

50/100
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)
CENTRAL ADMINISTRATIVE TRIBUNAL.
GUWAHATI BENCH.

ORDER SHEET

Original Application No. 197/05

Misc. Petition No. _____

Contempt Petition No. _____

Review Application No. _____

Applicant(s): Robin Kolila

Respondent(s): H. O. I. I. Sons

Advocate for the Applicant(s):- Mr. S. Dutta, Mr. S. Chaudhury

Advocate for the Respondent(s): Sr.C.G.S.C. G. Baishya

Notes of the Registry	Date	Order of the Tribunal
This application is in part filed. It is filed/C. F. for Rs 0/- deposited vide P. No. 93 No. 206/134/567 Dated 29.6.05	29.7.05	Heard Mr. S. Dutta learned counsel for the applicant and Mr. G. Baishya, learned Sr.C.G.S.C. for the Respondents.
		Application is admitted. Issue notice on the Respondents. Returnable by four weeks. Post the matter alongwith O.A. No. 195 of 2005.
steps not taken.		<i>U. D. Choudhury</i> Member
Notice & order sent to D/Section for issuing to resp. Nos. 1, 2, 3 by resp. No. 1, 2, 3 by regd. A/D postponed by resp. No. 1, 2, 3 received by hand.	30.8.05	Ms. S. D. Choudhury, counsel for the applicant is present. Mr. G. Baishya, learned Sr.C.G.S.C. submits that some more time is required to file written statement. Post the matter on 30.9.05.
D/No. 1220 to 1222 Df. 31/8/05.	30.9.2005	<i>G. Baishya</i> Smt. S. D. Choudhury, learned counsel for the applicant is present. Ms. U. D. Choudhury, learned Addl.C.G.S.C. on behalf of Mr. G. Baishya, learned Sr.C.G.S.C. for the respondents submits that some more time is required to file written statement post on 18.11.2005.

① Service report are still awaited.

26/8/05

bb

G. Baishya
Vice-Chairman

18.11.05. Mr. S. Nath learned counsel for the applicant is present. Mr. G. Baishay learned Sr. C.G.S.C. seeks time for further time to file written statement.

Post the matter on 6.1.06.

29/9/05 *29/9/05*
Vice-Chairman

Notice duly served on resp.
Nos. 2, 3.

A/D card of OA 197/05
keep in the "C" ab
OA 195/05

1m

No. WLS has been
billed.

29/9/05

06.01.2006 Mr. S. Nath, learned counsel for the applicant is present. Mr. G. Baishay learned Sr. C.G.S.C. for the respondents submits that written statement is being filed today. Post on 27.02.2006. Rejoinder, if any, in the meantime.

29/9/05

29/9/05

Member

Vice-Chairman

27.02.06. The counsel for the applicant's mother has fallen sick. Post the matter on 4.4.06.

29/9/05 Vice-Chairman

① No. WLS has been
billed.

1m

mb

29/9/05

Post the matter before the
next available Division Bench.

9.1.2006 Vice-Chairman

WLS filed by the
Respondents.

1m

mb

9.1.2006

Post on 2.8.2006.

29/9/05 Member (A)

29/9/05 Vice-Chairman

No Rejoinder has been
billed.

7.8.2006

bb

29/9/05

Member (A)

29/9/05

Vice-Chairman

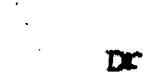
8.8.2006 post the case on 9.8.2006.


Member (A)


Vice-Chairman

bb

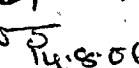
9.8.2006


Dr. J.L. Sarkar, learned counsel is appointed as amicus curie to enlighten this court on the point that whether this Tribunal has got jurisdiction to direct the respondents for formulating any ~~xxxxxx~~ scheme or not. Registry is directed to give him copy of the O.A. and written statement and the other documents, if any, within two weeks from today.

post before the next Division Bench.

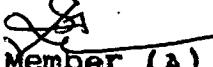
14.8.06

copy of the application may kindly be hand over to Dr J.L. Sarkar, Amicus curie in OA Nos. 197/05 and 198/05.


14.8.06.


Received

(For Dr. J.L. Sarkar)


Member (A)


Vice-Chairman

bb

05.05.2008

This matter stands adjourned to 21.05.2008 for hearing.

W/S filed.


22.5.08

/bb/


Khushiram
Member (A)

23.05.2008

Mr. M. Chanda, learned Advocate, has filed Vakalatnama in this case for the Applicant and seeks an adjournment.

26.5.08

Memo of appearance filed;


Khushiram

W/S filed.


27.8.08

/bb/


(Khushiram)
Member (A)


(M.R. Mohanty)
Vice-Chairman

OA 197) 05

9.6.2008 None appears for either of the parties.

Dr. J.L.sarkar was appointed to act amicus curiae in this case by order dated 09.08.2006. Registry has not shown his name in the cause list.

Call this matter on 17th June 2008 for hearing.

Ans
RS
12/6/08

Names of Shri G. Baishya, learned Senior Standing Counsel and Ms. U.Das, learned Additional Standing Counsel and Dr. J.L.Sarkar, Counsel, appearing as amicus curiae should be shown in the cause list.

A copy of this order be supplied to Dr. J.K.Sarkar, Advocate.

Khushiram
[Khushiram]

Member[A]

M.R.Mohanty
[M.R.Mohanty]

Vice-Chairman

cm

17.06.2008 On the prayer of learned counsel for both the parties, call this matter on 21.07.2008 along with O.A. No.195/2005.

Khushiram
(Khushiram)
Member (A)

M.R.Mohanty
(M.R.Mohanty)
Vice-Chairman

/bb/

21.07.2008 On the request of Mrs.U.Dutta, learned counsel for the Applicant call this matter on 05.08.2008 for hearing.

Khushiram
(Khushiram)
Member (A)

M.R.Mohanty
(M.R.Mohanty)
Vice-Chairman

/bb/

05.08.2008 Call this matter on 02.09.2008 for hearing.

1.09.08.

M.R. Mohanty
(M.R. Mohanty)
Vice-Chairman

nkm

5 A. 197/05

12.08.2008 Order pronounced in open Court. Kept in separate sheets. Application is dismissed.

02.09.2008 No costs. Heard learned counsel appearing for the parties. Hearing concluded. Judgment reserved.

lm.

(Khushiram)
Member(A)

(M. R. Mohanty)
Vice-Chairman

lm

(Khushiram)
Member(A)

(M. R. Mohanty)
Vice-Chairman

12.08.2008 Order pronounced in open Court. Kept in separate sheets. Application is dismissed.

No costs. (Common order with OA 195/05)

lm

(Khushiram)
Member(A)

(M. R. Mohanty)
Vice-Chairman

4/12/08
Copy of the
Common Order
sent to the Office
for record and
same to the
parties alongwith
copy to the h/Adm
for the Resps.

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CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH

Original Application No. 195 & 197/2005.

Date of Order: This the 12/5 Day of September, 2008.

THE HON'BLE MR. MANORANJAN MOLIANTY, VICE CHAIRMAN
THE HON'BLE MR. KHUSHI RAM, ADMINISTRATIVE MEMBER

Md. Abul Hussain (O.A. 195/2005)
Son of Md. Azizur Rahman.
Village Dimapur
P.O & P.S. Hajo.
District Kamrup (Assam).
.....Applicant

Shri Rabin Kalita (O.A. 197/2005)
Son of Late Krishna Kalita.
Resident of Village Chachamukh.
P.O. Kulhati, Kamrup (Assam)

By Advocate Mr. M. Chanda

Versus :

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

2. Registrar General of Census Operations,
21A Man Singh Road,
New Delhi.

3. Director of Census Operations,
Assam, G.S. Road,
Guwahati.

.....Respondents

By Advocate Mr. C. Baishya, Sr. C.G.S.C.
Mr. J.L. Sarkar, Amicus Curiae.



ORDER (ORAL)

KHUSHIRAM MEMBER(A)

Since both these Applications involve common questions of law (based on similar facts), both of them are being disposed of by this common order.

2. Applicants in both the cases were holder of I.T.I diploma in Draftsmanship from I.T.I, Guwahati and were appointed as Draftsman on temporary basis, in the Census organization. The Applicants have claimed that one Smt. Minu Kalita, who was appointed during census operation of 1980, has already been absorbed in the organization. The continuation of the posts (created against 1991 Census) beyond 31.12.1993 was not received from the Registrar General of Census Operation. However, interview was held; where names were sponsored by the Employment Exchange and Applicants appeared in the interview on 11.11.1993. Earlier the Applicant also filed O.A.No.270/03; wherein interim order was passed (directing the Respondents) not to terminate the services of the Applicants and the Applicants, on the basis of that interim order, continued in service till disposal of that O.A. on 27.06.1999. The Applicant again approached this Tribunal in O.A.No.388/2000; which was disposed of on 20.03.2001 with direction to absorb the Applicants. The Applicants were however, re-engaged on 06.05.2002. The Applicant of present O.A.195/05 was disengaged on withdrawal of the sanctioned post on 31.05.2002. Two draftsman (namely, Mrs Biju Mahanta and Mrs Renu Mazumdar) have been promoted on regular basis in the post of Senior Draftsman on

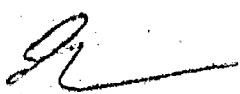
12.08.2004 and the Respondents have withdrawn 2 vacancies from Guwahati office on 13.08.2004. The Applicant has claimed that these two vacancies were created some 20/25 years back and Applicants were apprehending that the posts withdrawn have been shifted to Delhi with a view to deny the legitimate claim of the Applicant, for further absorption and they are apprehending termination at any time. The Applicants have claimed that, after rendering service of 9 years, they are entitled to regular absorption in the organization. The Applicants are even ready to serve in any other place as Draftsman if they are offered regular absorption in the post. The Applicant apprehending retrenchment have filed those O.As, seeking the following reliefs:

- i) The Respondents be directed to prepare a scheme for regular absorption of the Applicant in the light of the direction passed by the Hon'ble Supreme Court in the case of Govt. of Tamil Nadu and another vs. G.M. Amenuddin and others reported in 1990(7)SCC 499.
- ii) That the Hon'ble Court be pleased to direct the respondents to appoint the Applicant to the existing post of Draftsman or any other suitable Group 'C' post in the Respondent department or in any other Govt. Department with immediate effect.
- iii) The name of the Applicant is liable to be recommended by the Respondents for placement in the surplus cell for further recruitment to the Draftsman in any other Central/Govt. Department on priority basis."

3. The Respondents have filed written statement wherein they have disclosed that Applicants were posted, purely on temporary and ad hoc basis, against the temporary posts created for 1991 census operation with effect from 21.12.1990; whereupon the appointment letters issued it has been specifically mentioned that "his services will be dispensed with on completion of 1991 census works for which those



posts were created. Accordingly the applicants were terminated on discontinuation of the posts created in connection with 1991 census w.e.f. 31.12.1993." The Applicant filed O.A.No.270/93 before the Tribunal against the termination orders and the Tribunal disposed of the O.A. with reference to the judgment passed by the Hon'ble Supreme Court in the case of Union of India vs. Dinesh Kr. Saxena (reported in (1985) 29 ATC 585) stating that the "Respondent No.3 will take action in the lines of the judgment in case of the applicant also if occasion for appointment arises in near future. The applicant may approach him individually if they desire in these regards." The order of the Tribunal was challenged before the Hon'ble Gauhati High Court in CR No.2924/98; where it is still pending. The Tribunal in O.A.388/2000 passed an order on 20.03.2001 directed the Respondents to absorb the Applicants in vacancies that would occur for Census operation 2000-2001 in suitable posts commensurating with their qualifications. In response to this order the Applicants of O.A.270/93 were engaged against the resultant vacancies of Draftsman by giving temporary promotion to the incumbents against temporary post sanctioned for 2001 census operation. But they have been again disengaged/reverted on completion of 2001 census works. The Respondents have filed M.P.747/09 (C.R.No.2924/08) praying for appointment against the temporary posts sanctioned for 2001 census which was disposed of on 02.07.1999 with direction that the pending of the writ petition shall not be a bar for the Respondents to appoint/absorb the petitioners subject to the availability of posts. The Applicants have approached the Hon'ble



High Court by Misc.Case No.323/2000 (CR2924/98) challenging the vacancy circular issued by the Directorate of Census Operations, Assam for filling up the purely temporary posts/resultant vacancies sanctioned for 2001 census by deputation basis which was dismissed by the High Court on the ground that the case of present applicants is neither covered by the direction issued by the Hon'ble Tribunal nor by any judicial pronouncement. According to the Government of India DOPT instruction regarding disposal of personnel rendered surplus due to reduction of establishment in Central Govt. department/offices, the scheme for forwarding the name to Surplus Cell for redeployment is purely with respect to the regular Central Civil Servants and not to those employed on ad hoc, casual, work charged or contract basis. It has been stated that the Government of Tamil Nadu in respect of census employees of that State under orders of the Apex Court in the case of G Md. Ammenuddin (suprā) have prepared a scheme which is applicable to that State only and cannot be extended to other States or Union of India unless the same is adopted by them. The Hon'ble Gauhati High Court in W.P.No.7132-37 of 2002 passed an order on 31.01.2003 on retrenched census employees of 1991 census of Assam and Manipur ordered as follows:

"We find that no principles of law were laid down by the Apex Court in the case of G. Md. Ammenuddin (suprā) and the Apex Court gave directions when the State offered to make certain scheme. The relief or concessions, if any, was available under the said scheme and can it be said that the said scheme shall be applicable to the other employees all over the country or the State of Assam adopted by the State of Tamil Nadu cannot be made applicable to Assam or to the ~~country~~ ^{country} of the Union of India unless the said



scheme have been adopted by the said State or by the Union of India. In support of the above, we may refer to the recent decision of the Apex Court in the case of Bhupinder Singh Saini vs. State of Punjab AIR 2002 SC 2535, wherein it has been stated that such retrenched employees of the census organization shall be governed by the concerned/relevant circular of the State Government or the Union Govt. as the case may be.

In the present case, we find that the Tribunal gave direction for absorption of the Respondents on the basis of the so called earlier direction of this Court. We hold that no such direction was given by this Court and the petitioners were directed to be considered for appointment against the vacancies arising out of the work of census, 2001 as stated above and as submitted at the Bar, the Respondents were duly engaged for the 2001 Census and once that work was over, their services were terminated as they were fixed term appointments. The Government of India vide different office memorandum/circulars issued from time to time provided or offered concessions in favour of the retrenched census employees and it is needless to mention that the respondents shall be entitled to above concessions as are available to other retrenched census employees over the country. We would like to state here that the scheme of Tamil Nadu in respect of the Census employees of the State shall be applicable to their employees only and it cannot be applied to the employees of other State unless their scheme is adopted by the concerned State or by the Union of India.

In the result, the impugned order passed by the Central Administrative Tribunal is hereby set aside. The writ petitions stand allowed. The respondents are not entitled to any relief as claimed in Original application."

The Respondents have also cited the decision of Union of India vs. Dinesh Kr. Saxena (reported in (1985) 29 ATC 585); wherein the Respondents have been directed to consider the case of retrenched employees of census operation after taking into consideration the qualification, age limit etc. for appointment in future vacancies. It has also been stated that as a measure of austerity adopted by Union of



India there is a ban for filling up of vacancy in plan and non plan head. The Respondents have stated that Employment Exchange was requested to re-enter the names of the candidates who have been retrenched from census organization after the interview held on 20.11.1993 but no appointment was made as the posts were likely to be disengaged with effect from 31.12.1993. Instructions have been issued by Registrar General of Census, New Delhi to the Director of Census Operation of all States, Union Territories to fill up the temporary posts either by promotion or deputation basis. The posts created/sanctioned for 1991 census work have been terminated/disengaged with effect from 31.12.1993. On disengagement the Applicant approached the Tribunal in 2/02, 68/02, 69/02, 70/02 and 151/02. By common order dated 19.8.2002 the Tribunal disposed of all the Original Applications setting aside the termination orders passed by the Respondents and directed the Respondents to take appropriate measures to absorb the applicants including the other retrenched employees as per the direction of the Hon'ble High Court expeditiously and preferably within 4 months. This order was challenged before the Hon'ble High Court in W.P.7132-37 of 2002. The High Court vide order dated 31.01.2003 has set aside the order dated 19.08.2002 passed by the Tribunal inter alia holding that the applicants are not entitled to any relief as claimed in the O.As. The applicant had challenged the same before the Hon'ble Supreme Court by filing W.P.(C) No.7132-7137 of 2001 which has been dismissed by the Hon'ble Supreme Court vide order dated 21.07.2008. The Respondents also stated that the census operation periodically generate



work of periodic nature almost every 10 years and on completion of the same no staff is required for that purpose and persons engaged have to be disengaged. In this background the Hon'ble High Court in W.P.(C) 7132/2002 and the Hon'ble Apex Court in Union of India vs. D.C.Saxena have observed that "it is difficult to see how such employees can be regularized since there is no regular work available in the department for them." In the light of the observation of the Apex Court, the Hon'ble High Court dismissed the W.P.(C) No.7132/02 (along with other Writ Petitions) vide order dated 31.01.2003 and held that "we would like to state here that the scheme of Tamil Nadu in respect of the census employees of that State shall be made applicable to their employees only and it cannot be applicable to the employees of other State unless the scheme is adopted by the concerned State or by the Union of India." The Respondents are not entitled to any relief as claimed in the Original Application. Appeal against this decision has been dismissed by the Apex Court on 22.4.2003 as stated above.

4. We have heard Mr M.Chanda, learned counsel appearing for the Applicant, and Mr G.Baishya, learned Sr. Standing counsel appearing for the Respondents.

We have also heard Dr. J.L. Sarkar, Advocate, appearing as amicus-curie. Learned counsel for the Applicant argued the matter at length stating that employees have worked with the census organization earlier also and with the support of the Tribunal orders have continued in service for long time. The learned counsel stated that two vacancies for absorption of the Applicant is likely to be created



with the retirement of some persons in census organization in near future. Therefore, directions may be issued to the Respondents to absorb them against the resultant vacancies. He also vehemently argued that direction may be issued to the Respondents to prepare a scheme for absorption of such employees as has been prepared by the State of Tamil Nadu.

