

CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE

DATED THIS THE 7TH DAY OF SEPTEMBER, 1987

Present: } Hon'ble Shri Justice K.S. Puttaswamy, Vice-Chairman  
              } and  
              } Hon'ble Shri L.H.A. Rego, Member (A)

APPLICATION NO. 1223/86

Shri M.S. Krishna Rao,  
S/o M.K. Sreekanta Rao,  
aged about 33 years,  
No.292, Govinda Rao Street,  
Seshadripuram,  
Bangalore.

.... Applicant

(Dr. M.S. Nagaraja, Advocate)

v.

1. The Commissioner of Income-tax  
Karnataka-I,  
Central Revenue Building,  
Queen's Road,  
Bangalore.
2. The Director of Inspection (IT),  
4th Floor, Mayur Bhavan,  
Cannaught Circus,,  
New Delhi.
3. The Secretary (AD VII)  
Central Board of Direct Taxes,  
Central Secretariat,  
North Block,  
New Delhi.
4. Sri R.K. Eswara,  
LDC, Circle-1,  
Bangalore.
5. Sri V.R.P. Vadkar,  
LDC, IAC's Office,  
Panaji.
6. Sri D. Basavaraj,  
LDC, CIT's Office,  
Bangalore.
7. Sri R. Lakshminarayan achar,  
LDC, Circle-III,  
Bangalore.
8. Sri S. Subbaraya,  
LDC, II Office,  
Mangalore.

9. Sri S. Gurusiddaiah,  
LDC, Circle-IV,  
Bangalore.
10. Sri S.T. Gowda,  
LDC, TR/Office,  
MARGOA.
11. Sri. A. Siddiah,  
LDC, Salary Circle,  
Bangalore.

.... Respondents.

(Shri. M.S. Padmarajaiah, SCGSC)


This application having come up for hearing to-day,  
Vice-Chairman made the following.

O R D E R

This is a transferred application and is received  
from the High Court of Karnataka under Section 29 of the  
Administrative Tribunals Act, 1985 ('the Act').

2. M.S. Krishna Rao, applicant before us, joined  
service in 1975 as Group 'D' official, in the Income Tax  
Department of Government of India. He acquired SSLC  
qualification in 1981 and appeared for a departmental  
examination held in February, 1982, prescribed for pro-  
motion to the posts of Lower Division Clerks (LDCs) from  
the 10% quota reserved to Group 'D' Officials of the  
department. In that examination, the applicant was success-  
ful and was assigned the second rank in the list of  
successful candidates (List) published on 2.4.1982  
(Annexure 8).

3. On 13.9.1982, the Commissioner of Income Tax,  
Karnataka-I, Bangalore (Commissioner) by his Order No.  
E. No.11/LDC/1982-KTK dated 13.9.1982 (Annexure H), had




promoted and appointed Respondents 4 to 11 as LDCs, who were all successful in the departmental examination but had been assigned ranks lower than him in the 'List'. It is not in dispute, that Respondents 4 to 11 were all seniors to the applicant in the cadre of Group 'D' employees. But notwithstanding this, the applicant approached the High Court in 18.8.1983, in Writ Petition No.16116/83 for appropriate reliefs.

4. The applicant has urged that under the Income Tax Department Non-Gazetted Ministerial Posts Recruitment Rules 1969 (Rules), the nature of the examination prescribed for promotion of Group 'D' Officials for the 10% quota was "competitive". On this premise, he claims, that on the basis of his higher rank in the examination, he was entitled for preference for promotion as an LDC, over Respondents 4 to 11, who had secured lower positions in the List.

5. In their reply, the Respondents 1 to 3 have asserted, that the nature of examination was modified by the Central Board of Direct Taxes (Board) on 10.2.1981 to that of a "qualifying" one from that of "competitive" and that change was within the competence of the Board and was legal and valid. On this basis, Respondents 1 to 3 contend, that the promotions of Respondents 4 to 11, who were seniors and had qualified in the qualifying examination, were legal and valid.

6. Dr. M.S. Nagaraja, learned counsel for the applicant contends, that under the rules, the nature of examination




prescribed was "competitive" and not a "qualifying" one and therefore, the prescription made by the Board on 10.2.1981 in this regard in derogation of the Rules could not prevail and on that view, the applicant who was assigned the second rank in the List, was entitled to be promoted as LDC in preference to Respondents 4 to 11.

7. Shri M.S. Padmarajaiah, learned Senior Standing Counsel for the Central Government, appearing for Respondents 1 to 3 contends, that the nature of examination had not been prescribed by the rules and that prescription was made from time to time by the Board as the highest administrative authority of the Department and on that view, the prescription made on 10.2.1981 by the Board and the promotions of Respondents 4 to 11 on that basis were valid.

8. The rules were made by the President of India in exercise of the powers conferred on him by the proviso to Article 309 and came into force from 27.12.1969.

9. Rules 2 to 6 which deal with the application, classification, scales of pay, method of recruitment, age limit, qualification, disqualification, reservation of vacancies to State Government employees and power of Government to relax, do not really bear on the question and therefore their detailed analysis is not called for.

10. Column 11 of Serial Number 8 of the Annexure to the Rules on the ~~by~~ construction of which, the question hinges reads thus:



" Col.1 .....

