

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

O.A. No. 2481/2014

M.A. No. 2082/2014

M.A. No. 1617/2016

Reserved on : 11.05.2016

Pronounced on : 17.05.2016

**HON'BLE MR. P.K. BASU, MEMBER (A)
HON'BLE DR. BRAHM AVTAR AGRAWAL, MEMBER (J)**

1. Anju Azad,
Aged 57 years,
W/o Shri A.K. Azad,
Working as Senior Geographer
in the Office of the Registrar General, India,
Map Division,
West Block-I, R.K. Puram,
New Delhi.
R/o 118, 1st Floor, Shakti Khand-III,
Indirapuram, Ghaziabad-201014.
2. Pankaj Kumar,
Aged 47 years,
S/o Dr. Chandra Bhan,
Working as Senior Geographer
in the Office of the Registrar General, India,
Map Division,
West Block-I, R.K. Puram,
New Delhi.
R/o Plot No.401, Flat No.7,
Niti Khand-I, Indirapuram,
Ghaziabad-201014.
3. Chikkudukaila Rajeev,
Aged 51 years,
S/o Late Dr. Ch. Narasingarao,
Working as Senior Geographer
R/o B-202, Sharan Residency-1,
Vasna, Dev Hospital Road,
Ahmedabad-380007.

4. S.C. Rava,
 Aged 50 years,
 S/o Late Shri Omet Rava,
 Working as Senior Geographer
 in the Office of the Director of Census Operations,
 Meghalaya, Merwein Building,
 Dhankheti, Shillong-3.
 R/o C/o Mrs. Irilda Nongsiej,
 Lumshngain Rynjah,
 Shillong-6, Meghalaya. .. Applicants

(By Advocate: Shri Yogesh Sharma)

Versus

Union of India through :

1. The Secretary,
 Ministry of Home Affairs,
 Govt. of India,
 North Block, New Delhi.
2. The Registrar General, India,
 Govt. of India,
 Ministry of Home Affairs,
 2/A, Man Singh Road,
 New Delhi-110011.
3. Shri A. Lazar,
 Senior Geographer in Orgi and
 Directorate of Census Operations,
 Through the Registrar General, India,
 Ministry of Home Affairs,
 2/A, Man Singh Road,
 New Delhi-110011.
4. Shri Varinder Kaur,
 Senior Geographer in Orgi and
 Directorate of Census Operations,
 Through the Registrar General, India,
 Ministry of Home Affairs,
 2/A, Man Singh Road,
 New Delhi-110011.

5. Shri Shailendra Yadav,
Senior Geographer in Orgi and
Directorate of Census Operations,
Through the Registrar General, India,
Ministry of Home Affairs,
2/A, Man Singh Road,
New Delhi-110011.
6. Shri K. Selvam,
Senior Geographer in Orgi and
Directorate of Census Operations,
Through the Registrar General, India,
Ministry of Home Affairs,
2/A, Man Singh Road,
New Delhi-110011.
7. Shri Nitesh Parashar,
Senior Geographer in Orgi and
Directorate of Census Operations,
Through the Registrar General, India,
Ministry of Home Affairs,
2/A, Man Singh Road,
New Delhi-110011.
8. Shri Debatosh Biswas,
Senior Geographer in Orgi and
Directorate of Census Operations,
Through the Registrar General, India,
Ministry of Home Affairs,
2/A, Man Singh Road,
New Delhi-110011.
9. Smt. M.B. Rama Devi,
Senior Geographer in Orgi and
Directorate of Census Operations,
Through the Registrar General, India,
Ministry of Home Affairs,
2/A, Man Singh Road,
New Delhi-110011.

10. Shri Radha Raman,
 Senior Geographer in Orgi and
 Directorate of Census Operations,
 Through the Registrar General, India,
 Ministry of Home Affairs,
 2/A, Man Singh Road,
 New Delhi-110011.

11. Shri Binod Kumar Singh,
 Senior Geographer,
 O/o The Directorate of Census Operations,
 Lucknow, UP through
 The Registrar General, India,
 Ministry of Home Affairs,
 Govt. of India,
 New Delhi. .. Respondents

(By Advocate: Shri T.A. Ansari for R-1 & 2 and
 Shri Manindra Dubey for R-3 to 9 and 11)

ORDER

By Hon'ble Mr. P.K. Basu

The four applicants were appointed as Senior Geographers on ad hoc basis but subsequently promoted on regular basis on the recommendation of the Departmental Promotion Committee (DPC) w.e.f. 30.06.2008 in the case of applicant Nos. 1, 2 and 4 and w.e.f. 27.04.2007 in the case of applicant No.3.

