

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Swarup Kumar Mishra, Member (J)

OA No. 650 of 2017

1. Sudarsan Behera, aged about 57 years, S/o Late Laxmidhar Behera of Village/PO-Rahania, Dist-Bhadrak.
2. Upendra Kumar Naik, aged about 50 years, S/o Ghanashyam Nayak, of village-Kalyanpur, PO-Bhinpur, Dist-Jajpur.
3. Bijay Kumar Sahu, aged about 50 years, S/o Arikhita Sahu of Village-Bada Saragailo. PO-Teisipur, Dist-Puri.
4. Giridhari Samantaray, aged about 57 yers, S/o Late Kashinath Barik, of village/PO-Khandasahi, Dist-Cuttack.

All of them are working as SI Grade II, O/o Director of Census Operation, Bhoinagar, Unit-IX, Bhubaneswar-751007.

OA No. 651 of 2017

Narendra Kumar Singh, aged about 55 years, S/o late Jadunath Singh, resident of Vill-Soral, PO-Balichandrapur, PS-Mahanga, Dist- Cuttack, Odisha, Pin-754205 & now residing at Quarter No. Type II/33, Census Staff Quarters, Baramunda, Bhubaneswar, Pin-751003, presently working as Statistical Investigator Grade II, O/o Directorate of Census Operations, Odisha, Janpath, Unit-IX, Bhoinagar, Bhubaneswar-751022.

VERSUS

1. Union of India, represented through its Secretary to Government of India, Ministry of Home Affairs, North Block, New Delhi-110001.
2. The Registrar General of India, Ministry of Home Affairs, 21-A Mansingh Road, New Delhi-110011.
3. The Director of Census Operations, Odisha, Janpath, UUnit-IX, Bhoinagar, Bhubaneswar-751022.
4. The Joint Director of Census Operations, Odisha, Janpath, Unit-IX, Bhoinagar, Bhubaneswar-751022.

.....Respondents.

For the applicant : Mr.D.K.Mohanty, counsel (OA 650/17)
Mr.C.P.Sahani, counsel (OA 651/2017)

For the respondents: Mr.S.Behera, counsel (OA 650/17)
Mr.D.K.Mallick, counsel (OA 651/17)

Heard & reserved on : 4.9.2019

Order on : 17.10.2019

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

The applicant has filed these OAs seeking the following reliefs:-

OA No. 650/2017

- “(i) To quash the show cause dt. 16.10.2017 and the orders of rejection by the authority dtd. 15.11.2017 under Annexure 6 series and A/8 series.

- (ii) To direct the Respondents not to revert to the applicant where he is now continuing i.e. SI-Grade II.
- (iii) To pass any other order/orders as deem fit and proper.”

OA No. 651/2017

- “(i) Admit the Original Application, and call the records.
 - (ii) After hearing the counsels for the parties be pleased to quash the show cause notice vide Memo No. 20/05/2017-Estt. dated 16.10.2017 at Annexure A/7, rejection order vide Memo No. 20/05/2017-Estt. dated 15.11.2017 at Annexure A/9 and Annexure A/6 in respect of the applicant.
- And/Or
- (iii) Pass any other order(s) as the Hon’ble Tribunal deem just and proper in the interest of justice considering the facts and circumstances of the case and allow this OA with costs.”

2. Both these OAs are for similar reliefs and arise out of the same dispute pertaining to reversion of the applicants. These were, therefore, heard together with five other OAs with Nos. 169, 170, 171, 172 and 177 of 2018. But since there are some factual differences in the OA Nos. 650 and 651 of 2017 from the OA No. 170/18, the former two OAs are being disposed of by this common order with the OA No. 650/17 being taken as the lead OA for the purpose of this order.

OA No. 650/2017

3. The applicants in this OA had joined on ad hoc basis in 1992 and had approached Hon’ble High Court in W.P. No. 3268/2011, in which, the respondents were directed to regularize the services of the applicants from the date of their joining on adhoc basis and to grant consequential benefits of service. In compliance of the order of Hon’ble High Court, the respondents regularized the services of the applicants in this OA and they were allowed notional promotion w.e.f. 16.2.2011 to the post of SI Gr. III in pursuance of the recommendation of the DPC held on 26.5.2015 as per the letter dated 26.8.2014 of the respondent no.2 (Annexure-A/11) taking into consideration the fact that their juniors were allowed such notional promotion w.e.f. 16.2.2011. Later on the respondents found that the vacancies in the cadre of SI Gr. III were wrongly assessed by the respondents at the time of holding the DPC on 5.9.2014 and 26.6.2015 as per the letter dated 26.8.2014 of the respondent no.2. It was found that there were only 5 vacancies and there were other more deserving candidates for promotion.

