

30/10/00
**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05**

(DESTRUCTION OF RECORD RULES, 1990)

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SECTION OFFICER (Judl.)

FORM NO. 4

(See Rule 42)

In The Central Administrative Tribunal :: Guwahati Bench
Guwahati

ORDER SHEET

APPLICATION NO. 02

/2002

Applicant(s)

B. C. Hazarika

NS

u. or l. Sc.

Advocate for Applicant(s)

Dr. R. Parikh

Mr. D. Baru

CHSC

Notes of the Registry

Date

Order of the Tribunal

4.1.02

Heard learned counsel
for the parties.

Issue notice to show
cause as to why the application
shall not be admitted. Returnable
by Four weeks. List on 4.2.02
for Admission.

ICC Ushan

Member

Vice-Chairman

lm

4.2.02

The application is admitted.
Since the pleadings are complete,
the case may now be listed for hear-
ing. The applicant may file rejoinder
if any within 2 weeks from today.

List on 4.3.2002 for hearing.

ICC Ushan

Member

Vice-Chairman

mb

23.1.2002

WPS submitted
by the respondents Nos.
1, 2 & 3.

4.3.02

Prayer has been made on behalf
of Mr. M. Pathak, learned counsel for the
applicant for adjournment of the case.

Prayer accepted. List the case
again for hearing on 19.3.2002.

PD

ICU Shrivastava
Member

Vice-Chairman

bb

22.2.2002

Complaint affidavit against
the WPS filed by the respondent 3
on behalf of the Rep. No. 1, 2 and 4
and on his own behalf.

19.3. There is no dispensation
today.

The case is adjourned to
22.4.2002.

PD

A.K.Th

19.3.

22.4.02 List on 6/5/2002 alongwith the
contempt series.

18.3.2002

WPS submitted by
respondents on additional
rejoinder.

PD

6.5.02 Adjourned on the prayer of learned
counsel for the parties. List on
27/5/2002 for hearing.

mb

ICU Shrivastava
Member

Vice-Chairman

27.5. There is no dispensation today.
The case is adjourned to 20.6.2002.

PD

A.K.Th

27.5.

4

5

O.A. 70/2002

Notes of the Registry Date Order of the Tribunal

19.8.02

Judgment delivered in open Court
kept in separate sheets. The applica-
is allowed in terms of the orders with
cost of Rs. 1000/- to be paid to the
applicant.

U. Usha

Member

mb

U. Usha
Vice-Chairman

Notes of the Registry

Date

Order of the Tribunal

19.8.2002

Judgment delivered in open court, kept in separate sheets. The application is allowed in terms of the order with cost of Rs.1000/- to be paid to the applicant.

Judgment delivered 19/8/02
Communicated

Dr
379

mb

K. C. Sharma

Member

L. N. Sharma
Vice-Chairman

Notes of the Registry

Date

20.6.02

Ismaidat chs to refiro

Order of the Tribunal

Mr. I. Choudhury, learned counsel on behalf of the respondents prays for sometime to obtain necessary instructions. Dr. M. Pathak, learned counsel for the applicant submits that (she has) filed a Misc. Petition praying for direction from this Bench not to fill up the post against the interview conducted by the respondents as the applicant may be prejudiced. Mr. I. Choudhury, learned counsel for the respondents stated that the case may be posted for hearing. In the meantime, the post shall not be filled up till 26.6.2002.

List on 26.6.02 for hearing.

I C Usha
Member

[Signature]
Vice-chairman

lm

26.6.2002

List the case again on 17.7.2002 to enable the respondents to obtain necessary instruction in the matter.

I C Usha
Member

[Signature]
Vice-Chairman

bb

17.7.02

List the matter on 5.8.2002 for hearing alongwith O.A. 62/2002.

mb

918

Heard Dr. M Pathak, learned Counsel for the applicant & Mr. I. Choudhury, learned Counsel for the respondent.
Hearing Concluded.
Judgment reserved.

[Signature]
P. J. D.

Reorder listed by
stamps/cent on
5/8/2002
[Signature]

Qb

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.- Loharaghata,
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 -

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.

.....

O R D E R

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.....

7.6.2001 is reproduced below:

"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 retrenchedes 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 retrenchedes in that order. After exhausting the retrenchedes, 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 retrenchedes irrespective of whether or not they were applicants before the CAT."

4. By order dated 30.7.2001 the three applicants in O.A.No.62/2002 were re-engaged as Compiler, they being the seniormost retrenched employees of 1991 Census, subject to the following conditions:

- "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

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

to.....

to all the retrenchees irrespective of whether or not they were applicants before the Tribunal. Retrenchees 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 retrenchees 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 in regular posts in the Directorate of Census Operations, Uttar Pradesh in the manner indicated in the judgment. Therafter 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.....

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 concession 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.....

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 (1963) 2 SCR 563 (568)

made.....

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.

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.....

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.....

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 or trial 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 antithetic 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 schools, 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.

K. K. Sharma
(K. K. SHARMA)
ADMINISTRATIVE MEMBER

(D. N. CHOWDHURY)
VICE-CHAIRMAN

nkm

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH, GUWAHATI

25/01/2002
Guwahati Bench

(An application under Section 19 of the Administrative Tribunal Act, 1985)

Original Application No.....of 2002.

Shri Bikul Chandra Hazarika
.....Applicant

-Vs-

Union of India & Others
.....Respondents

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Date of filing or date

Filed by:

of receipt by post:

Dilip Baruah.

Requisition No.

Advocate

Signature of the Registrar:

Date: 4-1-2002

Bikul Ch. Hazarika

26
Filed by the
Petitioners
Through:
Divip Baruah
Advocate 4-1-2002

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

(An application under Section 19 of the Administrative Tribunal Act, 1985)

Original Application No.....of 2002.

BETWEEN:

Shri Bikul Chandra Hazarika,
S/o. Late Ghanashyam Hazarika,
Vill. & P.O.- Debnarkali,
Dist- Barilly, Uttar Pradesh.
P.S. Kampur, Dist. Nagaon, Assam.

.....*Applicant.*

-And-

1. Union of India,
Through the Secretary to the Government of India,
Ministry of Home Affairs, New Delhi.
2. Registrar of the Census Operations,
2/A Man Singh Road, New Delhi.
3. Director of the Census Operations, Assam,
G.S. Road, Guwahati.
4. The State of Assam,
Represented through the Secretary to the Govt. of Assam,
Personal (B) Deptt., Dispur, Guwahati.

.....*Respondents.*

Bikul Ch. Hazarika

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DETAILS OF THE APPLICATION:

1. Particulars of orders against which this application is made:

This application has not been made against any specific order; but has been made against the direction made against the direction and circular issued vide Letter No. DOC(E) 50/99/2172 dated 23/24.2.2000 whereby Respondent No. 3 has proposed to fill up the posts of Computor, Lower Division Clerk, Assistant Compiler, Proof Readers, which were created in connection with 2001 Census.

- (a) Circular No. A.11020/1/99-Ad.II dated 1.2.2000.
- (b) Circular No. 12011/4/2000-Ad.IV dated 14.2.2000.
- (c) Circular No. 350/8/4/2000-Ad.IV dated 16.2.2000.
- (d) Circular No. DCO(E) 50/99/2172 dated 23/24.2.2000.
- (e) Circular No. 12021/4/99-Ad.IV dated 28.3.2000.
- (f) Circular No. 12011/2/2000-Ad. IV dated 16.5.2000.
- (g) Circular No. D.30011/1/99-55 dated 14.2.2000.
- (h) Circular No. 12011/4/2000-Ad-IV (Pt.) dated 25.9.2000.

which are issued from time to time thereby creating temporary/ permanent post in the Head Quarters of the Directorate of Census Operations, of for filling up the sanctioned post for Census Operation of India- 2001 of for filling up the posts on deputation/ transfer/ promotion basis or to fill up some posts by suitable officials from Central/ State Govt. Departments by transfer or deputation or ad-hoc basis or filling up of posts which are created in connection with 2001 Census. The said notified and other posts are being filled up and some posts are still vacant.

The applicant craves the leave of this Hon'ble tribunal to allow him to produce these circulars at the time of hearing or as and when so required.

2. Jurisdiction of the Tribunal:

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

3. Limitation:

The applicant further declares that the application is within the limitation prescribed under section 21 of the Administrative Tribunal Act, 1985. Moreover, this application may not be barred by limitation in view of the order passed by the Hon'ble High Court

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in W.P.(C) No. 2531/2001 (series) as the non- appointment of the applicant is a continuing wrong.

4. **Facts of the case:**

The facts of the case in brief are given below:

- 4.1. That the applicant is a citizen of India and as such he is entitled to all the rights and privileges guaranteed under the Constitution of India and the law framed thereunder.
- 4.2. That the fact of the case traces back to the year 1991 when the applicant alongwith others were appointed to various posts under the disposal of the Respondent No.3. This applicant who belongs to the Scheduled Caste (Bania Community) is a Graduate in Arts and was appointed as Checker on 14.3.91 and subsequently as Computor on 3.6.93. The applicant is the only earning member of the family to look after his widow mother, unmarried sisters and school going brothers including himself.

Copies of the Certificate dated 9.8.95, B.A. Pass Certificate, Appointment Letter dated 14.3.90 and 3.6.93 are annexed herewith as Annexure A, B, C and D respectively.

- 4.3. That the appointment of the applicant as Checker was made on contract basis in the fixed/ consolidated pay of Rs. 1050/- P.M. as per the Appointment Letter dated 14.3.91, the applicant was senior and his name was placed in 3rd out of the total 28 number of appointees. Subsequent appointment of the applicant as Computor was made on 3.6.93 in the pay scale of 1200-2040/- P.M. on temporary and *ad-hoc* basis in connection in the 1991 Census work.
- 4.4. That the applicant having been so appointed, continued to work in the department under the disposal of Respondent No.3. But on 21.12.93, the Respondent No 3 issued a letter whereby the services of the applicant stood terminated w.e.f. 31.12.93 alongwith the others. In the said list, the name of the applicant was shown at Sl.No. 6 whereas the retrenched employees similar to him at Sl.No.1,7,12,14,16 etc. are appointed for the 2000-2001 Census Operation, while the applicant has been singled out and has not been appointed upto now.

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*A copy of the order dated 21.12.2001 is annexed as
Annexure E.*

4.5 That some of the employees so terminated challenged the said order dated 21.12.93 in **O.A. No. 269/93** before this Hon'ble Tribunal. The Hon'ble Tribunal after a threadbare consideration of the matter disposed of the Original Application vide order dated 5.6.98 holding that there was no need to interfere with the order dated 21.12.93 and the same could not be quashed following the judgment of the Hon'ble Supreme Court in **Union of India Vs. Dinesh Kumar Saxena**, reported in (1995) 2ATC 585. The Tribunal however held that the Respondent No.3 would take action to appoint the applicants in any regular vacancies that might arise in near future if the applicants were otherwise qualified and eligible for those posts and in the event the applicants might individually approach Respondent No. 3. Therefore in a series of cases, namely OA No. 284/97 (**Abani Barthakur & others Vs. UOI**), OA No.285/97 (**Baleri Kalita & others Vs. UOI**) and OA No. 286/97 (**B.C. Gogoi & others Vs. UOI**), this Hon'ble Tribunal had passed order on 31.8.99 thereby directing the respondents to consider the regularization and continuance of the services of the applicants. In O.A. No. 161/99 (**B Das & others Vs. UOI & others**), O.A. no. 182/99 (**U.K. Devi Vs. UOI & others**), O.A. No. 363/99 (**Abdul Kalam Vs. UOI & others**), this Hon'ble Tribunal had passed the order on 16.2.2000, 3.1.2000 and 22.12.99 thereby directing the Respondents for appointment/ regularization of the applicants against vacancies that would occur for the 2000-2001 Census Report.

Again in another series of cases, viz. O.A. No. 364/99, O.A. No. 50/2000, O.A. No. 51/2000, O.A. No. 52/2000, O.A. No. 82/2000, O.A. No. 385/2000, O.A. No. 89/2000, O.A. No. 142/2000, O.A. No. 82/99, O.A. No. 388/2000, this Hon'ble Tribunal was pleased to pass similar orders for appointment against the posts of 2000-2001 Census Operation. Against some orders of this Hon'ble Tribunal, the Respondents approached the Hon'ble High Court through the writ Petition (Civil) Nos. 2531/2001, 2532/2001, 2533/2001, 2534/2001, 2535/2001, 2536/2001 and 2537/2001 by challenging such orders and prayer for quashing them. The Hon'ble Gauhati high Court was pleased to pass a common judgment and order on 7.6.2001, and the operative portion of the said order is quoted below: —

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 abandon caution, make it clear that the petitioners would offer the vacancies to the retrenchies

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according to their length of service. A person with larger length of service in a particular category would be offered the job first and then the other retrenchies. After exhausting the retrenchies, if there are still more vacancies available, those may be filled up by any other method provided under the rules. These directions would be applicable to all the retrenchies irrespective of whether or not they were applicant before the CAT.

As per the said order dated 7.6.2001, this applicant is entitled to get the appointment as Computer, though he did not make any application before this Hon'ble Tribunal.

Copies of the said orders dated 22.12.99 and 7.6.2001 are annexed hereto as Annexure F and G respectively.

4.6 That it is pertinent to mention here that at present there are 2 vacant sanctioned posts Assistant Compiler amongst others as per the quarterly return of the staff of the Office of the director of Census Operation, Assam for the quarter ending 30.9.2001. As such the Respondent can easily appoint the applicant against such sanction vacant post of Assistant Compiler.

The copy of the said return is annexed hereto as Annexure H.

4.7 That the applicant state that the Respondents have totally ignored the spirit of the order of this Hon'ble Tribunal as well as the Gauhati High Court as stated above for which this applicant is deprived of his legitimate claims.

4.8 That the applicant belongs to the Scheduled Caste (Bania Community) and as such as per rooster system he should get preference over other general applicants.

4.9 That in this respect, he Respondent No. 4, i.e. the Government Of Assam had also issued a Office Memorandum vide Memo No. ABP.265/91/51 dated Dispur, the 6th January 1992, with a copy to the Respondent No. 3 amongst others to give preference to the retrenched employees of Census Operation in the matter of recruitment. The said Memo stated that:—

After careful consideration, Government have decided that while filling up equivalent post of Grade III and Grade IV in the Offices under the State Government, the

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cases of absorption of such retrenched personals should be considered giving them preference in the matter of recruitment, subject to observance of the provisions of Assam Scheduled Caste and Scheduled Tribes (Reservation of Vacancies in Services and Posts Act, 1978).

Further, it has been decided to relax the age limit of this category of candidates to the extent of the length of their service under Census Operation beyond the possible upper age limit while absorbing these employee, if any deficiency is detected with regard to their age, necessary proposal may kindly be sent to Government for condonation of such deficiencies.

This Office Memo, issued by the Government of Assam is very much clear and as such the Respondents have no bar to absorb/ appoint the applicant. Inspite of this clear direction, the Respondent No. 4 also took no steps upto now as in the similar case of Govt. of Tamil Nadu, the Hon'ble Supreme Court has issued direction to frame scheme to appoint such retrenched employees.

The copy of the said Memo dated 6.1.1992 is annexed hereto as Annexure I.