Mr. G.Baishya, learned Sr. Standing counsel for the Respondents has stated that the Apex Court in the celebrated decision rendered in the case of Secretary, State of Karnataka and Others vs. Umadevi (3) and Others [reported in (2006) 4 SCC 1] declared that casual labourer/temporary employee do not have any right to regular or permanent public employment and, further, it is held that temporary, contractual, casual, adhoc or daily-wage public employment must be deemed to be accepted by the employee concerned fully knowing the nature of it and the consequences flowing from it. In the said decision, interpreting provisions of the Constitution of India the Hon'ble Supreme Court observed as under:

16. In *B.N.Nagarajan V. State of Karnataka*⁸ this Court clearly held that the words "regular" or "regularisation" do not connote permanence and cannot be construed so as to convey an idea of the nature of tenure of appointments. They are terms calculated to condone any procedural irregularities and are meant to cure only such defects as are attributable to methodology followed in making the appointments. This Court emphasised that when rules framed under Article 309 of the Constitution are in force, no regularisation is permissible in exercise of the executive powers of the Government under Article 162 of the Constitution in contravention of the rules. These decisions and the principles recognized therein have not been dissented to by this Court and on principle, we see no reason to



accept the proposition as enunciated in the above decisions. We have, therefore, to keep this distinction in mind and proceed on the basis that only something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process, can be regularised and that it alone can be regularised and granting permanence of employment is a totally different concept and cannot be equated with regularisation.

19. One aspect arises. Obviously, the State is also controlled by economic considerations and financial implications of any public employment. The viability of the department of the instrumentality of the project is also of equal concern for the State. The State works out of the scheme taking into consideration the financial implications and the economic aspects. Can the court impose on the State a financial burden of this nature by insisting on regularisation or permanence in employment, when those employed temporarily are not needed permanently or regularly? As an example, we can envisage a direction to give permanent employment to all those who are being temporarily or casually employed in a public sector undertaking. The burden may become so heavy by such a direction that the undertaking itself may collapse under its own weight. It is not as if this had not happened. So, the court ought not to impose a financial burden on the State by such directions, as such directions may turn counterproductive.

26. With respect, why should the State be allowed to depart from the normal rule and indulge in temporary employment in permanent posts? This Court, in our view, is bound to insist on the State making regular and proper recruitments and is bound not to encourage or shut its eyes to the persistent transgression of the rules of regular recruitment. The direction to make permanent – the distinction between regularisation and making permanent, was not emphasised here – can only encourage the State, the model employer, to flout its own rules and would confer undue benefits on a few at the cost of many waiting to compete. With respect, the direction made in para 50 (of SCC) of *Paras Singh*⁶ is to some extent inconsistent with the conclusion in para 45 (of SCC) therein. With great respect, it appears to us that the last of the directions clearly runs counter to the constitutional scheme of

employment recognized in the earlier part of the decision. Really, it cannot be said that this decision has laid down the law that all ad hoc, temporary or casual employees engaged without following the regular recruitment procedure should be made permanent.

47. When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognized by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in cases concerned, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any promise while engaging those persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief or being made permanent in the post."

The above celebrated decision declares that casual labourer/temporary employee/contract labourer do not have any right to regularisation in permanent public employment.

5. We have considered the rival contentions of the learned counsel of both the parties and perused the materials placed on record. Admittedly the census work is periodic in nature and staff employed to complete the timely census work cannot be allowed to continue after census operations are over. The applicants have already lost their cases before the Hon'ble High Court and appeal against the decision of the High Court has also been dismissed by the Apex Court. The scheme of



the State of Tamil Nadu for regularization of census employees of that State cannot be made applicable for the State of Assam or any of the States of North East Region or to Union of India nor direction can be issued by the Tribunal to prepare such a scheme unless the concerned States want to do so or wants to adopt the Tamil Nadu scheme. In the light of these discussions, we do not see any merit in the contention of the Applicants and, accordingly, these Original Applications are dismissed without any order as to costs.

Sd/-
Monoranjan Mohanty

Vice Chairman

Sd/-

Khushiram
Member (A)

28 JUL 2005

17

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI

O.A. No. 197 /2005

Shri Rabin Kalita.

-Vs-

Union of India & Ors.

LIST OF DATES AND SYNOPSIS OF THE APPLICATION

1986- Applicant passed HSSLC (Science) Examination.

1989- Applicant obtained Diploma in Draftsmanship from I.T.I, Guwahati.

13/14.12.1990- Applicant was appointed on temporary basis to the post of Draftsman. (Annexure-1)

25.09.1991- Name of the applicant appeared in the final seniority list. (Annexure-4)

12.12.1979- One Smti. Minu Kalita who was appointed during census operation of 1980 has already been absorbed. (Annexure-5)

17.12.1993- Assistant Director of Census operation, Assam, sent a telegram to the Respondent No. 2 requesting thereby for extension of all the posts created against 1991 Census beyond 31.12.93. (Annexure-7)

28.12.1993- Respondent No. 3 drawn up a tentative programme of mapping at DCO, Assam, which reveals that there are still requirement of Draftsman. (Annexure-7)

11.11.1993- An interview was held by calling upon candidates sponsored by the Employment Exchange. (Annexure-8)

31.12.1993- Applicant approached this Hon'ble Tribunal through O.A. No. 270/93 and the Hon'ble Tribunal was pleased to issue an interim order directing the respondents not to terminate the service of the applicant and the applicant continued in service till dispose of the said O.A.

05.06.1998- This Hon'ble Tribunal disposed of the O.A. No. 270/93. (Annexure-9)

27.06.1999- Service of the applicant was discontinued.

Sri Rabin Kalita.

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20.03.2001- Applicant approached the Hon'ble Tribunal through O.A. No. 388/2000, which was disposed of, with a direction to absorb the applicant. (Annexure-10)

12.08.2004- Two draftsman have been promoted on regular basis in the post of Sr. Draftsman in the DCO, Assam, thereby 2 vacancies occurred. (Annexure-11)

13.08.2004- Surprisingly the resultant two vacancies of Draftsman have been withdrawn. (Annexure-12)

28.09.1999- Hon'ble Supreme Court in the case of Govt. of Tamil Nadu -Vs- G.M Ammenuddin and others asked the government to frame a scheme to the absorb the retrenched employees like the present applicant. (Annexure-13)

P R A Y E R

Relief(s) sought for:

Under the facts and circumstances stated above, the applicant humbly prays that Your Lordships be pleased to admit this application, call for the records of the case and issue notice to the respondents to show cause as to why the relief(s) sought for in this application shall not be granted and on perusal of the records and after hearing the parties on the cause or causes that may be shown, be pleased to grant the following relief(s) upon making the following declarations:

1. That the respondents be directed to prepare a scheme for regular absorption of the applicant in the light of the direction passed by the Hon'ble Supreme Court in the case of Govt. of Tamil Nadu and another - Vs- G.M. Ammenuddin and Others reported in 1999 (7) SCC 499.
2. That the Hon'ble court be pleased to direct the respondents to appoint the applicant to the existing post of Draftsman or any other suitable group 'C' post in the respondent Department or in any other Govt. Department with immediate effect.

Or
3. That the Hon'ble Court be pleased to declare that the name of the applicant is liable to be recommended by the respondents for placement in the surplus cell for further recruitment to the draftsman in any other central Govt. Department on priority basis.
4. Costs of the Application.

Sri Robin Kalita.

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5. Any other relief(s) to which the applicant is entitled as the Hon'ble Tribunal may deem fit and proper.

Interim order prayed for.

During pendency of this application, the applicant prays for the following relief:-

1. That the Hon'ble Tribunal be pleased restrain the respondents to fill up the existing vacant post of Draftsman or any other existing suitable Group 'C' post till disposal of this Original application and further be pleased to observe that the pendency of this application shall not be a bar for the respondents to grant relief as prayed for.

Sri Robin Kalita.

संघीय न्यायालय
Central Administrative Tribunal

28 JUL 2005

Guwahati Bench

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH: GUWAHATI

(An Application under Section 19 of the Administrative Tribunals Act, 1985)

Title of the case : O. A. No. 197 /2005

Shri Rabin Kalita : Applicant

- Versus -
Union of India & Others: Respondents.

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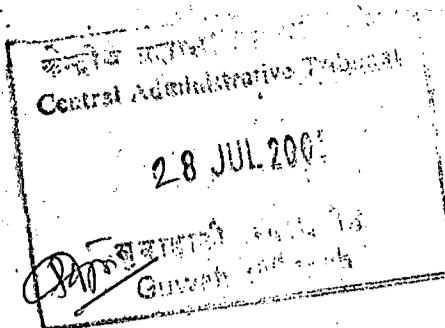
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Date: 28.07.2005

Filed by
Surajit Chaudhury
Advocate

Sri Rabin Kalita.

22
Filed by the Applicant
Surajit Chaudhury
on 28.7.05



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI

(An Application under Section 19 of the Administrative Tribunals Act, 1985)

O. A. No. 197 /2005

BETWEEN

Shri Rabin Kalita
Son of Late Krishna Kalita,
Resident of village Chachanukh,
P.O. Kulahati, Kamrup (Assam).

...Applicant.

-AND-

1. The Union of India,
Represented by the Secretary to the
Government of India,
Ministry of Home Affairs,
New Delhi.
2. Register General of Census Operations,
2/A Man Singh Road.
New Delhi.
3. Director of census Operations,
Assam, G.S. Road,
Guwahati.

... Respondents.

DETAILS OF THE APPLICATION

1. Particulars of order(s) against which this application is made.

This application is made praying for a direction to the respondents for consideration of appointment of the applicant in the existing available vacancy of Draftsman or in vacancies occurred following the order dated 12.08.2004 or alternatively for a direction to the respondents to prepare a

Sri Rabin Kalita.

scheme for regular absorption of the applicants in the existing vacancies in Group 'C' cadre in view of the past 8/9 years temporary service of the retrenched applicant or to forward his name in surplus cell for redeployment in service in any Govt. department, or alternatively for a direction to prepare a Scheme for regular absorption of the applicant in the existing vacancy in Group 'C' cadre, in the light of the decision in Govt. of Tamil Nadu and another -Vs- G.M. Ammenuddin and Others by the Hon'ble Supreme Court.

2. Jurisdiction of the Tribunal.

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

3. Limitation.

The applicant further declares that this application is filed within the limitation prescribed under section-21 of the Administrative Tribunals Act, 1985.

4. Facts of the Case.

- 4.1** That the applicant is a citizen of India and as such he is entitled to all the rights, protections and privileges as guaranteed under the Constitution of India.

- 4.2** That your applicant was sponsored by the Employment Exchange for being appointed as Draftsman in the Office of the Director of Census Operation, Assam, Guwahati. Pursuant to such sponsorship, the applicant along with many others was invited for interview. The said interview considered of both practical and viva-voce. Eventually, the applicant was selected for being appointed as Draftsman. Be it stated here that he is Diploma holder in Draftsmanship. After such selection the applicant was appointed temporarily to the post of Draftsman. The applicant was

appointed by office order dated 04.06.1991 issued under Memo No. DCO (E). I/89/Pt.I/11156-61. Pursuant to such appointment order that was preceded by necessary police verification and medical check up the applicant joined his post immediately on receipt of the office order and since then he has been continuing in his post without any interruption. Ever since his appointment he has been discharging his duty to the satisfaction of all concerned without any adverse remarks.

Copy of the aforesaid appointment order is enclosed hereto for perusal of Hon'ble Tribunal as Annexure-1.

4.3 That the applicant passed HSSLC (Science) Examination in 1987 from Pragjyotish College, Guwahati and obtained his Diploma in Draftsmanship from I.T.I, Guwahati in 1988.

Copies of HSSLC (Science) Examination pass certificates and Diploma in Draftsmanship Certificates of the applicants are enclosed hereto for perusal of Hon'ble Tribunal as Annexure-2 (Series).

4.4 That though in the appointment order, it has been stated that the post is purely temporary and created specially in connection with 1991 Census work, the applicant has all along been treated as regular employees and in the process he has earned increments, bonus and all other service benefits. His service book has also been opened. It will be seen from his appointment order that no time limit has been given for his continuance in service unlike many other who have also been appointed in some other posts alongwith the applicant. In this connection mention may be made of office order issued under Memo No. DCO (E)/I/89/Pt.I dated 03.06.1993 by which one Shri Jiban Malakar was appointed in Computor mentioning specially in the order itself that the appointment is to continue upto 31.12.1993 only.

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A copy of the said order dated 03.06.1993 is annexed hereto for perusal of Hon'ble Tribunal as Annexure-3.

4.5 That as has been stated above, the applicant has been holding his post receiving all the service benefits like that of any other permanent Government employee. His name have also appeared in the final seniority list which was circulated vide letter No. DCO (E)1/171/74/16361 dated 25.09.1991.

Copy of the said Gradation list is annexed for perusal of Hon'ble Tribunal as Annexure-4.

4.6 That the applicant states that the Census operation throughout the country are taken up at the interval of every 10 years, and as such, operation generally and normally continue since the new census operation is taken up. The incumbents who are appointed more particularly in the cadre of draftsman have never been retrenched on the ground of completion of census works. In this connection mention may be made of the appointment of one Miss Minu Kalita, who was appointed during census operation of 1980 vide order issued under Memo No. DCO (E) 21/78/14004-11 dated 12.12.1979. It will be pertinent to mention here that due to the Assam agitation, the census operation of 1980 could not be taken up. However, the said Miss Minu Kalita continued to hold the post and even thereafter, she has been continued in the office of the Director of Census operation, now it is learnt that Smti. Kalita has already been permanently absorbed.

Copy of the said order dated 12.12.1979 is annexed for perusal of Hon'ble Tribunal as Annexure-5.

4.7 That the applicant has come to know that the services of some of the members of the staffs are being dispensed with effect from 31.12.1993. As such been stated above, in their appointment orders it was specifically mentioned that their appointments are on ad hoc basis and will continue

Sri Rabin Kalita.

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only up to 31.03.1993. However, in the case of the present applicant, there was no such mention. Further more, never before the draftsman who have been appointed during the census operation, have been terminated and they were still continuing in their services. Many of them have been promoted/regularized. Moreover, it is being whispered in the office of the respondent No.3, the services of the applicant was also going to be dispensed with effect from 31.12.1993, without any prior notice. Being faced with such a situation, the applicant had filed the Original Application seeking appropriate relief from the Hon'ble Court, i.e. O.A. No. 270/1993.

4.8 That the applicant states that the office of the respondent No.3 has drawn up a tentative programme of mapping at DCO, Assam for 1991 Census in the level of Draftsman/Senior Draftsman/Artist/Senior Artist etc. by its letter dated 28.12.1993. A mere perusal of the said programme reveals that the various works relating to the said Census are to be completed meaning thereby that there is still requirement of draftsman. Such a position was further fortified from the fact that the respondents had issued a telegram to the respondent No.2 making a request thereby for extension of all the posts created against 1991 Census beyond 31.12.1993. In the said telegram, it was clearly mentioned about the pendency of huge mapping works relating to District Census Handbook and other related projects and as to why any shortfall will seriously dislocate mapping works. From this document it will be seen that there is still requirement of the posts of draftsmen to be continued.

Copies of the said programme dated 28.12.93 and the telegram dated 17.12.93 are annexed for perusal of Hon'ble Tribunal as Annexures- 6 & 7 respectively.

4.9 That the applicant states that apart from the aforesaid factual position, it is further evident from the fact that an interview was held by calling upon

candidates sponsored by the Employment Exchange for the post of Draftsman. As has been stated above, the applicant was also sponsored by the Employment Exchange and after his due selection by a powerful selection committee, he was appointed as Draftsman. Naturally after his such selection and appointment, his name has been scored out from the list maintained by the Employment Exchange and accordingly, he did not get any opportunity to appear before the concluded interview for the post of Draftsman. He was also not invited as departmental candidate to appear in the said interview.

A copy of the said interview letter dated 11.11.93 is annexed for perusal of Hon'ble Tribunal as Annexure-8.

4.10 That the applicant states that like before the 1991 census operation have been continued till final census report and by the time, the report was prepared and the works analogous to that were completed, the new census operation are taken up and eventually the employees who were appointed for a particular census work were allowed to continue. Furthermore, the requirement of draftsman is expected on the face of it in as much as some more incumbents are being recruited. In such a situation, if the service of the applicant is not regularized along with other employees of different cadres, the applicant will suffer irreparable loss and injury. In any case, he cannot be treated to be at par with the other incumbents of different cadres who were specifically told that their services would continue only up to a specific period.

4.11 That your applicant begs to state that when he came to know from a reliable source that his service is going to be terminated with effect from 31.12.1993 the applicant alongwith other similarly situated persons approached the Hon'ble Tribunal by way of filing the O.A. No.270/93, praying against the order of termination of their services issued by the respondents under letter No. DCO (E) 97/80 Vol.I/9922-48 dated

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21.12.1993. The said O.A. came up for consideration before the Hon'ble Tribunal on 31.12.1993 and the Hon'ble Tribunal after hearing the arguments of the counsel for the parties was pleased to pass an interim order directing the respondents not to terminate the services of those applicants from service. However, the applicant by virtue of the interim order passed on 31.12.1993 in O.A. No. 270/93 (Md. Abul Hussain & Ors. Vs. Union of India & Ors.) continued in service till disposal of the said Original Application.

4.13 That the said Original Application was decided by the Hon'ble Tribunal on 05.06.1998 with the following direction:

"4. The applicants were allowed to continue in service on the strength of interim order dated 31.12.1993. However, one of them had since left his service under the respondents. For the remaining applicants it was contended that they can be retained in service against other vacancies under the control of respondent No.3. In Union of India Vs. Dinesh Kumar Saxena, reported in (1995) 29 ATC 585 the Hon'ble Supreme Court had held among others as follows:

"Ends of justice will be met if the Directorate of Census Operations, U.P. is directed to consider those respondents, who have worked temporarily in connection with 1981 and/or 1991 census operations and who have been subsequently retrenched. For appointments in any regular vacancies which may arise in the Directorate of Census Operations and which can be filled by direct recruitment, if such employees are otherwise qualified and eligible for these posts."

Other directions such as relaxation of age were issued. We have no doubts that respondents No.3 will take action in the lines indicated

Sri Robin Kalita.

in the judgment above in the case of the applicants also if occasion for appointment arises in near future. There may also be scope to offer the applicants appointments on purely ad hoc basis against some purely ad hoc vacancies. The applicants may approach him individually in these regards if they desire.

The application is disposed with no order as to costs."

