

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

Original Application No.721/99.

Dated, Mumbai this Thursday, the 13th Day of February, 03

Hon'ble Shri A.S. Sanghvi, Member (J)

Hon'ble Shri G.C. Srivastava, Member (A).

Shri P.K. Chatterjee,
Manager, Mail Motor Service
(Postal), Head Post Office
Compound, Pune-411 001.

.. Applicant.

(By Advocate Shri S.P. Kulkarni).

Versus

1. Union of India, (its)
Secretary (Deptt of Posts),
(thru) Director General (Posts)
Deptt of Posts, Ministry of
Communications, Government of
India, Dak Bhavan,
New Delhi - 110 001.
2. Member (Posts),
Office of the Director General
(Posts), Dak Bhavan,
New Delhi - 110 001.
3. Chief Postmaster General,
Maharashtra Circle,
Old GPO Building, Fort,
Mumbai - 400 001.
4. Shri C. Nagarajan,
No.35, Middle Street,
Rama Krishna Nagar,
Muthiapet,
Rondicherry - 605 003.
5. The Secretary,
Union Public Service Commission,
Dholpur House, Shahjahan Road,
New Delhi - 110 011.

.. Respondents.

(By Advocate Shri V.S.Masurkar).

Order (Oral)

By A.S. Sanghvi, Member (J).

The applicnat has joined the Department of Posts
and Telegraph as Technical Supervisor with effect from ..

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11.8.1974. His grievance is that he ^{was} ~~is~~ ^{being} continued as Technical Supervisor without any promotion for a long period and ultimately he has been given adhoc promotion from 14.10.1986 as Manager, Mail Motor Service, Group 'B' post. However, the respondents now proposed to revert the applicant on the ground that he is not regularly promoted and the regular promotee through Union Public Service Commission is available for holding the post. The applicant being aggrieved by the proposed reversion has moved this OA. challenging the action of the respondents in not regularising ^{him} in the said post of Manager and praying inter-alia that he be considered for regular promotion to the said post.

2. The respondents on the other hand have resisted the OA on several grounds. It is pointed out that there are no promotional avenues open for the Technical Supervisor and the post of Technical Supervisor is not a feeder cadre post of Manager. The applicant was given promotion on adhoc basis by down grading the post as an arrangement of purely adhoc and temporary basis. According to them now ^{that} the Union Public Service Commission has selected a regular incumbent for the post, ^{there} is no alternative but to ask the applicant to make ~~the~~ ^{room} for him. They have prayed that the OA. be dismissed with cost.

3. We have heard the learned counsel for the parties. At the outset, Shri Kulkarni for the applicant has pointed out that similar question had arisen before the Bangalore Bench in O.A.No.95/98, in the case of

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Lakshminarayanan V. Vs. Union of India. According to Shri Kulkarni, Lakshminarayanan had joined the services as Technical Supervisor in the year 1978, while the applicant had joined the services on 18.11.1974 suggesting thereby that the applicant was inducted in the services prior to Lakshminarayanan. He has also pointed that the Bangalore Bench in his judgment dated 18.8.1998 has allowed the plea of applicant therein, by regularising him in the same post, calling upon the respondents department to make appropriate amendments to the recruitment rules for the category-A post of Manager, MMS, as already notified or with different nomenclature and provide for a certain percentage of those posts to be available to employees like the applicant on promotion provided they served in the criteria and qualifications which may be appropriately laid down for such promotion. The decision of the Bangalore Bench was carried before the Hon'ble Karnataka High Court at Bangalore by way of Writ Petition No.35765 of 1998 by the Union of India and while upholding the findings of the Bangalore Bench and also the directions of the Karnataka High Court at Bangalore to regularise the applicant, the Karnataka High Court in its judgment dated 1.7.2002 has laid down as under:-

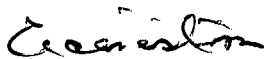
"10. However, in regard to the second part of the relief, there is considerable cause for the grievance of the petitioners. It is now well settled that Courts not Tribunals should not issue directions to the Government to modify the Rules and change the existing policy of the Government. The present policy of the Government is to fill as all posts of Manager 'Group-A', by direct recruitment. However, laudable is the intention of the Tribunal that a percentage of ...4..

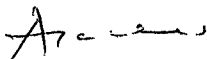
such posts should be filled by promotion, a direction to amend the Rules cannot be upheld. Even if the matter is under consideration, no direction can be given for framing rules or amending the rule and issue of such a direction will be beyond jurisdiction of the Tribunal. An observation that, if the matter is under consideration. Government may take note of the representations given by any Section of employee requesting for promotional quota, would have been sufficient. We find that the order of the Tribunal, in so far as it directs the petitioners to amend the Recruitment Rules and provide for filling of certain percentage of posts by promotion cannot be sustained.

11. Petition is therefore allowed in part and the order of the Tribunal dated 18.8.1998 in so far as it directs the petitioners to amend the Rules and provide for percentage of posts to be filled by promotion is set aside. However, the direction of the Tribunal that appointment of the first respondent as Manager, MMS - Group 'B' should be regularised is upheld. Parties to bear respective costs."

4. We are not aware that the decision of the Karnataka High Court has been accepted by the Union of India or not, but the fact remains ~~is~~ that the judgment of the Bangalore Bench has been upheld to the extent of regularising the applicant in the present post. Since it is apparent from the record that the applicant had joined prior to Lakshminarayanan, the applicant before the Bangalore Bench, the benefits available of the decision of the Bangalore Bench and confirmed by the Karnataka High Court are required to be extended to the present applicant also. He is therefore, entitled to be regularised in the present post of Manager, MMS on the same terms as per the directions laid down by the Bangalore Bench and upheld by the Hon'ble Karnataka High Court. It is ^{unquestionable} ~~no doubt~~ that if the respondents have also preferred an appeal to the Hon'ble Supreme Court any decision that may be received from the Hon'ble Supreme

Court would be binding to both the parties. In view of this position, we allow⁵ this O.A. and direct the respondents to regularise the applicant as Manager, MMS on the same terms and conditions laid down by the Bangalore Bench in the case of Lakshminarayanan V. The OA. stands disposed of. No order as to costs.


(G.C. Srivastava)
Member (A)


(A.S. Sanghvi)
Member (J).

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