

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO.170/00498/2017

DATED THIS THE 12TH DAY OF MARCH, 2018

HON'BLE DR.K.B.SURESH, MEMBER (J)

HON'BLE SHRI PRASANNA KUMAR PRADHAN, MEMBER (A)

1. Smt A.A. Geetha,
Aged: 58 years,
W/o B. Seetharam Bhat,
Working as Senior Drafts man,
O/o Directorate of Census operation,
Karnataka, Kendriya Sadan,
Bangalore – 560 034,
Residing at:
Q-34, 1st Main,
1st Cross, Maruthi Extension,
Bangalore – 560 021.

2. Smt. M.S. Poornima,
Age: 55 years,
W/o C.S. Venkatesh,
Working as Senior Drafts man,
O/o Directorate of Census Operation,
Karnataka, Kendriya Sadan,
Bangalore – 5600 34,
Residing at:
No. 469, Block-33,
CPWD Quarters, Sector I,
HSR Layout,
Bangalore – 560 102

.....Applicants

(By Advocate Shri P. Kamalesan)

Vs.

1. Director of Census operations,
Karnataka,
Kendriya Sadan,
Koramangala,
Bangalore – 560 034.

2. The Registrar General of India,
(Census)
Ministry of Home Affairs,
2/A, Mansingh Road,

New Delhi – 11011.

3. Union of India,
Represented by Secretary,
Ministry of Home Affairs,
Government of India,
New Delhi – 110 001

....Respondents

(By Shri M. Rajakumar, Senior Central Government Counsel)

O R D E R (ORAL)

(HON'BLE DR. K.B. SURESH, MEMBER (J))

Heard. The applicant claims for a regularization in service and consequential seniority from the date of initial appointment as temporary basis and consequential grant of benefits flowing out of it at as per the judicial decisions which has been placed before us vide Annexure-A11-A15.

2. The learned counsel for the respondents raised an objection that the matter had become stale as the Hon'ble Apex Court order is of 2012 and 5 years have elapsed since that decision. Apparently this matter was taken up by many other High Courts and Tribunals and finally the Hon'ble High Court of Gauhati had taken this matter in WP No. 4997 of 2002. In view of its importance, we hereby quote from the judgment in full.

"JUDGMENT AND ORDER

(ORAL)

(Ranjan Gogoi, J.)

Heard Mr S. Dutta, learned counsel for the petitioners and Mr. B. Pathak, learned Central Government Counsel for the respondents.

2. This writ petition is directed against an order dated 4.9.2001 passed by the learned Central Administrative Tribunal, Guwahati Bench in O.A. No. 387 of 2000. By the aforesaid order, the learned Tribunal has rejected the claim of the petitioners for ante-dated regularization of service and consequential seniority with effect from the date of initial appointment of the petitioners.

3. The facts of the case in brief may be noticed at the outset.

The Deputy Director, Census Operation, Assam by an

intimation dated 10.5.1990 requested the District Employment Exchanges to sponsor names of suitable candidates for filling up 15 vacant post of Assistant Compiler. The duration of vacancies mentioned in the said requisition was as "long term and short term vacancies". The requisition also laid down the conditions of eligibility for the posts in question. There is no dispute that the petitioners were sponsored by the employment exchange and had taken part in a written examination, typewriting test and viva-voce test whereafter they were found to be qualified for appointment. Such appointments were initially granted to the petitioners by identical orders dated 24.12.1990 which was on ad-hoc basis valid upto 28.2.1991. Thereafter, it appears that by a fresh order dated 8th January, 1991, the petitioners were temporarily appointed against the posts of Assistant Compiler. In the aforesaid order of appointment, it was mentioned that the posts against which the petitioners were being appointed are temporary and with the completion of the 1991 Census Operation, the posts will be abolished and the incumbents will be retrenched.