- 4.10. That the applicant beg to state that the respondents have already filled up all the vacancies by the retrenched employees of earlier census, and some other from open field with resorting to recruitment from amongst retrenched candidates like the applicant. In this connection, it is pertinent to mention that as per the direction of this Hon'ble Tribunal in a series of cases and judgment and order dated 7.6.2001 of the Gauhati high Court in the Writ Petition (Civil) Nos. 2531/2001, 2532/2001, 2533/2001, 2534/2001, 2535/2001, 2536/2001 and 2537/2001 had directed the Respondents to recruit the retrenched employees like the applicant to fill up the vacant post. But the respondents are resorting to the recruitment from the open market through Staff Selection Commission, thereby violating the order of this Hon'ble Tribunal as well as the Hon'ble Gauhati High Court. The actions of the Respondents are therefore illegal, arbitrary, discriminatory and malafide.

- 4.11. That your applicant further begs to state that normally retrenched workers/ employees are to be given priority for appointment to fill up the vacancies which occurred in connection with the Census work on priority basis. But this is for

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the first time in order to avoid the directions of this Hon'ble Tribunal and also the direction of the Hon'ble Gauhati High Court and the Apex Court, the Respondents issued the impugned circular dated 23/24.2.2000 to fill up all the posts which occurred in connection with the 2000-2001 Census on deputation basis with an ulterior motive to deny the benefits of appointment to the present applicant. It is also stated that there are existing vacancies of regular sanctioned posts and the same authority, particularly the Director, Census Operation, Assam, Respondent No. 3 issued requisition to the Staff Selection Commission for filling up those vacancies also without giving any opportunity to the present applicant inspite of the clear order/ direction of the Hon'ble Gauhati High Court vide order dated 7.6.2001, to absorb all the retrenchies, irrespective of the facts as to whether they were applicants before the Tribunal or not.

*Copy of the circular dated 23/24.2.2001 is annexed
hereto as Annexure J.*

4.12 That in the mean time, all the retrenchies who approached this Hon'ble Tribunal have been appointed by the Respondent No. 3 in different categories of posts. This applicant when approached the Respondent No. 3 on 16.7.2001 and 1.11.2001 gave only verbal assurances to give him appointment and requested him verbally not to go to this Tribunal. As the Respondent No. 3 failed to keep his word, and the time was running, the applicant had no other choice but to approach this Hon'ble tribunal through this application. This type of action of the Respondents to deprive the applicant is very much discriminatory and violative of Art. 14, 16 and 21 of the Constitution of India.

*entitled to be registered for appointment
under Staff Rules, 1970.*

4.13 That it is stated that it is a fit case for the Hon'ble Tribunal to interfere with and to pass necessary order/ orders or direction to stop the process for filling up the posts which occurred for the 2001 Census by deputation and further be pleased to direct they Respondents to appoint the present applicant in terms of the judgment and order passed by this Hon'ble Tribunal following the decision of the Apex Court in the Case of **Govt. of Tamil Nadu & others Vs. G. Md. Ammenuddin & others.**

4.14 That the petition has been made bonafide and for the ends of justice.

5. **Grounds for relief with legal provisions:**

5.1 For that the Director, Census Operation, Assam, Guwahati, issued the impugned circular dated 23/24.2.2000 inviting applications for filling up vacancies on deputation basis with malafide intention and on extraneous consideration to deprive the applicant from his legitimate claim for appointment and the same is also violative of the order and direction of the Hon'ble Tribunal passed in O.A. No. 363/99 dated 22.12.99 and in order and judgment dated 7.6.2001 in writ petitions Nos. 2531/2001, 2532/2001, 2533/2001, 2534/2001, 2535/2001, 2536/2001 and 2537/2001 and also the direction of the Apex Court in **Govt. of Tamil Nadu & others Vs. G. Md. Ammenuddin & Others.**

5.2 For that the Respondent No.3 issued the impugned circular for filling up the vacancies for 2001 Census in order to avoid implementation of the judgment and orders of the Hon'ble Tribunal and Hon'ble Gauhati High Court and also the Apex Court.

5.3 For that the Government of Assam, Respondent no.4 also agreed to fill up the vacancies of Grade III and Grade IV in the Offices under the State Govt. by the retrenched personnel. The Respondent No. 4 is also ready to relax the age limit of such candidates. But in case of the applicant, neither Respondent No.3 nor the Respondent No. 4 considered his genuine claim for appointment as retrenched employees.

5.4 For that the applicant has a valuable right to regular appointment on priority basis as his name was shown against Sl.No. 3 out of the total 28 numbers of candidates in the appointment letter dated 14.3.91. So, as senior most employees, his case should be considered on priority basis. The Respondent No.3 had gave appointment to the candidates who were junior than that of him.

5.5 For that, this applicant belongs to Scheduled Caste (Bania Community). As per rooster system, the applicant has acquired a valuable right to regular appointment on priority basis under the Respondents against the existing sanctioned post.

5.6 For that the applicant is experienced and having the qualification required for the post presently lying vacant under the Respondents.

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- 5.7 For that the applicant can easily be accommodated against the vacant post and there is no reasonable impediment on the part of the Respondents in doing so.
- 5.8 For that the consideration for appointment of almost all the retrenchies of 1991 Census excluding the applicant of this application is highly discriminatory and violative of the provisions of Art 14, 16 and 21 of the Constitution Of India.
- 5.9 For that the action of the Respondents in proposing to fill up the vacancies of 2001 Census by process of deputation is in total violation of the direction passed by the Hon'ble Tribunal, Hon'ble Gauhati High Court and also by the Apex Court.

6. Details of the remedies exhausted:

The applicant states that he has no other alternative remedy and other efficacious remedy than to prefer this application before this Hon'ble Tribunal.

7. Matter not pending before any other Court; etc.

The applicant further declares that he has not previously filed any application, writ petition or suit regarding the matter in any respect of which this application is been made, before any Court or any other authority or any other bench or any Tribunal and nor such application, writ petition or suit is pending before any of these.

8. Relief sought for:

Under the facts and circumstances of the case, the applicant pray for the following relief:

- 8.1 That the impugned circular issued vide Letter No. DCO(E) 50/99/2172 dated 23/24.2.2000 be set aside;
- 8.2 That the Respondents be directed to appoint the applicant in the existing available sanctioned posts/ vacant post on regular basis in terms of the judgment and orders passed by this Hon'ble Tribunal in a series of applications and judgment and order passed by the Gauhati high Court on 7.6.2001 in a series of writ petitions and also in the strength of the circular issued by the Respondent no.4 on 6.1.92 and as the respondents has already appointed almost all the

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retrenched employees of the 1991 Census Operation as per direction of this Hon'ble Tribunal except this applicant. *so under CCS (Re-deployment of*

8.3 For cost of this application;

8.4 For any other relief or reliefs to which this applicant is entitled under the facts and circumstances of the case as deemed fit and proper by this Hon'ble Tribunal.

9. **Interim orders prayed for:**

9.1 That the Hon'ble Tribunal please to stay the operation of the impugned circular dated 23/24.2.2000 till disposal of this application.

9.2 One post may be kept vacant for the applicant till the disposal of this application.

9.3 Any other relief or reliefs to which the applicant is entitled to under the facts and circumstances stated in paragraph 4 of this application.

10. **This application has been filed through advocate.**

11. **Particulars of the Postal order in respect of the application fee:**

(i) No. Of IPO : 6G 790929

(ii) Date : 31.12.2001

(iii) Issued from GPO

(iv) Payable at : Registrar, Central Administrative Tribunal, Guwahati Bench

12. **List of enclosures:**

As stated in the index.

VERIFICATION

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I, Shri Bikul Chandra Hazarika, S/O- Late Ghanashayam Hazarika, aged about 35 years, resident of village & PO- Debnarikali, District- Nagaon, Assam, do hereby solemnly affirm that the statements made in paragraphs 2, 5, 7, 6, 8, 8, 3, 8, 4, 9, 10, 11 are true to my knowledge and those made in paragraphs 1, 3, 4, 5, 1, 6, 5, 6, 8, 1, 10, 2, 11 being matter of records are true to my information derived therefrom and as per legal advice. I have not suppressed any material facts.

And I sign this verification on the 4th day of January, 2002.

Bikul Ch. Hazarika

SIGNATURE OF THE APPLICANT.

PLACE:

DATE:

To,

The Registrar, CAT,
Guwahati Bench.

Nagaon Sub-Divisional Schedule Caste Development

Vice Govt. Memo No.—

P.C.I. u/SC/112/76/443

Dt. 20.9.78.

O.S. S. D. M. O. NAGAON

CASTE CERTIFICATE

Sl. No.—

(Rule 3(2))

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This is to Certify that Shri/ Shrimati/ Khamari Birkul
Haizrikar Daughter of Sri Ghanashyam Haizrikar
Dom Dolenarikhi in District/ Sub-division Nagaon
of the State/ Assam belongs to Schedule Caste
Community, which is recognised as a Scheduled
Community under the Constitution (Scheduled Castes) Order, 1950 as amended by the
Scheduled Castes and Scheduled Tribes (List of Modification) Order, 1956.

This is to Certify that Shri/ Shrimati/ Khamari Birkul and his
her family, ordinarily resides in Village/ Town Dolenarikhi
District/ Sub-Division of the State of Assam

Counter Signature—

D. C./S. D. O.

Signature

Designation

Date 21/8/85 HUN LONG

Office of the Principal, Kampur College.

[Estd. 1968]

[Affiliated to the Gauhati University]

Ref. No. 38

Date: 1/1/2023

I certify that Sri/Smt. Prakash Chandra Barik of
Kampur College, Kampur, Roll No. 12345678 duly passed the F. H. C. Exam.
Examination in Group A. (Arts & Commerce) from this College under
Gauhati University held in the year 2022 and was placed in the
Second Division.

During the period of his/her student life in this College his/her
character and conduct both are found satisfactory/unsatisfactory.

I wish him/her all success in life.

[Seal]

PRINCIPAL

Kampur College, Kampur P. O.
Dist. Nowrangpur, Assam

Issued by

NO.DCO(E)32/90/5126

GOVERNMENT OF INDIA
 MINISTRY OF HOME AFFAIRS/GRIHA MANTRALAYA
 OFFICE OF THE DIRECTOR OF CENSUS OPERATIONS, ASSAM
 G. S. ROAD, ULUBARI, GUWAHATI-781007.

Dated Guwahati 14th March '91

OFFICE ORDER

The following persons are appointed as Checker on a contract basis with immediate effect in the office of the Deputy Director of Census Operations, Regional Tabulation Office, Nagaon in the Fixed/Consolidated pay of Rs. 1050/- p.m. Their date of joining in the post will be the date they sign the contract Agreement.

They are to join immediately on or before 1.4.91 failing which their appointment will be treated as cancelled.

Sl. No. Name of persons

1.	Smti Usha Hazarika	15.	Shri Indreswar Hira
2.	" Hira Saikia	16.	" Purna Ch. Medhi
3.	Shri Bimal Hazarika	17.	Smti. Anjana Mudoi (Kakati)
4.	" Putul Ch. Deka	18.	Shri Padmeswar Hazarika
5.	" Bishauram Kalita	19.	" Jiban Ch. Saikia
6.	" Gopal Ch. Bora	20.	Md. Samsul Ali
7.	" Sonalbar Bora	21.	Shri Phanidhar Saikia
8.	" Surendra Bora	22.	Tikendra Deka
9.	" Manik Ch. Bortoloi	23.	Shri Sobharam Phukan
10.	" Dilip Kr. Deka	24.	Md. Mobarak Ali
11.	" Dilip Kr. Dora	25.	Shri Karuna Sagar Hazarika
12.	" Bireswar Dora	26.	" Chabon Hazarika
13.	" Baben Ch. Deka	27.	" Mir Sultan Katub
14.	" Bireen Ch. Saikia	28.	Smti. Taru Dutta

Jy. Bhuyan
 (J. C. BHUYAN) 14/3/91

DEPUTY DIRECTOR OF CENSUS OPERATIONS
 ASSAM : GUWAHATI.

NO.DCO(E)32/90/5127/27-63

Dated : 14/3/91

Copy for information and necessary action to :-

- (1) The Deputy Director of Census Operations, R.T.O. Nagaon. He is to be informed of the appointment to join the post only after they sign the contract Agreement.
- (2) The Assistant Director of Census Operations (D.D.O.)
- (3) The Paymaster, Paymaster Agent
- (4) The Jr. Accounts Officer
- (5) The Launch
- (6) File No. 47/90/
- (7) Physical Checkup by the Census Physician and Hygienist.
- (8) Police Commissioner, Dibrugarh, Distr. Dibrugarh.
- (9) To produce Medical Fitness Certificate from a Chief Medical & Inspector Officer at the time of joining the post.

Jy. Bhuyan
 (J. C. BHUYAN) 14/3/91
 DEPUTY DIRECTOR OF CENSUS OPERATIONS
 ASSAM:GUWAHATI. ATIQI

NO.DCO(E)1/89/Pt.I/

GOVERNMENT OF INDIA
 MINISTRY OF HOME AFFAIRS
 OFFICE OF THE DIRECTOR OF CENSUS OPERATIONS: ASSAM
 G.C. ROAD, ULUBARI, GUWAHATI - 781007.

Dated Guwahati the 3/6/93

OFFICE ORDER

Shri/Smti *Dikshul Ch. Hazarika*, Computer, is hereby appointed purely on temporary and adhoc basis as Computer in the office of the Director of Census Operations, Assam, Guwahati in the scale of pay of Rs. 1200-30-1560-EB-40-2040/-P.M. plus other allowances as admissible under the Central Govt. Rules as amended from time to time.

The post is purely temporary created specially in connection with the 1991 Census work and would be abolished on completion of the work and the incumbent will be retrenched and the Govt. would have no liability thereafter.

The appointment is adhoc in nature and likely to continue upto 31/12/93 only. However, the appointment can be terminated even before 31/12/93 or the extended period as the case may be by giving one month's notice from either side or one month's emoluments in lieu thereof.

He/She should produce the Medical Certificate of his/her fitness from the Chief Medical and Health Officer in proper form at the time of joining in this office.

He/She should join immediately.

Sd/-

(T. SENAPATI)
 DIRECTOR OF CENSUS OPERATIONS
 ASSAM:GUWAHATI.

Memo No. DCO(E)1/89/Pt.I/4440 - 46

Date :- 3/6/93

Copy to :- 1) The Pay & Accounts Officer (Census), New Delhi-2.
 2) The Asstt. Director of Census Operations (T), (D.D.O.).
 3) The Accounts Branch.
 4) The Estt. Branch.
 5) The Office Superintendent.
 6) The Store-in-charge.

At Shri/Smti Dikshul Ch. Hazarika,

c/o Sri Ramesh Hazarika, Wing/Asstt. Director

Assam Census Office (T. SENAPATI)

Guwahati, Assam. DIRECTOR OF CENSUS OPERATIONS

ASSAM:GUWAHATI.

1/SC/37

ANNEXURE - B

NO.DCO(E)97/80/Vol.II

फोन. कार्यालय 31954
Phone, Office

भारत सरकार

GOVERNMENT OF INDIA

पृष्ठ मंत्रालय

MINISTRY OF HOME AFFAIRS/GRIHA MANTRALAYA

कार्यालय असम जनगणना निदेशक

OFFICE OF THE DIRECTOR OF CENSUS OPERATIONS, ASSAM

जि. एस० रोड, उलुबारी, गुवाहाटी 781007

G. S. ROAD, ULUBARI, GUWAHATI-781007

दिनांक गुपाहाटी

Dated Guwahati

the 21st December, 1993.