In terms of the above judgment and order dated 05.06.1998 service of the applicants have been discontinued with effect from 27.06.1999.

Copy of the judgment and order dated 05.06.98 referred to above is annexed for perusal of Hon'ble Tribunal as Annexure-9.

4.14 That your applicants further beg to say that having approached the Hon'ble Tribunal through O.A. No. 388/2000, the said Original application finally disposed of vide order dated 20.03.2001, wherein the Hon'ble Tribunal directed the respondents to absorb the applicants in the vacancies that would occur for census Operation for the year 2000-2001 in a suitable post commensurating with the qualification.

(Copy of the order dated 20.03.2001 is enclosed herewith for perusal of Hon'ble Tribunal and marked as Annexure- 10).

4.15 That it is stated that the respondents vide order bearing letter No. 27/96/94-Ad.IV dated 12.08.2004 whereby two numbers of Draftsman Smti. B. Mahanta and Smti. R. Mazumdar have been promoted on regular basis in the post of Sr. Draftsman. But surprisingly the resultant two vacancies of Draftsman have been withdrawn from the office of the Draftsman of Census operation, Assam vide impugned order bearing letter No. File No. 227/96/94-AD.IV dated 13.08.2004 without any justifiable reason. In this connection it may be stated that these two post of Draftsman were sanctioned for the Directorate of Census operation, Assam since 20-25 years back but the respondents on apprehending that

Sri Rabin Kalita.

those retrenched employees may approach the authority for their regular absorption against these two vacancies of Draftsman and thereafter they have withdrawn these two posts of draftsman and shifted them to the Head quarter office, New Delhi with the sole intention to deny, the legitimate claim of the applicants for future absorption.

It is submitted that in view of the long service rendered by the applicant that is nearly 9 years as such he has acquired a valuable and legal right as retrenched employee for regular absorption. It is further submitted that the present applicant is even ready to serve in any other place as Draftsman if he is offered regular appointment to the post of Draftsman.

Copy of the order dated 12.08.2004 and 13.08.2004 are enclosed for perusal of Hon'ble Tribunal as Annexure-11 & 12 respectively.

4.16 That it is stated that since the applicant has rendered about 9 years service in the Central Govt. Department in the Directorate of Census operation as such he is also entitled to all the benefits which are available to a retrenched/surplus employee of the Central Govt. Department; apart from his entitlement for regular absorption to the post of draftsman in the Census department and alternatively the name of the applicant is liable to be recommended by the respondents for placement in the surplus cell. In view of the Redeployment scheme of surplus employees in view of the Govt. of India which is known as Central Civil Services (Redeployment of Surplus Staff) Rules, 1990. Whereby the Govt. of India provided the aforesaid scheme for the Redeployment/appointment of a surplus employees against a vacancy in Central Civil Service or post in accordance with this rules if the appointment of the surplus employee was given on permanent basis or temporary basis provided he has rendered not less than 5 years regular continuous service in Govt. department in that event an employee is entitled to be recommended for placing his name in surplus cell and also entitled to be considered for appointment/

Sri Rabin Kalita.

absorption in any suitable post in Central Govt. department, but surprisingly in the instant case, no such action was taken by the respondent department, moreover, the case of the applicant also not considered even in the existing Group-C vacancy.

4.17 That it is stated that in view of the decision rendered by the Hon'ble Supreme Court in the case of Govt. of Tamil Nadu and another -Vs- G.M. Mohammad Ammenudeen and others reported in 1999 (7) SCC 499. The Central Govt. is duty bound to frame a scheme to absorb the applicant and other retrenched employees in view of the special features of the case. The relevant portion of paragraph 4 of the judgment and order dated 28.09.99 in the case of Govt. of Tamil Nadu -Vs- G.M. Ammenuddin and others are quoted below:-

"para 4. Several contentions have been raised before us but in view of the stand taken now by the appellants, it is unnecessary to examine them. On 11-3-1999, when the matter came up before us, we heard the learned counsel on both sides at length and felt that considering the special features of the case, it would be appropriate for the State Government to frame a scheme to absorb the respondents and other employees, who were similarly placed and who have been retrenched. On the commencement of the census operations, persons who have registered themselves in the employment exchange get jobs in that Department. However, when the project is over, their employment and their position in the queue in the employment exchange. Bearing this aspect in mind, the Government was asked to work out an appropriate scheme."

In view of the peculiar circumstances and the special features of the case the respondents Union of India should prepare a scheme for regular absorption of the applicant. Therefore, the Hon'ble Court be pleased to direct the respondents to prepare a scheme for regularization of the

applicant in view of the decision of the Hon'ble Supreme Court rendered in the case of Govt. of Tamil Nadu and another -Vs- G.M. Ammenuddin and Others reported in 1999 (7) SCC 499.

Copy of the judgment and order dated 28.09.99 in the case of Govt. of Tamil Nadu -Vs- G.M. Ammenuddin is enclosed herewith for perusal of Hon'ble Tribunal as Annexure-13.

4.18 That it is stated that in all the Directorate of Census operations throughout India, respondents had sanctioned good numbers of post of Draftsman in its directorate since inception. However, in the DCO, Assam two post of draftsman were sanctioned say 20-25 years back for mapping works, but the said two posts have been shifted to Headquarter office, Delhi in a most arbitrary manner, by the respondents for denying the claim of regular absorption, to the applicants. It is pertinent to mention here that mapping work in each directorate is compulsory, and as such in each directorate more than two post of draftsman have been sanctioned by the Head quarter office, New Delhi, in each Directorate through out the country. It is pertinent to mention here that after shifting of the two posts of draftsman from DCO, Guwahati to Head Quarter, New Delhi vide impugned office order bearing letter filed on 27.96/94- Ad. IV dated 13.08.2004, at present there is no post of Draftsman available in the Directorate of Assam. This is the only Directorate where at present no posts of draftsman since the two posts are shifted to the Head quarter office Delhi with an ulterior motive, to avoid absorption of the applicant, therefore Hon'ble Tribunal be pleased to direct the respondents to consider the case of regular absorption of the applicants in the two vacant post of draftsman which are now shifted to Head quarter office, new Delhi. It is relevant to mention here that the applicant is ready to work in any place, if the job of Draftsmanship is offered to him. Therefore Hon'ble Tribunal be pleased to direct the respondents to absorb the applicant in

the vacant post of draftsman in view of his long service rendered in the Department.

4.19 That this application is made bonafide and for the cause of justice.

5. Grounds for relief(s) with legal provisions.

5.1 For that, the applicant has rendered about 8/9 years of service on temporary basis after being duly selected by the selection board, sponsoring their name through local employment exchange and recruited after being found suitable as such he has acquired a valuable and legal right for regular absorption to the post of Draftsman in the respondents department.

5.2 For that, the two posts of Draftsman that are fall vacant although withdrawn from this Directorate by the Head quarter office, New Delhi but the same are still vacant.

5.3 For that, applicant posses requisite qualification and eligibility for regular absorption to the post of Draftsman.

5.4 For that, applicant being retrenched employees of Central Govt. Deptt. like Directorate of Census Operation Assam entitled to benefit of employment/re-employment/redeployment in Central Govt. as and when post of draftsman arises either in the Department of Census Operation or an any other Central Govt. organization, under the relevant scheme issued by the Govt. of India.

5.5 For that the applicant rendered about 8/9 years of service in the Directorate of Census Operation in Assam and thereafter retrenched from service due to discontinuation of sanction of the post of Draftsman and by this time he is now over aged for any other govt. job, as such employment/ redeployment in the respondents Department is the only alternative scope.

5.6 For that when the post of draftsman are available in DCO, Assam, Headquarter Office therefore the applicant is entitled to be appointed on priority basis in relaxation of age.

5.7 For that the respondents did not take any action forwarding the name of the applicant in surplus cell of the Central Govt. for alternative employment/redeployment after his retrenchment from service.

5.8 For that applicant is also entitled to be absorbed in any suitable Group 'C' post in the light of the Scheme, suggested by the Hon'ble Supreme Court in the case of Govt. of Tamil Nadu and another - Vs- G.M. Amenuddin.

5.9 For that, Govt. of India is also equally duty bound to prepare a scheme for absorption of the applicant and other similarly situated employees, in the light of the decision rendered by the Hon'ble Supreme Court in the case of Govt. of Tamil Nadu and another - Vs- G.M. Amenuddin and Others.

6. Details of remedies exhausted.

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

7. Matters not previously filed or pending with any other Court.

The applicant states that he had filed an O.A. which was registered in O.A. No. 270/93 and the same was disposed of on 05.06.98 with the direction to the respondents to consider his case in terms of the Judgment and order passed by the Hon'ble Apex Court in the case of Dinesh Kr. Saxena - Vs.- Union of India and others. Thereafter, again filed an Original Application which was registered as O.A No. 388/2000 which was disposed of on 20.03.2001. The applicant further begs to state that he has no other cases pending before any Tribunal or Court regarding the subject matter of this application.

8. Relief(s) sought for:

Under the facts and circumstances stated above, the applicant humbly prays that Your Lordships be pleased to admit this application, call for the records of the case and issue notice to the respondents to show cause as to why the relief(s) sought for in this application shall not be granted and on perusal of the records and after hearing the parties on the cause or causes that may be shown, be pleased to grant the following relief(s) upon making the following declarations:

- 8.1 That the respondents be directed to prepare a scheme for regular absorption of the applicant in the light of the direction passed by the Hon'ble Supreme Court in the case of Govt. of Tamil Nadu and another - Vs- G.M. Amenuddin and Others reported in 1999 (7) SCC 499.
- 8.2 That the Hon'ble court be pleased to direct the respondents to appoint the applicant to the existing post of Draftsman or any other suitable group 'C' post in the respondent Department or in any other Govt. Department with immediate effect.
- 8.3 That the Hon'ble Court be pleased to declare that the name of the applicant is liable to be recommended by the respondents for placement in the surplus cell for further recruitment to the draftsman in any other central Govt. Department on priority basis.
- 8.4 Costs of the Application.
- 8.5 Any other relief(s) to which the applicant is entitled as the Hon'ble Tribunal may deem fit and proper.

9. Interim order prayed for.

During pendency of this application, the applicant prays for the following relief: -

- 9.1 That the Hon'ble Tribunal be pleased restrain the respondents to fill up the existing vacant post of Draftsman or any other existing suitable Group 'C' post till disposal of this Original application and further be pleased to

Sri Rabin Karthik

o observe that the pendency of this application shall not be a bar for the respondents to grant relief as prayed for.

10.....

This application is filed through Advocates.

11. Particulars of the I.P.O.

i) I. P. O. No.	:	20 G 34567
ii) Date of Issue	:	29.6.05
iii) Issued from	:	GPO, Gowardhan
iv) Payable at	:	GPO, Gowardhan

12. List of enclosures.

As given in the index.

VERIFICATION

I, Shri Rabin Kalita, Son of Late Krishna Kalita, Resident of village Chachamukh, P.O. Kulahati, Kamrup (Assam), aged about years, resident of village Dimapur P.O. & P.S. Dimapur, Hajo District- Kamrup, Assam do hereby verify that the statements made in Paragraph 1 to 4 and 6 to 12 are true to my knowledge and those made in Paragraph 5 are true to my legal advice and I have not suppressed any material fact.

And I sign this verification on this the _____ day of _____, 2005.

Sri Rabin Kalita.

Annexure-1 (Series)REGISTERED

No. I.C.O.(E) 1/89/Pt. I/11154
 GOVERNMENT OF INDIA
 MINISTRY OF HOME AFFAIRS
 OFFICE OF THE DIRECTOR OF CENSUS OPERATION, ASSAM
 G.S.B.C.O., ULUBAFTI, GUWAHATI-781007

Dated Guwahati the 4th June/91

OFFICE ORDER

Shri Rabin Kalita is hereby appointed temporarily on ad hoc basis as Draftsman in the office of the Director of Census Operations, Assam, Guwahati in the scale of pay of Rs. 1200-30-1560-LN/40-2040/- P.M. plus other allowances as admissible under the Central Govt. Rules as amended from time to time.

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

He should produce the medical certificates of his fitness from the Chief Medical & Health Officer in the proper form (enclosed) at the time of joining the post.

He should join in the post on or before 17/6/91 failing with the appointment order will be treated as cancelled.

SD/-

(J.C. BHUYAN) 4.6.91
 DEPUTY DIRECTOR OF CENSUS OPERATIONS
 (SR), ASSAM, GUWAHATI.

Memo No. I.C.O.(E) 1/89/Pt. I/11156-61

Date 4.6.91

Copy to :

1. The Pay & Accounts Officer (Census), A.C.C.U. & M Building, New Delhi-2.
2. The Asstt. Director of Census Operations (D.D.O.).
3. The Office Superintendent.
4. The Jr. Accounts Officer.
5. Establishment Branch (for personal file).
6. File No. I.C.O.(E) 21/78/Vol. I.
7. Shri Rabin Kalita, Vill. Chechamuchi, P.O. Kulahati, P.S. Hajo, Dist. Darrang (Assam) PIN 781104

SD/-

(J.C. BHUYAN) 4.6.91
 DEPUTY DIRECTOR OF CENSUS OPERATION (SR)
 Assam, Guwahati

*A. Dated
 28/6/91
 by
 J.C. BHUYAN
 on 28.7.03*



ARYA VIDYAPEETH COLLEGE

GUWAHATI - 16

No. 150

This is to certify that Rakhi Kalita
 Roll No. 1023 No 803 has duly passed the Higher secondary
Arts/Science (Two yr. Course) final Examination of the Assam
 Higher Secondary Education Council from this College in 1986 and
 was placed in the Second class division.

While he/she was a student of this College his/her character and
 conduct were good.

I wish him/her success in life,

Verified & written by

Dated

27/7/05



Aswag
 Principal
 ARYA VIDYAPEETH COLLEGE
 GUWAHATI - 16

*Aswag
 Chandr
 Jyoti
 28.7.05*



19
Serial No. A - 5629

GOVERNMENT OF ASSAM

PROVISIONAL NATIONAL TRADE CERTIFICATE

Shri/Shrimati/Kumari Rabin Kalita
Son/Wife/Daughter of Shri Krishna Kalita

Having completed the Course of training at INDUSTRIAL TRAINING INSTITUTE
Guwahati and passed the prescribed trade test in the Trade of
Draughtsman (Civil) held on July'89 One Thousand Nine Hundred
and eightynine is awarded this trade certificate provisionally.

The National Trade Certificate will be issued by the National Council for
Vocational Training.

Period of Training :— From August'87 to July'89

CHARACTER good

TRADE TEST MARKS :

	MAX. MARKS :	MARKS OBTAINED :
1) Practical (Including Sessional)	400	285
2) Trade Theory (" ")	120	74
3) Workshop		
Calculation	60	27
& Science (" ")		
4) Engineering		
Drawing (" ")	X	X
5) Social studies	50	30
TOTAL	<u>630</u>	<u>416</u>

He/She has also passed in the Additional Subject of Social Studies.

Date of birth as recorded in School Certificate 1.1.69.

Signature of certificate holder

SRI RABIN KALITA

Address

VILL-CHECHAMUKH

Seal

P.O.-KULAHATI, DIST-KAMRUP

Date.....

29/11/90
Principal

INDUSTRIAL TRAINING INSTITUTE
GUWAHATI-13

Annexure-3.

SC. 1001
No. DCO (E) 1/89/Pt. I/4463
GOVERNMENT OF INDIA
MINISTRY OF HOME AFFAIRS
OFFICE OF THE DIRECTOR OF CENSUS OPERATIONS, ASSAM
G.S. ROAD, ULUBARI, GUWAHATI-781007

Dated Guwahati the 3rd June/93

OFFICE ORDER

Shri Jibon Malekar 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-402040/- 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 the either side or one month's emoluments in lieu thereof.

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

He should join immediately.

Sd/- Illegible

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

Memo No. DCO (E) 1/89/Pt. I
Copy to :-

Date :-

1. The Pay & Accounts Officer (Census), New Delhi-2.
2. The Asstt. Director of Census Operations (I), (DDO)
3. The Accounts Branch.
4. The Estt. Branch.
5. The Office Superintendent.
6. The Store-in-charge.
7. Shri Jibon Malekar

Sd/-
(T. SENAPATI)
DIRECTOR OF CENSUS OPERATIONS
ASSAM, GUWAHATI

Appled
Surjit Choudhury
Advocate
07/28/03

-~~22~~-

Annexure-4

No. DCO(E)171/71/16361
GOVERNMENT OF INDIA
MINISTRY OF HOME AFFAIRS
OFFICE OF THE DIRECTOR OF CENSUS OPERATIONS, ASSAM
G.S.ROAD, ULUBARI, GUWAHATI-781007

Dated Guwahati the 25.9.91

The final seniority list in the post of Draftsman
as on 1.8.91 in the office of the Director of Census
Operations, Assam, Guwahati is enclosed herewith for
information of all the concerned officials.

Sd/- Illegible 25.9.91

(J.C. BHUYAN)
DEPUTY DIRECTOR OF CENSUS OPERATIONS (SR)
ASSAM, GUWAHATI.

Memo No. DCO(E)171/71/16364 to 69 Date 25.9.91
Copy to :-- All the persons concerned.

Sd/- Illegible 25.9.91

(J.C. BHUYAN)
DEPUTY DIRECTOR OF CENSUS OPERATIONS (SR)
ASSAM, GUWAHATI.

Abhijit Choudhury
Ad. Officer
28.7.05

Final Seniority list of Draftsman in the Office of the Director
of Census Operations, Assam, Guwahati as on 1/8/91.

