 31.1.2003 passed by the Hon'ble Gauhati High Court and more particularly in view of the fact that the earlier Judgment and Order passed in W.P. (C) Nos. 2531 - 2537/2001 having been clarified, explained and distinguished, the Respondents humbly

beg to state that the present Original Application is liable to be dismissed.

In view of the above, it is respectfully prayed that the Original Application may be dismissed with costs.

... VERIFICATION ...

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(4)

V E R I F I C A T I O N

I, Sri Nishi Kanta Laskar, son of Late Ramesh Chandra Laskar, aged about 56 years presently serving as Director of Census Operations, Arunachal Pradesh, Shillong under the Govt. of India do hereby solemnly affirm and verify that I have been taking steps in the instant case and as such, I am fully conversant with the facts and circumstances of the case. I am duly authorised to sign this verification on behalf of all the Respondents. The statements made in Paragraphs are true to my knowledge and those made in Paragraphs are true to my information derived therefrom and the rests are my humble submission before this Hon'ble Tribunal. I have not suppressed any material facts.

And I sign this verification on this day of March, 2003 at Guwahati.

Nishi Kanta Laskar.
DEPONENT

Director of Census Operations
Arunachal Pradesh &
Shillong-1. Meghalaya

तारीख Date of application for the copy.	रॉफ़ा सूचित करने की निश्चित तारीख Date fixed for notifying the requisite number of stamps and folios.	देने की तारीख - 5- Date of delivery of the requisite stamps and folios.	प्रतिलिपि तैयार की Date on which the copy was ready for delivery.	ANNEXURE-A
31/1/93	7/2/03	7/2/03	7/2/03	7/2/03

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IN THE GAUHATI HIGH COURT
 (THE HIGH COURT OF ASSAM, NAGALAND, MEGHALAYA,
 MANIPUR, TRIPURA, MIZORAM AND ARUNACHAL PRADESH)

WRIT PETITION © NO. 7132 OF 2002

1. The Registrar General & Census
 Commissioner of India,
 2/A, Mansingh Road,
 New Delhi-110011.

2. The Director of Census Operation,
 Assam, G.S. Road, Ulubari,
 Guwahati-781007.

.....Petitioners.

-Versus-

1. Smt. Ratna Bhattacharjee,
 D/o Late Mukunda Bhattacharjee,
 No.5 Ferry Ghat Colony, Pandu
 Guwahati-12, Dist. Kamrup, Assam.

2. Shri Karuna Ram Das
 S/o Late Holi Ram Das,
 Vill. & P.O. Borkhola,
 P.S. - Palasbari,
 Dist.-Kamrup, Assam.

.....Respondents.

Certified to be true Copy

INDRANEEL CHOWDHURY
 Advocate,

WRIT PETITION © NO. 7133 of 2002

1. Registrar General & Census
Commissioner of India,
2/A, Mansingh Road,
New Delhi-110011.
2. The Director of Census Operation,
Assam, G.S. Road, Ulubari,
Guwahati-781007.

.....Petitioners

-Versus-

1. Shri Bikul Hazarika,
S/o Late Ghanashyam Hazarika,
Vill & P.O.-Debanrikali
Dist.-Nagaon.

.....Respondents.

WRIT PETITION © NO. 7134 OF 2002

1. Registrar General & Census
Commissioner of India,
2/A, Mansingh Road,
New Delhi-110011.

2. The Director of Census Operation,
Assam, G.S. Road, Ulubari,
Guwahati-781007.

.....Petitioners

-Versus-

1. Shri Bimalananda Das,
Resident of village Mirza,
P.O.-Palasbari,
Dist.-Kamrup, Assam.
2. Shri Nagen Rubha,
Resident of village-Shar Khari
P.O.-Loharghat,
P.S.-Palasbari,
Dist.-Kamrup, Assam.
3. Shri Arjun Baruah,
Resident of village & P.O. Arikuchi,
Dist.-Nulbari, Assam.

.....Respondents.

WRIT PETITION © NO. 7135 OF 2002

1. Registrar General & Census
Commissioner of India,
2/A, Mansingh Road,
New Delhi-110011.

2. The Director of Census Operation,
Assam, G.S. Road, Ulubari,
Guwahati-781007.

.....Petitioners

-Versus-

1. Smti. U Kamila Devi,
Resident of village-Sekmai
P.O. Sekmai,
District.-Imphal West, Manipur.
2. Shri Th. Basanta Singh,
Resident of village-Ningthoukhong,
Kha,
B.P.O. Ningthoukhong,
Dist.-Bishnupur, Manipur.
3. Md. Abdul Kalam Shah,
Resident of village-Yairipok,
P.O. Thoubal,
Dist.-Thoubal, Manipur.