OFFICE ORDER

The following officials have been appointed on purely temporary and adhoc basis against 1991 Census posts which had been sanctioned by the Government of India till 31.12.93. Consequent on the expiry of the sanction of these posts and as already indicated in their appointment letters the services of these officials stand terminated with effect from 31.12.93.

Sl.No.	Name	Designation
1.	Shri Santanu Goswami	Computer
2.	" Indrajit Das	"
3.	" Prasanna Borleakoty	"
4.	" Ranjan Goswami	"
5.	" Tara Charan Kalita	"
6.	" Bikul Hazarika	"
7.	" Arjun Baruah	"
8.	" Nagen Rabha	"
9.	" Jibon Malakar	"
10.	" Hara Kanta Das	"
11.	" Khalequer Zaman	"
12.	" Harish Ch. Rabha	"
13.	" Sarat Dutta Goswami	"
14.	Smt. Ratna Bhattacharjee	"
15.	" Archana Barman	"
16.	Shri Karuna Das	"
17.	Smt. Geeta Devi	"

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH
Order No. 287 dated 20th Dec. 1993.

18.	Shri Suren Nath	Asstt. Compiler
19.	Jiten Kr. Deka	Chowkidar
20.	Shri Bimalananda Das	Peon
21.	" Bharat Barman	Administrative Member
22.	" Smt. Anima Hazarika	Applicant
23.	Shri Sailen Doley	"
24.	" Prasanna Das - Malakar	Chowkidar
25.	" Jayanta Das	Peon
26.	" Rodhan Hazong	"
27.	" Ajit Kr. Das	Farash
28.	" Abul Hussain	Draughtsman
29.	The" Re Dhrubojoyoti Nath	"
30.	Shri Nripon Ch. Das	Registrar General
31.	" Robin Kalita	"

SD/- T. SENAPATI
DIRECTOR OF CENSUS OPERATIONS

ASSAM : GUWAHATI
Memo No.DCO(E)97/80/Vol.II 9922-68. Date: 21.12.93.

Copy forwarded for information and necessary action to:

1. The Registrar General, 2/A, Mansingh Road, New Delhi-110011.
2. The Pay and Accounts Officer (Census), New Delhi-110002.
3. The Drawing and Disbursing Officer, were employees under the Director of Census Operations.
4. All Deputy Directors of Census Operations.
5. All Asstt. Directors of Census Operations. they were allowed vide order dated 30/6/93 to join in the application. The names of
6. Research Officer (Map).
7. All Investigators (Editing & Coding, S.R.S.).
8. Office Superintendent, resignations and dates of appointment.
9. Mr. Accounts Officer.
10. Establishment section.

11. Shri/Smt. Parvati Das

12. Shri Bimalananda Das

13. Shri Jiten Kr. Deka

14. Shri Robin Kalita

15. Shri Bharat Barman

16. Smt. Anima Hazarika

Date of appointment letter

13.12.1991
124/12/93

(N. C. SEN)

ASSTT. DIRECTOR OF CENSUS OPERATIONS

ASSAM : GUWAHATI

In The Central Administrative Tribunal
GUWAHATI BENCH : GUWAHATI

ANNEXURES F

ORDER SHEET

APPLICATION NO.

364

OF 199

Applicant(s) Sri Atokpran Gopal Singh

Respondent(s) Union of India and others

Advocate for Applicant(s) Mr. B.K. Sharma
Mr. S. Sharma

Advocate for Respondent(s)

C.G.S.C.

22.12.99

This is a consent order as agreed by the counsel for the parties. The brief facts are as follows:-

The applicant was appointed Hindustani Typist in Census department for the purpose of Census Operation of 1991. After the operation was over, the applicant was retrenched. Thereafter, in the year 2000, the Census Operation will be started and some vacancies will arise. The applicant having worked more than 1 year. Therefore, the applicant submitted Annexure 8 representation for appointment in a suitable post. The representation has not yet been disposed of. Hence the present application.

Heard Mr. S. Sharma learned counsel for the applicant and Mr. B.C. Pathak, learned Addl. C.G.S.C. for the respondent.

It is agreed by the counsel for the parties that as per the decision of the Apex Court in Government of Tamilnadu and another, Vs. G.Md. Ammenden (1999) 7 SCC, 499 and others, 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 of 2000, in a suitable post which he is entitled to following the judgment of the Apex Court. Application is disposed of.

Sd/- VICE CHAIRMAN

Sd/- MEMBER (ADM)

FORM NO. 4

(See Rule 42)

In The Central Administrative Tribunal

GUWAHATI BENCH : GUWAHATI

ORDER SHEET

M.P. APPLICATION NO. 45/2000
OA. 364/99

Applicant(s)

Athokpar Gopal Singh

Respondent(s)

Crown of India and Ors.

Advocate for Applicant(s)

Mr. B. K. Sharma

Mr. S. Sharma

Mr. K. K. Wair

Advocate for Respondent(s)

C. S. S.

16.02.00

This M.P. has been filed seeking clarification of the order dated 20.1.2000 passed in the Original Application. The grievance of the applicant is that even after occurring of the vacancies he has not been appointed as the order did not indicate the time limit.

We have heard learned counsel for the parties. On hearing the counsel for the parties we make it clear that our order dt. 20.1.2000 passed in the Original

WS
SL

M.P. 45/2000 (A) 364/99

Date	Order of the Tribunal
16.2.00	<p>application is very clear inasmuch as we said that the applicant may be absorbed in the vacancy that will occur for Census Operation of 2000 in a suitable post. Suffice to say that the opposite party/respondents shall make the appointment immediately within a reasonable time after occurrence of such vacancy, not later than two months from the date of receipt of this order.</p> <p>The Misc. Petition is accordingly disposed of.</p>

Sd/- VICE CHAIRMAN

Sd/- MEMBER(ADM)

संवेदन नं। Application for copy.	स्टाम्प और फोलिओ की अपेक्षित संख्या संभित करने की तिथि। तारीख। Date fixed for notifying the requisite number of stamps and folios.	अपेक्षित स्टाम्प और फोलिओ देने की तारीख। Date of delivery of the requisite stamps and folios.	तारीख, जबकि देने के लिए प्रतिलिपि तैयार भी Date on which the copy was ready for delivery.	आवेदक को प्रतिलिपि देने की तारीख Data of making over the copy to the applicant.
11/6/2001	13/6/2001	13/6/2001	13/6/2001	13/6/2001

ANNEXURE - 6

(HIGH COURT OF ASSAM, NAGALAND, MEGHALAYA, MANIPUR, TRIPURA,

(MIZORAM AND ARUNACHAL PRADESH)

WRIT PETITION (CIVIL) NOS. 2531/2001, 2532/2001,
2533/2001, 2534/2001, 2535/2001, 2536/2001 and
2537 of 2001.

(1) In WP(C) No. 2531/2001 :-

1. Union of India.
2. The Registrar General of India, New Delhi.
3. The Director of Census Operations, Manipur.

.... Petitioners.

-Versus-

Oinam Indramani Singh,
Imphal, Manipur.

.... Respondent.

(2) In WP(C) No. 2532/2001 :-

Union of India and 2 others.
(as in WP(C) No. 2531/2001)

.... Petitioners

-Versus-

Md. Hatim Ali,
Vill. Yairipok Bamon Leikai,
Manipur.

.... Respondent.

(3) In WP(C) No. 2533/2001 :-

Union of India and 2 others.
(as in WP(C) No. 2531/2001)

.... Petitioners.

-Versus-

Shri K.S. Theimi,
of vill. Hundung, Ukhru, Manipur.

.... Respondent!

(4) In WP(C) No. 2534/2001 :-

Union of India and 2 others.
(as in WP(C) No. 2531/2001)

.... Petitioners

-Versus-

Md. Hasim Khan,
of vill. Top, Manipur.

.... Respondent

(5) In WP(C) No. 2535/2001 :-

Union of India and 2 others
(as in WP(C) No. 2531/2001)

.... Petitioners.

-Versus.-

13/6/2001
13/6/2001

- 2 -

Shri A. Gopal Singh,
of vill. Top,
Dist. Imphal, Manipur.

.... Respondent.

(6) In WP(C) No. 2536/2001 :-
Union of India and 2 others
(as in WP(C) No. 2531/2001).

.... Petitioners.

-Versus-

Th. Basanta Singh,
of Bishnupur, Imphal.

.... Respondent.

(7) In WP(C) No. 2537/2001 :-
Union of India and 2 others.
(as in WP(C) No. 2531/2001).

.... Petitioners

-Versus-

Md. Abdul Kalam Shah,
of vill. Yairipok,
Dist. Thoubal, Manipur.

.... Respondent.

PRESENT :

THE HON'BLE THE CHIEF JUSTICE (ACTING) MR. R.S. MONGIA

THE HON'BLE MR. JUSTICE D. BISWAS

For the petitioners : Mr. K.K. Mahanta, CGSC.

For the respondents : Mr. B.K. Sharma, Mr. U.K. Goswami,
Mr. R.K. Bothra, Mr. B.P. Sahu,
Advocates.

Date of Hearing and Judgment : 7th June, 2001.

JUDGMENT AND ORDER (ORAL)

R.S. MONGIA, C.J. (ACTING) :-

This order will dispose of WP(C) Nos. 2531/2001, 2532/2001, 2533/2001, 2534/2001, 2535/2001, 2536/2001 and 2537/2001. The impugned orders, passed in the Original Applications by the Central Administrative Tribunal, Assam (for short, the CAT) though identical, are of different dates in these cases. However, the order passed in the Review Applications is the same in all the cases. The facts are being taken from WP(C) No. 2531 of 2001.

(62)

We have heard Mr. K.K. Mahanta, learned Central Govt. Standing Counsel appearing for the petitioners and Mr. B.K. Sharma, learned counsel for the respondents.

The writ petition in WP(C) No. 2531 of 2001 is against the order of the Central Administrative Tribunal, Guwahati Bench (for short, the CAT), dated 20th January, 2000, passed in Original Application No. 415/99 (Annexure-B/7), as also the order passed on review filed by the respondents (petitioners before us), dated 11th January, 2001 (Annexure-B/11), by which the Review Application was dismissed.

Instead of giving the facts giving rise to the present petition, it will be apposite to reproduce the order passed by the CAT, dated 20th January, 2000, as also the order dated 11th January, 2001, passed on the Review Application.

"20.1.2000.

This is a consent order as agreed by the learned counsel for the parties. The brief facts are as follows :

The applicant was appointed Lower Division Clerk on 28.2.1991 in the Census Department for the purpose of Census Operation of 1991. After the operation was over, the applicant was retrenched. According to the applicant the Census operation for the year 2000 will be taken up from January, 2000 and, therefore, some vacancies will arise. The applicant having worked for almost two years submitted Annexure-5 representation dated 28.8.1996 for appointment in a suitable post. However, the representation has not yet been disposed of. Hence the present application.

Heard Mr. S. Sarma, learned counsel for the applicant and Mr. B.S. Basumatary, learned Addl. C.G.S.C. 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. Ammenden 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 ...

b2

(6)

- 4 -

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."

Order dated 11.1.2001 on Review Applications :-

"All the Review Applications were taken up together for consideration since it involved similar questions of facts and law.

2. Number of applications were filed before the Tribunal by the retrenched census employees for regularisation of their services in the light of the judgment rendered by the Supreme Court in Government of Tamilnadu and another v. G. Md. Ammenden reported in (1999) 7 SCC 499. This tribunal in the light of the directions rendered by the Supreme Court allowed the applications. Now these Review applications have been filed by the Union of India referring to the communications those were sent to the learned Standing Counsel for the Union of India by the concerned authority indicating the policy decisions which were taken by the respondents. The aforementioned communications were sent by the Ministry of Home Affairs and Ministry of Finance. By the communication dated 5.8.1999 the Ministry of Finance issued certain guidelines on expenditure management and to make fiscal prudence and austerity which also mentioned about the ban on filling of vacant posts and 10% cut in posts. By the communication dated 14.2.2000 sent from the Ministry of Home Affairs were also pertaining to filling up of Group C and D posts in the Census department either by promotion or on deputation stopping ad hoc appointment from open market.

3. We have heard learned counsel for the Union of India and also the counsel appearing for the opposite party/applicants in the O.A. On perusal of the documents those referred to earlier we do not find that those materials provide any scope for review of the earlier judgment passed by this Tribunal. The materials now produced by the review petitioners does not call for review of the earlier order. The power of review is not absolute and unfettered. The power is hedged with limitations prescribed in section 114/Order XLVII Rule 1 of C.P.C. read with section 22(3)(f) of the Administrative Tribunals Act, 1985. No such ground for review is discernible in the case in hand.

4. Under the facts and circumstances these Review Applications are liable to be dismissed and thus dismissed.

There shall, however, be no order as to costs."

Apart from the fact that the order dated 20th January, 2000 is a consent order, we also find nothing wrong or illegal in the same. The order is in consonance with the dicta of the Apex Court laid down in Govt. of T.N. and another v. G. Mohamed Ammudeen and others, reported in (1999) 7 SCC 499. The objection raised by the learned counsel for the petitioners is that in the aforesaid by the Apex Court judgment directions were given that as per the scheme approved by the Apex Court the retrenchedes may be absorbed in any vacancy that may be available in any Government Department, whereas in the present case, the directions of the CAT were being confined only to the Census Department. We are of the view that if the directions were being only confined to Census Department, the respondents herein (the applicants before the CAT) should have some grievance as the right of consideration was being only confined to Census Department and not to the other Departments of the State Government. Learned counsel for the respondents (applicants before the CAT) has stated that he is satisfied with the directions given by the CAT.

We have also gone through the order passed on the Review Applications. We find no infirmity in the same. We concur with the reasoning adopted by the CAT.

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 retrenchedes according to their length of service. A person with longer length of service in a particular category would

be

(59)

. - 6 -

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.

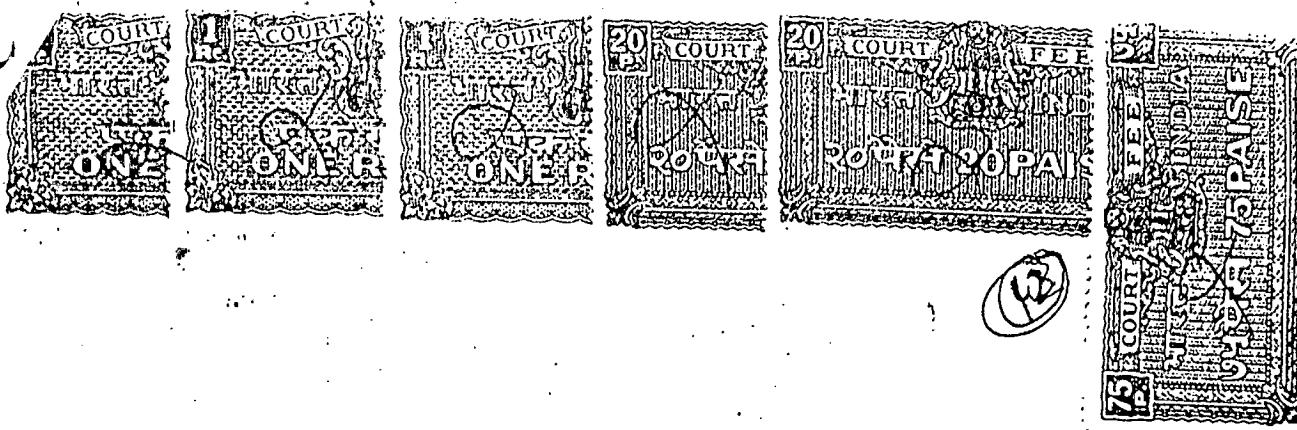
Copy of this order, attested by the
 Bench ~~Secretary~~
 Court ^{Secretary}, be given to the counsel for the
 parties.

