

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BENGALURU**

ORIGINAL APPLICATION NO.170/000226/2018

DATED THIS THE 9TH DAY OF JANUARY, 2019

**HON'BLE DR.K.B.SURESH
HON'BLE SHRI C.V. SANKAR**

...**MEMBER(J)**
...**MEMBER(A)**

R. Gangamma,
Aged about 60 years,
D/o Late D.N. Ramamurthy,
Working as Office Superintendent,
O/o Director of Census,
Karnataka, Kendriya Sadan,
Bangalore-560 034.
Residing at 111, 10th Main,
9th Cross, Shankarnagar,
Mahalakshmi Layout,
Bangalore-560 096.Applicant.

(By Advocate Shri P. Kamalesan)

Vs.

1. Union of India
Rep. by the Secretary,
Ministry of Home Affairs,
Government of India,
New Delhi – 110 001.
2. Director of Census Operation,
Karnataka, Kendriya Sadan,
Koramanga,
Bangalore-560 034.
3. Registrar General of India ,
Ministry of Home Affairs (Census),
2/A, Man Singh Road,
New Delhi-1100 001.Respondents

(By Standing Counsel Shri Sayed S. Khazi for Respondents)

ORDER (ORAL)

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

Heard. This matter seems to be covered by the Judgment of coordinate Bench at Gauhati which went up to Hon'ble Gauhati High Court in WP.No. 4997/2002, which we quote:-

IN THE GAUHATI HIGH COURT
(The High Court of Assam, Nagaland, Meghalaya, Manipur, Tripura, Mizoram and
Arunachal Pradesh)

WRIT PETITION NO.4997 OF 2002

1. Md. Shah Nawaz Haque
2. Shri Parag Das
3. Shri Abani Borthakur ...Petitioners
(For common cause of action)

(All are working as Assistant Compilers in the Office of the Director of Census Operation, Assam, G.S. Road, Ulubari, Guwahati-7)

-Versus-

1. Union of India
Rep. by the Secretary,
Ministry of Home Affairs,
Government of India,
New Delhi – 110 001.
2. Registrar General of India ,
2/A, Man Singh Road,
New Delhi-1100 001.
3. The Director of Census Operations,
Assam, G.S. Road, Ulubari, Guwahati-7,
Represented by the Dy. Director of
Census Operation. ...Respondents.

PRESENT
THE HON'BLE MR. JUSTICE RANJAN GOGOI
THE HON'BLE MR. JUSTICE B.P. KATAKEY

For the petitioners Mr. S. Dutta,
Advocate

Date of hearing 05.06.2009.

Date of Judgment and Order. 05.06.2009

**JUDGEMENT 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. The Writ Petition is directed against an order dated 4.9.2001 passed by the learned Central Administrative Tribunal, Guwahati Bench in OA.No.387 of 2000. By the aforesaid order, the learned Tribunal has rejected the claim of the petitioners for ante-dated regularization of serviced 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 Exchange 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 8.1.1991, 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 post will be abolished and the incumbent 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 insisting a proceeding registered and numbered as OA. 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 OA.No. 387 of 2000 out of which this writ petition has arisen.

5. The facts recited above make it abundantly clear that the petitioner had qualified 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 appointments 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 appointments 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 the relief had been refused to the petitioners.

7. We have already indicated that the initial appointment of the petitioners made by the order dated 24.12.1990 were on ad-hoc 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 said 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 for 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 4.9.2001 passed by the learned Central Administrative Tribunal, Guwahati Bench in OA.No.387 of 2000 is accordingly set aside.

Sd/- B.P. KATAKEY
JUDGE

Sd/- RANJAN GOGOI
JUDGE

2. In the High Court order in para 8 it is stipulated that "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.”

3. This matter was taken up in appeal in SLP.No. 19137/2010 and Hon’ble Apex Court vide order dated 16.04.2012 held that there is no merit in the appeal and SLP was dismissed. Therefore, this matter had become final.
4. But in the meanwhile it is pointed out that the applicant herein had suffered an earlier set back in OA.No.1775 & 1776/88, which we had disposed off vide order dated 06.01.1989, which we quote:

“ORDER”

The two applicants before us are working as Lower Division Clerks (LDC) in the office of the Director of Census operations, Bangalore. Both of them were appointed as LDCs with effect from 9.10.1980 and their services were regularized with effect from 1.1.1995. A seniority list of LDCs as on 1.7.1987 was brought out by the Joint Director of Census Operations, Karnataka, Bangalore, vide his office memorandum dated 17.8.1988. In the seniority list, the first applicant appears at Serial No. 9 and the second applicant at Serial No.4 and this position of seniority is based on the date from which they were regularised. In these applications, their prayer is that the seniority list be quashed and the respondents be directed to re-draw the seniority list reckoning the seniority of the applicants from the date they were given ad hoc appointment and not from the date they were regularly appointed.