.....Respondents

WRIT PETITION © NO. 7136 OF 2002

1. Registrar General & Census
Commissioner of India,
2/A, Mansingh Road,
New Delhi-110011.

2. The Director of Census Operation,
Assam, G.S. Road, Ulubari,
Guwahati-781007.

.....Petitioners

-Versus-

1. Shri Indrajit Das,
S/o Late Jitendra Lal Das,
C/o Miss. Chandana Das,
P.O.-Bishnupur, Guwahati,
Dist.-Kamrup. Assam.

.....Respondents.

WRIT PETITION @ NO. 7137 OF 2002

1. Registrar General & Census
Commissioner of India,
2/A, Mansingh Road,
New Delhi-110011.

2. The Director of Census Operation,
Assam, G.S. Road, Ulubari,
Guwahati-781007.

.....Petitioners

-Versus-

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1. Shri Tara Charan Kalita,
S/o Shri Samudra Kalita,
Resident of village No.1 Jiakar
P.O.-Kukurmara,
Dist.-Kamrup, Assam.

..... Respondents.

P R E S E N T

THE HON'BLE THE CHIEF JUSTICE
AND
THE HON'BLE MR. JUSTICE PG AGARWAL

For the petitioners

: Mr. KN Choudhury,
Mr. I Choudhury,
Mr. J Phukan,
Miss A Baruah,
Advocates.

For the respondents

: Mr. BK Sarma,
Mr. M Pathak,
Mr. D Baruah
Mr. J Das,
Advocates,
Dr. M Pathak,
Mr. H Baruah
Advocates for the caveator.

Date of hearing

: 19.12.2002

Date of Judgment
And Order

: 31.1.2003

JUDGMENT AND ORDER (CAV)

BY AGARWAL J.

1. These writ petitions are directed against a common order passed by the Central Administrative Tribunal, Guwahati Bench on 19.8.2002 in Original Application Nos. 2/2002, 62/2002, 68/2002, 69/2002, 70/2002 and 151/2002.

2. Upon hearing the learned counsel for both sides all these writ petitions are disposed of by this order as common question of law and facts are involved.

3. The undisputed facts are that the respondents/petitioners before the Central Administrative Tribunal were all appointed in various posts for the purpose of Census Operation, which commenced in the year 1991. At the completion of Census Operation and on discontinuation of sanction of such temporary posts, the services of the respondents were terminated with effect from 31.12.1993.

4. The respondents along with other retrenched employees thereafter moved the Central Administrative Tribunal in Original Application No. 269/93. The application was dismissed by order dated 5.6.1998 with the direction to the authorities to act in accordance with the law laid down by the Apex Court in the case of Union of India vs. Dinesh Kumar Saxena (1995) 3 SCC 401. The case of the petitioner Union of India is that the respondents never applied

for any post for which advertisements were made by the Staff Selection Commission. It is further stated that due to austerity measures adopted by the Union of India, there was a ban on filling up vacant posts or creation of plan/non-plan posts.

5. When the Census work of 2001 commenced or was about to commence, a circular No. DCO(E)50/99/2172 dated 24.2.2000 was issued for filling up temporary posts created for 2001 Census operation by way of promotion or deputation basis. Feeling aggrieved, the respondents approached the Central Administrative Tribunal in Original Application No. 142/2000. In view of some interim orders passed on 8.5.2000 in the said Original Application, the respondents were reengaged with effect from 3.10.2000 and in view of the various interim orders, the respondents continued in their service till 28.2.2002. The Union of India thereafter, approached this court in writ petition Nos. 2531-2537/2001 and the said writ petitions were dismissed with the directions to carry out the orders given by the Central Administrative Tribunal. Thereafter, the Original Application No. 142/2000 was disposed of in the light of the decision rendered by this High Court in the above writ petitions. After the completion of work of the 2001 census and on discontinuation of the posts sanctioned for the above purpose, the services of the respondents were terminated with effect from 1.3.2002 vide order, dated 28.2.2002. Against the said order of termination, the present batch of

Original Applications were filed before the Central Administrative Tribunal and by the impugned order the Tribunal gave the following directions and hence the present writ petitions :-

"19. For all the reasons stated above we set aside the orders dated 28.2.2002 passed by the respondents in the above O.A.s and direct the concerned authority to take appropriate measure to absorb the applicants including the other retrenched employees as per the direction of the High Court expeditiously and preferably within four months from the date of receipt of the order."