Name	Date of birth	Educational qualification	Date of entry into Govt. Service	Date of Appointment to a post in graded scale of pay in Central Govt.	Date of temporary appointment to the grade in the D.C.O. Assam.	Date of confirmation in the grade	Remarks
Minu Kalita	10/7/59	<u>H.S.L.C.</u> Diploma in Draftsmanship	24/12/79	24/12/79	24/12/79	-	Appointed as Draftsman w.e.f. 30/7/90 (Regular)
Biju Mahanta	13/11/58	<u>P.U.</u> Diploma in Draftsmanship	26/7/80	26/7/80	26/7/80	-	---do---
Abnu Mazumder (S/C)	1/3/1948	<u>H.S.L.C.</u> Diploma in Draftsmanship	29/5/70	29/5/70	30/1/81	1/3/76	Confirmed in the Office of the Director of Census Operations (D.C.O.)
Baranti Kalita	1/4/69	<u>H.S.L.C.</u> Diploma in Draftsmanship	19/10/90	19/10/90	19/10/90	-	
Abul Hussair	31/3/69	<u>H.S.S.L.C.</u> Diploma in Draftsmanship	20/12/90	20/12/90	20/12/90	-	
Rebin Kalita	1/1/69	<u>H.S.L.C.</u> Diploma in Draftsmanship	10/6/91	10/6/91	10/6/91	-	
Nripendra Das	1/1/66	<u>P.U.Sc.</u> Diploma in Draftsmanship	7/6/91	7/6/91	7/6/91	-	
Dhrubajyoti Nath	1/12/66	<u>H.S.S.L.C.</u> Diploma in Draftsmanship	6/6/91	6/6/91	6/6/91	-	



Annexure-5

No. DCO (S) 21/78/14003
GOVERNMENT OF INDIA
MINISTRY OF HOME AFFAIRS
OFFICE OF THE DIRECTOR OF CENSUS OPERATIONS, ASSAM
G.G.S.ROAD, GULUBARI, GUWAHATI-781007

Dated Gauhati, December, 12, 1979

ORDER

Miss Minu Kalite, is hereby temporarily appointed as Draftsman in the office of the Director of Census Operations, Assam, Gauhati in the scale of pay of Rs.330-10-360-EB-12-500-32-560/- P... plus other allowances as admissible at the Central Government rates.

The appointment is temporary and terminable at any time without notice and without assigning any reasons therefor.

Miss Minu Kalite is to join immediately and in any case not later than 15 days from the date of issue of this order.

She should also produce medical fitness certificate from the Chief Medical Officer, Gauhati at the time of joining.

SD/- N.K.CHOWDHURY
DIRECTOR OF CENSUS OPERATIONS
ASSAM, GAUHATI

Memorandum No. DCO (S) 21/78/14004-11 Dated 12.12.1979
Copy to

1. The Registrar General, India, 2/4, Mensingh Road, New Delhi-110011.
2. The Pay & Accounts Officer, Census, New Delhi-2.
3. The Asstt., Director of Census Operations (T), Assam, Gauhati.
4. Investigator (Census Tabulation).
5. The Accounts Branch of this office.
6. Miss Minu Kalite, C/o Shri Rama Kalite, Purbenchal Nagar, Gauhati-3.
7. The Establishment Branch of this office.
8. Personal file.

SD/- N.K.Choudhury
Director of Census Operations
Assam, Guwahati.

Approved
Sugit Choudhury
Procedure
on 28.7.05

GOVERNMENT OF INDIA
MINISTRY OF HOME AFFAIRS /GRHA MANTRALAYA
OFFICE OF THE DIRECTOR OF CENSUS OPERATIONS, ASSAM
G.R.ROAD, ULUBARI, GUWAHATI 781001

Dated Guwahati 28.12.93

Tentative Programme of Mapping at D.C.O., Assam for
1991 Census (In the level of Draftsman/ Sr.Draftsman/
Artist & Sr. Artist).

Projects	Total No.	Comple- of maps to be prepared	Yet to be completed	Remarks
1. District Census Hand Book 1991				
2. a) Experimental Dist. maps & C.D. Blocks	75	6	67	
b) Final Dist. maps Revenue Circle community Dev. Block	23	11	12	Yet to complete two districts.
	75	6	66	
			67	
3. Maps for Town Directory				
a) Experimental maps	15	8	7	
b) Final maps	15	6	9	
4. Census Atlas	150 (Appox)	-	-	Instructions yet to be received from the map Division.
Experimental	150	-	-	
Final	150	-	-	
5. Census Cartography Project & Plans Scheme	8 town maps including enumeration block maps	-	-	Enumeration block maps of the individual towns (approx.) 3000 maps are to be prepared Details instructions awaited from the map division.
Computer assisted Cartography and date dissemination.				

A. Deed
S. Choudhury
26.12.93

Contd.....

-6 (Contd.)
Annexure

GOVERNMENT OF INDIA
MINISTRY OF HOME AFFAIRS/GRIHA MANTRALAYA
OFFICE OF THE DIRECTOR OF CENSUS OPERATIONS, ASSAM
G.O. ROAD, ULUBARI, GUWAHATI-7
Dated Guwahati 28.12.93

-2-

5. Plans Scheme
Regional Division
of India '81
project

6. Miscellaneous

Instructions avai-
ted from the Map
Division.

Misc. jobs come
from time to time

sc/- Illegible 28.12.93

(K.C.S. Bhagawati)
Research Officer
Map Sections
D.C.O., Assam

Annexure-7

Annexure-7

TELEGRAM

EXPRESS

RECORDED
S/A, MANSINGH ROAD
NEW DELHI-11

FROM - DIRECTOR OF CENSUS OPERATIONS, ASSAM, GUWAHATI.

REPLY TOURTEL OF FIFTEEN INSTANT REGARDING MAPPING
NO. STAFF (.) ALL THE POSTS CREATED AGAINST 1991 CENSUS REQUIRE
EXTENSION BEYOND 31/12/93 IN VIEW OF HUGE MAPPING WORKS
RELATING TO DISTRICT CENSUS MAP BOOK AND OTHER RELATED
PROJECTS (.) ANY CUT WILL SERIOUSLY DISLOCATE MAPPING WORKS (.)
LETTER FOLLOWS.

ASSAM CENSUS

NOT TO BE TELEGRAPHED
PRINTED ON 17.12.93

MOBILIZED ON 17.12.93

Yours etc,
Lokesh Chandra Sen (N.C.SEN)
ASSISTANT DIRECTOR OF CENSUS OPERATIONS
ASSAM : GUWAHATI

MEMO NO. DCO (E) 7/78/VOL. VIII/9208
POST COPY IN CONFIRMATION TO :

DATE - 17/12/93

THE REGISTRAR GENERAL, INDIA NEW DELHI-11.

Sd/- Illegible 17.12.93
(N.C.SEN)

ASSISTANT DIRECTOR OF CENSUS OPERATION
ASSAM, GUWAHATI.

P. D. Sen
Advocate
28.7.05

Annexure - 8

No. DCO (E)/89/PT.I/8929-51

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 the 11.11.1993

To

Shri Nareswar Bora, C/o Rajen Bora
111, Bhetapara, P.G. Beltola
Dist. Kamrup.

Your name has been sponsored by the Employment Exchange Guwahati for the post of Drafterman in the office of the Director of Census Operations, Assam, Guwahati.

You are therefore asked to appear before the Selection Board for interview/test to be held in the office of the Director of Census Operations, Assam, Guwahati, Mathurangar Building, Dispur, Guwahati-6 near Down Town Hospital on 20.11.93 at 10.30, A.M.

You are to bring with you all the Original Educational Qualification certificate and other Certificate to prove your age, etc.

No T.A./D.A. will be allowed for appearing in the interview.

Sc/- Illegible 11.11.93
Assistant Director of Census
Operations, Assam, Guwahati.

Approved
Supt. Choudhury
28.7.03

Original Application No. 270 of 1993.

Annexure-9

50

Date of Order : This the 5th Day of June, 1998.

Justice Shri D.N. Baruah, Vice-Chairman.

Shri G.L.Sanglyine, Administrative Member.

1. Md. Abul Hussain,
2. Shri Dhrubajyoti Nath,

3. Sri Rabin Kalita and

4. Sri Nripendra Das Applicants
All the applicants are working as Draftsman
in the office of the Director of Census
Operation, Assam, Guwahati.

By Advocate Shri B.K. Sharma.

- Versus -

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

2. The Registrar General of India,
Census Operation,
2/A Man Singh Road,
New Delhi-11.

3. The Director of Census Operation,
Assam, Ulubari, Guwahati-7.

4. The Assistant Director of Census Operation,
Assam, Guwahati-7.

By Advocate S/Shri S.Ali, Sr.C.C.S.C and
G. Samma, Addl.C.G.S.C. Respondents.

O R D E R

G.L.SANGLYINE: ADMINISTRATIVE MEMBER

The applicants were appointed temporarily as
Draftsman in the office of the Director of Census Operations,
Assam, Guwahati on the dates mentioned against each of
them as below :

<u>Sr.No.</u>	<u>Name</u>	<u>Date of appointment</u>
1.	Md Abul Hussain	14.12.90.
2.	Sri Dhrubajyoti Nath	4.6.91.
3.	Sri Rabin Kalita	4.6.91.
4.	Sri Nripendra Das	4.6.91

A. Dated
S. D. J. Choudhury
for 28/7/98
on 28/7/98

The appointments were purely temporary against the posts created specially in connection with 1991 census works which would be abolished on completion of the work and the incumbents would be retrenched with no liability to the Government thereafter. The applicants accepted the offers of appointment and joined their respective posts immediately after their appointment. On 21.12.1993 the respondent No.3, the Director of Census Operations, Assam issued office order No.DCO(E)97/86/vcl.1/9922-68 dated 21.12.1993, Annexure-II, terminating the services of the applicants among other employees with effect from 31.12.1993. The applicants felt aggrieved with the order of termination of their services and had submitted this Original Application (O.A for short). They were allowed to join in a single application vide order dated 31.12.1993.

2. According to the impugned order the services of the applicants were terminated on expiry of sanction to the posts with effect from 31.12.1993. The applicants have disputed the action of the respondents. According to the applicants works relating to them were in existence even after 31.12.1993. This is evident from the fact that there was new recruitment to the posts of Draftsman and from various letters written by the local authorities to the Registrar General, India seeking extension of sanction of the posts created against 1991 census beyond 31.12.1993. Moreover, the applicants were sponsored by the Employment Exchange and they were appointed after due interview and the respondents had treated the applicants as regular employees and included their names in the seniority list of Draftsman working under respondent No.3. Therefore, the respondents cannot terminate their services in the manner it was done. There is also discrimination in terminating their services as other Draftsman who were appointed under same terms and conditions as those of the applicants were retained. In evidence, the applicants also submitted that

even if there was no work for them there was no occasion for the respondents to terminate the services as there are even now vacancies in other posts such as Assistant Compiler and Lower Division Clerks against which the applicants can be accommodated and they referred to the letter No. DCO/45/75/345 dated 21.1.1998. The respondents have contested the application submitted written statement. According to the respondents the four posts of Draftsman were created specially for 1991 census and the terms had been clearly stipulated in the appointment letters. It was decided that the posts were no longer necessary after 31.12.1993 and sanction was not extended. Therefore, the services of the applicants had to be terminated. The appointments were on ad hoc basis and for specified period and therefore such appointment does not confer any right on the applicants to continue in service indefinitely. In this regard they have relied on Director, Institute of Management Development, U.P. vs. Pushpa Srivastava reported in (1992), 21 ATC 377. They also contend that mere inclusion of the names of such ad hoc employees such as the applicants in the seniority list of Draftsman does not confer on them any right to continue in the posts. Regarding the contention of the applicants that new recruitments were being made at the relevant time, the respondents have submitted that though interview for appointment to the post of Draftsman was held on 30.11.1993 but since they came to know that the posts were not to continue beyond 31.12.1993, as a result of the interview no appointment was made. Another appointment made to the post of Draftsman was not against 1991 census posts but it related to a reserved post for Scheduled Tribe. Regarding availability of mapping works the respondents contend that assessment of the works requirements were undertaken by the competent authority and it was decided that

the work could be carried out by the permanent staff.

We have heard counsel of both sides. From the records submitted by Mr Ali three posts of Draftsman were sanctioned vide order dated 6.4.1990 and another post by order dated 29.9.1990 by the competent authority for the Director of Census Operation, Assam, Guwahati in connection with the 1991

census work. According to the appointment letters the posts were purely temporary created specially in connection with 1991 census and would be abolished on completion of the work and the incumbent will be retrenched. This work mentioned in the appointment letters must necessarily be the work concerning the posts. It is true that no time limit for completion of the work is mentioned in the appointment letters and that the 1991 census work in some respects was not completed as on 31.12.1993 but the work stipulated must necessarily as mentioned already relate to the posts specially created for 1991 census and occupied by the applicants. The competent authority has the power to make assessment of the work requirement and to come to a conclusion whether the work with reference to a certain post had been completed or not. It appears that in this case the posts were initially sanctioned for a short period but extended upto 31.12.1993. In 1993 the Registrar

General, India however after making assessment on all India basis regarding work requirement had decided that all the posts specially created for the 1991 census were no longer necessary to be retained beyond 31.12.1993. Consequently, on 30.11.1993 he had issued the order that the posts will stand abolished with effect from 31.12.1993. It is true that thereafter the local authority had made attempt to alter the decision of the competent authority by sending letters to him. But they had no effect to alter the decision. Therefore, the fact

32

responsible that the four posts of Draftsman created for 1991 census stood abolished from 31.12.1993. Respondents No.1 and 2 are within their powers to create or abolish posts after making assessment of the requirement of their organisation.

In this case they had abolished the posts created specially for the 1991 census throughout the country. When the posts have been abolished it is clear that according to the competent authority of the respondents there was no more work for the posts and alternative arrangement can be made to carry out the pending work if any. It is within their power to make such assessment and decision. In the circumstances we are of the view that the competent authority had not arbitrarily discontinued the sanction to the posts. Termination of service in such circumstances is permissible. In State of Himachal Pradesh vs. Suresh Kumar Verma and another reported in 1996(1) A.I.R. 618 the Hon'ble Supreme Court had upheld the termination of service of Daily Wage Employees when there was no work as the project they were engaged in had come to an end. Regarding the other contention of the applicants that they were treated as regular employees and included in the seniority list we are of the view that mere inclusion of names of ad-hoc employees in the seniority list does not confer on them a right to continue in the service specially when as in the case of the applicants here they were only appointed temporarily on ad-hoc basis for a particular work with clear intention to dispense with their services when work is completed. Such inclusion in the list cannot also give rise to expectation of being permanently absorbed in view of the clear stipulations in their appointments. There are certain factual instances the applicants have referred to to justify their contention. They have

contd. 6

that her service was not terminated. It however appears from the appointment letter of Minu Kalita at Annexure-D that though she was appointed temporarily as a Draftsman she was not appointed against any posts created specially for a particular census. Her appointment is temporary and can be terminated at any time without notice and without assigning any reason. Therefore the case of Minu Kalita is not similar with the case of the applicants. Further, on perusal of the records produced by the respondents, we find that the other contention of the applicants that Draftsmen who had been appointed had never been retrenched on the ground of completion of Census work to be incorrect. Yet another of their contentions is unacceptable. According to records it is seen that an interview for appointment to the post of Draftsman was held on 30-11-1993 in Guwahati but on the same date, that is, 30-11-1993 the Registrar General, India had issued the order discontinuing sanction to all the posts created specially for 1991 census all over the country. Therefore there is force in the contention of the respondents that no new appointment was made pursuant to the interview. Further, it transpired during the course of hearing that the other appointment referred to by the applicants was in connection with a back log reserved post for Scheduled Tribe. Therefore, this instance of appointment is also of no help to the contention of the applicants that new appointments were made while their services were terminated. In the light of the above we do not find any merit in the contention of the applicants that the impugned order dated 21-12-1993, Annexure H, is liable to be quashed and to issue direction on the respondents to continue the applicants in service. The prayer therefore cannot be allowed.

4. The applicants were allowed to continue in service on the strength of interim order dated 31-12-1993.

However, one of them had since left his service under the respondents. For the remaining applicants it was contended that they can be retained in service against other vacancies under the control of respondent No.3.

In Union of India Vs. Dinesh Kumar Saxena, reported in (1995) 29 ATC 585 the Hon'ble Supreme Court had held among others as follows -

"Ends of justice will be met if the Directorate of Census Operations, U.P. is directed to consider those respondents, who have worked temporarily in connection with 1981 and/or 1991 census operations and who have been subsequently retrenched, for appointments in any regular vacancies which may arise in the Directorate of Census Operations and which can be filled by direct recruitment, if such employees are otherwise qualified and eligible for these posts."

Other directions such as relaxation of age were issued.

We have no doubts that Respondent No.3 will take action in the lines indicated in the judgment above in the case of the applicants also if occasion for appointment arises in near future. There may also be scope to offer the applicants appointments on purely ad hoc basis against some purely ad hoc vacancies. The applicants may approach him individually in these regards if they desire.

The application is disposed of with no order as to costs.

Certified to be true Copy

सत्याग्रह अधिकारी

COURT OFFICER

सत्याग्रह अधिकारी

Central Administrative Tribunal

केन्द्रीय नियन्त्रित नियन्त्रित

संविधान सभा भवन

संविधान सभा भवन

Sd/- VICE CHAIRMAN

Sd/- MEMBER (ADMN)

Contd...

Appended hereto
copy of order
on 26.7.05

Original Application No. 388 of 2000.

Date of order : This the 20th day of March, 2001.

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

Hon'ble Mr. K.K.Sharma, Member (A).

1. Md. Abul Hussain
Son of Md. Azizur Rahman
Village Dampur
P.O. & P.S. Hajo
District-Kamrup,
Assam.
2. Sri Rabin Kalita
Son of late Krishna Kalita
resident of village Chachamukh.
3. Sri Nripen Das
Son of Sri Durga Kanta Das,
Resident of Amingaon,
District Kamrup,
Assam.

...Applicants

By Advocate Mr. A.K.Choudhury.

-versus-

Union of India,
Through the Secretary to the
Government of India,
Ministry of Home Affairs, North Block,
New Delhi-2.

2. Registrar General of Census Opration,
2/A Man Singh Road,
New Delhi.
3. Director of Census Operations,
Ministry of Home Affairs,
Assam, G.S.Road,
Guwahati-7.
4. Sri M.R.Das,
Director of Census Operations,
Ministry of Home Affairs,
Assam, G.S.Road, Guwahati-7.

...Respondents

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

O R D E R (ORAL)

CHOWDHURY J.(V.C.).

The applicants are three in number who are similarly situated retrenched employee of the Census department seeking for a similar direction granted by this Bench in

Contd...

*Mar 2001
Sriji & Choudhury
Advocate
on 20.3.01*

in O.A. No. 415 of 1999 (O.I.Singh Vs. Union of India and Ors.) dated 20.1.2000. In the aforesaid decision the Tribunal in the light of the decision rendered by the Supreme Court in the case of Govt. of Tamilnadu and another Vs. G. Md. Ameenudeen reported in 7 SCC 499, ordered for consideration for absorption of the aforementioned applicant in vacancy that may occur in the 2000-2001 in suitable post commensurating to his qualification in terms of the judgement of the Apex Court.