4. *The petitioners continued to render service on the basis of their appointment as made by the order dated 8.1.1991. In the year 1993, the petitioners were asked to appear in a special qualifying examination for regularization of their services. According to the petitioners, they sat in the said examination on 26.8.1993 but they could not qualify in the same. Notwithstanding the above, the petitioners continued to remain in service. However, in the year 1997, apprehending termination with effect from 31.12.1997, the petitioners approached the learned Tribunal by instituting a proceeding registered and numbered as O.A. No. 284/1997. The said Original Application was disposed of by the learned Tribunal on 31.8.1999 by holding that the failure of the petitioners to qualify in the special qualifying examination could not act as a restraint for consideration of their cases for regularization. Accordingly, directions were issued for de-novo consideration of the cases of the petitioners for regularization. Pursuant to the said order of the learned Tribunal, the petitioners were appointed on regular basis by an order dated 27.6.2000. By the said order, however, it was made clear that the services rendered by the petitioners prior to 27.6.2000 were not to be counted for the purpose of promotion, seniority etc. The petitioners represented against the said order of the respondents. Such representations having been rejected by the authority the petitioner had approached the learned Tribunal by instituting O.A. No. 387 of 2000 out of which this writ petition has arisen.*

5. *The facts recited above make it abundantly clear that the petitioners had qualified in a selection process initiated through the Employment Exchange prior to their initial appointment made by the order dated 24.12.1990 which was followed by the order dated 8.1.1991. The Recruitment Rules, which are available on record, indicate that selection through the employment exchange is a recognized mode of direct recruitment to the post of Assistant*

Compiler. From a reading of the two orders of appointment of the petitioners i.e. 24.12.1990 and 8.1.1991, it is clear that the initial appointment of the petitioners made by the order dated 24.12.1990 was on ad-hoc basis and valid upto 28.2.1991. The second appointment of the petitioners made by the order dated 8.1.1991 was on temporary basis against temporary posts. The requisition to the employment exchange having specified the posts in question to be "long term and short term vacancies", the Court will have to understand that the initial appointments of the petitioners were against available posts in the cadre.

6. The learned Tribunal while considering the cases of the petitioners appears to have proceeded on the basis that the appointment of the petitioners were on ad-hoc basis and, therefore, the petitioners will fall within the proposition indicated as corollary to proposition (A) contained in para-47 of the judgment of the Apex Court in *Direct Recruit Class II Engineering Officers' Association Vs. – State of Maharashtra and others*, reported in (1990) 2 SCC 715. It is primarily on the aforesaid principle and the findings recorded in that regard that relief had been refused to the petitioners.

7. We have already indicated that the initial appointment of the petitioners made by the order dated 21.12.1990 were on adhoc basis and that by the subsequent order dated 8.1.1991 the petitioners were appointed on temporary basis against temporary posts. The initial appointment of the petitioners were preceded by a selection process in which process they had qualified. The said selection was initiated through the Employment Exchange. Recruitment through the employment exchange is a permissible mode of recruitment under the Recruitment Rules in force. If that be so, it would be difficult to appreciate as to how the case of the petitioners will fall within the corollary to proposition (A) as laid down in *Direct Recruit Class II Engineering Officers' Association (supra)*. Even if the stand of the respondents that the initial appointments of the petitioners were on ad-hoc basis is to be hypothetically accepted, the two other requirements which would bring such appointments within the ambit of corollary to proposition (A) above are not present in the instant case. The initial appointment of the petitioners having followed a permissible mode of direct recruitment under the Rules, it cannot be said that the initial appointment of the petitioners were not according to the Rules. That apart, the requisition sent to the employment exchange having indicated that the vacancies were of short and long term duration, it cannot be said that the initial appointments of the petitioners were purely stop-gap arrangements. In the instant case, we clearly find that even if the first requirement of the corollary is to be hypothetically accepted, the other two requirements are not satisfied. Consequently, the case of the petitioners will not fall within the corollary but will be covered by the main part of the proposition (A) laid down in the case of *Direct Recruit Class II Engineering Officers' Association (supra)*.