11

8. Lower Division Clerks and Lower Division Clerks with special pay


.... 10% of the vacancies in the grade of Lower Division Clerks to be filled by direct recruitment, will be reserved for being filled up by Class IV employees (borne on regular establishment), subject to the following conditions:-

(a) Selection shall be made through a departmental examination confined to such Class IV employees who fulfil the requirement of minimum educational qualification, namely Matriculation or equivalent."

...

This provision only stipulates a departmental examination without specifying its nature and the authority that should determine the same. The nature of the examination is not specified by this provision itself, as urged by Dr. Nagaraja.

11. On the promulgation of the Rules, the Board as the highest administrative authority of the Department, had specified the departmental examination as a "competitive" one, and that very Board on 10.2.1981, had changed the same to a "qualifying" one. If the Board was competent to specify the examination as "competitive", then it was also competent to change or modify the same to a "qualifying" one. Whether the nature of the examination should be "competitive" or "qualifying" was for the Board to examine and decide. This Tribunal cannot therefore take exception to the modification made by the Board on 10.2.1981.



12. The examination was held and the results thereof declared only after 10.2.1981. If that is so, then we must necessarily hold that the 'List' only declared the results of a "qualifying" examination and not a "competitive" examination. From this it also follows, that the promotions of Respondents 4 to 11, who were all successful in "qualifying" examination and were senior to the applicant, do not suffer from any infirmity at all.

13. In the Circular dated 10.2.1981, the Board had also made certain modifications in the 10% quota reserved for Group 'D' officials for promotion as LDCs. Whether the Rules themselves have been amended as indicated in the Circular, cannot be ascertained at this stage. But at this stage, it is not the case of the applicant that any one who is not qualified and who is junior to him had been promoted superseding the claim of his superiors as a qualified official. We, therefore, leave the question open.

14. In the light of our above discussion, we hold, that this application is liable to be dismissed. We, therefore, dismiss this application. But in the circumstances of the case, we direct the parties to bear their own costs.

*Ms. Praveen*  
Vice-Chairman  
7/9/87

*[Signature]*  
Member (A) 7.10.87

bsv/Mrv.

REGISTERED

CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH  
\*\*\*\*\*

Commercial Complex(BDA)  
Indiranagar  
Bangalore - 560 038

Dated : 19-10-87

Application No. 1223/86(T)

W.P.No. 16116/83

Applicant

Shri M.S. Krishna Rao

Respondents

V/s The Commissioner of Income Tax  
Karnataka - I & 10 Ors

To

1. Shri M.S. Krishna Rao  
No. 292, Govinda Rao Street  
Seshadripuram  
Bangalore - 560 020

2. Dr M.S. Nagaraja  
Advocate  
No. 35 (Above Hotel Swagath)  
1st Main, Gandhinagar  
Bangalore - 560 009

3. The Commissioner of Income Tax  
Karnataka - I  
Central Revenue Buildings  
Queens' Road  
Bangalore - 560 001

4. The Director of Inspection(IT)  
4th Floor, Mayur Bhavan  
Connaught Circus  
New Delhi - 110 001

5. The Secretary (AD VII)  
Central Board of Direct Taxes  
Central Secretariat  
North Block, New Delhi - 110 001

6. Shri R.K. Eswara  
LDC, Circle-I

7. Shri D. Basavaraj  
LDC, CIT's Office

8. Shri R. Lakshminarayana  
Achar  
LDC, Circle - III

9. Shri S. Gurusiddaiah  
LDC, Circle - IV

10. Shri A. Siddaiah  
LDC, Salary Circle

(Sl Nos.6 to 10 - C/o

Office of the Commissioner  
of Income Tax, Karnataka - I  
Central Revenue Buildings  
Queens' Road  
Bangalore - 560 001 )

11. Shri V.R.P. Vadkar  
LDC, IAC's Office  
Panaji

12. Shri S. Subbaraya  
LDC  
Income Tax II Office  
Mangalore

13. Shri S.T. Gowda  
LDC  
TR Office  
Margoa

14. Shri M.S. Padmarajaiah  
Central Govt. Sng Counsel  
High Court Buildings  
Bangalore - 560 001

\*\*\*\*\*

Subject : SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith the copy of Order passed by  
this Tribunal in the ~~re~~ above mentioned application on 7-9-87 .

*[Signature]*  
Section Officer  
(Judicial)

Encl : As above

*o/c*

RECEIVED 14 copies 19/10/87

Diary No. 1326/CR/10

Issue Date: 20/10/87 *8*



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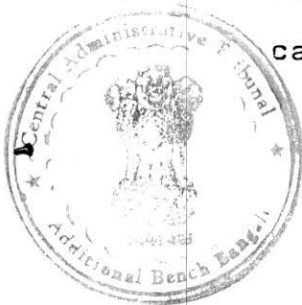
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Sd/-  
Vice-Chairman

Sd/-  
Member (A) 17.6.87

bsv/Mrv.

7/9/87  
- True copy -  
SECTION OFFICER  
CENTRAL ADMINISTRATIVE TRIBUNAL  
ADDITIONAL BENCH  
BANGALORE