4. The respondents issued a show cause notice dated 16.10.2017 (Annexure-A/6 series) asking the applicants why they will not be reverted since they were erroneously promoted to the post of SI Gr. III notionally w.e.f. 16.2.2011. The reply furnished by the applicants vide letter dated 22.10.2017 (Annexure-A/7 series), were rejected vide order dated 15.11.2017 (Annexure-A/8 series). The applicant challenges both the orders at Annexure A/6 and A/8

series in this OA. The Tribunal vide order dated 7.12.2017, stayed the reversion of the applicants. As a result, the applicants are continuing in the post and they were also promoted to the next higher post of SI Gr. I vide order dated 28.11.2018 (Annexure-R/4 to the reply of the respondents to the MA No. 451/18 filed by the applicants) subject to the outcome of this OA.

5. The grounds mentioned in the OA are that after merger of the cadres of SI Gr. II and SI Gr. III w.e.f. 1.1.2006, there are 42 posts in the merged cadre and the vacancy in the merged cadre is to be considered by the respondents before deciding to revert the applicants. It is stated that the proposed reversion is a punishment which is not permissible under the rules. DCO, Bihar, under similar circumstances, had convened the DPC on 22.12.2011 taking into account the vacancies in the merged cadre, which was not done in the case of the applicant. It is further stated that the respondents had allowed the benefit of seniority and promotion to the applicants as per the order of Hon'ble High Court and reversion of the applicant without taking permission of Hon'ble High Court is illegal. It is also stated that 7 persons who are juniors to the applicant are continuing as SI Gr. III on ad hoc basis and considering vacancies, there will be about 11 posts vacant as on 16.2.2011, for which, the promotion given to the applicants is based on correct assessment of vacancies.

6. Counter filed by the respondents stated that the number of vacancies were wrongly assessed at the time of the DPC held on 26.6.2015, which recommended promotion of the applicants. It is stated that there were only 5 vacancies and senior employees to the applicants were available for promotion. It is stated that as per the rules, as on 16.2.2011, 50% of posts are to be filled up by promotion. Out of 34 vacancies, 17 posts are to be filled up by promotion. It is stated that as on 16.2.2011, 12 posts were already filled up by promotion, thus leaving only 5 posts to be filled up by promotion out of which 3 posts are unreserved and 2 posts are reserved category. It is further stated that as per the DOPT OM dated 13.4.1998, if there is a mistake in any promotion, then it will be rectified by holding a review DPC (Annexure-R/15 to the Counter). Hence, in the situation where 14 officials were promoted to SI Gr.III w.e.f. 16.2.2011 against available 5 vacancies, the promotion of the applicants was found to be erroneous. Hence, the action of the respondents to review the promotion of the applicants is stated to be correct.

7. We have heard learned counsel for the applicants as well as the respondents in OA Nos. 650 and 651 of 2017 and written notes of submissions were also filed by learned counsel for both the sides. The applicants' counsel also cited the following judgments in his written note in support of the applicants' case:-

- (i) Mohinder Singh Gill and another –vs- The chief Election Commissioner, New Delhi and Others [AIR 1978 SC 851]
- (ii) P.C.Kakkar –vs- Chairman & managing Director, United Commercial Bank and Others [(2003) 4 SCC 364]
- (iii) Akhila Kumar Mohapatra –vs- State of Orissa and Others [2012(1) OLR-87]
- (iv) Rajat Kumar Mohanty & Ors. –vs- Sarat Chandra Panda & Anr. [2015 (II) ILR-CUT-767]
- (v) M/S East Coast Constructions Industries Ltd. Odisha –vs- State of Odisha & Ors. [2016 (I) ILR-CUT-894]

It is stated by the applicants' counsel that the applicants in their reply to show cause notice dated 16.10.2017 (A/6 series), have stated that there were vacancies in the merged cadre for consideration of their case, but this submission was not considered by the respondents while passing the rejection order dated 15.11.2017 (Annexure-A/8 series). It was further submitted that the review DPC was held on 26.6.2015 only on the vacancy of SI Gr.III although the cadre was merged with the cadre of SI Gr. II. It is stated that the respondents at the time of holding the DPC on 5.9.2014 and the review DPC on 26.6.2015, the number of vacancies in the merged cadre was not placed before the DPC. It is also submitted that the rejection orders are not speaking orders.