8. *On the findings recorded, we therefore, have to hold and declare that the petitioners are entitled to regularization of their services and consequential seniority from the date of their initial appointment on temporary basis i.e. 8.1.1991. We accordingly make the aforesaid declaration and leave the matter for grant of consequential relief that may follow to be determined by the Respondents in accordance with law and after notice and opportunity to all such persons who may be affected, if any.*

9. *Consequently, the writ petition is allowed to the extent indicated above. The judgment and order dated 4.9.2011 passed by the learned Central Administrative Tribunal, Guwahati Bench in O.A. No. 387 of 2000 is accordingly set aside.*

*Sd/- B.P. KATAKEY
JUDGE*

*Sd/-RANJAN GOGOI
JUDGE"*

3. Since the Hon'ble High Court at Gauhati had discussed this matter and pronounced its findings on all elements which would have arisen in this matter, we do not think that there is any more need to go any more deeper in this subject as the question of fact arisen in Hon'ble High Court of Guwahati and this Tribunal are essentially the same.

4. Apparently this matter was taken up by the Government in SLP No. 19137/2010 and that having been dismissed vide order dated 16.04.2012 the matter had become concretised. Therefore we hold that the applicant is eligible to the benefit as claimed for. Therefore her seniority will be counted from 09.08.1982 but this will not mean that any settled promotion for any other person in the interregnum will be affected because she had come to the Court only now, this benefit will not be extended to her. She will also not get any arrears of pay if at all any such can be canvassed on her behalf during the interregnum period of 09.08.1982 to 29.08.1984 but this will have a bearing on her pension and similar consequences. Her seniority also will

be recast taking the initial appointment of 09.08.1982.

5. To this extent the OA is allowed. No order as to costs.

(PRASANNA KUMAR PRADHAN)
MEMBER (A)

(DR.K.B.SURESH)
MEMBER (J)

/ksk/

Annexures referred to by the applicant in OA No. 170/00498/2017

Annexure-A1: Copy of the OM dated 09.08.1982 issued by office of the Director, census operation karnataka

Annexure-A2: Copy of the OM dated 31.08.1984 issued by office of the Directorate of Census operation Karnataka

Annexure-A3: Copy of the OM No. ADA/65/Est 84 dated 14.11.1984 issued by office of the Directorate of Census operation Karnataka

Annexure-A4: Copy of Memo No. ADM/37/Est 87 dated 24.11.1987 issued by office of the Directorate of Census operation Karnataka

Annexure-A5: Copy of Memo No. ADM/22/Est/89-90 dated 18.02.1991 issued by Directorate of Census operations Karnataka

Annexure-A6: Copy of letter No. 12/62/201-AD-111 (Pt) dated 05.02.2012 issued by Office Registrar General India, Census operation, New Delhi

Annexure-A7: Copy of letter No. 23024/01/2013 (pt) Ad IV Dated 04.08.2015 issued by Office Registrar General India, Census operation, New Delhi

Annexure-A8: Copy of the letter No. A/1207/1/2015 (Est) dated 29.06.2015 issued by Directorate of Census operations Karnataka

Annexure-A9: Copy of provisional seniority list of Senior Drafts man dated 19.05.2017 issued by office registrar general India, Census operation, New Delhi

Annexure-A10: Copy of representation of applicants dated 03.07.2017

Annexure-A11: Copy of Hon'ble CAT, Bangalore Bench order dated 12.06.2015 in OA No. 397/407/14

Annexure-A12: Copy of Hon'ble High Court of Gujarat at Ahmedabad order dated 03.07.2014 in special Civil Appeal No. 1175/2014

Annexure-A13: Copy of Hon'ble High Court of Rajasthan, Jaipur Bench order dated 07.05.2015 in DB Civil Writ Petition No. 1822/2000

Annexure-A14: Copy of Hon'ble High Court of Assam at Gauhati order in W.P. No. 4997/2002

Annexure-A15: Copy of Hon'ble Apex Court order dated 16.04.2012 in SLP Civil No(s) 19137/2010

Annexures with Reply Statement:

Annexure-R1: Copy of OM No. 28036/1/2001-Estt(D) dated 23.07.2001