2. Upon hearing Mr. A.K.Choudhury, learned counsel for the applicants and Mr. B.C. Pathak, learned Addl. C.G.S.C., we dispose of this application with a direction to the respondents to absorb the applicants in vacancies that would occur for Census Operations 2000-2001 in suitable post commensurating with their qualifications. The respondents are directed to make necessary appointments within a reasonable time on arising of such vacancies.

3. The application is accordingly disposed of. There shall, however, no order as to costs.

Sd/ VICE CHAIRMAN

Sd/ MEMBER (Adm)

Certified to be true Cop

प्रमाणित प्रतिलिपि

N. Sonowal
25/4/2001

Section Officer (J)

गोप्यमान अधिकारी (न्यायिक सारा
Central Administrative Tribunal

गुवाहाटी न्यायिक अधिकार
Guwahati Bench, Guwahati
प्राप्ताधीन न्यायिक अधिकारी

X
25/4/2001

trd



By Speed Post

Office of the Registrar General, India
(Government of India, Ministry of Home Affairs)
2/A, Mankiing Road, New Delhi-110011.

No.27/96/94-Ad.IV

Date : 12.08.2004

ORDER

Against two temporary posts of Artist created for Census, 1991- Smt. B. Mahanta and Smt. R. Mazumdar, Draughtsmen were promoted as Artists w.e.f. 30.4.1990 and 30.10.1991 respectively purely on temporary and adhoc basis. On abolition of these two posts the above named officials were reverted to their original posts of Draughtsman w.e.f. 31.12.1993. These two officials filed O.A. No.130/94 and 131/94 before the Hon'ble Tribunal, Guwahati Bench against the above reversion order. The operative portion of the judgment of the Hon'ble Tribunal dated 8.5.1998 is reproduced below:-

"It is not possible for this Tribunal to ascertain and come to a conclusion that the present applicants were promoted only for the purpose of 1991 census. The expression of regular basis is contrary to the same. As the appointment letters do not indicate that the promotions had been made only for the purpose of 1991 census, it is difficult for us to hold and accept that the appointments were made only for the purpose of 1991 census. In view of the above we are constrained to hold that there is nothing to show that the applicants were promoted only for the purpose of 1991 census. Therefore, we are unable to accept the submission of the respondents. On the other hand, we hold that these two applicants were promoted after holding two different

Alka Choudhury
28.7.1993

1. DPCs on regular basis and there was therefore no justification to revert the present applicants to the original post. We have come to this conclusion as the respondents failed to produce any document including the sanction letter, report of the DPC. The respondents have not made any endeavour to show that even in the DPC was constituted for the purpose of promoting the applicants against 1991 census work. In the absence of any such document we are inclined to hold that they were promoted on regular basis and therefore the applicants cannot be reverted. The sanction letters produced by the respondents do not indicate anything that those were for the present applicants. Accordingly, we set aside the order of revision dated 30.12.1993 and direct the respondents to give the applicants all consequential benefits. The applications are allowed. No order as to costs."

2. Against the judgment of the Hon'ble Tribunal dated 8.5.1998, DCO, Assam then filed, C.R. No.3985/98 and 4037/98 before the Hon'ble High Court, Guwahati. The Hon'ble High Court vide their order dated 27.10.2003 dismissed the above prayer and upheld the judgement and order of the Hon'ble Tribunal passed on 8.5.1998 in O.A. No.130/94 and 131/94. Both the Hon'ble Tribunal and Hon'ble High Court have taken a view and passed judgments on the assumption that the above named officials were promoted as Artists on regular basis although in fact the above officials were promoted against temporary census posts created for Census, 1991.

3. With due regard to the directions of both the Hon'ble Tribunal dated 8.5.1998 and Hon'ble High Court dated 27.10.2003, the orders of the Hon'ble Courts have been implemented in the following manner :-

- Smt. R. Mazumdar and Smt. B. Mahanta will continue to hold the posts of Artist till 31.12.1995 on notional basis from the date of their initial promotions. As Smt. R. Mazumdar and Smt. B. Mahanta have not worked as Artist for the period mentioned above and also due to non-availability of vacant post of Artists, they will not be entitled to draw arrears of pay and allowances as Artist during the said period.

ii) W.e.f. 1.1.1996 on the basis of recommendation of the 5th Central Pay Commission, the posts of Artist, Senior Artist and Senior Draughtsman were merged and redesignated as Senior Draughtsman. Therefore, w.e.f. 1.1.1996 Smt. R. Mazumdar and Smt. B. Mahanta are appointed as Senior Draughtsman. Similarly, their pay in the grade of Senior Draughtsman will be fixed notionally and they will not be entitled to draw arrears of pay and allowances of the post of Senior Draughtsman for the period for which they did not work as Senior Draughtsman due to the fact that there were no posts available in DCO, Assam.

iii) Due to non-availability of posts of Senior Draughtsman in DCO, Assam, Smt. R. Mazumdar and Smt. B. Mahanta are hereby transferred and posted as Senior Draughtsman in the Hqrs. Office of Registrar General, India, New Delhi against vacant core posts of Senior Draughtsman.

Mantrauwa 1/1/84
(M.R. SINGH)

UNDER SECRETARY TO THE GOVT. OF INDIA

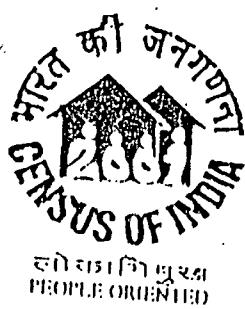
Copy to:-

1. DCO, Assam, Guwahati, for necessary action.
2. Smt. B. Mahanta, Draughtsman in DCO, Assam. She is directed to join her duties in Hqrs. Office of RGI in Delhi with immediate effect.
3. Smt. Renu Mazumdar, Draughtsman in DCO, Assam. She is directed to join her duties in Hqrs. Office of RGI in Delhi with immediate effect.
4. PAO, Home (Census), New Delhi.
5. Record Assistant.
6. Office Order folder.

(M.R. SINGH)

UNDER SECRETARY TO THE GOVT. OF INDIA

By Secretary
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ANNEXURE - 12

Office of the Registrar General, India
(Government of India, Ministry of Home Affairs)
2/A, Mansingh Road, New Delhi-110011.

File No. 27/96/94-Ad.IV

Dated 13.8.2004

ORDER

In pursuance of this Office Order of even no. dated 12.8.2004, Smt. B. Mahanta and Smt. R. Mazumdar, Draftsman in DCO, Assam have been transferred and posted as Senior Draftsman in the Hqrs. Office of Registrar General, India with immediate effect.

After transfer of the above Senior Draftsman from DCO, Assam to Hqrs. Office, two posts of Draftsman in DCO, Assam stand withdrawn. The staffing structure of Map Section in DCO, Assam after the above arrangement becomes as under:-

<u>Name of posts</u>	<u>No. of posts at present as on 12.8.2004</u>	<u>No. of posts after transfer order dated 12.8.2004</u>
Sr. Draftsman	2	2
Draftsman	3	1

M.R. SINGH

(M.R. SINGH)
UNDER SECRETARY TO THE GOVT. OF INDIA

Copy to:-

1. DCO, Assam, Guwahati with the request to relieve the above officials as early as possible with the direction to report for duty in the Hqrs. Office, New Delhi.
- ✓2. Smt. B. Mahanta, Draftsman in DCO, Assam. She is directed to join her duties in Hqrs. Office of RGI in Delhi with immediate effect.
3. Smt. Renu Mazumdar, Draftsman in DCO, Assam. She is directed to join her duties in Hqrs. Office of RGI in Delhi with immediate effect.
4. Record Assistant.
5. Office Order folder.

1. Ad
10/8/04
10/8/04
10/8/04

Shriram Mandir Sansthan v. Vatsalabai, (1999) 1 SCC 657, followed

A-M/TZ/21707/C

Advocates who appeared in this case:

Uday Umesh Lalit and Ms Aprajita Singh, Advocates, for the Appellant;
 V.A. Mohita, Senior Advocate (Dr Rajeev B. Masodkar, K.L. Taneja and G.B. Sathe, Advocates, with him) for the Respondents.

Chronological list of cases cited

1. (1999) 1 SCC 657. Shriram Mandir Sansthan v. Vatsalabai
 2. 1989 Mah LJ 891 (FB). Khanqah-Kadria Trust (Wakf) v. Shevantabai

on page(s)

498g-h, 499a

498g

JUDGMENT

1. This appeal and CA No. 8556 of 1994 involve a common question and they also arise out of a common judgment dated 20-2-1990 of the High Court of Judicature at Bombay in Writ Petition No. 49 of 1989 and Writ Petition No. 2929 of 1988. Respondent 1 in CA No. 8556 of 1994 has died and the appellant Trust has, therefore, filed an application for bringing on record the LRs of Respondent 1. Civil Appeal No. 8556 of 1994 is, therefore, delinked and only Civil Appeal No. 8555 of 1994 arising out of Writ Petition No. 49 of 1989 is disposed of by this judgment.

2. The appellant Trust is a certified landlord under the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 (hereinafter referred to as "the Act"). It made an application under Section 120 of the Act for summary eviction of the respondents on the ground that they have no right to remain on the land as legal heirs of the deceased tenant or in any other capacity and thus they are unauthorisedly occupying or wrongfully in possession of its land. The Sub-Divisional Officer, Daryapur allowed that application as he found that the respondents had not even initiated any proceeding for getting the declaration that they are the statutory owners. He also held that as the Trust was holding an exemption certificate, the respondents had no right to remain on the land as legal heirs of the original lessee, Vishwanath and, therefore, they were in unauthorised occupation of the land. Respondents 1 to 4 filed a revision application before the Maharashtra Revenue Tribunal challenging the said order. The Tribunal dismissed it. In the writ petition filed in the High Court, the only point raised on behalf of Respondents 1 to 4 was that the tenancy being heritable, they became the tenants of the Trust and, therefore, their possession cannot be said to be unauthorised or wrongful. The High Court accepted this contention and allowed the writ petition following the Full Bench decision of the High Court in Khanqah-Kadria Trust (Wakf) v. Shevantabai¹.

3. It was contended by the learned counsel for the appellant Trust that the decision followed by the High Court has now been overruled by this Court in Shriram Mandir Sansthan v. Vatsalabai². This Court has now held that such tenancy under the Act is not heritable. In view of the decision of this Court in

1 1989 Mah LJ 891 (FB)

2 (1999) 1 SCC 657

Shriram Mandir Sansthan² this appeal has to be allowed and the judgment and order passed by the High Court will have to be set aside.

4. Learned counsel for Respondents 1 to 4 however contended that they have now become owners of the land as their father should be deemed to have become owner of the land under the Act. The order passed by the SDO discloses that though no proceedings were initiated by the deceased or his heirs for such a declaration, in their reply to the application filed by the appellant Trust a contention was raised that they have become owners of the land. It was rejected by the SDO on the ground that no material was placed before him to show that they have become owners. Proceedings were initiated by the SDO for summary eviction under Section 120 of the Act. So far as the appellant Trust is concerned, it produced the certificate which has to be taken as final till it is cancelled or modified by the State Government. In view of the said certificate and the provisions contained under Section 129 of the Act, it becomes clear that Section 54 of the Act, which provides for inheritance of tenancy did not apply to the land of the Trust. The appellant Trust having made out a case, it was for Respondents 1 to 4 to prove that they have a right to remain on the land. They having failed to do so the SDO was justified in passing the order of summary eviction. No evidence was produced before the Tribunal or even before the High Court to show that Respondents 1 to 4 have become owners of the land. Before this Court it was stated by their learned counsel that a certificate to that effect has now been granted by the Tahsildar. On the other hand the learned counsel for the appellant Trust stated before us that the said declaration has already been set aside and the matter is now pending before the Division Bench of the High Court as Respondents 1 to 4 have filed an appeal. It, therefore, cannot be said at this stage that Respondents 1 to 4 are the statutory owners of the land.

5. We, therefore, allow this appeal, set aside the judgment and order passed by the High Court in WP No. 49 of 1989 and restore the order passed by the Tribunal.

(1999) 7 Supreme Court Cases 499

(BEFORE S. RAJENDRA BABU AND R.C. LAHOTI, JJ.)

GOVT. OF T.N. AND ANOTHER

Appellants:

Versus

G. MOHAMED AMMENDEEN AND OTHERS

Respondents.

Civil Appeal No. 810 of 1998¹, decided on September 28, 1999

Service Law — Absorption — Census workers recruited on temporary basis — Held, in view of special features of the case, it would be appropriate for State Govt. to frame a scheme to absorb retrenched census workers, who after retrenchment lost not only employment, but also their position in

¹ From the Judgment and Order dated 8-4-1996 of the Tamil Nadu Administrative Tribunal, Madras in OA No. 483 of 1995

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the queue in the employment exchange — Such workers to be placed in Group IV and condition relating to exclusion of 3 years from their ages deleted — Scheme to be executed despite State order banning recruitment of temporary employees, other than those sponsored by State Public Service Commission

The respondents were recruited through the employment exchange for the purpose of census work in Tamil Nadu, for a period of 18 months from 1-2-1991 to 30-6-1992. Upon completion of the work their services were terminated on 30-6-1992. On 15-5-1991, during the subsistence of their work, the appellant State Govt. issued an order imposing a ban on recruitment of temporary employees, for one year starting from the date of the order; the only exception made was for candidates sponsored by the T.N. Public Service Commission.

This banning order, which continued in effect indefinitely, was in conflict with a practice that had come into being after the 1971 census. After the 1971 and 1981 censuses, upon request being made by the Registrar General and Census Commissioner of India, certain benefits were accorded to census workers, such as top priority status for recruitment to the posts of Jr. Assistants, Record Clerks, Peons, age relaxation of 3 years and rule of reservation while making of appointments. This time regardless of the request being made on 26-12-1991, nothing was done as the ban was in effect. Two GOMs Nos. 341 and 344 were issued extending certain concessions, but nothing came of them.

The respondents filed an application before the T.N. Administrative Tribunal, seeking absorption in State Govt. service. The Tribunal held that the respondents were entitled to absorption following the practice after the previous two censuses, and also because GOMs Nos. 341 and 344 were issued after the ban order.

Before the Supreme Court, the appellant State became ready ultimately to make certain concessions. The Supreme Court, placing on record its appreciation of the State's reasonable stand

Held :

Considering the special features of the case, it would be appropriate for the State Government to frame a scheme to absorb the respondents and other employees, who were similarly placed and who have been retrenched. On the commencement of the census operations, persons who have registered themselves in the employment exchange get jobs in that Department. However, when the project is over, their employment would come to an end, and they are retrenched thereby losing both the employment and their position in the queue in the employment exchange. Bearing this aspect in mind, the Government was asked to work out an appropriate scheme. (Para 4)

The retrenched employees of the Census Department should be placed in Group IV and the condition relating to the exclusion of three years from their age shall be deleted. Subject to this modification, the scheme proposed by the State Government may be worked out so as to absorb the respondents in services of the State Government or in any of the local authority or government undertakings as may be feasible as expeditiously as possible. (Para 6)

Advocates who appeared in this case :

S. Sivasubramaniam and M.N. Krishnamani, Senior Advocates (V. Krishnamurthi, K. Tennan, T. Raja, V. Balaji, A.T.M. Sampath, P.N. Ramalingam, Ms Kalpana Kr. Tripathy and S. Muralidhar, Advocates, with them) for the appearing parties.

The Judgment of the Court was delivered by

RAJENDRA BABU, J.— Census is conducted once in every ten years under the Census Act, 1948 in the country under the direction of the Registrar General and Census Commissioner of India. The Government of Tamil Nadu conducts the census operations under the Directorate of Census. For the purpose of census work, personnel are recruited through the employment exchange. After the census work is over their employment would come to an end inasmuch as such employees are taken on duty on a temporary basis. From 1971 onwards, on each occasion, on completion of the census work, on the request of the Registrar General and Census Commissioner of India, certain benefits were given to the census workers, such as, top priority for recruitment to the posts of Junior Assistants, Record Clerks, Peons, etc. and age relaxation of three years and rule of reservation while making appointments. Similar orders had been issued on each occasion after the census work was over at the instance of the Registrar General and Census Commissioner of India.

2. For the purpose of census operations which commenced in the year 1991 certain workers, including the respondents, were engaged on a consolidated pay to carry out the census work for a period of 18 months from 1-2-1991 to 30-6-1992. After the completion of the census work, their services were terminated. On 15-5-1991, the State Government issued an order imposing a ban on recruitment of temporary employees, for a period of one year from that date, other than those who are sponsored by the Tamil Nadu Public Service Commission (hereinafter referred to as "the Commission"). This ban was continued for an indefinite period. The Registrar General and Census Commissioner of India, by a letter sent on 26-12-1991, requested the State of Tamil Nadu to take appropriate steps in absorbing the temporary workers employed in the census operations at the State level in its services and in the undertakings under its control. Similar request was made by the Director of Census Operations, Madras. The services of the respondents in the present case who had been engaged as census workers were terminated or retrenched on 30-6-1992. Certain concessions were sought to be extended to the respondents in GOMs Nos. 341 and 444 but the concessions extended under the earlier order were withdrawn and more stringent conditions were imposed for their absorption.

The resultant position is that there was a ban on the recruitment of temporary employees through the employment exchange and recruitment of both temporary and permanent employees had to be made only from the list of persons sponsored by the Commission. Thus, the temporary employees who were working in the Census Department and whose services were terminated also had to pass such qualifying examination conducted by the Commission.

3. In this background, the respondents filed an application before the Tamil Nadu Administrative Tribunal (hereinafter referred to as "the Tribunal") that they had to be absorbed either in the State Government service or in any of the undertakings inasmuch as they had worked for 15 months continuously and they sought for a direction to absorb them as Junior Assistants or Typists. The appellants resisted the said petition on the basis that the Tribunal does not have jurisdiction to entertain the application since the respondents were not employed in any civil post; that, in view of various government orders indicating the policy that the respondents could not be recruited to the State Government service except on being sponsored by the Commission. The Tribunal, however, held that the appellants had absorbed the terminated temporary employees of the Census Department in 1971 and 1981 and GOMs Nos. 341 dated 13-12-1992 and 444 dated 23-12-1992 were subsequent to the one issued on 15-5-1991 imposing general ban on the recruitment of temporary employees sponsored by the employment exchange and, therefore, the subsequent GOMs issued for the specific category of employees would exclude the earlier GOMs and thus the respondents were entitled to absorption in the State Government and directed the State Government to consider their cases for such absorption within a period of two months. Hence this appeal by special leave.