8. Learned counsels for the respondents in both the OA Nos. 650 and 651 of 2017 were heard and they also submitted written note of submissions in pursuance to the order dated 6.8.2019 seeking clarifications on some points from the respondents. For the query as to the reasons for not holding the review DPC before reversion of the applicant, it is stated by the respondents that vide letter dated 28.9.2017 (Annexure-R/14 of the Counter), it was instructed that the review DPC be held after issuing show cause notice to the concerned employees who were wrongly promoted in the DPC held on 5.9.2014 and 26.6.2015 and that no reversion order has been issued in view of the interim order dated 7.12.2017 staying reversion of the applicants. It was stated that the DPC was held for the date 16.2.2011 prior to the merger. It was stated that as against 5 vacancies, more number of officers were promoted.

9. We have gone through the pleadings and materials on record and also considered the submissions of the learned counsels for both the parties. In another batch of OAs with Nos. 169, 170, 171, 172 and 177 of 2018 with similar circumstances, our findings are as under:-

“12. It is clear from the pleadings on record that the respondents are treating the merged cadre of SI Gr.II/III to be separate till 16.2.2011 and they have also averred that from 17.2.2011, when merger of Cadres of SI Gr.III and ST Gr.II was effected, there were no provisions in the recruitment rules till 27.11.2013 for promoting Senior Compilers directly to the merged cadre post of the SI Gr. II. The order dated 17.2.2011 (Annexure-R/2) of the respondent no.2 merging the cadres of SI Gr.III and SI Gr.II stated as under:-

“The following posts in the Office of the Registrar General of India and Directorate of Census Operations stand merged with effect from 01-Jan-2006...”

The said order dated 17.2.2011 stated that 169 posts of SI Gr.II and 707 posts of SI Gr.III merge together to form the cadre of SI Gr. II (876 posts) and the Grade Pay of Rs. 4200/- for the combined cadre was specified. Hence, the order dated 17.2.2011 meant that from 1.1.2006, both the posts stand merged. By the time the DPC was held on 5.9.2014, the merger of the cadres had taken effect w.e.f. 1.1.2006, for which, it will not be correct to say that on 16.2.2011, a separate SI Gr.III cadre was in existence with vacancies of 34 posts as contended in the Counter. Had the DPC been held prior to 17.2.2011, then such contention would have been acceptable. On 16.2.2011, the vacancy in the cadre should have been found out based on the total cadre strength of SI Gr.III and SI Gr.II, which was 42 (out of which 21 would be promotion posts) as averred by the applicant in his Rejoinder.

13. Consideration of the applicants for promotion to posts in the merged cadre of SI Gr.II and SI Gr.III was not acceptable to the respondents since there was no provision in the Recruitment Rules for promotion of Senior Compiler to SI Gr.II till the new Rules were notified on 27.11.2013 (Annexure-R/9). Such a stand of the respondents will also mean that there will not be any promotion from the post of Senior Compiler to the post of SI Gr. II from 17.2.2011 till 27.11.2013, which will adversely affect the employees who are eligible for promotion, but they cannot be considered since the DPC could not be convened prior to 16.2.2011 for reasons not explained by the respondents. That was also not the intention of the authorities as no policy guidelines/instructions of the respondent No.2 has been produced by the respondents to show that the authorities did not intend to take up any promotion of eligible Senior Compilers to the post of SI Gr. II till the amendments in the Recruitment Rules. On the other hand, the respondent no.2 has instructed vide letter dated 26.8.2014 (A/3) issued after merger of the cadres of SI Gr.II and SI Gr.III had already taken place, to consider all the eligible candidates for promotion to SI Gr.III as on 16.2.2011 subject to availability of vacancy as on 16.2.2011. In pursuance to the letter dated 26.8.2014 of the respondent No.2, the applicant's case was considered and he was found fit for promotion notionally from 16.2.2011 on regular basis prior to 16.2.2011, the applicant had been promoted as SI Gr.III on ad hoc basis. It is noted that the applicant was already getting the pay scale of the SI Gr. III w.e.f. 13.10.2010 because of his ad hoc promotion.

14. After about 3 (three) years of promotion of the applicant notionally w.e.f. 16.2.2011 on regular basis, it was discovered by the respondents that the number of vacancies as on 16.2.2011 in the cadre of SI Gr.III was not correctly assessed at the time of holding of the DPC on 5.9.2014 and of the review DPC on 26.6.2015 and after correct calculation of the vacancies as on 16.2.2011, it was found that the applicant's promotion to SI Gr.III was incorrect as the vacancies were not sufficient to accommodate his case. The reason for incorrect assessment of vacancies at the time of holding the DPC as per the letter at Annexure-A/3 has not been mentioned by the respondents in their pleadings. Clearly, the present situation has arisen due to the wrong assessment of vacancies as on 16.2.2011 and for not convening the DPC for promotion regularly every year for promotion to the Grade of SI Gr.III and SI Gr.II and there is no fault on the part of the applicant. This fact has to be kept in mind while deciding this case.