6. On perusal of the impugned judgment, we find that the Tribunal has granted the above relief mainly on two counts (i) that the decision of the Tribunal in OA 142/2000 got merged in the decision of this Court in WP© No. 2531-2537/2001 and the Union of India are bound to follow the said judgment; (ii) that the respondents are all retrenched employees of the Census department and as such they are entitled to all the benefits granted or directed to be granted to such employees of the State of Tamil Nadu, on the directions of the Apex Court in the case of Govt. of Tamil Nadu vs. G. Mohamed Amenudeen (1999) 7 SCC 499.

7. So far the legal status of the earlier order of the Tribunal got merged with the decision of the High Court is concerned, the said decision is binding on the Union of India and the petitioner before us can not be allowed to set any appeal against the said decision or revise it in their own manner.

8. Mr. KN Choudhury, learned senior counsel has, however, submitted that the Tribunal went wrong in interpreting the implication of the decision of this Court and thereafter extending the purview of the earlier judgment of this Court stating that the above observation of this Court were not meant for the petitioners who were before the Court but these were meant for all the employees, whether they had approached the Court or not. The Tribunal rejected the contention of the Union of India and held that the directions in the earlier writ petitions were not confined for vacancies of Census operation of 2001. The Tribunal observed as follows:-

"9. Admittedly, the applicants in these applications were engaged by the respondents alone. The directions were issued for absorption of the retrenched employees. We find no justification for giving any narrow, constricted, rabid and abstruse restrictions to the judgment of the court. The respondents sought to mean as if the directions were confined for vacancies of Census Operation of 2001. Whatever misgivings could have been there was cleared by the decision of the High Court in WPC Nos. 2531, 2532, 2533, 2534, 2535, 2536 and 2537 of 2001. The High Court referred to the decision of G. Mohamed Amenudeen and others (Supra) and directed to offer vacancies to retrenches according to their length of service and only after exhausting retrenches if there were still vacancies available those could be filled as per the Recruitment Rules. Appointment by Recruitment Rules itself means regular appointment and not appointment by way of stops-gap arrangement. The contention of the respondents that the claim of the applicants was to be confined to the Census posts alone and therefore, the judgment was not meant to be

used for regular absorption, in our view is an ultra-technical attitude."

9. We have gone through the judgment, dated 7.6.2001 passed by this Court in WP© Nos. 2531 - 2537/2001. It may be mentioned here that the writ petitions were preferred against the consent order, dated 20.1.2000 passed by the Central Administrative Tribunal. The relevant portion of which reads as follows :-

"Heard Mr. S Sarma, learned counsel for the applicant and Mr. BS Basumatary, learned Addl. C.G.S.G. It is agreed by the learned counsel for the parties that as per the decision of the Apex Court in Government of Tamil Nadu and another v. G. Md. Ammenudeen and others, reported in (1999) 7 SCC 499, the applicant is entitled to get the appointment when the new vacancy will arise. As per the said decision, the learned counsel for the parties submit that the applicant may be absorbed in the vacancy that will occur for Census Operation of 2000 in a suitable post which he is entitled to following the judgment of the Apex Court."

The application is accordingly disposed of."

10. We find sufficient force in the submissions of Mr. Choudhury, that the original application was for appointing the respondents against the temporary vacancies arising out of the Census Operation 2001 and accordingly the respondents were so engaged and after completion of the work of Census Operation 2001 their services were terminated as no sanctioned posts were available to accommodate them.

11. Mr. BK Sarma, learned senior counsel for the respondents, however, submits that as this Court gave the above direction following the dictum of the Apex Court in *G. Mohamed Amenudeen*(supra), the case of the respondents were required to be considered for permanent absorption and as the Union of India failed to do so, the Central Administrative Tribunal rightly granted the present relief. Even before this High Court, the respondents (applicants before the Central Administrative Tribunal) stated that they were satisfied with the directions given by the Central Administrative Tribunal.

12. When the very applicants before the Central Administrative Tribunal sought for appointment against the 2001 Census vacancies, we are unable to comprehend as to how it can be said that all future vacancies arising in the Census department are to be filled up by absorbing or regularizing the services of the respondents.