Sd/- R S Mongia
 Chief Justice (Acting)
 Sd/- D Biswas
 Judge

Certified to be true Copy
 Krishan Kumar Shrivastava
 Superintendent (Copying) 13/6/2007.
 GAUHATI HIGH COURT
 Authorized U/S 76 Act of 1870

H No 10037
 Date 11.6.07

Mr. K. K. T.
 13/6/2007
 13/6/2007



date of application	Date fixed for serving the respondent with number of stamps and folios	Date of delivery of the required stamps and folios	Date on which the copy was ready for delivery	Date of serving over the copy to the applicant
28.3.2001	28.3.2001	28.3.2001	28.3.2001	28.3.2001

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

W.P.C. NO. 979/2001.

1. The Union of India, through the secretary to the Govt. of India, Ministry of Home Affairs, New Delhi.
2. The Registrar General, census operation 2/A Man Singh Road, New Delhi.
3. The Director of Census operation Assam, Govt. of India, Ministry of Home Affairs, Ghy.
4. Shri M.R. Das, Director of Census operation, Assam Govt. of India, Ministry of Home Affairs, Ghy.

... Petitioners.

-Vs-

1. Smti Ratna Bhattacharjee, D/O Late Mukunda Prasad Bhattacharjee, Resident of Ferryghat colony, Pandu, Ghy.
2. Shri Karuna Das, son of Late Hali Ram Das, P.O. & Vill-Barkhala, Nalbari, Assam.

... Respondents/Applicants.

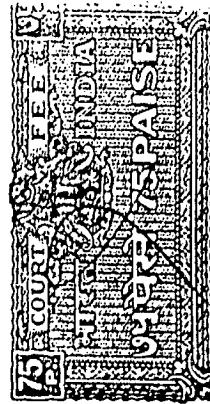
:-PRESENT:-

THE HON'BLE MR. JUSTICE JN. SARMA,
 THE HON'BLE MR. JUSTICE R. GOGOI

For the petitioner : -Mr. D. Sur, Addl. CGSC.
 For the respondent:-

Contd...2/-

(11)



-2-

Date:-5.3.2001.

O R D E R

This matter has no merit and accordingly dismissed.

Heard Mr. Sur, learned counsel for the petitioner.

Sd/-R. GOGOI,
JUDGE.

Sd/-JN. SARMA,
JUDGE.

28/3/2001
28/3/2001
28/3/2001

28/3/2001
Krishna Kanta Sharma 28/3/2001

28/3/2001

ANNEXURE - 14

Quarterly return of staff of the office of the Director of Census Operations, Assam
for the quarter ending 30.7.2001

Name of post	Scale of pay	Sanction post			
		Pmt.	Temp.	Filled	Vacant
2	3	4	5	6	7
Printing Inspector	5000 - 8000/-	—	1	1	—
St. D/ man	5500 - 9000/-	2	2	3	1
D/ man	5000 - 8000/-	3	—	1	2
Statist. Assist. G-1/II	5000 - 8000/-	10	7	15	2
Sr. Compiler	4500 - 7000/-	7	—	7	—
Compiler	4000 - 6000/-	19	8	27	—
Asstt. Compiler	3050 - 4590/-	19	—	17	2
Proof Reader	4500 - 7000/-	1	—	1	—
H. P. M. O.	3050 - 4590/-	1	—	1	—
Loader	2550 - 3200/-	4	—	4	—
S/C. Driver	3050 - 4590/-	1	—	1	—
Sweeper	2550 - 3200/-	11	—	1	—
Hindi Typist	3050 - 4590/-	—	1	—	1
		176	36	131	22

ANNEXURE - I

GOVERNMENT OF ASSAM
DEPARTMENT OF PERSONNEL :: PERSONNEL (B)
DISPUR :: GUWAHATI.

No. APP. 265/91/15

Dated Dispur, the 6th January '92.

OFFICE MEMORANDUM

P/1A
P/28/1/92
Sub : GIVING PREFERENCE TO THE RETRENCHED EMPLOYEES OF
CENSUS OPERATION IN THE MATTER OF RECRUITMENT.

Consequent upon the likely retrenchment of employees of Census operation in near future, the question of absorption of these personnel has arisen. After careful consideration, Government have decided that while filling up equivalent posts of Grade-III & Grade-IV in the offices under the State Government, the cases of absorption of such retrenched personnel should be considered giving them preference in the matter of recruitment, subject to observance of the provisions of Assam Schedule Castes & Schedule Tribes (Reservation of vacancies in Services & Posts, Act. 1970.

Further, it has been decided to relax the age limit of this category of candidates to the extent of the length of their service under Census operation beyond the permissible upper age limit. While absorbing these employees, if any deficiency is detected with regard to their age, necessary proposal may kindly be sent to Government for condonation of such deficiencies.

S. K. J. CHAKRABORTY,
Secretary to the Govt. of Assam,
Personnel (B) Department.

Memo, No. APP. 265/91/10-A, Dated Dispur, the 6th January, 1992,
Duly to : -

1. The Secretary to the Governor of Assam.
2. All Special Commissioners & Special Secretaries/Commissioners & Secretaries/Secretaries to the Government of Assam.
3. O.S.O. to Chief Minister, Assam.
4. P.S. to Administrators of State, Assam.
5. P.S. to Chief Secretary to the Govt. of Assam.
6. All Commissioners of Divisions.
7. All Deputy Commissioners, Sub-Divisional Officers.
8. All Administrative Departments.
9. All Heads of Departments.
10. The Director, Census Operation, Assam.

Ex order etc.

28/1/92
Deputy Secretary to the Govt. of Assam,
Personnel (B) Department.

GOVERNMENT OF INDIA

MINISTRY OF HOME AFFAIRS/GRHA MANTRALAYA

କାଷାଣୀ କାମ କରିପାରା ପିଲେଖା

OFFICE OF THE DIRECTOR OF CENSUS OPERATIONS, ASSAM

বি. এস. রোড, উলুবাৰী, গুৱাহাটী-৭৮১০০৭
G. S. ROAD, ULUBARI, GUWAHATI-781007

दिल्ली क. गभाहाटी

Dated Guwahati, the 23rd Feb. 2000

C I R C U L A R

It is proposed to fill up some posts as shown in ANNEXURE-I by suitable officials from Central/State Government Departments for appointment by transfer on deputation on ad-hoc basis to the posts in the O/o the Director of Census Operations, Assam, Guwahati. The pay of the officials selected for these posts will be regulated in accordance with the Ministry of Personnel's O.M. No.2/12/87-Estt./Pt.II dated 29.4.88.

2. Officials who volunteer for these posts will not be permitted to withdraw their names later.

3. As these posts are required to be filled up by ad-hoc deputation for 2001 census time bound work, it is requested that names of suitable officials who are willing and eligible and who can be spared immediately may be recommended. The C.R. dossiers for last five years of the recommended officers alongwith their application as per Annexure-II and vigilance clearance certificate may be forwarded to this Directorate latest by 31/3/2000. Incomplete applications or received after the closing date will not be entertained.

The period of deputation will be initially for a period upto 28.2.2001 which may be extended for further period.

(M. B. DAS)
DIRECTOR OF CENSUS OPERATIONS

Memo No.DCO(E)50/99/213-217 Date : 22/2/2000

Date : 23/2/2000
Copy to : 1). The Registrar General, India, 2/A Mansingh Road,
New Delhi-110011 with reference to his letter No.
12011/4/2000 Ad. IV.

2) All DCO's State/UTs and Deputy Registrar General(L) Calcutta

3) The Deputy Director (Advertising), Directorate of Advertising and visual publicity, PTI Building, Sansad Marg, New Delhi-11 for publication in the Employment News.

4) The Circulation-cum-Advertising Manager, Employment News, East Block-IV, R. K. Puram, New Delhi.

26/11/11
- : 2 : -

5) All Head of offices, Central Govt.
6) All Heads of State Govt. offices to the Govt. of Assam
7) The Secretary (GAD), Dispur, Guwahati.
8) The Secretary to the Govt. of Assam (SAD), Dispur.
9) The Commissioners of Divisions Govt. of Assam.
10) All Deputy Commissioners.
11) All Sub-Divisional Officers (Civil).
12) Notice Board.

M. H. DAS
DIRECTOR OF CENSUS OPERATIONS : ASSAM
GUWAHATI

ANNEXURE - I

Name of the post and
pay scale

Upper Division Clerk

Rs. 4000-100-6000/- p.m.

Eligibility condition

(i) Officials Central/State Govt. holding analogous posts in the pay scale of Rs. 1200-2040/- (pre-revised) or with at least 8 years regular service in the LDC/ Typist posts carrying pay scales of Rs. 950-1500/- (pre-revised) and possessing the following qualifications.

(ii) Degree of a recognised University or equivalent.

Draftsman

Rs. 4500-125-7000/- p.m.

Officials from Central/State survey offices.

(i) Matriculation or equivalent.

(ii) Diploma in commercial or Fine Art or Draftamanship from a recognised institution with some knowledge in drawing maps, charts and book covers.

Desirable

At least one year experience as draftsman cum Artist.

Proof Reader

Rs. 4000-100-6000/- p.m.

Officials of Central/State Govt. holding analogous post or at least 5 (five) years regular service in posts carrying pay scale of Rs. 950-1500/- (pre-revised) and possessing the following qualifications.

(i) Degree of a recognised University or equivalent.

(ii) Two years experience of Proof Reading and technical marking.

Computer

Rs. 4000-100-6000/- p.m.

Officials of the Central Govt./ State Govt. holding analogous posts, or with 8 years regular service in the posts in the scale of Rs. 3050-75-3950-80-4590/- or equivalent and possessing the following educational qualification.

Essential : Degree with Economics or statistics or Mathematics as a subject from any recognised university.

Desirable : Possessing experience of field survey & Tabulation of Statistical data.

Lower Division Clerk

Rs. 3050-75-3950-80-4590/- p.m.

Officials of the Central/State Govt., holding analogous posts and having the following educational and other qualifications.

(i) Matriculation or equivalent.

(ii) Minimum speed of 30 words per minute in typewriting (in English).

Sr. Technical Asstt. (Ptg.)

Rs. 5500-175-9000/- p.m.

Officers of the Central/State Govt.

(i) holding analogous post or with at least three years regular service in posts carrying pay scale of Rs. 1400-2300/- (pre-revised) and

(ii) having five years experience in printing work, proof reading and technical marking.

Sr. Stenographer

Rs. 5000-150-8000/- p.m.

Officials of the Central Govt./ State Government

(a) (i) holding analogous post on regular basis.

(ii) With five years regular service in the grade of Rs. 1200-2040/- (pre-revised).

(b) Possessing a speed of 100 words per minute in Stenography (English/Hindi).

- : 3 : -

sett. Compiler

Rs. 3050-75-3950-80-4590/- p.m.

Officials of the Central/State
Govt.

(i) Matriculation or equivalent

(ii) Minimum speed of 30 words
per minute in Type writing
(English) or proficiency in
operating calculating
machines.

or

Experience in coding and
punching in an office or
firm having mechanical
tabulation equipment.

Peon

Rs. 2550-55-2660-60-3200/- p.m.

Officials of the Central/State
Govt.Middle school standard pass from
a recognised school.

ANNEXURE - III

Name of applicant

2. Date of Birth

3. Post held on regular basis

4. Date of regular appointment to the post

5. Present post held (whether ad-hoc/regular with date of appointment)

6. Scale of pay

7. Present pay

8. Whether SC/ST

9. Educational qualifications

10. Brief Service Particulars

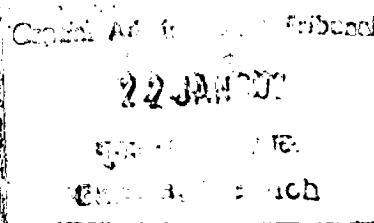
Period		Post held in regular basis	Scale of pay	Nature of work
From	To	3	4	5
1	2			

Signature of applicant

Certificate to be given by the Head of office of the applicant.

1. It is certified that the particulars furnished by the official are correct.
2. It is certified that no disciplinary case is pending or contemplated against applicant and he/she is clear from vigilance angle.

Head of office



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH :: GUWAHATI.

O.A. NO. 2 OF 2002

Shri Bikul Chandra Hazarika.

- VS -

Union of India & Others

- AND -

IN THE MATTER OF ::

Written statement submitted by
the Respondent No-1, 2 and 3.

The Respondents beg to submit the written statement
as follows :-

1. That with regard to para - 1 to 4, 1 of the O.A.,
the Respondents beg to offer no comments.
2. That with regard to para 4.2 & 4.3 of the O.A.,
the Respondents beg to state that the applicant of the
O.A. was engaged on contract and fixed pay basis alongwith
more than one thousand unemployed persons for compilation
and Tabulation of 1991 Census data, these temporary and
fixed pay staff engaged on contract basis for the purpose
were retrenched. However, a few of them were appointed on
a purely temporary and adhoc basis against the available
vacancies at that time sanctioned to this Directorate in
connection with 1991 Census. The applicant Shri Bikul Chandra
Hazarika was engaged as Checker on a contract basis in the
Regional Tabulation Office, Nagaon and disengaged after
wounding of the Office in June 1992 on completion of the
manual tabulation works of 1991 Census data.

- 2 -

However, he was appointed on a purely temporary and adhoc basis as Computer w.e.f. 3.6.93 against the available vacancies/posts sanctioned in connection with 1991 Census and terminated w.e.f. 31.12.93 on discontinuation of sanction of these temporary posts may kindly be noted that he hardly worked for seven months in the post of Computer.

4. That with regard to the Para - 4.4 of the O.A., the respondents beg to state that the applicant alongwith others were terminated w.e.f. 31.12.93 on discontinuation of sanction of the temporary post by the Govt. in connection with 1991 Census works..

The Respondents also beg to state that the Govt. of ~~India~~ India, O/O the Registrar General India, New Delhi has sanctioned a few purely temporary posts to attend the additional works of 2001 Census to this Directorate initially for a period w.e.f. 1.2.2001 to 28.2.2001 and subsequently extended upto 28.2.2001 and subsequently extended upto 28.2.2002 only. Moreover, the O/O The Registrar General, India, New Delhi has issued the instruction to fill up these temporary posts either by promotion or by deputation only. Therefore, the respondents has no alternative but to fill up these posts by deputation basis after giving promotion to eligible incumbents and issued the Circular No. DCO(E)50/99/2122 dated 23.2.2001. However, the persons shown in the list at Sl. 1, 7, 12, 14 & 16 at Annexure E were ~~re~~ engaged in compliance with the Hon'ble Tribunal's order passed in O.A. No-342/2000 dated 28/11/2000 O.N. No 142/2000 dated 8.5.2000 & O.A. No.385/2000 dated 16/1/2001.