2. In the provisional seniority list issued on 12.10.2009 (Annexure A/5), the applicants have been shown at Sl.Nos. 19, 20, 21 and 23 and the private respondents, who are direct recruits, have been shown at Sl.Nos. 24 onwards. In this list, the date of

regular appointment to the post has been indicated as 11.09.2008 for applicant Nos. 1, 2 and 4 and w.e.f. 27.04.2007 for applicant No.3 and dates ranging from 20.08.2008 to 16.03.2009 for direct recruit private respondents.

3. The final seniority list was notified on 30.12.2009 (Annexure A-6) in which again the applicants were shown at Sl. Nos. 19, 20, 21 and 23 with the same date of regular appointment and the private respondents have been shown at Sl.Nos. 24 onwards with the same date of appointment as shown in the earlier list.

4. On 06.11.2012, a fresh provisional seniority list was again circulated as on 01.01.2012 in which the applicants were shown at Sl. Nos. 13, 14, 15 and 17 and the private respondents at Sl.Nos. 18 onwards.

5. When the impugned order dated 31.01.2014 was issued, which is a provisional list of Senior Geographers as on 01.01.2012, the applicants were shown at Sl. Nos.22, 23, 24 and 25 and the private respondents were placed above them at Sl.Nos.14 onwards. The applicants are aggrieved by this order and state that in this order the respondents have changed their date of regular appointment to the post to 11.10.2010 (applicant No.3) and 29.02.2011 (applicant Nos. 1, 2 and 4) and, hence, placed them below the private respondents, and that too, without giving any show cause notice to the applicants.

6. It is stated that the applicants had represented against this order but their representations were rejected vide order dated 11.07.2014 and in the final seniority list circulated with this letter as on 01.01.2012, the private respondents have again been placed above the applicants at Sl.Nos. 11 to 19 and the applicants have been placed at Sl.No.20 to 23, indicating the revised date of appointment for the applicants. Being aggrieved by this, this O.A. has been filed with the following prayer:

- “(i) That the Hon’ble Tribunal may graciously be pleased to pass an order of quashing the impugned order dated 31.01.2014 and order dated 11.07.2014 (Annex.A/1) by which the date of promotion of the applicants have been changed and consequently pass an order directing the respondents to restore the date of promotion of the applicants with all consequential benefits.
- “(ii) That the Hon’ble Tribunal may graciously be pleased to pass an order of quashing the impugned seniority list dated 31.01.2014 and 11.07.2014 and also order dated 16.06.2014 (Annex.A/1 & A/2) declaring to the effect that the same are illegal, arbitrary and against the principle of natural justice and consequently pass an order directing the respondents to restore the date of promotion of the applicants and the seniority of the applicants as per the earlier seniority list dated 30.12.2009 above the private respondents with all consequential benefits.
- “(iii) Any other relief which the Hon’ble Tribunal deem fit and proper may also be granted to the applicants along with the costs of litigation.”

7. Learned counsel for the respondents pointed out that in the office memorandum dated 16.06.2014 (Annexure A/2) issued by the respondents, they have considered the representations received on the aspect of inter se seniority of Senior Geographers and this order disposed of those representations. The basic argument against the

applicants' case is that the applicants were not promoted against substantive vacancy but against resultant vacancies due to certain officers going on deputation and the post remaining vacant for more than a year and that the promotion orders dated 27.04.2007 (applicant No.3) and 11.09.2008 (applicant Nos. 1, 2 and 4) specifically provide that promotion of these officers were made against the resultant vacancies and on repatriation of the incumbent against whom those are promoted, these officers shall stand reverted to their substantive post of Geographer. Secondly, promotion of these officers were made on the basis of recommendation of the DPC against long term vacancies. Thus, instead of their regular promotions, these officers were not kept at par with truly regular promotions which involves no scope for reversion to feeder grade. Thirdly, it is stated that a total sanctioned strength of Senior Geographers was 27 and the quota for promotion of 18 posts (66.66%) was already filled up when these officers were given promotion against the resultant vacancies. In fact, erroneously in the seniority list of 2009, 31 officers were included (27 + 4 applicants), which was not permissible under the rules.

8. It is further mentioned that in the seniority list of 01.07.2009 as well as 2007, it was made clear against the names of these four officers that promotion is against long term vacancies, but they could be reverted. It is further stated in this order that the direct recruit candidates, after the issue of provisional seniority list on

12.10.2009, made a representation against inter se placement of promotees and direct recruit officers in the seniority list. This was examined in the light of DoPT O.M. dated 03.03.2008 (since withdrawn ab initio and treated as non-existent vide DoPT order dated 04.03.2014), which provides that the persons so appointed shall get seniority in the order in which they were appointed on substantive post, i.e. joins the post/service. It is for this reason that the date of appointment of four promotee officers has been changed to the date of occurrence of vacancies of promotion quota instead of date on which they were initially promoted in resultant vacancies with the provision of their likely reversion to the lower post. This in-turn has resulted into change in the inter-se seniority.