4. Several contentions have been raised before us but in view of the stand taken now by the appellants, it is unnecessary to examine them. On 11-3-1999, when the matter came up before us, we heard the learned counsel on both sides at length and felt that considering the special features of the case it would be appropriate for the State Government to frame a scheme to absorb the respondents and other employees, who were similarly placed and who have been retrenched. On the commencement of the census operations, persons who have registered themselves in the employment exchange get jobs in that Department. However, when the project is over, their employment would come to an end and they are retrenched thereby losing both the employment and their position in the queue in the employment exchange. Bearing this aspect in mind, the Government was asked to work out an appropriate scheme.

5. Now, Shri V. Krishnamurthy, the learned counsel for the appellants has brought to our notice that the appellants have issued an order GOMs No. 144 dated 11-8-1999 which takes note of the various aspects to which we have adverted to earlier for absorption of the respondents subject to the following conditions:

(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.

6. However, it is brought to our notice that the condition in clause (i) above would impose hardship on the respondents if they are to be placed in Group III and if they had to be placed in Group IV, condition in clause (ii) cannot be worked out at all because even if the period of three years stated therein is excluded the appellants will not get any benefit because their services had been put to an end in the year 1992 and over seven years have elapsed since then and, therefore, they cannot fulfil that condition at all. In the circumstances, we direct the State Government to modify the scheme in respect of these two conditions. It would be appropriate for the State Government to delete these two conditions and all that may be insisted upon is that the retrenched employees of the Census Department should be placed in Group IV and the condition relating to the exclusion of three years from their age shall be deleted. Subject to this modification, the scheme proposed by the State Government may be worked out so as to absorb the respondents in services of the State Government or in any of the local authority or government undertakings as may be feasible as expeditiously as possible. This appeal stands disposed of accordingly.

7. Before parting with the case, we must put on record our appreciation for the very reasonable stand taken on behalf of the appellants and the learned counsel appearing in the case.

(1999) 7 Supreme Court Cases 503

(BEFORE S.B. MAJMUDDAR AND S.N. PHUKAN, JJ.)

STATE OF MANIPUR AND OTHERS

Appellants:

Versus

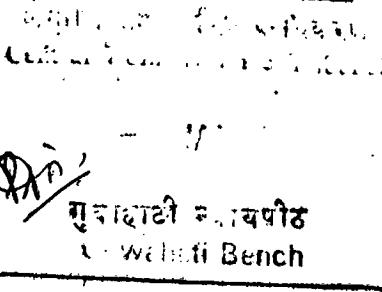
CHANDAM MANIWAR SINGH

Respondent

Civil Appeal No. 5561 of 1999, decided on September 23, 1999

A. Environment Protection and Pollution Control — Water (Prevention and Control of Pollution) Act, 1974 — Ss. 5(6), 5(1) and 4(2)(a) — Term of office of member of State Pollution Control Board, including Chairman, in cases of casual vacancy — The usual term under S. 5(1) is three years, but in cases where a casual vacancy arises, held, the person nominated to fill the vacancy shall under S. 5(6) hold office only for the remainder of the term of the original member — Respondent Chairman appointed upon resignation of earlier Chairman — Later respondent removed from office after show-cause notice issued — Held, High Court in writ jurisdiction, after setting aside the removal, erred in directing that respondent should continue holding office till the end of three years from the date of his appointment —

† From the Judgment and Order dated 10-6-1999 of the Gauhati High Court in WA No. 63 of 1999



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH

C.A. NO. 187 OF 2005

Sri Rabin Kalita ..Applicant

-vs-

Union of India & Ors...Respondents

Filed by
The respondents
through C. S. Baruah
S. C. S. C. A. No.

The written statement on behalf of
the Respondents above named-

WRITTEN STATEMENT OF THE RESPONDENTS

MOST RESPECTFULLY SHEREWETHA:

1. That with regard to the statements made in paragraph 1. of the instant application the respondents beg to state that the applicant was appointed on purely temporary and adhoc basis against the purely temporary posts created for 1991 Census w.e.f. 10.6.91. It was dispensed with on completion of 1991 Census works for which those posts created in connection with 1991 Census w.e.f. 31.12.93.

The applicant along with two others however filed an OA No. 270/93 before this Hon'ble Tribunal against the termination order No. RCO(E)97/80/VPL.I/9921 dated 21.12.93. The Hon'ble Tribunal disposed of the OA No. 270/93 vide order dated 5.6.98 with reference to the judgment passed by the Hon'ble Supreme Court in the case of UOI Vs. Dinesh Kr. Sekhena reported in (1985) 29 ATC 586 stating that the Respondent No.3 will take action in the lines of the judgment in case of the applicant also

Contd... P/-

if occasion for appointment further arises in near future. The applicant may approach him individually if they desire in these regards.

The applicant also filed a petition CR No.2924/98 before the Hon'ble High Court, Guwahati against the judgment and order dated 5.6.98 passed by the Hon'ble Tribunal in OA No. 270/93 which is still pending and undecided. The applicant along with others also filed an OA No. 388/2000 before this Hon'ble Tribunal praying for appointment against the purely temporary posts sanctioned in connection with 2001 Census in the Directorate of Census Operation, Assam. Be it stated here that the Govt. of India has sanctioned a few purely temporary posts to the O/O of the Director of Census Operations, Assam to attend the additional works in connection with the 2001 Census. In connection the O/O the Registrar General India, New Delhi had also issued instructions to the Director of Census Operations of all States/Uts to fill up those temporary posts either by promotion of eligible staff or on deputation basis in accordance with the provisions of the Recruitment Rules. Accordingly the Directorate of Census Operations, Assam had filled up some posts by giving promotion to eligible officials and issued circular to fill up the remaining posts/resultant vacancies from the officials of other Census/State Govt. departments on deputation basis. While disposing OA No. 388/2000 the Hon'ble Tribunal by order delivered on 20.3.2001 directed the respondents

[3]

to absorb the applicants in vacancies that would occur for Census Operation 2000-2001 in suitable post commensurate with their qualifications. The respondents are directed to make necessary appointments within a reasonable time on arising of such vacancies. However, in compliance with the Hon'ble Tribunal's order dated 20.3.2001, passed in OA No. 388/2000, the applicant Md. Abul Hussain was engaged against a resultant vacancy of Draftsman occurred due to giving temporary promotion of incumbent against temporary post sanctioned for 2001 Census and reversion of incumbent promoted against the post. The applicant also filed a Misc Petition No. 747/99(CR No. 2924/98) praying for appointment against the temporary posts sanctioned for 2001 Census which was disposed on 2.7.99 with the direction that the pending of the writ petition shall not be a bar for the respondents to appoint/absorb the petitioners subject to the availability of posts.

The applicant along with others further approached to the Hon'ble High Court, Guwahati through Misc Case No. 323/2000 (CR No. 2924/98) against the said vacancy circular issued by the Directorate of Census Operations, Assam for filling up the purely temporary posts/resultant vacancies sanctioned for 2001 Census by deputation basis. The Misc Case No. 323/2000 was dismissed by the Hon'ble High Court on the ground that the case of present applicants is neither covered by the direction issued by the Tribunal in the order impugned

in the writ petition or by any judicial pronouncement.

It is reiterated here that the applicant was appointed temporarily on ad-hoc basis against the temporary posts created for 1991 Census and terminated w.e.f. 31.12.93 on discontinuation of posts. The applicant, however, continued in service on the strength of the Hon'ble Tribunal's order till disposal of the OA No. 270/93 dated 5.6.98. According to Govt. of India, Deptt. of Per. & Trgs instruction regarding disposal of personnel rendered surplus due to reduction of establishment in Central Govt. Department/Office the scheme for forwarding the name of Surplus Cell for redeployment is only to the regular Central Civil Servants (Other than those employed on adhoc, casual, work-charged or contract basis).

The Government of India vide different office memorandum/circulars provided or offered concessions in favour of the retrenched Census employees. The scheme of Tamilnadu (as laid down by the Apex Court in the case of S.Ammenuddin) in respect of the census employees of that State shall be applicable to their employees only and it cannot be applicable to the employees of other State unless their scheme is adopted by the concerned State or by the Union of India. The Hon'ble High Court, Guwahati vide order dated 31.1.2003 while disposing a similar cases (WP(C) No. 7132-37 of 2002 on retrenched census employees of 1991 Census, Assam and Manipur ordered as follows:

"We find that no principles of law, were laid down by the Apex Court in the case of S.Md. Ammenudien (Supra) and the Apex Court gave directions when the state offered to make certain scheme. The relief or concessions, if any was available under the said scheme and can it be said that the said scheme shall be applicable to the other employees all over the country or in state of Assam. The Scheme adopted by the state of Tamilnadu can't be made applicable to Assam or to the employees of the Union of India, unless the said scheme have been adopted by the state or by the Union of India. In support of the above, we may refer to the recent decision of the Apex Court in the case of Bhupinder Singh Saini vs State of Punjab AIR 2002 SC 2535 wherein it has been stated that such retrenched employees of the census organisation shall be governed by the concerned relevant circular of the State Government or the Union of India.

19. In the present case, we find that the Tribunal gave direction for absorption of the respondents on the basis of so called earlier direction of this court. WE held that no such direction was given by this court and the petitioner were directed to be considered for appointment against the vacancies arising out of the work of Census 2001 as stated above and as submitted at the Bar the respondents were duly engaged for the 2001 Census and once that work was over their

[6]

services were terminated as they were fixed term appointments. The Government of India vide different office memorandum/circulars issued from time to time provided or offered concessions in favour of the retrenched census employees and it is needless to mention that the respondents shall be entitled to above concessions as are available to other retrenched census employees over the country. We would like to state here that the scheme of Tamil nadu in respect of the Census employees of that State shall be applicable to their employees only and it cannot be applicable to the employees of other state unless their scheme is adopted by the concerned State or by the Union of India.

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

The respondents also beg to state that there are no vacancy of Draftsman in the Q/O of the DCO, Assam nor any vacancy occurred following the order dated 12.8.04 (of the Department) as claimed by the applicant. Wide OASIs order No. 27/96/94-Ad.IV dated 12.8.04 the department only made arrangements to implement Hon'ble Tribunals order dated 8.5.98 in OA No.130-131/94 and Hon'ble High Courts order dated 27.10.03 in CR No. 2985/98 and CR No. 4037/98 and created two posts of Sr. D/Mn surrendering two posts of Draftsman.

Contd....2/-

2. That as regards to the statement made in paragraphs 2 to 4.1 of the instant application the respondents have no comments.

3. That in respect of the statement made in paragraph 4.2 of the application the respondents beg to state that the applicant was appointed in the office of the Director of Census Operations, Assam, Guwahati as Draftsman against the purely temporary post sanctioned in connection with the 1991 Census which was created specially for 1991 Census works and terminated w.e.f. 31.12.93 on discontinuation of temporary posts.

4. That as regard to the statements made in paragraph 4.3 of the application the respondents have no comments.

5. That as regards to the statement made in paragraph 4.4 of the application the respondents beg to state that the applicant was appointed on purely temporary and on adhoc basis against the purely temporary posts created for 1991 census. He was therefore paid all the benefits as admissible under the Temporary Service Rules only. Both the appointment letters issued to the applicant and that to Sri Jibon Malekar (as alleged by the applicant) contained all the conditions of temporary appointment.

T A I

6. That in respect of the statement made in paragraph 4.5 of the application the respondents beg to state that the applicant was paid all the benefits as admissible to temporary Govt. servants as per rule for the period of service rendered in the O/D the Director of Census Operations, Assam.

7. That in respect of the statement made in paragraph 4.6 of the application the respondents beg to state that the applicant was appointed against the purely temporary posts created for 1981 Census works and terminated after discontinuation of sanction of the temporary posts w.e.f. 31.12.93. Mrs. Minu Kalita was continuing against 1981 post as the post remained continued. Posts of Draftsman created for 1981 Census work however, were discontinued and as a result the services of the applicant had to be terminated.

8. That as regards to the statement made in paragraph 4.7 of the application the respondents beg to state that the applicant had filed an OA No. 270/93 before the Hon'ble Tribunal against the termination order No. DCO(E)97/80/Vol. I/9921 dated 21.12.93. The Hon'ble Tribunal disposed of the OA No. 270/93 vide order dated 5.6.98 with reference to the judgment passed by the Hon'ble Supreme Court in the case of UOI Vs Dinesh Kr. Sena reported in (1985) 29 ATC 585 wherein the respon-

ents are directed to consider the retrenched census employees after taking into account the length of their services for relaxation of their age limit for appointment in the vacancies arising in future and meant for direct recruitment provided they are otherwise qualified and eligible. The details of the benefits were intimated to the applicant vide this office letter No. DCO(E)34/98/5456-SB dated 5.5.2000. It is further stated that due to austerity measures adopted by the Union of India, there was a ban on filling up vacant posts or creation of plan/non plan posts.

Copy of the order dated 5.6.98 in OA No.270/93 and office letter dated 5.5.2000 are annexed herewith as Annexure-I & II.

9. That in respect of the statement made in paragraph 4.8 of the instant application the respondents beg to state that for continuation of some posts of 1991 census requests were forwarded by the DCO, Assam to the Registrar General, India, New Delhi. However, the DCO the Registrar General, India had informed that the matter was reviewed by the Govt. in the Ministry of Finance and the Ministry did not consider it necessary to continue the posts.

10. That as regards to the statement made in paragraph 4.9 of the application the respondents beg to

[10]

state that it was made clear in the offer of appointment itself that the services of the applicant was temporary and adhoc in nature and the applicant was appointed against 1991 census posts for a specific period. The fact was within his knowledge and knowing fully well that situation he had taken up his assignment. However, the Employment Exchange was requested to re-enroll his name after termination of his service. Regarding holding of interview for the post of Draftsman as stated by the applicant it is stated here that an interview was held on 20.11.93 for the candidates sponsored by the Employment Exchange but no appointment was made out of it knowing that those posts were likely to be discontinued w.e.f. 31.12.93.

11. That in respect of the statement made in paragraph 4.10 of the instant application the respondents beg to state that the Directorate of Census Operations is not like any other Central Govt. Deptts. In Census Operations (Directorates) the volume of work expands at the time of decennial Census for 1 to 2 years and thereafter the volume of works come down to a normal level. The remaining works are to be attended including the normal mapping works by the regular staff. The services of the applicant who was appointed specifically for 1991 Census works had to be retrenched when posts created for 1991 Census were discontinued.

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12. That as regards to the statement made in paragraph 4.11 of the application the respondents beg to state that the applicant filed an OA No.270/93 before this Hon'ble Tribunal against the termination order issued vide No. DEC(E)97/80/Vol. I/2922-48 dated 21.12.83 and passed an interim order dated 31.12.93 directing the respondents to continue their services till disposal of the O.A.

13. That the respondents beg to state that the paragraph No. 4.12 is not available in the instant application hence the respondents have no comments for the same.

14. That as regards to the statement made in paragraph 4.13 of the application the respondents beg to state that the Hon'ble Tribunal disposed of the OA No.270/93 dated 5.6.98 with reference to the judgment passed by the Hon'ble Supreme Court in the case of UOI Vs Dinesh Kumar Saxena reported in (1995) 29 ATC 585.

In terms of the above judgment and order dated 5.6.98 the services of the applicant was discontinued.

15. That in respect of the statement made in paragraph 4.14 of the application the respondents beg to state that the Govt. of India has sanctioned a few temporary posts to the O/O the Director of Census Oper-

tions, Assam to attend the additional works in connection with the 2001 Census. In this connection the O/G the Registrar General, India, New Delhi had also issued instructions to the Director of Census Operations of all States/Uts to fill up those temporary posts either by promotion of eligible staff or on deputation basis in accordance with the provisions of the Recruitment Rules. Accordingly the Directorate of Census Operations, Assam had filled up some posts by giving promotion to eligible officials and issued circular to fill up the remaining posts/ resultant vacancies from the officials of other Central/State Govt. departments on deputation basis. The applicant along with others also filed an OA No. 388/2000 before this Hon'ble Tribunal praying for appointment against the purely temporary posts sanctioned in connection with 2001 Census in the Directorate of Census Operations, Assam. In compliance with Hon'ble Tribunals order dated 20.3.2001 passed in OA No.388/2000, one of the applicant Md. Abul Hussain was engaged against a resultant vacancy of Draftsman occurred due to giving temporary promotion of incumbent, against temporary post sanctioned for 2001 Census and again the applicant had to be disengaged on discontinuation of temporary post sanctioned for 2001 Census and reversion of incumbent promoted against the post.

16. That in respect of the statement made in paragraph 4.15 of the application the respondents beg to state that Consequent upon discontinuation of posts of Artists

sanctioned in connection with 1991 Census the incumbents Sati Biju Mahanta, Draftsman and Sati Rebu Mazumdar, Draftsman of Directorate of Census Operations, Assam who were promoted temporarily to the post of Artist revert-
ed to their substantive post of Draftsman w.e.f. 31.12.93. The applicants then approached the Learned Administrative Tribunal, Guwahati Bench by way of an original Application No. 130-131/94 challenging the order of reversion dated 30.12.93. The learned Tribunal vide judgment and order dated 8.5.98 (common judgment DA No. 130/94 and DA No.131/94) held that the applicants were promoted on regular basis and therefore cannot be reverted and accordingly set aside the order of rever-
sion and further directed the respondents to give all consequential benefits. The respondents beg to state that the applicants (DA No. 130-131/94) were reverted to their substantive posts only on discontinuation of 1991 Census posts from the Directorate w.e.f. 31.12.93. However, in compliance with the Hon'ble Tribunal as well as the Hon'ble High Court's order dated 8.5.98 and 27.10.2003 respectively the applicants had been allowed the promotion to the post of Artist (now redesignated as Senior Draftsman) vide order No.27/96/94-Ad.IV dated 12.8.2004 and No.13014/21/2004-Ad.IV dated 14.9.2004 by creating two posts of Sr. D/Men against the existing two posts of Draftsman. The above internal arrangement of creating the posts of Sr. Draftsman at the cost of Draftsman had to be made only to comply the Hon'ble

Tribunal and High Court orders above. As such no vacancies of Draftsman have been created by the above order.