5. That with regard to para - 4.5 of the O.A., the Respondents beg to state that the applicant was appointed on adhoc basis for a short period i.e. w.e.f. 3.6.93 to 31.12.93 and terminated alongwith others on discontinuation of the temporary posts sanctioned for 1991 census works. The applicant alongwith others filed and O.A. No- 269/93 before the Hon'ble Tribunal against the termination order dated 21.12.93. The Hon'ble Tribunal disposed of the O.A.NO-269/93 dated 5.6.98 with reference to judgment passed by the Hon'ble Supreme Court in the case of UOA Vs Dinesh Kumar Saxena reported in(1995) 29 ATC585

The respondents also beg to state that the Hon'ble Tribunal has passed orders in O.A.No.284/97,285/97 & 286/97 relating to this Directorate and directing the respondents to consider the regularization of services of the applicants. However, the order of the Tribunal has been implemented by this Directorate. This Directorate has also implemented the order of the Hon'ble Tribunal passed in O.A. No- 142/2000(applicants of ~~MP~~ No- 169x O.A. No- 161/99) and O.A.NO-76/2000 and re-engaged the applicant against the temporary posts sanctioned for 2001 Census upto 28.2.2001. The applicants so re-engaged were terminated w.e.f. 28/2/2001 on discontinuation of the temporary posts. Since then the applicants are continuing on the strength of stay order granted by the Hon'ble Tribunal in MP No-67/01 dated 27/2/2001. The respondent also filed a ~~MP~~ M.P. No-81/2001 before the Hon'ble Tribunal praying to vacate the order dated 27/2/2001 which is still pending before the Hon'ble Tribunal.

Regarding the W.P(C) No-2531/01 to 2537/01 relating to O/O the DCO, Manipur which are of similar nature of the cases with this Directorate, the Hon'ble High Court has

directed the respondents to offer the vacancies to the retrenchees according to their length of service. According to the direction given by the Hon'ble High Court in WP (C) 2531/01 to WP (C) 2537/01 dated 7.6.01 the respondents prepared a list of retrenchies according to their seniority and re-engaged 3 (three) persons senior to the present applicant Shri Bikul Chandra Hazarika against the available vacancies of 2001 Census at that time. The applicant could have been considered also byt for the presence created by the Tribunal to implement the judgment passed by the Hon'ble Tribunal in O.A.NO.385/2000 dated 16/1/2001 the respondent could not re-engaged the applicant against the available vacancies of 2001 census in this Directorate by complying the judgment passed by the Hon'ble High Court on 7.6.01.

6. That with regard to para - 4.6 of the O.A., the respondents beg to state that a post of Asstt.Complier has fallen vacant temporarily due to promotion of incumbent against 2001 posts and reversion of incumbents to their original posts. The other post is reserved for OBC and for this requisition was sent tp SSC long back ~~by~~ but they fail to sponsor any candidate earlier. Now this post cannot be filled up without the clearance of the Ministry. Further, a proposal for compassionate appointment has been sent to ORGI in respect of Shri Nabajyoti Sarma son of late C.P. Sarma who died of cancer while in service. Moreover, for direct recruitment to the regular vacancies in the grade of Asstt.Complier, Staff Selection Commission is the proper authority to select and sponsor candidates for regular appointment. No reference to the Staff Selection Commission will be violative of Recruitment Rule and the respondent is liable for departmental action. Therefore, the applicant

cannot be appointed against this regular vacancy.

7. That with regard to para - 4.7 of O.A. the respondents beg to state that the applicant cannot be accommodated against the regular vacancies of Asstt.Complier in view of the facts stated in para-5 above and also cannot be accommodated against the resultant vacancy caused due to promotion of some incumbents against 2001 Census as per Govt. instructions as stated above paras.

8. That with regard to para- 4.8 of O.A., the Respondents beg to state that this Directorate has not filled up the temporary posts sanctioned for 2001 Census works by direct recruitment. These posts are filled up by promotion and by deputation as per instructions of the Govt. of India, O/O the Registrar General, India's letter No-12011/4/200- Ad.IV dated 14.2.2000 and WPCNo-2531/01 to 2537/01 dated 7/6/01 and the direction of the Hon'ble High Court WP No-323/200 dated 30.3.2000. Therefore, the ~~exist~~ question of getting preference as Scheduled Caste as per roster system does not arise.

9. That with regard to para - 4.9 of O.A., the respondents beg to state that the GOVT. OF ASSAM issued this Circular at the request of the then the Registrar General, India and the DCO, Assam to absorb the retrenched census employees in the State Govt. offices and ~~pay~~ a copy was given to DCO, Assam. It is not known whether the applicant applied for any post in the State offices and is so why his case was not considered. Further, the respondent do not like to make any comment as the matter for consideration of retrenched Census employees is under jurisdiction of state Govt.

10. That with regard to para-4.10 of th O.A., the respondents beg to state that the temporary posts sanctioned to this Directorate has been filled up by ~~par~~ promotion and by deputation as per instruction of the Govt. However, a few persons has also been engaged temporarily in compliance with the order passed by the Hon'ble ~~tribunal~~ High Comrt's dated 7/6/01 and by the Hon'ble Tribunal's order dated 28/11/00, 8.5.00 & 16.1.01 passed in O.A.NO-342/2000, 142/2000 & 385/2000 respectively. Therefore, the actions of the respondents are not illegal, arbitrary, discriminatory and malafide at all as stated by the applicant.

11. That with regard to para - 10.11 of OA, the Respondents beg to state that the Govt. of India, O/O. the Registrar General, India has sanctioned a few purely temporary posts to this Directorate to attend the additional works in connection with the 2001 Census w.e.f. 1.2.2000 to 28.2.2001. The office of the Registrar General, India, New Delhi has also issued instructions to the Director of Census Operations of all states/Uts to fill up these posts only either by promotion or on deputation basis in accordance with the provisions of recruitment Rules. Accordingly, this Directorate has filled up some of the posts by giving promotions to the eligible officials from the lower grades and issued the circular No-D00(E)50/99/2172 dated 23/2/2000 to fill up the vacancies from the officials of other departments on deputation basis. Therefore, the respondent has not issued the circular to avoid the implement action of the judgments passed by the Hon'ble Tribunal but to implement the standing instructions of the Govt. of India for filling up the purely temporary posts sanction in connection with 2001 Census. Further, the Hon'ble High Court, Guwahati has dismissed the Misc.petition

No.323/2000(CP No-2924/98) vide order dated 30/3/2000 filed by Mr.A Hussain and ors., retrenched Census employees of 1991 Census to stay the operation of the said vacancy circular No-DOO(E)50/99/2172 dated 23/2/2000.

A copy of judgment of Hon'ble High Court in MP No-323/2000 dated 30/3/2000 is annexed as Annexure-I

Regarding re-deployed of surplus staff the applicant was appointed on adhoc basis against temporary post in connection with 1991 Census for a short period w.e.f.3.6.93 to 31/12/93 on adhoc basis only. Therefore, the applicant is not entitled to be registered for appointment under CCS (~~Redeployment~~ (Redeployment of surplus staff) Rules.

12. That with regard to para - 10.13 & 10.14, the respondents beg to state that the applicant have no claim to be appointed against such adhoc vacancy as there is standing instructions to fill up these posts either by promotion or on deputation.

13. That with regard to para -5.1 to 5.9 & 6, the respondents beg to state that the applicant is not entitled to any relief whatsoever, the application being devoid of any merit and therefore liable to be dismissed.

14. That with regard to para 7 of the OA the Respondents beg to offer no comments.

15. That with regard to para 8.1 to 8.4 & 9, the respondents beg to state that the respondent has filled up the temporary post sanction for 2001 Census as per instructions of the Govt. and also in compliance with the Hon'ble High Court/Tribunal's directions as stated in the above paras. Therefore the applicant is not entitled for any relief and for any interim order and therefore application is liable to be dismissed.

VERIFICATION

I, Shri Sunil. K. Barveal. ADCO

being authorised do hereby verify and declare
that the statements made in this written statement are
true to my knowledge, information and believe and I have
not suppressed any material fact.

And I sign this verifiaation on this 23rd the
day of January 2002.

S. Barveal
23/11/2002
Declarant.

25/10/2002
25/10/2002
Guwahati Bench

Fixed the petition through
 Dip Bhattacharya
 Advocate 22-10-2002

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
 GUWAHATI BENCH :: GUWAHATI.

O.A. NO. 2/2002

Shri Bikul Chandra Hazarika.

..... Petitioner
 - Vs -

Union of India & Others.

..... Respondents .

(A counter affidavit against the written
 Statement filed by the respondent No. 3
 on behalf on Respondents Nos. 1, 2 and 4
 and on his own behalf)

I, Shri Bikul Chandra Hazarika, son of late
 Ghanashayam Hazarika, aged about 35 years, resident of
 Village & P.O. - Debnarikali, District - Nagaon, Assam
 do hereby solemnly affirm and state as follows :

1. That I am the applicant in the instant Original Application No. 2/2002. A copy of the written statement filed by the Respondent No. 3 for his own behalf and on behalf of Respondent No. 1, 2 and 4 has been served on my counsel. I have gone through the same and understood the contents thereof. Save what has been specifically admitted in the affidavit, all the averments made in the written statement may be taken to have been denied by thid deponent.

2. That with regard the statements made in para 1 of the written statement, the deponent has no comments as the same are stated in the Original Application.

3. That with regard to the statement made in para 2 of the written statement, the deponent like to state that it is not fact that he had worked with the respondents only for seven months as stated by them. He was appointed as Checker vide letter dated 14.3.91 and as computor vide letter dated 3.6.93. So the length of services was about three years, not only seven months as stated by the respondents. Therefore, he also like other retrenched employees has a preferential right to get appointment on regular basis.

4. That with regard to the statement made in para 4, this deponent beg to reiterate that almost all the retrenched employees listed in the termination letter dated 21.12.93 were re-appointed by the respondents for Census of 2001, except this applicant. From the statement of the respondents it is admitted that the Registrar of General, India, New Delhi had issued the instruction to fill up the vacancies created in the Department either by promotion or by deputation only, which has directly violated the Judgement of the Apex Court passed in the case of Tamilnadu and Another - Vs - G. Md. Ammenudeen and others (1999(7) SCC 499). In that case the Apex Court directed the respondents to absorb the applicants in the vacancies which will occur for Census operation of 2001 in suitable posts, for which this applicants is also entitled to get such appointment as he is also similarly situated with such retrenched

employees. Moreover, the respondents have stated that the persons shown in the list at Sl. No. 1, 7, 12, 14 and 16 at Annexure E (in O.A.) were re-engaged in compliance with the Hon'ble Tribunal's order passed in O.A. No. 342/2000 at 28.11.2000, O.A. No. 142/2000 dated 8.5.2000 and O.A. No. 385/2000 dated 16.1.2001 are not true. Besides that the respondents were appointed 2, 4, 8 and 20 also. In this connection it may be mentioned here that the respondents had approached the Hon'ble Gauhati High Court challenging the orders passed by this Hon'ble Tribunal in a series of Writ Petition vide W.P.(C) Nos. 2531/2001, 2532/2001, 2533/2001, 2534/2001, 2535/2001, 2536/2001 and 2537/2001. The Hon'ble High Court in common Judgement and order (as in Annexure-G in O.A.) directed that petitioners would offer vacancies to the retrenchies according to their length of service. A person with larger length of service in a particular category would be offered the job first and then the other retrenchies. After exhausting the retrenchies, if there are still more vacancies available those may be filled up by any other method provided under the rules. This directions would be applicable to all the retrenchies irrespective of whether or not they were applicant before the CAT." It appears that the respondents have violated the court order dated 7.6.2001 by not considering the matter of the applicant for appointment.

5. That with regard to the statement made in para 5, this deponent reiterate that the Hon'ble Supreme Court in Union of India -Vs- Dinesh Kumar Saxena (1995) held that the

respondent No.3 would take action to appoint the applicants in any regular vacancies that might arise in near future if the applicants were otherwise qualified and eligible for those posts. Therefore, in a series of cases, this Hon'ble Tribunal had passed orders thereby directing the respondents for appointment/regularization of such applicants. Accordingly the respondents have gave appointment to Sri Arjuna Barua, Sri Harish Chandra Rabha, Sri Nagen Rabha, Sri Bimalananda Das, vide order dated 8.5.2000 in O.A. No. 142/2000 and Smti. Ratna - Bhattacharjee and Sri Karuna Das vide order dated 26.7.2001 in M.A. No.160/2001/O.A. No.385/2000 and many others who were retrenched vide order dated 21.12.1998 (Annexure-E) ^{in OA} and thereby depriving this applicant from this legitimate claim of appointments against the available vacancies of 2001 Census. Instead of offering appointment to this applicant the respondents have appointed some outsiders who are not retrenches.

In this connection I also say that as admitted by the respondents in their Written Statements they were bound to appoint such retrenched employee in accordance with their seniority and qualification against the vacancies as categorically directed by the Hon'ble Gauhati High Court in the series of Writ petition as stated above. As stated by the respondents that they have worked out a list of retrenched employee in accordance with their respective seniority and act of which (3) three such senior retrenched employees had already been re-engaged who are said to be senior to this applicant. This statement of the respondent is not supported by any cogent proof and in absence of any such list of seniority are not annexed to the

Written Statement can not sustain in law. But contrary to the respondents own statements, the respondents have appointed some of the Junior retrenched employees depriving the applicant. Some examples are given below :

Sl. No.	Name	Date of joining as Cheker	Date of joining as Computer	Date of Termination
1.	Sri Biku Chandra - Hazarika.	14.3.91	3.6.93	21.12.93
2.	Smti. Ratna Bhattacharjee	14.3.91	10.9.93	-do-
3.	Sri Karuna Das	5.6.91	10.11.93	-do-

As the respondents have claimed that they have prepared a list of retrenched employees in accordance with seniority and as they have violated the law by appointing Juniors, depriving ~~xxxx~~ seniors, I crave the leave of this Hon'ble Tribunal to direct the respondents to produce the list of seniority at the time of hearing of the case.

Moreover, it is not correct that the order dated 16.1.2001 in O.A. No. 385/2000 had debarred the respondents from giving appointment to the applicant. The operative part of the order dated 16.1.2001 is as quated below :

"....., we are of the opinion that the present applicants who are similarly situated are also entitled to similar benefits and following the decisions mentioned above, we direct the respondents to consider the case of these two applicants for their appointment

in the light of the directions given by this Tribunal, more particularly in O.A. No.415/1999, O.I. Singh -Vs- Union of India and other disposed of on 20.1.2000

So, the statement made therein is not correct more particularly when the order dated 7.6.2001 is still holding the field.