9. It is further explained in this order dated 16.06.2014 that regular promotions were possible only after substantive vacancies for filling up by promotion are available. In para 7, the following explanation has been given:

- “(i) The RRs provides for 66.66% promotion quota (18 posts) which was already filled up. After this the names of 4 more promotee Sr. Geographers were included in the S.L.
- (ii) Promotion of four officers was made against the long-term resultant vacancies in the year 2007 & 2008.
- (iii) Requisitions were already placed with the SSC, the recruiting authority for filling up of 9 vacancies in DR quota in the year 2005 and 2006 itself.

- (iv) In seniority list of Sr. Geographer circulated in 2009, names of 31 officers were included instead of the total sanctioned strength of 27.
- (v) Names of the same officers were included in two seniority lists of two grades i.e. Sr. Geographer and Geographer at the same time.”

10. In conclusion, their representations were disposed of holding that “DoP&T recently in their O.M. No.20011/1/2012-Estt.(D) dated 04.03.2014, which has been issued in pursuance of the recent Supreme Court decision on fixation of seniority, inter-alia, stipulates that the cases of seniority already settled with reference to the applicable interpretation of the term of availability, as contained in DoPT O.M. dated 7.2.1986/3.7.1986 may not be reopened. Thus it is appropriate that cases where the rotation of vacancies has not been done as per 1986’s OM of DoPT are required to be examined afresh for settlement of inter-se seniority of officers. In view of the position explained above, this office does not intend to make any alteration in the inter-se seniority of promotee and direct recruits and represented in the seniority list circulated on 31.01.2014.”

11. According to the respondents, the requisition for direct recruits were sent to the SSC in the years 2005 and 2006, whereas the promotees were regularised in the cadre w.e.f. 30.06.2008 vide order dated 11.09.2008. Therefore, the direct recruits have to be placed above the applicants.

12. Learned counsel appearing on behalf of private respondents No.3 to 9 and 11 stated that he would like to adopt the arguments put forth by the learned counsel for official respondents. He reiterated that the applicants were first appointed on ad hoc basis and thereafter regularised w.e.f. 30.06.2008 against the vacancies created by employees on deputation and thus not appointed against the substantive posts and were appointed as against substantive posts only later on in 2010 and 2011, as indicated above and, therefore, they cannot steal a march over the private respondents.

13. In reply, the learned counsel for the applicant stated that the substantive vacancies were available in 2008 to 2011 as well none of the employees, who had gone on deputation and due to which the vacancies had arisen, reverted back to the department. Therefore, in fact, the applicants have been occupying the posts on substantive basis from 30.06.2008 itself and thus the original seniority list issued in 2009 was correct.

14. Heard the learned counsel and perused the pleadings.

15. The only issue here is regarding date of substantive appointment of the applicants. In the order dated 11.09.2008 granting regularisation to the applicants No.1, 2 and 4, it had been made clear that promotion is against long term vacancies against deputation of some officers as Research Officer (Map) and, on the

repatriation of Research Officer (Map) to the post of Senior Geographer, the officers shall stand reverted back to the post of Geographer.

16. The applicants' claim is that due to this order they should be treated as being against substantive post of Senior Geographer from 30.06.2008 itself as none of the Research Officer (Map) repatriated and none of the applicants were hence reverted.

17. Per contra, the respondents states that the post of Senior Geographer were only 27. Therefore, there was no question of any one getting promoted on a substantive post beyond 27 posts. The department by mistake included the names of four applicants for promotion as Senior Geographers and took this number to 31, which was clearly not permissible under the rules as there was no substantive posts for them to be promoted on. Further, they argue that the order dated 11.09.2008 itself made it clear that the promotion is against long term vacancies and the above officers shall stand reverted to the substantive post of Geographers. In case, the applicants had to raise the issue, they could have raised it at that point of time itself. The applicants joined against this order without any complaint.

18. The fact is that four applicants were included to be promoted as Senior Geographers even when the total strength was 27, thus taking the number beyond the sanctioned strength of 27, which

action was impermissible under the rules and the respondents rectified it by giving them substantive appointment from the dates these posts were available on the substantive basis, which is in 2010 and 2011. Whether some Research Officer (Map) reverted or not is not relevant at all. The question is whether the vacancy is substantive or not. Clearly, the vacancies were not substantive as on 30.06.2008 and substantive only in 2010 and 2011, as detailed above. The O.A., therefore, does not succeed and it is accordingly dismissed. No costs.

(Dr. Brahm Avtar Agrawal)
Member (J)

(P.K. Basu)
Member (A)

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