17. That as regards to the statement made in paragraph 4.16 of the application the respondents beg to state that the applicant was appointed on purely temporary and on adhoc basis against the purely temporary posts created for 1991 Census and terminated on discontinuation of the posts created in connection with 1991 Census w.e.f. 31.12.93. Rendering of 9 years services by the applicant was as a result of the interim order dated 31.12.93 of the Hon'ble Tribunal in OA No.270/93.

According to Govt. of India, Deptt. of Personnel & Trainings instruction regarding the disposal of personnel rendered surplus due to reduction of establishment in Central Govt. Department/office the scheme for forwarding the name to Surplus Cell for redeployment is only applicable to the Central Civil servants (other than those employed on adhoc, casual, work charged or contract). Since the applicant was serving in the Directorate of Census Operations, Assam against purely temporary posts sanctioned for 1991 Census on adhoc basis forwarding of his name to the surplus cell does not arise.

Copy of the Govt. of India, Ministry of Personnel & Trainings instruction is annexed herewith as Annexure - III.

18. That as regards to the statement made in paragraph 4.17 of the application the respondents beg to state that apart from the OA No. 270/93 filed by the applicant and two others a few terminated Census employees of 1991 Census of Directorate of Census Operations, Assam filed an OA No. 269/93 before this Hon'ble Tribunal had disposed the OA No. 269/93 vide order dated 5.6.98 as in the same manner that with the OA No. 270/93 filed by the present applicant. During the Census of India, 2001 the applicants of above OA No. 269/93 had filed a series of OAs before this Hon'ble Tribunal praying for appointment/absorption against the purely temporary 2001 Census posts. A few of them, however, were engaged in the Directorate of Census Operations, Assam in compliance with the Hon'ble Tribunals and disengaged them w.e.f. 28.2.2002 on discontinued of sanction of the posts created for 2001 Census. On their discontinuation the applicants again approached before this Hon'ble Tribunal by filing OA No. 68, 2, 69, 70 and 151 of 2002. The Hon'ble Tribunal vide common order dated 19.8.2002 disposed off all the OAs by setting aside the termination order dated 28.2.2002 passed by the respondents and directed the concerned authority to take appropriate measures to absorb the applicants including the other retrenched employees as per the direction of the High Court expeditiously and preferably within 4 months. The respondent thereafter approached before the

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Hon'ble High Court, Guwahati filing a bunch of Writ petitions being registered as WP(C) No. 7132-7137 of 2002 assailing the order dated 19.8.2002 passed by the Hon'ble Tribunal, Guwahati Bench. The Hon'ble High Court, Guwahati vide common judgment dated 31.1.2003 set aside the order dated 19.8.2002 passed by the Hon'ble Tribunal, Guwahati Bench inter alia holding that the applicants are not entitled to any relief as claimed in the original Application. It is respectfully submitted that the impugned order deserves to be set aside inasmuch as the High Court failed to follow the dicta laid down by the court in the case of Government of Tamil nadu VS. G. Md. Ammenudeen (1999) 7 SCC 499. The High Court rightly arrived at the opinion that no principle of law were laid down by the Apex Court in the aforesaid case and that the directions given in that case was only limited to the State of Tamil Nadu and cannot be made applicable to Assam.

Being highly aggrieved and dissatisfied with the impugned judgment dated 31.1.2003 passed by the Hon'ble High Court in WP(C) No.7132-7137 of 2002 the applicants filed SLP before the Hon'ble Supreme Court. But the Hon'ble Supreme Court has dismissed the SLP vide order dated 21.4.2003 in SLP (Civil) No. 6361/2003.

Copy of the order dtd.31.1.2003 in WP(C) No. 7132-7137 of 2002 and order dtd. 21.4.2003 in SLP(C) No.6361/2003 are annexed herewith as Annexure- IV and V.

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19. That in respect of the statement made in paragraph 4.18 of the instant application the respondents beg to state that all the posts are sanctioned by the Govt. to the department and its subordinate offices according to the work load of each directorates. It is reiterated here that the Directorate of Census Operations is not like any other Central Govt. Deptts. In Census Operations (Directorates) the volume of work expands at the time of decennial Census for 1 to 2 years and thereafter the volume of works come down to a normal level. The remaining works are to be attended including the normal mapping works by the regular staff. Accordingly 3(three) posts of Draftsman was sanctioned to the Directorate of Census Operations, Assam since long back and the same was filled up till compliance of the order of the Hon'ble Tribunal order passed in OA No. 130-131/94 as stated in para 4.15 above.

The respondents respectfully beg to submit that none of the ground averred in the OA are valid ground and no fundamental statutory or other legal right of the Applicant has been infringed in any way. Under the facts and circumstances as have been narrated above, it submitted that the instant application is devoid of any merit and the same is liable to be dismissed in the light of the judgment passed by the Hon'ble High Court in WP(C) No. 7132-37/2002 dated 31.1.2003 and Hon'ble Supreme Courts order dated 21.4.2003 in SLP (C) No. 6361/2003.

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20. That as regards to the statement made in paragraph 5 of the application the respondents beg to state that these are not good grounds for filing the instant application hence the same is liable to be dismissed.

21. That as regards to the statement made in paragraph 6 and 7 of the application the respondents beg to state that the matters are within the personal knowledge of the petitioner, hence the respondents do not admit or denied the same.

22. That as regards to the statement made in paragraph 8 of the application the respondents beg to state that in view of the facts and circumstances of the case and as per the law laid down by the Apex Court and the Hon'ble CAT, Principal Bench, the application of the applicant is liable to be rejected at the admission stage itself.

VERIFICATION

1, Nikhil Ch. Bhagabati S/o Late. H. Bhagabati aged about 57 years, a/o Japarigog, P.S. Diphu, Gauhati District Kamrup Metropolitan and competent officer of the answering respondents, do hereby verify that the statement made in paras 1 to 8, 9 to 16, 19 to 22 are true to my knowledge and those made in paras 8, 17, 18 being matters of record are true to my information derived therefrom which I believe to be true and the rests are my humble submissions before this Hon'ble Tribunal.

And I sign this verification on this 10th day of December 2005 at Guwahati.

Nikhil Chandra Bhagabati
Signature

N. C. Bhagabati
Assistant Director (T)
Directorate of Census Operations,
Assam, Guwahati

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CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 270 of 1993.

Date of Order : This the 5th Day of June, 1998. 63-94

Justice Shri D.N.Baruah, Vice-Chairman.

Shri G.L.Sanglyine, Administrative Member.

1. Md. Abul Hussain,
2. Shri Dhrubajyoti Nath,
3. " Rabin Kalita and
4. " Nripendra Das Applicants

All the applicants are working as Draftsman
in the office of the Director of Census
Operation, Assam, Guwahati.

By Advocate Shri B.K.Sharma.

- Versus -

1. Union of India,
represented by the Secretary to the
Government of India, Ministry of Home,
New Delhi.
2. The Registrar General of India,
Census Operation,
2/A Man Singh Road,
New Delhi-11.
3. The Director of Census Operation,
Assam, Ulubari, Guwahati-7.
4. The Assistant Director of Census Operation,
Assam, Guwahati-7. Respondents.

By Advocate S/Shri S.Ali, Sr.C.G.S.C and
G.Sarma, Addl.C.G.S.C.

O R D E R

G.L.SANGLYINE, ADMINISTRATIVE MEMBER

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The applicants were appointed temporarily as
Draftsman in the office of the Director of Census Operations,
Assam, Guwahati on the dates mentioned against each of
them as below :

<u>Sl.No.</u>	<u>Name</u>	<u>Date of appointment</u>
1.	Md Abul Hussain	14.12.90.
2.	Sri Dhrubajyoti Nath	4.6.91.
3.	Sri Rabin Kalita	4.6.91.
4.	Sri Nripendra Das	4.6.91

contd. 2

The appointments were purely temporary against the posts created specially in connection with 1991 census works which would be abolished on completion of the work and the incumbents would be retrenched with no liability to the Government thereafter. The applicants accepted the offers of appointment and joined their respective post immediately after their appointment. On 21.12.1993 the respondent No.3, the Director of Census Operations, Arunaw issued office order No.DCO(E)97/ EO/Vcl.I/9922-66 dated 21.12.1993, Annexure-H, terminating the services of the applicants among other employees with effect from 31.12.1993. The applicants felt aggrieved with the order of termination of their services and had submitted this original Application (O.A for short). They were allowed to join in a single application vide order dated 31.12.1993.

2. According to the impugned order the services of the applicants were terminated on expiry of sanction to the posts with effect from 31.12.1993. The applicants have disputed the action of the respondents. According to the applicants works relating to them were in existence even after 31.12.1993. This is evident from the fact that there was new recruitment to the posts of Draftsman and from various letters written by the local authorities to the Registrar General, India seeking extension of sanction of the posts created against 1991 census beyond 31.12.1993. Moreover, the applicants were sponsored by the Employment Exchange and they were appointed after due interview and the respondents had treated the applicants as regular employees and included their names in the seniority list of Draftsman working under respondent No.3. Therefore, the respondents cannot terminate their services in the manner it was done. There is also discrimination in terminating their services as other Draftsman who were appointed under same terms and conditions as those of the applicants were retained in service. The applicants also submitted that

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Even if there was no work for the respondents to terminate the services as there are even no vacancies in other posts such as Assistant Compiler and Lower Division Clerks against which the applicants can be accommodated and they referred to the letter No. DCO/45/75/34 dated 21.1.1998. The respondents have contested the application and submitted written statement. According to the respondents the four posts of Draftsman were created specially for 1991 census and the terms had been clearly stipulated in the appointment letters. It was decided that the posts were no longer necessary after 31.12.1993 and sanction was not extended. Therefore, the services of the applicants had to be terminated. The appointments were on ad hoc basis and for specified period and therefore such appointment does not confer any right on the applicants to continue in service indefinitely. In this regard they have relied on Director, Institute of Management Development, U.P. vs. Pushpa Srivastava reported in (1992) 21 ATC 377. They also contend that mere inclusion of the names of such ad hoc employees such as the applicants in the seniority list of Draftsman does not confer on them any right to continue in the posts. Regarding the contention of the applicants that new recruitments were being made at the relevant time, the respondents have submitted that though interview for appointment to the post of Draftsman was held on 30.11.1993 but since they came to know that the posts were not to continue beyond 31.12.1993, as a result of the interview no appointment was made. Another appointment made to the post of Draftsman was not against 1991 census posts but it related to a reserved post for Scheduled Tribe. Regarding availability of mapping works the respondents contend that assessment of the works requirements were undertaken by the competent authority and it was decided that

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the work could be carried out by the permanent staff.

3. We have heard counsel of both sides. From the records submitted by Mr Ali three posts of Draftsman were sanctioned by order dated 6.4.1990 and another post by order dated 29.9.1990 by the competent authority for the Director of Census Operation, Assam, Guwahati in connection with the 1991 census work. According to the appointment letters the posts were purely temporary created specially in connection with 1991 census and would be abolished on completion of the work and the incumbent will be retrenched. This work mentioned in the appointment letters must necessarily be the work concerning the posts. It is true that no time limit for completion of the work is mentioned in the appointment letters and that the 1991 census work in some respects was not completed as on 31.12.1993 but the work stipulated must necessarily as mentioned already relate to the posts specially created for 1991 census and occupied by the applicants. The competent authority has the power to make assessment of the work requirement and to come to a conclusion whether the work with reference to a certain post had been completed or not. It appears that in this case the posts were initially sanctioned for a short period but extended upto 31.12.1993. In 1993 the Registrar General, India however after making assessment on all India basis regarding work requirement had decided that all the posts specially created for the 1991 census were no longer necessary to be retained beyond 31.12.1993. Consequently on 30.11.1993 he had issued the order that the posts will stand abolished with effect from 31.12.1993. It is true that thereafter the local authority had made attempt to alter the decision of the competent authority by sending letters to him. But they had no effect to alter the decision. Therefore, the fact

remains that the four posts of Draftsman created for 1991 census stood abolished from 31.12.1993. Respondents No.1 and 2 are within their powers to create or abolish posts after making assessment of the requirement of their organisation. In this case they had abolished the posts created specially for the 1991 census throughout the country. When the posts have been abolished it is clear that according to the competent authority of the respondents there was no more work for the posts or alternative arrangement can be made to carry out the pending work if any. It is within their power to make such assessment and decision. In the circumstances we are of the view that the competent authority had not arbitrarily discontinued the sanction to the posts. Termination of service in such circumstances is permissible. In State of Himachal Pradesh vs. Suresh Kumar Verma and another reported in 1996(1) A.T.D. 618 the Hon'ble Supreme Court had upheld the termination of service of Daily Wage Employees when there was no work as the project they were engaged in had come to an end. Regarding the other contention of the applicants that they were treated as regular employees and included in the seniority list we are of the view that mere inclusion of names of ad hoc employees in the seniority list does not confer on them a right to continue in the service specially when as in the case of the applicants here they were only appointed temporarily on ad hoc basis for a particular work with clear intention to dispense with their services when work is completed. Such inclusion in the list cannot also give rise to expectation of being permanently absorbed in view of the clear stipulations in their appointments. There are certain factual instances the applicant have referred to to justify their contention. They have

pointed out to the case of one Bina Kalita and submitted that her service was not terminated. It however appears from the appointment letter of Bina Kalita at Annexure-D that though she was appointed temporarily as a Draftsman she was not appointed against any post created specially for a particular census. Her appointment is temporary and can be terminated at any time without notice and without assigning any reason. Therefore the case of Bina Kalita is not similar with the case of the applicants. Further, on perusal of the records produced by the respondents we find the other contention of the applicants that Draftsman who had been appointed had never been retrenched on the ground of completion of Census work to be incorrect. Yet another of their contentions is unacceptable. According to records it is seen that an interview for appointment to the post of Draftsman was held on 30-11-1993 in Guwahati but on the same date, that is, 30-11-1993 the Registrar General, India had issued the order discontinuing sanction to all the posts created specially for 1991 census all over the country. Therefore there is force in the contention of the respondents that no new appointment was to be pursuant to the interview. Further, it transpired during the course of hearing that the other appointment referred to by the applicants was in connection with a back log reserved post for Scheduled Tribe. Therefore, this instance of appointment is also of no help to the contention of the applicants that new appointments were made while their services were terminated. In the light of the above we do not find any merit in the contention of the applicants that the interview of 30-11-1993, Annexure-D, is liable to be quashed and to issue direction to the respondents to re-employ the applicants in service. The prayer of the applicants is granted.

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45. The applicants were allowed to continue in service on the strength of interim order dated 31-12-1993.

However, one of them had since left his service under the respondents. For the remaining applicants it was contended that they can be retained in service against other vacancies under the control of respondent No.3.

In Union of India Vs. Dinesh Kumar Saxena, reported in (1995) 29 ATC 585, the Hon'ble Supreme Court had held among others as follows:

"Ends of Justice will be met if the Directorate of Census Operations, U.P. is directed to consider those respondents, who have worked temporarily in connection with 1981 and/or 1991 census operations and who have been subsequently retrenched, for appointments in any regular vacancies which may arise in the Directorate of Census Operations and which can be filled by direct recruitment if such employees are otherwise qualified and eligible for these posts."

Other directions such as relaxation of age were issued.

We have no doubts that respondents No.3 will take action in the lines indicated in the judgment above in the case of the applicants also. If occasion for appointment arises in near future. There may also be scope to offer the applicants appointments on purely ad hoc basis against some purely ad hoc vacancies. The applicants may approach him individually in these regards if they desire.

The application is disposed of with no order as to costs.

TRUE COPY

प्रतिलिपि

Sd/- VICE CHAIRMAN

Sd/- MEMBER (ADMN)

Section Officer (S), 17/1/98
लोकसभा अधिकारी (सचिव गवर्नर)
Central Administrative Tribunal
केन्द्रीय प्रशासनिक अधिकारी
Guwahati Bench, Guwahati-6
गुवाहाटी नगरपालिका, गुवाहाटी-6
17/1/98

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17/1/98

NO. DCO(B) 34/99/ 5456 - 58

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1999-2000
CENSUS OF INDIA
18.2.2001
BUREAUX OF
STATISTICS
ASSAM
GUWAHATI
COMMISSIONER OF
ASSAM, GUWAHATI

the 3rd May/2000

OFFICE MEMORANDUM

Reference to his representation/Application dated 3.5.2000 submitted to the Director of Census Operations, Assam, Guwahati praying for appointment against the posts sanctioned in connection with the 2001 Census.

He is hereby informed that the Registrar General, India, New Delhi has sanctioned a few purely temporary posts to this directorate for attending the additional work for 2001 Census works upto 28.02.2001 only with a direction/instruction either to fill up the posts by promotion or by transfer on deputation from Central/State Govt. offices only.

Therefore, his prayer for appointment against the purely ad-hoc temporary posts cannot be considered in view of the facts stated above.

However he is advised to apply against any regular vacancy through the recruiting agency (S.S.C. as the case may be) as and when notified by this directorate for direct recruitment suiting his qualifications and other norms as laid down in the Recruitment Rules/Departmental regulations/Circular etc.

(M. R. DAS)
DIRECTOR OF CENSUS OPERATIONS
ASSAM & GUWAHATI.

To:

Shri Abul Hussain, Ex-D/man.
Rabin Kalita, Ex-D/man.
Nripendra Das, Ex-D/man.