6. That with regard to statement made in para 6 of the Written Statement, this deponent beg to state that regarding the vacancies the respondents are trying to mislead this Hon'ble Tribunal by making false statements. As per the Hon'ble Gauhati High Court order dated 7.6.2001 in W.P(C) Nos. 2531/2001 to 2537/2001 the respondents should 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 this 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. The Hon'ble High Court also stated that the said direction would be applicable to all the retrenchees irrespective of whether or not they were applicants before the CAT. So, as per that order as a senior reteree, this applicant is eligible to get the appointment, which is willfully denied to him by the respondents. As admitted by the respondents there are still vacancies with the respondents which are not yet filled up purportedly on the basis of rules. There is no bar

to appoint the applicant against the resultant vacancies of promotion or reversion. The another vacancy lying vacant allegedly reserved for OBC. But this can not be admitted in absence of any such proof and roaster position of vacancies. The respondents can not avoid their responsibilites by making such a statement. The present applicant belongs to Scheduled Caste Community. So far as the right of this deponent for appoint is concerned, is an accrued right out of his past services and flowing from the various decisions pronounced by the Hon'ble Apex Court, Hon'ble Gauhati High Court and this Hon'ble Tribunal. No where in these decisions there is any question of reservation on any court including the case of appointment on compassionate ground. The reservation for appointment on compassionate ground is dependent on the 5% (now 3%) out of the total vacancies. Hence, the case of one Nabajyoti Sarma as alleged, can not came into interferance as the respondents have not shown that there are vancies coming within the zone of consideration for compassionate appointment. It is an apparent case of malafide by which the respondents are trying to cover their faults and illegality. In the instants case, no sponsorship from the Staff Selection Commission nor any clearance from the Ministry is necessary for giving appointment to this deponent as the matter of appointment has been settled by the prouncement of Hon'ble Courts/Tribunal. The operation of law/rule can not be pleaded against such decisions. I reiterate the existance of vacancies as per Annexure -H in O.A.

7. That as regard to the statement made in para 7, this deponent reiterate that he has been deprived by the respondents with malafide intention as stated above even after the clear direction of the Hon'ble Gauhati High Court dated 7.6.2001.

8. That with regard to the statement made in para 8, this deponent beg to state that the statements made in this paragraph are directly contradictory to their own statements made in paragraph 6, of this written statements. Hence, I reiterate and reassert the foregoing statements made in this affidavit and also say that I am entitled to be appointed against any such vacancy available with the respondents.

9. That with regard to the statement made in para 9 this deponent beg to state that the general view as adopted by the Hon'ble Supreme Court from time to time is to accommodate any such retrenched employee of Census operation in any future vacancies in the group 'C' & 'D'. But it has been proved that neither the Union of India nor the respective State Government had ever made any attempt to appoint such retrenched employees of Census operation as a separate class in preference to outsider. Hence, the statements are irrelevant and evasive and can not sustain in law.

10. That with regard to the statement made in para 10, I say that as admitted by the respondent, the respondents in gross violation of the Hon'ble Supreme Court decision in Union of India Vs Dinesh Kumar Saxena (1995), State of Tamilnadu and

State of Tamilnadu and Ans. - Vs- Ammenudeen & Ors. (1999) and also the direction of the Hon'ble Gauhati in W.P.(C) No. 2531/2001 to 2537/2001 much appointment to the ~~maximum~~ outsiders. I also say that same outsiders namely Sri Anil Kumar Das and Rupram Barua has been appointed as Asstt. Compiler and computor respectively by transfer on deputation basis vide order No. DCO(E) 123/2001/8161-65 dated 1.5.2001. I also say that I acquired a valuable right to have appointment against such vacancies as a preferred class of person in view of the Hon'ble Supreme Court and High Court decisions. The action of the respondent has deprived me of my very right to life and also the right of appointment as enshirned in the Article 14, 16 and 21 of the Constitution of India.

The copies of the appointment letter dated 1.5.2001 are annexed as Annexure - K. ~~Yasius~~.

11. That with regard to the statement made in para 11, I reiterate and reassert the statement made herein above in this rejoinder and also say that the respondents acted in clear violation of the Hon'ble Court's/Tribunals direction and hence such actions illegal and arbitrary . It is also denied that the applicant worked only for seven months. But in fact he worked from 14.3.91 to 21.12.93. Hence, the said statements are falls and misleading.

12. That with regard to the statement made in para 12 and 13, I say that I have acquired a valuable right to claim appointment for the 2001 Census operation and or for regular

appointment in the Directorate of Census Operation by virtue of the settled provisions of law and under the facts as stated in the Original Application and the statements made herein above.

13. That with regard to the statements made in para 15, I reiterate my foregoing statements and say that this Hon'ble Tribunal as decided in a series of cases by directing ~~maxx~~ the respondents to appoint such applicants for the vacancies created for 2001 Census operation in the light of the Hon'ble Supreme Court direction as reported.

Under this circumstances, the averments made in the statement and also the issued raised can not sustain in law and therefore, I am entitled to get my appointment in any suitable post ~~consuruting~~ to my experience and qualifications.

14. That the statement made in paragraphs 2, 8, 9, 12, 13 are true to my knowledge and belief and those made in para 1, 3, 4, 5, 6, 7, 10 & 11 being matter of records are true to my information derived therefrom and the rest are my humble submission before this Hon'ble Tribunal. I have not suppressed any material facts.

And I sign this affidavit on this 22nd day, February, 2002.

Bilal Ch. Hazeefa.
Deponent.

Identified by me.

22-2-2002

Advocate

Solemnly affirmed and declared before me by the deponent who is identified by Shri Dilip Bhowmik Advocate on this 22nd day of February, 2002, at Guwahati.

11
No. DCO(E)123/2001

Annexure - 1c

A (Series)

Marketing Consumers Federation Ltd (Statfed),
Bhengaghat, Guwahati
Ministry of Home Affairs
BUREAU OF CENSUS : ASST. DIRECTOR
" Head of Census Operations
Central Government
Guwahati

ORDER

1/5/2001.

Shri Amee Kr. Das in the o/o the Assam State co-operative Marketing Consumers Federation Ltd (Statfed), Bhengaghat, Guwahati is hereby appointed as Assistant Compiler by transfer on deputation basis in the o/o the Director of Census Operations, Assam, Guwahati in the scale of pay Rs. 304073-3950-80-4590/- p.m. plus other allowances as admissible as per Central Govt. Rules initially w.e.f. 27.4.2001 to 28.2.2002 against the resultant vacancies caused due to promotion of incumbents against the post sanctioned for 2001 Census. The pay of the incumbent will be regulated as per Ministry of Personnel's O.M. No. 2/12/87/Estt/pt.II dt. 20.4.1988 read with this office letter No. DCO(E)50/99/8084 dt. 25.4.2001.

Baruah
(DR. S. K. BARUAH)
ASSTT. DIRECTOR OF CENSUS OPERATIONS
ASSAM :::::::::: GUWAHATI.

romo No. DCO(E)123/2001/8161-65

dt. 1/5/2001.

Copy to : -

1. The Pay & Accounts Officer (CENSUS), New Delhi-2.
2. The Managing Director, Statfed H.O., Guwahati with reference to his letter No. GA/A/266/pt.I/86-87/681 dt. 26.4.2001. He is requested to send the LPC & Service Book to this office immediately.
3. Service Book.
4. Accounts Branch.
5. Shri Amee Kumar Das, Asstt. Compiler.

Baruah
8/2/2001
22/2/2001

Baruah
(DR. S. K. BARUAH)
ASSTT. DIRECTOR OF CENSUS OPERATIONS
ASSAM :::::::::: GUWAHATI.

BINOB

Shri Rup Ram Baruah
Executive Officer
Computer
Directorate of Census
Assam State
Guwahati
Ministry of Statistics
Government of India

1/5/2001.

ORDER

Shri Rup Ram Baruah in the o/o the Assam State Co-operative Marketing Consumers Federation Ltd. (Statefed), Bhangaghat, Guwahati is hereby appointed as Computer by transfer on deputation basis in the o/o the Director of Census Operations, Assam, Guwahati in the scale of pay Rs. 4000-100-6000/- p.m. plus other allowances as admissible as per Central Govt. Rules initially for a period from 27.4.2001 to 28.2.2002 against the purely temporary posts sanctioned for 2001 Census.

The pay of the incumbent will be regulated as per Ministry of Personnel's O.M. No. 2/12/87/Estt/pt.II. dt. 29.4.1988 read with the conditions embodied in this office letter No. DCO(E)50/99/8084 dt. 25.4.2001.

Baruah
(DR. S. K. BARUAH)
ASSTT. DIRECTOR OF CENSUS OPERATIONS
ASSAM ::::::: GUWAHATI.

Memo No. DCO(E)120/2001/ 8192-96

dt. 1/5/2001.

Copy to :-

1. The Pay & Accounts Officer (Census), New Delhi-2.
2. The Managing Director Statefed H.O., Guwahati with reference to his letter No. SA/A/266/pt.I/86-87/681 dt. 26.4.2001. He is requested to send LPC & Service Book in respect of Shri Baruah to this office immediately.
3. Service Book.
4. Accounts Branch.
5. Rup Ram Baruah, Computer.

Baruah
(DR. S. K. BARUAH)
ASSTT. DIRECTOR OF CENSUS OPERATIONS
ASSAM ::::::: GUWAHATI.

SAK
22/4/2001

82

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH : GUWAHATI

OA No. 2 of 2002

Shri Bikul Chandra Hazarika - Petitioner
VS
Union of India & Ors. - Respondents

-AND-

IN THE MATTER OF

Written statement submitted by the Respondents on the additional rejoinder.

The Respondents beg to submit the written statement of the additional rejoinder as follows:

1. That with regard to the statement made in para 1 of the rejoinder the Respondents beg to state that statements made already in the written statement of OA No.2/2002 are based on facts and as per records which cannot be denied by the petitioner as stated in the rejoinder.
2. That with regard to the statement made in para 2 of the rejoinder the respondents beg to offer no comments.
3. That with regard to the statement made in para 3 of the rejoinder, the Respondents beg to reiterate here that the applicant was appointed as Checker on contract basis on 14.3.91 in one of the Regional Tabulation Offices located

Filed by

18/3/02

(A. DES ROY)

Sr. C. G. S. C.

C. A. T. Guwahati Bench

at Nagaon. The office was wound up after completion of manual Tabulation works in June, 1992 and his services was discontinued with expiry of his contract period after the abolition of the office. He was however, considered for a post of Checker(fixed pay) w.e.f. 6.7.92 after signing a fresh contract with Director of Census Operations, Assam, Guwahati and thereafter appointed in a post of Computer created for 1991 Census w.e.f. 3.6.93. As the Census posts are created for a fixed period to attend to the additional work during the peak period of every Census, the posts are again abolished on completion of additional work w.e.f. 31.12.93 and accordingly services of Shri Bikul Hazarika was also discontinued. The applicant, therefore cannot claim that he has been serving this organisation w.e.f. 14.3.91 to 2.6.93 continuously. So the statement regarding his length of service is not based on facts. However, the Hon'ble Tribunal has disposed of the OA No.269/93 of 5.6.98 filed by the applicants alongwith others with reference to judgement passed by the Hon'ble Supreme Court in the case of UOI VS Dinesh Kumar Sexena reported in (1995) 29 ATC 585.

4. That with regard to the statement made in para 4 of the rejoinder the Respondents beg to state that all the retrenched employees listed in the termination order dated 21.12.93 were not re-engaged against the posts sanctioned for 2001 Census as stated by the applicant. This statement is totally false and malafide. Appointments from the retrenchees of 1991 Census were made only in compliance with the Hon'ble Tribunal's order dated 8.5.2000 in

OA No.142/2000, order dated 16.1.2001 in OA No.385/2000 and order dated 28.11.2000 in OA No. 342/2000. A list of persons who were re-engaged against the posts sanctioned for 2001 Census are given below:

1. Shri Harish Rabha	Since expired
2. " Nagen Rabha	OA No.142/2000 dated 8.5.2000
3. " Arjun Baruah	
4. " Bimalananda Das	
5. Smt. Ratna Bhattacharjee	OA No.385/2000 dated 16.1.2001
6. Shri Karunaram Das	
7. Shri Santanu Goswami	OA No.342/2000 read with Hon'ble
8. " Indrajit Das	High Court order dated 7.6.2001
9. " T.C. Kalita	WP© 2531/01 to 2537/01.

In this connection, it is also mentioned here that the Hon'ble Tribunal in its order dated 8.5.2000 in OA no.142/2000 (Annexure-I) directed the respondents "to consider the applicants in vacancies that will occur for Census Operation of 2000 in suitable posts". The Hon'ble Tribunal also ordered that "the benefit of these orders would be restricted only to the present 4 applicants who are agitating their cases. It is made clear that this direction shall not apply to other similarly situated persons who have not agitated their rights before the Tribunal".

However, the Hon'ble High Court, Guwahati in its order dated 7.6.2001 in WP© No.2531/01 to No.2537/01 on 7.6.01 directed the respondents to offer the vacancies to the retrenches of 1991 Census according to their seniority as per length of service. In

compliance with the above directions of the Hon'ble High Court the respondent prepared a list of retrenches as shown under and issued the offer of appointment to the senior most persons against the available vacancies at that time in the post of Computer sanctioned in connection with 2001 Census.

Sl.No.	Name	Post held earlier		Remarks
		w.e.f.	to	
1.	Shri Santanu Goswami	Computer 1.4.91	31.12.93	Re-engaged
2.	Shri Indrajit Das	Computer 4.4.91	31.12.93	Re-engaged
3.	" Ranjan Goswami	" 3.6.93	31.12.93	Offer issued but not accepted.
4.	" T.C. Kalita	" 3.6.93	31.12.93	Re-engaged
5.	" Bikul Hazarika	" 3.6.93	31.12.93	-
6.	" Arjun Baruah	" 4.6.93	31.12.93	Applicant of OANo.142/2000 dated 8.5.2000.
7.	" Nagen Rabha	" 4.6.93	31.12.93	- do -
8.	" Jiban Malakar	" 9.6.93	31.12.93	-
9.	" Hara Kanta Das	" 27.7.93	31.12.93	-
10.	Md. K. Zaman	" 29.7.93	31.12.93	-
11.	Shri Harish Ch. Rabha	" 10.8.93	31.12.93	Applicant of OANo.142/2000 dated 8.5.2000.

12.	Miss Ratna Bhattacharjee	”	13.9.93	”	Applicant of OANo.385/2000 dated 16.1.2001.
13.	Miss Archana Barman	”	13.9.93	”	-
14.	Shri Karunaram Das	”	12.11.93	”	Applicant of OANo.385/2000 Dated 16.1.01
15.	Miss Geeta Devi	”	12.11.93	”	-

The applicant Shri Bikul Chandra Hazarika could have been considered also but to implement the order of the Hon'ble Tribunal in OA No. 142/2000 dated 8.5.2000 and OA No. 385/2000 dated 16.1.2001 which were passed prior to the fresh guidelines issued by Hon'ble High Court, two applicants of the above OA's are considered against the respondent re-engaged two applicants of the above O.A's against the available vacancies of 2001 Census by complying the judgement passed by the Hon'ble High Court on . The respondent has considered the re-engagement of persons at Sl.2 & 5 (not No.4 as the person refused to accept the offer) as per direction of the Hon'ble High Court in WP© No. 2531/01 to 2537/01 dated 7.6.01 and Sl. 7,8,12,20 & 14 & 16 as per direction of the Hon'ble Tribunal in OA No.142/2000 dated 8.5.2000 and O.A. No.385/2000 dated 16.1.2001 as the High Court order was passed subsequent to the orders of the Hon'ble Tribunal. The respondent could not consider the case of the applicant as there was no Census posts left vacant to accommodate him.