15. The applicant has stated in his pleadings that there were enough vacancies as on the date of holding the DPC on 5.9.2014 to accommodate his case. Such contention has not been contradicted by the respondents, who have submitted that after 16.2.2011, both the cadres merged to SI Gr.II and there was no provision in the rules for promotion of senior compilers to the post of SI Gr. II. Moreover, the DPC was held on 5.9.2014 in pursuance of the letter dated 26.8.2014 of the respondent no. 2 to consider promotion to SI Gr.III w.e.f. 16.2.2011 on the basis of the vacancies as on 16.2.2011. Since the letter dated 26.8.2014 is not challenged in this OA, such stipulation is to be acted upon, for which, the action of the respondents for not considering the vacancies arising after 16.2.2011 in the DPC cannot be faulted.

16. It is noticed that since the merger of the cadres of SI Gr.III and SI Gr. II has been effected from 1.1.2006, on the date the DPC held on 5.9.2014 or on 26.6.2015, both the cadres had merged from 1.1.2006 and hence, there was no existence of the cadre of SI Gr. III separately on 16.2.2011 even to allow notional promotion. Hence, the applicant's averment that the number of posts in the merged cadre was 42 (out of which 34 posts were from the cadre of SI Gr.III and 8 from the cadre of SI Gr. II), cannot be brushed aside. The

promotion quota for the combined cadre was 50% of 42 posts i.e. 21 posts, out of which 12 persons were in position as on 16.2.2011 leaving 9 vacancies. Hence, the DPC held on 5.9.2014 should have selected the candidates for promotion to the combined post of SI Gr.II/III for 9 posts vacant in the combined cadre. The contention of the respondents that there was no provision in the Recruitment Rules for promotion to the combined post of SI Gr.II/III is not tenable, since the rules as on 16.2.2011 provided for promotion to SI Gr.III, which has to be taken as the provision for SI Gr.II after merger of ST Gr.III and ST Gr.II till the notification for new rules w.e.f. 27.11.2013 vide Annexure-R/9 of the Counter. In absence of any policy guidelines that till notification of the revised Recruitment Rules after merger of the cadres of SI Gr.II and SI Gr.III, there will not be any promotion of the employees to the post of SI Gr.II/III under the extant rules. We are of the considered view that for promotion to SI Gr.III/Gr.II notionally w.e.f. 16.2.2011, the vacancies of 9 posts, in the combined cadre is to be considered and DPC is to be convened as per the Recruitment rules which were in force. The only way to consider promotion of the eligible employees to the post of SI Gr.II after 16.2.2011 is to adopt the provision of the rules for promotion to the post of SI Gr.III, which has to be accepted to be same as SI Gr.II after merger of both the cadres on 17.2.2011 w.e.f. 1.1.2006. Hence, we are unable to accept the contention of the respondents that as on 16.2.2011, there were only 5 vacant posts, since the posts in the cadre of SI Gr.II were not taken into consideration.

17. From the pleadings of the respondents, it is clear that such a situation has arisen entirely due to fault of the authorities. Firstly, the DPC and review DPC were held on 5.9.2014 and 26.6.2015 respectively, without first ascertaining the vacancies available in the cadre. Secondly, the mistake in the assessment of vacancy could not be identified by the respondents within a reasonable time after the applicant was allowed ad hoc promotion w.e.f. 13.10.2010 and regular promotion w.e.f. 5.9.2014 with notional seniority from 16.2.2011 and the mistake was identified after a lapse of about three years till 16.10.2017 (A/7) when the show cause notice was issued to the applicant. There is no whisper in the pleadings of the respondents about the reasons for such mistake on the part of the authorities and for delay in identifying the said mistake. Thirdly, the reasons mentioned in the respondents' pleadings for not considering the vacancies in the cadre of SI Gr. II before deciding the case of reversion of the applicant, are not acceptable as discussed in para 16 of this order.

.....