Annexure - III

ON

REDEPLOYMENT OF SURPLUS EMPLOYEES

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IV

Revised Scheme for the Disposal of Personnel rendered surplus due to reduction of establishment in Central Government Departments/Offices

1.0 Preamble

In the context of a modern, development-oriented Welfare State, the concept of having a fixed Government establishment is no longer valid or possible. It is necessary to shift manpower from a low priority to a higher priority area of Governmental activity. Besides, with a view to containing expenditure on establishment and improving efficiency of public services, the organizational structure and work procedures in vogue have to be constantly subjected to a review and readjustment by the application of improved techniques and concepts of management and financial control and introduction of advanced or more extensive technical support. For this purpose, studies of work-measurement and for appraisal of the relevance and effectiveness of the existing working procedures and organizational set-up have to be carried out through specialized agencies like the Staff Inspection Unit of the Ministry of Finance (Department of Expenditure); Department of Administrative Reforms and Public Grievances; Internal Work Study Units, etc. As a result of these exercises, as also arising out of Zero Base Budgeting, it may be found necessary in some cases to reduce the sanctioned establishment, or discontinue or transfer an activity carried out in one organization or Department. In certain cases an organization may be found to be altogether redundant and may have to be wound up or abolished. In all such cases, the staff employed therein is affected. It is the considered view of the Government that it will be contrary to the concepts of personnel management that improvements in administrative and financial management should affect the continuity of service of the affected employees; particularly, as the Government would be losing the benefit of their valuable experience if they were to lose their jobs. Since 25-2-1966, a scheme has already been in operation for arranging alternative placements for the staff found surplus in such contingencies. The scheme, by and large, proved very successful in arranging the placement of the eligible categories of surplus employees. However, on the basis of the experience gained thus far and taking into account the changes made in the working of the existing scheme, in the meantime, it is considered necessary to revise the existing scheme with a view to eliminating the possibility of retrenchment of the employees who are rendered surplus in these contingencies.

2.0 Basic Assumptions

The scheme is based on the following assumptions:

* Revised Scheme prescribed under G.I., Dept. of Per. & Trg., O.M. No. 1/18/88-CS. III, dated the 1st April, 1989. This is in supersession of the Scheme issued under G.I., M.H.A., O.M. No. 3/27/65-CS. II, dated the 25th February, 1966.

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2.1 The existence of superfluous personnel in any organization only retards its progress and adversely affects its efficiency and even the interests of the personnel employed in it and it is advisable to prune away such superfluous personnel, as soon as detected.

2.2 That if the job of pruning away superfluous personnel in Government organizations is to succeed, there must be a really effective procedure for arranging speedily alternative placements for the personnel so identified as surplus.

2.3 That to facilitate speedy placement of surplus staff, it is necessary to ensure ready availability of vacancies with the centralized redeploying agencies and also to ensure that the placement proposed by such redeploying agencies is accepted without any hesitation by the other Government Departments/Offices in which the relevant vacancies are located.

2.4 That to ensure that surplus personnel are readily acceptable for absorption and become useful members of the staff of the organization to which they are redeployed, it is necessary to give them training in new skills, wherever required.

2.5 That it is advisable to continue to offer attractive retirement benefits to the surplus staff so that those who are not interested in moving to alternative jobs or do not find themselves to be capable of adjusting to new environments and demands of work can happily seek voluntary retirement.

3.0 Application of the Scheme

3.1 The scheme will apply to the Central Civil Servants (other than those employed on *ad hoc*, casual, work-charged or contract basis) who—

- (a) are permanent or quasi-permanent or, if temporary, have rendered not less than five years' regular continuous service, and
- (b) have been rendered surplus along with their posts from the Ministries/Departments/Offices of the Government of India as a result of—
 - (i) administrative reforms including, *inter alia*, restructuring of an Organization; transfer of an activity to a State Government, Public Sector Undertaking or other Autonomous Organization; discontinuation of an ongoing activity and introduction of changes in technology; or
 - (ii) studies of work measurement undertaken by the Staff Inspection Unit of the Ministry of Finance or any other body set up by the Central Government or the Ministry/Department concerned; or
 - (iii) abolition or winding up (in whole or part) of an Organization of the Central Government.

3.2 Placement for the surplus staff aforesaid shall ordinarily be ~~done~~ only against vacancies to be filled by direct recruitment in Central

Services and the Central G made through Commission.

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by the Staff Inspec other body set up Ministry/Department
of an Organization

ordinarily be arranged nt in Central Civil

REDEPLOYMENT OF SURPLUS EMPLOYEES

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Services and Posts located in the various Ministries/Departments/Offices of the Central Government, other than the services/posts to which recruitment is made through a competitive examination held by the Union Public Service Commission.

However, redeployment may be arranged against vacancies in an Autonomous Organization or a Public Sector Undertaking of the Central Government on the terms and conditions in force therein, if so opted for by the surplus employees concerned.

3.3 The scheme shall not apply to—

- (i) Ministry of Railways (except the staff and posts at the Headquarters of the Railway Board);
- (ii) Field formations of the Ministry of Defence (except those under the Department of Defence Research and Development);
- (iii) Appointments to the Scientific and other posts under the Ministries/Organizations which have been specifically excluded from the purview of the personnel policies and recruitment procedure laid down by the Department of Personnel and Training (e.g., Department of Space; Department of Electronics; Department of Atomic Energy, etc.), except where desired otherwise by such Ministry/ Organization;
- (iv) Any other category of post as may be specified under rules/orders.

4.0 Identification of Surplus Staff

4.1 Once the findings regarding surplus staff contained in the reports of the Department of A.R. & P.G. or the SIU or the IWSU or any other Committee or study team constituted by the Government or the Ministry concerned have been discussed and agreed upon at the appropriate level, it shall be incumbent upon the Administrative Ministry/Head of Department to give formal effect to the reduction in the sanctioned strength and identify and declare the excess staff surplus within 3 months of the receipt of the report.

4.2 Likewise, where a decision has been taken with the approval of the Cabinet to abolish or wind up an organization in phases, the Administrative Ministry shall, unless a different time frame is prescribed by the Government, give effect to the reduction in staff strength within a period of 3 months from the date of receipt of such decision.

4.3 In this context, the Administrative Ministry/Head of the Department shall determine the posts which are required to be abolished in the light of the report or the decision as referred to in sub-para 4.1 above and shall take action to complete the process of identification of such posts within a period of one month from the date of receipt of the report or the decision in question.

4.4 (a) Immediately after the surplus posts requiring abolition are determined, action shall be taken in hand to determine whether there is any surplus staff and, if so, to identify them. Ordinarily, the juniormost temporary persons

should be surrendered against the reduced cadre strength, followed, if necessary, by the juniormost quasi-permanent and then permanent staff. The rule of 'juniormost' should be insisted upon and the Central Cells in the Department of Personnel and Training and the Directorate General of Employment and Training would have authority to see to the strict and prompt observance of this rule. There shall, however, be no bar to the persons higher in the seniority ladder volunteering for the purpose, particularly if they wish to avail of the voluntary retirement benefits available to the surplus employees.

(b) Where an organization is being wound up in phases, the surplus staff should be declared surplus not in the reverse order of the seniority, but strictly in accordance with the regular seniority itself. In such a case, the seniors may, at their option be allowed to stay back for being surrendered at a later stage and their juniors surrendered forthwith, making it specifically clear to them that by opting to stay back they would lose in point of seniority in the new offices where their juniors would be getting redeployed earlier.

(c) The application of the above principles will be subject to the special instructions in regard to the members of the Scheduled Castes and Tribes, couple cases, etc., issued from time to time.

(d) Detailed steps and time-limits for identification of surplus staff and having them cleared from the eligibility angle for redeployment with the Central Cell concerned, are laid down in Annexure-I to this Scheme and should be strictly followed by the Administrative Ministries/Departments in which surpluses exist.

(e) An employee, though ordinarily due to be declared surplus may not be declared surplus and his redeployment kept in abeyance if he is under suspension or facing disciplinary proceedings, till his reinstatement and/or the conclusion of the disciplinary proceedings against him. Each such case will, however, be reported to the Cell concerned.

(f) The decision of the Department of Personnel and Training on the question of eligibility of an employee for redeployment will be final.

5.0 Agencies for Redeployment of Surplus Staff

5.1 The Central (Surplus Staff) Cell in the Department of Personnel and Training, Ministry of Personnel, Public Grievances and Pensions, will be responsible for arranging the redeployment of surplus staff against vacancies arising in Central Civil Services and Posts belonging to Groups 'A', 'B' and 'C', in consultation with the Union Public Service Commission in respect of appointments against Groups 'A' and 'B' posts, as provided in the rules.

5.2 The redeployment of surplus staff arising in Central Civil Services and Posts in Group 'D' will be handled by the Special Cell in the Directorate General, Employment and Training, under the Ministry of Labour, as heretofore. However, where necessary, the Central (Surplus Staff) Cell in the Department of Personnel and Training may, as far as possible under advance

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* G.I., Dept. of Per.

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n Central Civil Services Cell in the Directorate of Labour, as hereto-superior Staff) Cell in the possible under advance

intimation to the Special Cell under the DGE & T, nominate a Group 'C' surplus employee against a vacancy in Group 'D' post/service.

[NOTE.—The two Cells have been referred to hereafter as the 'Central Cells'.]

5.3. A Ministry/Head of Department may adjust its surplus staff in vacant posts available in other cadres or other offices under the Ministry/Department in consultation with the Central Cell concerned with such staff. [Where it is proposed to adjust any surplus officer against a vacancy in Group 'A' or Group 'B' post/service, which, in the normal course, is to be filled in through the UPSC, the Ministry/Head of Department should obtain the approval of the said Commission before adjusting any surplus officer against such a post. The proposal for adjustment of a surplus officer against such a post should be sent to the Commission in the pro forma (Annexure IV) together with his up-to-date Confidential Rolls.]

6.0 Disposition of Surplus Staff while awaiting Redeployment

6.1. The members of the staff who are declared surplus with the prior concurrence of the Department of Personnel and Training or the Directorate General, Employment and Training, as the case may be, will be transferred to a 'Surplus' Staff Establishment' which will be created to accommodate such surplus staff in the concerned Ministry/Department or Office, as the case may be. The posts held by the temporary, including quasi-permanent and officiating employees, declared surplus shall be transferred to such Establishment from the date on which their incumbents are declared surplus. In the case of surplus employees occupying permanent posts, their regular posts will be abolished from the date they are declared surplus and supernumerary posts created simultaneously in their lieu, in the same scale of pay and with the same designation in the Surplus Staff Establishment aforesaid.

6.2. On transfer to the Surplus Staff Establishment, the surplus employees will continue to receive pay and allowances in their previous scales, till they are relieved either to join another post or on their retirement, resignation, etc., whichever is earlier.

6.3.1. Every employee, as soon as he is declared surplus will be informed of the availability of the facility of seeking voluntary retirement under Rules 29, 48 and 48-A of the CCS (Pension) Rules, 1972, and various clauses of FR 56. If a request for retirement under any of these rules is received, it should be processed expeditiously under the relevant rule(s) and orders for retirement issued as early as possible.

6.3.2. The Central Cell concerned should be informed of the acceptance of the request for retirement immediately so that the process of redeployment being carried on by it, is discontinued.

F. F.
Date

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

WRIT PETITION © NO. 7132 OF 2002

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

.....Petitioners.

-Versus-

1. Smt. Ratna Bhattacharjee,
D/o Late Mukunda Bhattacharjee,
No.5 Ferry Ghat Colony, Pandu
Guwahati-12, Dist. Kamrup, Assam.
2. Shri Karuna Ram Das
S/o Late Holi Ram Das,
Vill. & P.O. Borkhola,
P.S. Palasbari,
Dist.-Kamrup, Assam.

.....Respondents.

WRIT PETITION C NO. 7133 of 2002

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

.....Petitioners

-Versus-

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

.....Respondents.

WRIT PETITION C NO. 7134 OF 2002

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

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

.....Petitioners

-Versus-

1. Shri Bimalananda Das,
Resident of village Mirza,
P.O.-Palasbari,
Dist.-Kamrup, Assam.

2. Shri Nagen Rabha,
Resident of village-Shar Khari
P.O.-Loharghat,
P.S.-Palasbari,
Dist.-Kamrup, Assam.

3. Shri Arjun Baruah,
Resident of village & P.O. Arikuchi,
Dist.-Nalbari, Assam.

.....Respondents

WRIT PETITION @ NO. 7135 OF 2002

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

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

.....Petitioners

-Versus-

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

.....Respondents

WRIT PETITION @ NO. 7136 OF 2002

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

-37-

5

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

.....Petitioners

-Versus-

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

.....Respondents.

WRIT PETITION @ NO. 7137 OF 2002

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

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

.....Petitioners

-Versus-

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

.....Respondents.

P R E S E N T

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

For the petitioners

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

For the respondents

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

Date of hearing

: 19.12.2002

Date of Judgment
And Order

: 31.1.2003

JUDGMENT AND ORDER (CAV)

WV AGARWAL,J.

1. These writ petitions are directed against a common order passed by the Central Administrative Tribunal, Guwahati Bench on 19.8.2002 in Original Application Nos. 2/2002, 62/2002, 68/2002, 69/2002, 70/2002 and 151/2002.
2. Upon hearing the learned counsel for both sides all these writ petitions are disposed of by this order as common question of law and facts are involved.
3. The undisputed facts are that the respondents/petitioners before the Central Administrative Tribunal were all appointed in various posts for the purpose of Census Operation, which commenced in the year 1991. At the completion of Census Operation and on discontinuation of sanction of such temporary posts, the services of the respondents were terminated with effect from 31.12.1993.
4. The respondents along with other retrenched employees thereafter moved the Central Administrative Tribunal in Original Application No. 269/93. The application was dismissed by order dated 5.6.1998 with the direction to the authorities to act in accordance with the law laid down by the Apex Court in the case of Union of India vs. Dinesh Kumar Saxena (1995) 3 SCC 401. The case of the petitioner Union of India is that the respondents never applied

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

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

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

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

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

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

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

"9. Admittedly, the applicants in these applications were engaged by the respondents alone. The directions were issued for absorption of the retrenched employees. We find no qualification for giving any narrow, constricted, rabid and obtruse 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 W.P.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 retrenches according to their length of service and only after exhausting retrenches if there were still vacancies available those could be filled as per the Recruitment Rules. Appointment by Recruitment Rules itself is a regular appointment and not appointment by way of steps-gap arrangement. The contention of the respondents that the claim of the applicants was to be confined to the Census counts alone and therefore, the judgment was not meant to be

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

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

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

The application is accordingly disposed of."

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

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

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

On perusal of the impugned order passed by the Tribunal, we find that the Tribunal was of the opinion that the decision of the Apex Court in respect of retrenched employees of the Census department as laid down in Union of India and others vs. Dinesh Kumar Saxena (1991) 3 SCC 401 stands reviewed in view of the later directions given in G. Mohamed Amenudeen (supra). In Dinesh Kumar Saxena the Apex Court held that at the time of each decennial census which is an exercise carried out on a gigantic scale every 10 years, a large

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

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

- (i) The law laid down in Dinesh Kumar Saxena has not been reviewed or modified by the Apex Court.
- (ii) Mr. Sarma, learned counsel for the respondents, however, submits that the above decision stands modified in view of the subsequent directions of the Apex Court in the case of G. Mohamed Ananddeen(supra).
- (iii) It may be mentioned at this stage that conduct of census work all over the country is taken up by the Census Department, Govt. of India. But in Tamil Nadu, the situation is different as a Census Department works in the State of Tamil Nadu itself and it carries out

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

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

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

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

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

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

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

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As stated above and as submitted on the Bar, the respondents were duly engaged for the 2001 Census and once that work was over their services were terminated as they were fixed term appointments.

Government of India vide different office Memorandums/circulars issued from time to time provided or offered concessions in favour of the retrenched Census employees and it is to be noted to mention that the respondents shall be entitled to above concessions as are available to other retrenched Census employees across the country. We would like to state here that the scheme of Tamil Nadu in respect of the Census employees of that State shall be applicable to their employees only and it cannot be applicable to the employees of other State unless their scheme is adopted by the concerned State or by the Union of India.

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

Sd/- P.G. Agarwal.
JUDGE.

Sd/- P.P. Naolekar.
CHIEF JUSTICE.

Mem No. 2128-30

R.M. Dtd. 7/4/03

Copy forwarded for information and necessary action to the:-

1. The Registrar General Census Commissioner of India, 2/A, Mano Singh Road, New Delhi-110011.
2. The Director of Census Operation, Assam, G.S. Road, Ulubari, Guwahati-781007.
3. Section Officer (J) C.A.T. Guwahati Branch, Guwahati-781005. He is requested to acknowledge the receipt of the following records. This has a reference to his letter No. C.A.T./G.H./68/Juddha/1189/ dated 12.12.2002.

Enclos:-

1. O.A. 62/2002 with M.P. 61/2002- 5 Nos.
2. O.A. 70/2002 with M.P. 80/2002- 5 Nos.
3. O.A. 68/2002 _____ -3 Nos.
4. O.A. 2/2002 _____ -3 Nos.
5. O.A. 69/2002 _____ -3 Nos.
6. O.A. 151/2002 _____ -3 Nos.

With Original Judgement
and Order Sheets.

Total - 22 Nos.

By order

Asstt. Registrar (e)
Guwahati High Court, Guwahati
1/10/03

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

678228

Petition(s) for Special Leave to Appeal (Civil) No. 6361/2003.

(From the judgement and order dated 31/01/2003 in WP 7135/02
of The HIGH COURT OF GAUHATTI)

U. KAMILA DEVI & ORS.

Petitioner (s)

VERSUS

R.G. & CENSUS COMMNR. OF INDIA & ANR.

Respondent (s)

(With prayer for interim relief)

With

SLP(C)No.6364-6369/2003 (with appln. for exemption from filing c/c of
the impugned judgment)

Date : 21/04/2003 These Petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE M.P. SHAH
HON'BLE MR. JUSTICE ARUN KUMAR

Certified to be true copy

12/4/2003
Assistant Registrar (Appl.)

Supreme Court of India

For Petitioner(s)
in SLP 6361/2003Mr. P.P. Rao, Sr. Adv.,
Mr. Manish Goswami, Adv.,
Mr. Rameshwar Prasad Goyal, Adv.

in SLP 6364-65/03

Mr. Manish Goswami, Adv.,
Mr. Rameshwar Prasad Goyal, Adv.

For Respondent (s)

Mr. Rakesh Tikkoo, Adv.,
Mr. Rajiv Malhotra, Adv.,
Mr. Rajiv Mehta, Adv.

UPON hearing counsel the Court made the following

O R D E R

The special leave petitions are dismissed.

129/2003/Adv.
AR cum PS to Hon'ble Judge

(Vijay Kumar Sharma) (MS)

J. B. B.
(Janki Bhatia)

Court Master

1172/2003/Adv.

129/2003/Adv.

AR cum PS to Hon'ble Judge

129/2003/Adv.

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URGENT FEE RS. 5

SUPREME COURT OF INDIA

Certified copy is valid.

500P(774381)03

Matter No.

2. Kamila Jemison

Brief Cause Title

Richard Bussey Comm. of Ind 3rd 11.

SEALED IN MY PRESERVATION

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