Therefore, the respondents has neither disobeyed the order & directions of the Hon'ble High Court nor the order of the Hon'ble Tribunal. Further, the statement of the applicant that the Registrar General and Census Commissioner of India has violated the order of the Supreme Court of India in G. Amenuddin and others- VS- Govt. of Tamil nadu and others 1999(7) SCC (499) is not based on facts. The Registrar General of India issued the order to fill up the post first by promotion and thereafter by deputation only as these posts are created for a short term basis to attend to the additional work of 2001 Census during its peak period. Census posts are abolished after every Census when the volume of works comes down to normal level after the peak-period and no additional hands are required after that. Therefore, temporary sanction accorded are discontinued after reviewing the workload from time to time. Moreover, the Apex Court never directed to absorb the applicant against vacancies which will occur for Census posts of 2001. The above direction is to the Govt. of Tamil nadu to consider his case in future regular vacancies. The respondents after implementing the orders of the honourable Tribunal in OA No.142/2000, 342/2000 and 385/2000 have also considered the order of judgement passed by the Hon'ble High Court on 7.6.2001 and appointed three officials viz. Shri Santanu Goswami (Sl.1) Indrajit Das (Sl.2) and Tara Charan Kalita (Sl.5). The applicant was at Sl.6 and there was no more vacancy left to accommodate him against 2001 Census posts.

The copies of order dated 8.5.2000, 28.11.2000, 16.1.2001 & 7.6.2001 are annexed as Annexure I, II, III & IV.

5. That with regard to the statement made in paragraph 5 of the rejoinder the respondent beg to state that the order of the Honourable Supreme Court in Union of India-VS-Dinesh Kumar Sexena (1995) cited by the applicant is relevant in case of regular vacancy and not purely temporary vacancy like Census posts of 2001 which are usually abolished after a fixed period. Further, the directions of the Hon'ble Tribunal as well as High Court are to appoint the applicants against 2001 Census posts and all appointments have been done in compliance with the orders of the Hon'ble Tribunal and not a single appointments were made from outside. Some of juniors to the applicant were appointed by this Directorate prior to the order passed by the Honourable High Court on 7.6.01 but in compliance with the order of the Honourable Tribunal also passed prior to the order of Hon'ble High Court. Therefore, the respondent has not violated any law as alleged the petitioners.

The seniority list of the retrenches of 1991 Census have been given under para 4 above taking into account the services rendered in the scale post only. The applicant was appointed on contract basis in Nagaon RTO and with the expiry of contract period, he was out of employment for quite sometime. Therefore, he cannot claim seniority over his two juniors of contractual service is taken into account as his services are not continuers. Further, respondent never said that the order of the Hon'ble Tribunal dated 16.1.01 in OA No. 385/2000 has debarred the respondents to give appointment to the applicant. The respondent beg to state that the above order of the Hon'ble Tribunal was passed on 16.1.2001, a date prior to 7.6.2001. Therefore, respondent implemented the order dated

16.1.2001 of the Hon'ble Tribunal when the applicants filed CP No.6/2000. (O.A No.385/2000).

6. That with regard to statement made in para 6 the respondent beg to state that the allegation made by the applicant regarding misleading the Hon'ble tribunal regarding vacancies is totally false. The respondents have, on the contrary, faithfully implemented all the orders of the Hon'ble Tribunal as well as the Hon'ble Gauhati High Court when the respondent started implementing the order, filling up the available vacancies, there were no more post to accommodate the applicant. Therefore the applicant could not be accommodated. There is not a single vacancy now to accommodate him. Regarding the right of the applicant as a scheduled caste candidate, it may be stated that neither the Hon'ble Apex Court, nor the High Court nor the Hon'ble Tribunal passed any order to break the reservation rule framed by the Apex Court of India after introduction of "post based roster." The Hon'ble Tribunal on the other hand upheld the right of the candidate against a reserved vacancy in O/A No.142/2000 & O.A.No.385/2000. Further the case of Shri Navajyoti Sarma cannot be linked to the appointment of a person 2001 Census posts, Shri Sarma's appointment has been made against a regular vacancy on compassionate ground and for such appointment no reference to SSC is required. The approval from the Head of deptt. has however been obtained. Regarding pronouncement of the Hon'ble High Court/Tribunal, the respondent beg to state that both the judgement clearly indicated that the appointments should be made against 2001 Census posts. The order of the Hon'ble Tribunal dated 8.5.2000 in O.A. No.142/2000 is reproduced below:

"I have considered the rival arguments. In my opinion staying the operation of Annexure-3 order dated 23/24.2.2000 will result in complete stoppage of Census work and therefore the prayer of learned counsel for the applicants in this respect cannot be granted. But at the same time the order dated 16.2.2000 and 25.2.2000 passed in two different O.As also cannot lost shight of, in which there were clear directions to the respondents authorities to absorb the applicants on the suitable vacancies in the Census operation of 2000-01. In view of these I am of the opinion that while the concerned authorities may go ahead in calling the prospective candidates on deputation as per Annexure-3 circular dated 23/24.2.2000 they shall also consider and adjust the present 4 applicants as directed vide order dated 16.2.2000 and 25.2.2000. The benefits of these orders would be restricted only to the present 4 applicants who are agitating their cases. It is made clear that this direction shall not apply to other similarly situated persons who have not agitated their rights before the Tribunal. It is further order that judgement/absorbtion of the applicants in pursuance of the order passed today will not confer any right on the applicants to further continue their services after the census operation is over unless their claims are considered on merits as highlighted in the O/A".

7. That with regard to the statement made in this para, the respondent beg to state that there was no malafide intention to deprive the petitioner but there was no more vacancy against 2001 Census posts after the implementation of Hon'ble tribunal/High Court order dated 7.6.2001.

8. That with regard to para 8 the respondent beg to state that no posts created for 2001 Census have been filled up by direct recruitment. As there were no vacancy against any Census posts, his case could not be considered.

9. With regard to para 9, the respondent beg to state that the order of the Hon'ble Supreme Court is to consider the retrenched employees against regular vacancies but the order of the Hon'ble Gauhati High Court as well as the Hon'ble Tribunal is to consider them against 2001 Census posts and as there was no vacancy against the Census posts, the case of applicant could not be considered.

10. That with regard to para 10, the respondent beg to state that the order of the Supreme Court of India in Union of India-VS-Dinesh Kr. Sexena (1995) and Md.Amenuddin-VS-Union of India & Others are to consider the case of retrenchedes against regular vacancies whereas the orders of the Hon'ble High Court and Hon'ble Tribunal are to consider them against post created for 2001 Census. Further, the appointment of Sri Ameo Kr. Das (not Anil Kr. Das) and Rupram Baruah have not be appointed from outside. These two officials have been brought on deputation as per the permission granted by Hon'ble High Court and Hon'ble Tribunal dated 8.5.2000 in O.A. No.142/2000.

11. That with regard to statement made in para 11, the respondent beg to state that the respondent has not violated any Court order. It is a fact that the applicant has not worked continuously from 14-3-91 to 31.12.93. He was initially appointed against a post of Checker with a fixed pay on contract basis at Regional Tabulation Office, Nagaon. After winding up of RTO at Nagaon, his case was considered against a post of Computor

created for 1991 Census. Therefore, the claim of the applicant is totally false and misleading.

12. That with regard to para 12, the respondent beg to state that the applicant acquired no right by serving less than six months in a post on ad-hoc basis against a Census post. As per Govt. rule, even the serving of a temporary Govt. servant can be terminated under Rule 5 of Temporary Service Rules unless and until he is declared permanent. Therefore, the applicant acquired no right to claim his regular appointment when the direction of the Hon'ble tribunal is to consider him against 2001 census posts and there is no more vacancy.

13. That with regard to the statement made in para 13, the respondent beg to state that the applicant himself admitted the fact here that the orders of the Hon'ble tribunal were to consider/appoint the applicant against posts created for 2001 Census and as there was no more vacancy against 2001 Census posts, his case could not be considered.

14. The respondent also beg to state that sanction for six out of 8(eight) posts of Computer created for 2001 Census were discontinued with effect from 1.3.2002 and all the six Computer senior and junior to him appointed in compliance with the various orders of the Hon'ble High Court/Tribunal have been disengaged w.e.f. that date and there is no vacancy against Census posts.

In view of the facts stated above the application is liable to be dismissed.

Verification

I, Shri Nripendra Chandra Sen presently working as Deputy Director of Census Operations, Assam, Guwahati being duly authorized and competent to sign this verification, do hereby solemnly affirm and state that the statements made in para are true to my knowledge and belief, those made in para being matter of records are true to my information derived therefore and the rest are my humble submission before this Hon'ble Tribunal. I have not concealed/suppressed any material facts.

And I sign this verification on this 15th day of March, 2002, at Guwahati.



Deponent

ANNEXURE - I
A.O. 1999/196. AP. ~~Annexure-3~~
Annexure-3
The Central Administrative Tribunal
GUWAHATI BENCH : GUWAHATI

ORDER SHEET

APPLICATION NO. 142/2000 OF 199

Applicant(s)

Recongendarin Das and others.

Respondent(s)

India and others.

Advocate for Applicant(s)

Mr. N. Chanda
Mr. N. D. Gogoi

Advocate for Respondent(s)

C. G. S.

8.5.2000 Present : Hon'ble Mr. A.K. Mishra, Judicial Member.

Mr J.L. Sarkar, learned counsel for the applicants and Mr A. Deb Roy, learned Sr.C.G.S.C for the respondents present.

This case was listed on 31.5.2000 and has been taken on board ^{Today} on the oral submission of the learned counsel for the applicants. Learned counsel for the applicants submits that in this case the respondents have issued Annexure-3 order ignoring the benefit granted to the applicants vide order dated 25.2.2000 for absorption. He further submits that the order dated 25.2.2000 in favour of the applicant Sri Arjun Barua and the order dated 16.2.2000 passed in O.A. 161/99 in favour of other 3 applicants. But the respondents are adopting another mode of recruitment for filling up the vacancies for the census operation 2000-01 by ignoring the direction of absorbing the applicants for such posts. In view of this the operation



15-42-

Order of the Registry	Date	Order of the Tribunal
	8.5.2000	<p>of order of respondents, Annexure-3 dated 23/24.2.2000 be stayed. Learned counsel for the respondents submits that there is no intention to disregard the order passed by the Tribunal. However, a different scheme has been formulated by the Central Government so that after the census operation is over the persons who are proposed to be taken on deputation ^{can} be sent back to the department. Moreover, there is a ban on direct recruitment and hence the question of absorption at the moment cannot be taken in hand by the respondents and therefore the scheme, as formulated by the Central Government relating to filling the posts to carry on the census operation should not be stayed.</p> <p>I have considered the rival arguments. In my opinion staying the operation of Annexure-3 order dated 23/24.2.2000 will result complete stoppage of census work and therefore the prayer of learned counsel for the applicants in this respect cannot be granted. But at the same time the order dated 16.2.2000 and 25.2.2000 passed in two different O.A.s also cannot be lost sight of, in which there were clear directions to the respondents authorities to absorb the applicants on the suitable vacancies in the census operation of 2000-01. In view of this I am of the opinion that while the concerned authorities may go ahead in calling the prospective candidates on deputation as per Annexure-3 circular dated 23/24.2.2000 they shall also consider and adjust the present 4 applicants as directed vide order dated 16.2.2000 and 25.2.2000. The benefits of these orders would be restricted only to the present 4 applicants who are agitating their cases. L.R. 1001</p>

contd..



-43-
47 26
12 9b

Notes of the Registry	Date	Order of the Tribunal
	8.5.2000	<p>It is made clear that this direction shall not apply to other similarly situated persons who have not agitated their rights before the Tribunal. It is further ordered that adjustment/absorption of the applicants in pursuance of the order passed today will not confer any right on the applicants to further continue their services after the census operation is over unless their claims are considered on merits as highlighted in the O.A.</p> <p>List on 29.5.2000 for further orders.</p>

Sd/MEMBER(J)

Certified to be true Copy

প্রাণি প্রতিষ্ঠিত
9/5/2000
Section Officer (J)
আসাম অধিবাদি প্রযোগ কার্য
General Administration Tribunal
কাশী পার্ক, গুৱাহাটী, গুৱাহাটী, গুৱাহাটী

GUWAHATI APPELLATE TRIBUNAL
GUWAHATI BENCH: GUWAHATI 5

ORIGINAL APPLICATION NO. 342/2000

AT 6
70

Santosh Kumar Gogoi

APPLICANT

versus

Union of India & Ors.

Respondents

FOR THE APPLICANT(S) No. J. L. Sarker

ADVO. C. I. E.

Ab. M. Chanda, M. S. Ghol

Heard Mr J. L. Sarker, learned counsel
FOR THE APPLICANT(S) also Mr A. Deka, learned
S. C. A. S. C. for the respondents.

This case is squarely covered by the 3 decisions rendered by this Tribunal in O.A.269/93, 161/99 and 76/2000 disposed of on 5.6.98, 16.2.2000 and 25.2.2000 respectively. In the aforementioned O.A.269/93 21 applicants moved this Tribunal praying for a direction for getting appointment in different vacancies under the Census department. The applicant was initially engaged as a Computer on 13.3.1991 under the Director of Census Operation, Assam during the census started at the relevant time. The tribunal by the aforesaid judgment and order taking note of the decision rendered by the Apex Court in Union of India vs. Dinesh Kumar Saxena, reported in (1995) 29 AIC 585 ordered to consider the case of the applicant for being accommodated in other vacancies available under the respondents. Failing to get any appropriate remedy some of the applicants again approached this Tribunal which culminated in the decision in O.A.161/99 and 76/2000. The Tribunal considered the facts and circumstances of the case and directed the respondents to absorb the applicants of those cases in vacancies that would occur in census operation 2000-2001 in suitable post for which the applicants are entitled following the judgment of the Apex Court in Government of Tamilnadu and another vs. C.Md. Ambedden and others (1999) 7 SCC 499. In the light of the aforesaid decision subsequently the Tribunal also passed order in O.A.142/2000 confining the similar benefit thereby directing the respondents to absorb the applicants in suitable vacancies in the census operation of 2000-2001. Since the applicant is also similarly situated, there is no justification for refusing the benefit of the aforementioned judgments.



O.A. 342/2000

Notes of the Registry	Date	Order of the Tribunal
	28.11.00	<p>of the Tribunal. Accordingly it is ordered upon the respondents to accommodate the applicant in a suitable vacancy in the census operation of 2000-2001. as expeditiously as possible.</p> <p>The application is accordingly allowed. No order as to costs.</p> <p>Sd/ VICE CHAIRMAN</p>

Certified to be true Copy
প্রমাণিত প্রতিক্রিয়া

A. K. Singh
Section Officer (W, 28/11/2000)

গুৱাহাটী অধিকারী (স্বাক্ষৰ স্বাক্ষৰ)

Central Administrative Tribunal

গুৱাহাটী প্রসাধনিক অধিকারী

Guwahati Bench, Guwahati

গুৱাহাটী স্বাক্ষৰ, প্রসাধন

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 385 of 2000

Date of decision: This the 16th day of January 2001

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

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

1. Smt Ratna Bhattacharjee,
D/o Late Mukunda Prasad Bhattacharjee,
Resident of Ferryghat Colony, Pandu,
Guwahati.
2. Shri Karuna Das,
Son of Late Hali Ram Das,
P.O. & Vill. - Barkhala,
Nalbari, Assam.