21. In view of the above discussions, the impugned orders dated 15.11.2017 (Annexure-A/9) and dated 26.3.2018 (Annexure-A/10) are set aside and the matter is remitted to the respondent no. 2 to reconsider the case of the applicant for notional promotion as SI Gr. II/Gr.III w.e.f. 16.2.2011 by convening a review DPC after taking into account total vacancies available in the merged cadres of SI Gr.II and SI Gr.III as discussed in paragraph 16 of this order and if the applicant is recommended by the DPC for notional promotion w.e.f. 16.2.2011, then the respondents will allow all consequential benefits as per the letter dated 26.8.2014 (Annexure-A/3) of the respondent No.2. In case the applicant cannot be promoted w.e.f. 16.2.2011 in view of the available vacancies in the combined cadre as on 16.2.2011, then his case for notional promotion will be considered on or after 17.2.2011 as when vacancies of SI Gr.II/Gr.III are available as per the rules prevalent during the aforesaid period. If the applicant will be found eligible for notional promotion to the combined cadre of SI Gr. II from an earlier date, then he will be assigned the seniority from the date/year he would be found suitable for such promotion as per the available vacancy and he would be allowed all consequential service benefits for such notional promotion as per the rules. The respondent No.2 will communicate the decision taken in this regard to the applicant through a speaking order within four months from the date of receipt of a copy of this order based on the recommendation of the review DPC to be convened as per this order. The OA No. 170/18 is accordingly allowed in part as above."

10. Learned counsel for the applicant has filed the judgment of Hon'ble Apex Court in the case of Mohinder Singh Gill (supra) in which it is laid down that when a statutory authority passes an order, its validity is to be judged based

on the reasons mentioned in the order and any additional reason furnished subsequently is not to be considered. Applying the ratio to this OA, it is seen that no order for reversion of the applicant was issued in this OA because of the interim order dated 7.12.2017. The only reason mentioned in the impugned order dated 15.11.2017 (Annexure-A/8 series) related to the number of vacancy in the cadre as on 16.2.2011, which is to be taken into account for disposal of this OA. As observed in para 16 of the order in OA No. 170/18 extracted in para 9 above, this issue has been considered. In the case of Akhila Kumar Mohapatra (supra), Rajat Kumar Mohanty (supra) and Prasanna Kumar Acharya (supra), cited by the learned counsel for the applicant, it was held by Hon'ble High Court that an administrative order is to be passed with reasons. In this OA, the reason has been mentioned in the impugned order dated 15.11.2017 as discussed earlier. Hence, these cited judgments will not be helpful for the applicants' case in this OA.

11. Since the nature of the dispute in both the OA no. 650/17 and the grounds taken by the respondents are similar to the OA nos. 170/18, the order passed for the OA No. 170/18 including the conclusion at paragraph 21 of the order as extracted above, will be squarely applicable for the applicants in the OA No. 650 of 2017. The number of vacancy as on 16.2.2011 mentioned to be 5 in the cadre of SI Gr. III is found to be erroneous since the respondents did not take into consideration the vacancy in the combined cadres as discussed in the paragraph 16 of the order passed by us in OA No. 170/18 (extracted in para 9 above). This finding is corroborated by the averments in para 4.18 of the OA with reference to the combined seniority for the cadre of SI Gr. II as on 1.1.2011 circulated by the respondents vide letter dated 8.1.2013 (Annexure-A/10 of the OA) and these averments have not been contradicted in the pleadings of the respondents.

12. We are, therefore, of the view that the case of the applicants deserve reconsideration by the authorities, as in the case of the applicants in OA No. 170/18 and other OAs disposed of in the batch with OA No. 170/18. We accordingly allow the OA No. 650 of 2017 in part by setting aside the orders dated 15.11.2017 (Annexure-A/8 series), by which the representation of the applicants were rejected and by remitting the matter to the Respondent no.2 to reconsider the case of the applicants in this OA in terms of the paragraph 21 of the order passed in the OA No. 170/18 as extracted in para 9 of this order and communicate the decision in this regard to the applicants through a speaking order within four months from the date of receipt of a copy of this order. It is made clear that while considering vacancies for the purpose of the DPC that would be convened in compliance of this order, the posts in which the

applicants are now continuing on account of the interim order dated 7.12.2017, would be treated as vacant and if on reconsideration of the matter as stated above, the applicants are found to be ineligible for notional promotion w.e.f. 16.2.2011, then the respondents will be at liberty to pass appropriate order to withdraw or disallow any service benefit that would have accrued to the applicants because of the interim order dated 7.12.2017, after following due process of law. It is further clarified that till a decision is taken by the respondents on reconsideration of the matter in pursuance of this order, no reversion of the applicants will be carried out by the respondents.

13. Since the facts and circumstances in the OA No. 651 of 2017 are similar as the OA No. 650 of 2017, the said OA No. 651/17 is also allowed in part in terms of the paragraph 12 above.

14. Both the OAs are allowed in part as above with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

I.Nath