2. Dr. M.S. Nagaraja, learned counsel for the applicants, submitted that what the applicants want is that the date of regular appointment in their cases be shown as 9.10.1980 and not 1.1.1985 in view of a long line of decisions holding that when ad hoc service is followed by regularisation, the regularisation should take effect from the commencement of ad hoc service. He, however, admits that this will not affect the relative seniority of the applicants vis-a-vis those senior to them in the said seniority list.

3. Sri M. Vasudeva Rao, learned counsel for the respondents, submitted that a similar application involving the same issue was dismissed by us in applications No. 1758 to 1765/88, M.N. Muralidhar and others vs Director of Census Operations, Bangalore. He submitted that following the principle of that decision, these applications deserved to be dismissed.

4. Having considered the rival contentions carefully, we are of the view that these applications deserve to be dismissed. The decisions rendered by the Supreme Court on which Dr. Nagaraja relies were rendered in the context of determining relative seniority of persons in a cadre. In this case, neither of the applicants wants his position of seniority altered. Their only apprehension is that the service rendered by them prior to the date of their regularization may not be counted for determining eligibility for promotion to higher posts. Thus, the various decisions cited on behalf of the applicants have really no bearing on the facts of these cases. As we have pointed out in Murlidhar's case, if the applicants are denied promotion to higher posts ignoring the service rendered by them before regularization, then they would have a cause of action which they could, if so deemed fit, agitate at the appropriate time.

5. In view of the above, both the applications are dismissed leaving the parties to bear their own costs."

5. Learned counsel for the applicant explains this position and says that this OA was actually in response to their termination and other consequential reliefs also and also that is evident in para 3 of the above order. This was in relation to an order which was passed therein in OA.No.1758 to 1765/88 and in relation to that only this particular order was passed and the issue of their continuity and consequential benefits cannot have been raised as an issue, as the Tribunal could have been had access only to one issue at that point of time.
6. Leaving this aside, we have to also note that following this, this order of the Hon'ble Apex Court is now implemented across India and to many other in similar situations have got the benefit. Therefore the question could be under what issues and matrix can we deny to the applicant, even if constructive resjudicata may have come against her claim. We note that going by great public interest of uniformity in service, since the order has already been implemented, we think this will be applicable to the applicant herein also without any hindrance or obstacle, as otherwise Article 14 will stand defeated. This OA is therefore allowed. The benefits as mentioned in the declaration made by the Gauhati High Court and upheld by the Hon'ble Apex Court will be made available in this case also. No costs.

(C.V. SANKAR)
MEMBER(A)

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

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Annexures referred to by the Applicant in OA No.170/00226/2018

1. Annexure A1 : Copy of Director of Census Operation, Karnataka letter dated 9.10.80.
2. Annexure A2 : Copy of Director of Census Operation, Karnataka letter dated 25.1.85.
3. Annexure A3 : Copy of Director of Census Operation, Karnataka letter dated 21.6.96.
4. Annexure A4 : Copy of Director of Census Operation, Karnataka letter dated 1.12.2006.
5. Annexure A5 : Copy of Registrar General of India, Ministry of Home Affairs, letter dated 27.8.2010.
6. Annexure A6 : Copy of Director of Census Operation, Karnataka letter dated 18.5.2015.
7. Annexure A7 : Copy of Director of Census Operation, Karnataka letter dated 29.6.2015.
8. Annexure A8 : Copy of Hon'ble CAT, Bangalore order dated 12.6.2015 in OA.No.397 to 407/2014.
9. Annexure A9 : Copy of Hon'ble High Court, Gauhati order dated 5.6.2009 in WP.No.4997/2002.
- 10 Annexure A10 : Copy of Hon'ble Apex Court order dated 16.4.2017 in SLP.No.19137/2010.
11. Annexure A11 : Copy of Representation dated 19.2.2016.

Annexures referred to by the respondents in the Reply

1. Annexure R1: Copy of Official Memorandum dated 17.8.1988.
2. Annexure R2 :Copy of the order dated 06.01.1989.
3. Annexure R3 :Copy of the Judgement dated 17.10.2014.
4. Annexure R4: Copy of the letter dated 10.05.2015.
5. Annexure R1: Copy of Official Memorandum dated 23.7.2001.