By Advocate Dr (Mrs) M. Pathak.Applicants

- 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,
2/A Man Singh Road,
New Delhi.
3. The Director of Census Operations, Assam
Government of India,
Ministry of Home Affairs,
Guwahati.
4. Shri M.R. Das,
Director of Census Operations, Assam,
Government of Assam,
Ministry of Home Affairs,
Guwahati.

By Advocate Mr B.S. Basumatary, Addl. C.G.S.C.Respondents

.....
ORDER (ORAL)

CHOWDHURY.J. (V.C.)

The applicants are two in number who are retrenched employees of the Census Department. They have assailed the Circular issued by the Director of Census Operation on 23/24.2.2000 for filling up the posts of Computer, Lower Division Clerk, Assistant Compiler, Proof Reader in

connection with the 2001 Census operations. By the aforementioned communication, the department has sought to fill up the posts on deputation basis.

2. Dr (Mrs) M. Pathak, learned counsel for the applicants submitted that a number of decisions have been rendered by this Tribunal for absorbing such persons in the light of the decision rendered by the Supreme Court in Government of Tamilnadu and another vs. G. Md. Ammenden and others, reported in (1997) 7 SCC 499.

3. We have also heard Mr B.S. Basumatary, learned Addl. C.G.S.C. Upon hearing the learned counsel for the parties, we are of the opinion that the present applicants who are similarly situated are also entitled to similar benefits and following the decisions mentioned above, we direct the respondents to consider the case of these two applicants for their appointment in the light of the directions given by this Tribunal, more particularly in O.A.No.415 of 1999, O.I. Singh vs. Union of India and others disposed of on 20.1.2000. The applicants may also submit representation before the authority giving the fact situation within two weeks from the date of receipt of this order and on receipt of the representation, the respondents shall take necessary measures for consideration of their case within three weeks from the date of receipt of the representation.

4. Subject to the above observations the application stands allowed. There shall, however, be no order as to costs.

Sd/ VICE CHAIRMAN

Sd/ MEMBER (Adm)

Certified to be true Copy

(प्रमाणित अस्तित्व
Nar 17/07/07)

Section Officer (W)

Central Administrative Tribunal

नियन्त्रित प्रशासन नियन्त्रण बोर्ड

Delhi Bench, Government of India

प्रमाणित अस्तित्व

प्राप्ति के तिर अविद्युत की तारीख Date of notification for copy.	स्टाप और फोलिओ की अपेक्षित संख्या सूचित करने की नियमित तारीख Date fixed for notifying the requisite number of stamps and folios.	अपेक्षित स्टाप और फोलिओ देने की तारीख Date of delivery of the requisite stamps and folios.	तारीख, जबकि देने के लिए प्रतिलिपि तैयार हो Date on which the copy was ready for delivery.	आवेदक को प्रतिलिपि देने की तारीख Date of marking over the copy to the applicant.
11/6/2001	13/6/2001	13/6/2001	13/6/2001	13/6/2001

HIGH COURT OF ASSAM, NAGALAND, MEGHALAYA, MANIPUR, TRIPURA,
MIZORAM AND ARUNACHAL PRADESH)

WRIT PETITION (CIVIL) NOS. 2531/2001, 2532/2001,
2533/2001, 2534/2001, 2535/2001, 2536/2001 and
2537 of 2001.

(1) In WP(C) No. 2531/2001 :-

1. Union of India.
2. The Registrar General of India, New Delhi.
3. The Director of Census Operations, Manipur.

..... Petitioners.

-Versus-

Oinam Indramani Singh,
Imphal, Manipur.

..... Respondent.

(2) In WP(C) No. 2532/2001 :-

Union of India and 2 others.
(as in WP(C) No. 2531/2001)

..... Petitioners

-Versus-

Md. Hatim Ali,
Vill. Yairipok Bamon Leikai,
Manipur.

..... Respondent.

(3) In WP(C) No. 2533/2001 :-

Union of India and 2 others.
(as in WP(C) No. 2531/2001).

..... Petitioners.

-Versus-

Shri K.S. Theimi,
of vill. Hundung, Ukhru, Manipur.

..... Respondent.

(4) In WP(C) No. 2534/2001 :-

Union of India and 2 others.
(as in WP(C) No. 2531/2001)

..... Petitioners

-Versus-

Md. Hasim Khan,
of vill. Top,
Manipur.

..... Respondent

(5) In WP(C) No. 2535/2001 :-

Union of India and 2 others
(as in WP(C) No. 2531/2001).

..... Petitioners.

-Versus.-

Shri A. Gopal Singh,
of vill. Top,
Dist. Imphal, Manipur.

.... Respondent.

(6) In WP(C) No. 2536/2001 :-
Union of India and 2 others
(as in WP(C) No. 2531/2001).

.... Petitioners.

-Versus-

Th. Basanta Singh,
of Bishnupur, Imphal.

.... Respondent.

(7) In WP(C) No. 2537/2001 :-
Union of India and 2 others.
(as in WP(C) No. 2531/2001).

.... Petitioners

-Versus-

Md. Abdul Kalam Shah,
of vill. Yairipok,
Dist. Thoubal, Manipur.

.... Respondent.

PRESENT :

THE HON'BLE THE CHIEF JUSTICE (ACTING) MR. R.S. MONGIA

THE HON'BLE MR. JUSTICE D. BISWAS

For the petitioners : Mr. K.K. Mahanta, CGSC.

For the respondents : Mr. B.K. Sharma, Mr. U.K. Goswami,
Mr. R.K. Bothra, Mr. B.P. Sahu,
Advocates.

Date of Hearing and Judgment : 7th June, 2001.

JUDGMENT AND ORDER (ORAL)

R.S. MONGIA, C.J. (ACTING) :-

This order will dispose of WP(C) Nos. 2531/2001, 2532/2001, 2533/2001, 2534/2001, 2535/2001, 2536/2001 and 2537/2001. The impugned orders, passed in the Original Applications by the Central Administrative Tribunal, Assam (for short, the CAT) though identical, are of different dates in these cases. However, the order passed in the Review Applications is the same in all the cases. The facts are being taken from WP(C) No. 2531 of 2001.

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We have heard Mr. K.K. Mahanta, learned Central Govt. Standing Counsel appearing for the petitioners and Mr. B.K. Sharma, learned counsel for the respondents.

The writ petition in WP(C) No. 2531 of 2001 is against the order of the Central Administrative Tribunal, Guwahati Bench (for short, the CAT), dated 20th January, 2000, passed in Original Application No. 415/99 (Annexure-B/7), as also the order passed on review filed by the respondents (petitioners before us), dated 11th January, 2001 (Annexure-B/11), by which the Review Application was dismissed.

Instead of giving the facts giving rise to the present petition, it will be apposite to reproduce the order passed by the CAT, dated 20th January, 2000, as also the order dated 11th January, 2001, passed on the Review Application.

"20.1.2000.

This is a consent order as agreed by the learned counsel for the parties. The brief facts are as follows :

The applicant was appointed Lower Division Clerk on 28.2.1991 in the Census Department for the purpose of Census Operation of 1991. After the operation was over, the applicant was retrenched. According to the applicant the census operation for the year 2000 will be taken up from January, 2000 and, therefore, some vacancies will arise. The applicant having worked for almost two years submitted Annexure-5 representation dated 28.8.1996 for appointment in a suitable post. However, the representation has not yet been disposed of. Hence the present application.

Heard Mr. S. Sarma, learned counsel for the applicant and Mr. B.S. Basumatary, learned Addl. C.G.S.C. 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. Ammenden 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

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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."

Order dated 11.1.2001 on Review Applications :-

"All the Review Applications were taken up together for consideration since it involved similar questions of facts and law.

2. Number of applications were filed before the Tribunal by the retrenched census employees for regularisation of their services in the light of the judgment rendered by the Supreme Court in Government of Tamilnadu and another v. G. Md. Ammenden reported in (1999) 7 SCC 499. This tribunal in the light of the directions rendered by the Supreme Court allowed the applications. Now these Review applications have been filed by the Union of India referring to the communications those were sent to the learned Standing Counsel for the Union of India by the concerned authority indicating the policy decisions which were taken by the respondents. The aforementioned communications were sent by the Ministry of Home Affairs and Ministry of Finance. By the communication dated 5.8.1999 the Ministry of Finance issued certain guidelines on expenditure management and to make fiscal prudence and austerity which also mentioned about the ban on filling of vacant posts and 10% cut in posts. By the communication dated 14.2.2000 sent from the Ministry of Home Affairs were also pertaining to filling up of Group C and D posts in the Census department either by promotion or on deputation stopping ad hoc appointment from open market.

3. We have heard learned counsel for the Union of India and also the counsel appearing for the opposite party/applicants in the O.A. On perusal of the documents those referred to earlier we do not find that those materials provide any scope for review of the earlier judgment passed by this Tribunal. The materials now produced by the review petitioners does not call for review of the earlier order. The power of review is not absolute and unfettered. The power is hedged with limitations prescribed in section 114/Order XLVII Rule 1 of C.P.C. read with section 22(3)(f) of the Administrative Tribunals Act, 1985. No such ground for review is discernible in the case in hand.

4. Under the facts and circumstances these Review Applications are liable to be dismissed and thus dismissed.

LMb *Vb*

There shall, however, be no order as to costs."

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Apart from the fact that the order dated 20th January, 2000 is a consent order, we also find nothing wrong or illegal in the same. The order is in consonance with the dicta of the Apex Court laid down in Govt. of T.N. and another v. G. Mohamed Ammenu-deen and others, reported in (1999) 7 SCC 499. The objection raised by the learned counsel for the petitioners is that in the aforesaid judgment directions were given that as per the scheme approved by the Apex Court the retrenchees may be absorbed in any vacancy that may be available in any Government Department, whereas in the present case, the directions of the CAT were being confined only to the Census Department. We are of the view that if the directions were being only confined to Census Department, the respondents herein (the applicants before the CAT) should have some grievance as the right of consideration was being only confined to Census Department and not to the other Departments of the State Government. Learned counsel for the respondents (applicants before the CAT) has stated that he is satisfied with the directions given by the CAT.

We have also gone through the order passed on the Review Applications. We find no infirmity in the same. We concur with the reasoning adopted by the CAT.

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

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.

Copy of this order, attested by the
Bench Assistant
Court Secretary, be given to the counsel for the
parties.

Sd/- R S Mongia
Chief Judicial Acting

Sd/- D Biswas
Judge

Certified to be true Copy
Kishorlal Kirti Shroff
Superintendent (Copying) 13/6/2007
GAUHATI HIGH COURT
Authorized U/S 96 Act of 1970

13/6/2007

File No. 10037
Date 11.6.07

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH : GUWAHATI.

OA No. 2/2002

Sri Bikul Ch. Hazarika

- Applicants

- VS -

Union of India & Ors.

- Respondents

IN THE MATTER OF :

Rejoinder in reply to the written
statements submitted by the
Respondents.

The applicant above-named

Most Respectfully Sheweth :

1. That the above noted respondents in the OA No.2/2002 have filed their written statement in the case. The applicant has gone through the same and understood the contents thereof. The applicant instead of making statements parawise, has made his statements as a whole as under.

2. That the same and substance of the written statement is that there is no vacancy available for the Census posts and therefore the respondents could not accommodate the applicants against such posts. The contention of the respondents is that the Hon'ble Tribunal and the Hon'ble Gauhati High Court have directed the respondents to reengage them only against the Census posts not against any core posts. But admittedly the respondents themselves have stated in para 9 of their written statement that the order of the Hon'ble Supreme Court is to consider the retrenched employees against regular vacancies. They have also categorically stated in para 6 of the written statement that there is not a single vacancy now to

accommode him. In this regard, the applicant
respectfully submits that the ratio of all the
decisions rendered by the Hon'ble Supreme Court
regarding the retrenched employees of the Census
Operation is to accommode them against any
available vacancy. Hence, the argument put forwarded
by the respondents are against the law laid down by
the Hon'ble Supreme Court.

3. That the respondents have issued an advertisement
in the "Employment News" dated 12-4-2002 thereby
inviting applications to fill up regular posts of Data
Entry Operators. As admitted by the respondents
themselves in their statements made in the written
statements in connection with some other OAS pending
before this Hon'ble Tribunal, there are still as many
as six clear vacancies for the post of Data Entry
Operators. By an order passed on 20-6-2002, this
Hon'ble Tribunal has directed the Respondents not to
fill up these posts.

4. That the applicant is a graduate and he has
undergone training for 12 months in Computer operation.
On completion of the training successfully, the
Institute has issued a Certificate on 2-1-2002 indicating
area of training viz. MS-DOS, Windows, Wordstar,
d-Base III plus, on MS-Word, Fox Pro etc.

The copy of the aforesaid Certificate
annexed as Annexure - H.

5. That the applicants is now possessing the knowledge
of Computer operation particularly on data entry, MS-Dos,
Windows etc. Therefore, he is quite eligible for
appointment against the posts of data entry operator.

It is also pertinent to mention here that the
Comptroller & Auditor General of India vide Circular
No. NGE/68/1998, No. 1334 NSC(App)/55-98 dated 16-12-98

laid down the relaxed norms and eligibility for appointment to the post of Data Entry Operator. According to said Circular, a Matriculate Clerk with two years regular service in the grades, who possess the speed of not less than 8000 key depressions per hour for data entry works shall also be considered for appointment to the posts of Data Entry Operators. Under this circumstances, the applicants being graduate with experience both in service and in computer operations are doubtlessly eligible for appointment against the said posts of data entry operators.

6. That the foregoing statements may be treated as statements made in the rejoinder and also may be considered while hearing the matters on merit.
7. That this petition has been made bonafide and for proper adjudication of the matter.

In the premises aforesaid, it is, therefore, prayed that Your Lordships would be pleased to hear the parties, peruse the records and shall also be pleased to direct the respondents to consider the case of the applicants for appointment as Data Entry Operator against the existing vacancies and or pass such further or other orders as your Lordships may deem fit and proper.

VERIFICATION

VERIFICATION

I, Shri Bikul Chandra Hazarika, S/o Late
Ghanashyam Hazarika, aged about 35 years, resident
of Village and P.O. Debnarikali, District Nagaon, Assam,
do hereby solemnly affirm that the statements made in
paragraphs 1, 2, 6 and 7 — — — and true to my
knowledge and those made in paragraphs 3, 4 and 5 — —
being matter of records are true
to my information derived therefrom and as per legal
advice. I have not suppressed any material facts.

And I sign this Verification on the 5th day
of August, 2002.

Bikul Chandra Hazarika

DEPONENT

MATRIX COMPUTERS

ANNEXURE - H

Six Mile, Guwahati, Assam
Regd. No. 020507170



CERTIFICATE

Certified that Sri / Smti ... Bikul Chandra Hazarika.....
Son / Daughter / Wife of late Chanashyam Hazarika.....
of Christian Basti, Ghy-5.....
has successfully completed ... 12 (twelve) months Certificate Course in Computer
Application covering .. M.S.-DOS, WINDOWS, WORDSTAR, dBASE IV Plus, M.S-WORD, FOXPRO.

We wish his/ her in life.

*M. Datta
1/10/92*

Head of the Institute

MATRIX COMPUTERS
Six Mile, Guwahati, Assam
Circular - H

*S. C. Sarker
Instructor*