13. On perusal of the impugned order passed by the Tribunal, we find that the Tribunal was of the opinion that the decision of the Apex Court in respect of retrenched employees of the Census department as laid down in *Union of India and others vs. Dinesh Kumar Saxena* (1995) 3 SCC 401 stands reviewed in view of the later directions given in *G. Mohamud Amenudeen* (supra). In *Dinesh Kumar Saxena* the Apex Court held that at the time of each decennial census which is an exercise carried out on a gigantic scale every 10 years, a large

number of extra temporary posts are required to be created for a short period. The appointments to such temporary posts are only made for a fixed period and on the clear basis that these appointments are short-term. The incumbents would not be entitled to any regular appointment on the basis of such a fixed term appointment. On such fixed term appointments the Apex Court further observed :-

"In the present case, however, the additional work which is available is periodic in nature, available only at the end of each decennial when census operations are carried out. The additional work lasts for a period of about 2 or 3 years. Hence additional hands are required only for this periodical increase in work and while the work subsists. They are, therefore, engaged for a fixed period (during which the additional work exists) and they are paid a fixed salary. It is difficult to see how such employees can be regularized since there is no regular work available in the department for them."

14. The law laid down in Dinesh Kumar Saxena has not been reviewed or modified by the Apex Court.

15. Mr. Sarma, learned counsel for the respondents, however, submits that the above decision stands modified in view of the subsequent directions of the Apex Court in the case of G. Mohamed Amenudeen(supra).

16. It may be mentioned at this stage that conduct of census work all over the country is taken up by the Census Department, Govt. of India. But in Tamil Nadu, the situation is different as a Census department works in the State of Tamil Nadu itself and it carries out

the exercise. The State of Tamil Nadu had made certain rules for recruitment in respect of the retrenched employees of the Census department and when the matter came up before the Supreme Court, the State of Tamil Nadu offered to make certain concessions. The Supreme Court placing on record its appreciation of the State's reasonable stand held:-

"Considering the special features of the case, it would be appropriate for the State Government to frame a scheme to absorb the respondents and other employees, who were similarly placed and who have been retrenched. On the commencement of the census operations, persons who have registered themselves in the employment exchange get jobs in that department. However, when the project is over, their employment would come to an end and they are retrenched thereby losing both the employment and their position in the queue in the employment exchange. Bearing this aspect in mind, the Government was asked to work out an appropriate scheme.

The retrenched employees of the Census Department should be placed in Group IV and the condition relating to the exclusion of three years from their age shall be deleted. Subject to this modification, the scheme proposed by the State Government may be worked out so as to absorb the respondents in services of the State Government or in any of the local authority or government undertakings as may be feasible as expeditiously as possible."

17. In compliance of the above, the State of Tamil Nadu made a scheme, and it again came up before the Apex Court in the case of N. Palani vs. Thiru A.P.Muthuswami (2001) 9 SCC 748, wherein the

Apex Court suggested certain rectifications and alterations in the above scheme of the State of Tamil Nadu.

18. In view of the above, we find that no principles of law, were laid down by the Apex Court in the case of G. Md. Amenudeen(supra) and the Apex Court gave directions when the State offered to make certain scheme. The relief for concessions, if any, was available under the said scheme and can it be said that the said scheme shall be applicable to the other employees all over the country or in the State of Assam. The scheme adopted by the State of Tamil Nadu cannot be made applicable to Assam or to the employees of the Union of India, unless the said scheme have been adopted by the State or by the Union of India. In support of the above, we may refer to the recent decision of the Apex Court in the case of Bhupinder Singh Saini vs. State of Punjab AIR 2002 SC 2535 wherein it has been stated that such retrenched employees of the census organization shall be governed by the concerned/relevant circular of the State Government or the Union Government as the case may be.

19. In the present case, we find that the Tribunal gave directions for absorption of the respondents on the basis of the so-called earlier directions of this court. We held that no such direction was given by this Court and the petitioners were directed to be considered for appointment against the vacancies arising out of the work of Census

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2001 as stated above and as submitted in the Bar, the respondents were duly engaged for the 2001 Census and once that work was over their services were terminated as they were fixed term appointments. The Government of India vide different office memorandums/circulars issued from time to time provided or offered concessions in favour of the retrenched Census employees and it is needless to mention that the respondents shall be entitled to above concessions as are available to other retrenched Census employees over the country. We would like to state here that the scheme of Tamil Nadu in respect of the Census employees of that State shall be applicable to their employees only and it cannot be applied to the employees of other State unless their scheme is adopted by the concerned State or by the Union of India.

20. In the result, the impugned order passed by the Central Administrative Tribunal is hereby set aside. The writ petition stands allowed. The respondents are not entitled to any relief as claimed in the Original Application.

Sd/- P. P. Naolekar
Chief Justice
Sd/- P. G. Agarwal
Justice

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31/1/03

CERTIFIED TO BE TRUE COPY
Date 7th day of Feb 2003
Superintendent (Copying Section)
Patna High Court
Authenticated U/S 76, Act 1, 1878

7/2/03