

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH BANGALORE

DATED THIS THE 24TH NOVEMBER 1986

PRESENT: HON'BLE SHRI CH. RAMAKRISHNA RAO,

MEMBER(J)

HON'BLE SHRI P. SRINIVASAN,

MEMBER(A)

APPLICATION NO 1268/86(T)

M. Palaksha, Major
Superintending Engineer (Mechanical)
Regional Office, Ministry of Shipping
and Transport, Bangalore.

Applicant

(Shri Ranganath Jois, Advocate)

1. The Union of India represented
by its Secretary, Ministry of
Shipping and Transport (Road Wing),
Transport Bhavan, No.1,
Parliament Street, New Delhi 1.

2. Shri PJ Khadilkar, Major,
Executive Engineer, (Mechanical)
Roads Wing, Ministry of Shipping
and Transport, Bangalore.

Respondents

(Shri M.S. Padmarajaiah, Advocate)

The application has come up for hearing before
this Tribunal to-day, Member (A) made the following:-

O R D E R

This is a transferred application received from
the High Court of Karnataka. The facts in this case
lie within a very narrow compass. The applicant who
was earlier working as an Executive Engineer (Mechanical)
in the Roads Wing, Ministry of Shipping and Transport,
was promoted to the post of Superintending Engineer
(Mechanical) by an order dated 13.11.1982 (Annexure C)
and posted at the Regional Office at Bangalore. He
was initially appointed to that post on an officiating
basis, but by a subsequent order dated 10.1.83 he was
appointed as Superintending Engineer (Mechanical) on
a "regular basis with effect from 14.11.1982 (FN) and

P. J. Khadilkar

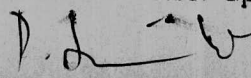
until further orders". However, by an order dated 24.11.1983 a certain Shri P.J. Khadilkar, Executive Engineer (mechanical) in the Ministry of Shipping and Transport, Roads Wing, was promoted to the grade of Superintending Engineer (Mechanical) and posted in that capacity at the regional office of the Ministry of Shipping and Transport (Roads Wing) at Bangalore. By the same order, the applicant who was working as officiating Superintending Engineer (Mechanical) was reverted to his former post of Executive Engineer to accommodate Shri P.J. Khadilkar. The applicant is aggrieved with this order dated 24.1.1983 (Annexure F) and hence this application.

Shri Ranganath Jois, learned counsel for the applicant, contended that a person promoted on the basis of selection by a Departmental Promotion Committee and appointed regularly to a higher post cannot be reverted from that post without giving him an opportunity of being heard. As such a reversion, according to Shri Jois, involves civil consequences, the Government official who is sought to be reverted should be given the protection of Article 311(2) of the Constitution.

Shri M.S. Padmarajaiah, learned counsel for the respondents, explains that in a Departmental Promotion Committee meeting held on 3.11.1982, a panel of three officers was prepared for appointment as Superintending Engineer (Mechanical). These names, in the order of their respective seniority were :

1. Shri D. R. Gulati
2. Shri P.J. Khadilkar
3. The applicant.

Shri Gulati and Shri Khadilkar were on deputation and were not available for being posted as Superintending Engineer against the only vacancy which was in existence at the time. Therefore the applicant was

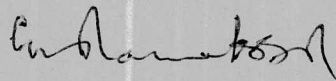
 ...3/-

promoted to that post. Subsequently Shri P.K. Khadilkar returned from deputation on 17.1.83 and had to be accommodated, Being senior to the applicant and also having been placed above the applicant in the order of merit for selection to the post of Superintending Engineer by the DPC, Shri Khadilkar had to be posted as Superintending Engineer displacing the applicant since there was no other vacancy available at that time. Shri Padmarajaiah explained that if another vacancy of Superintending Engineer had been available, that would have gone to the applicant unless of course of Shri Gulati also returned from deputation. In any case his name being on the panel he would get his promotion in his turn. The reversion of the applicant was not by way of punishment because he was reverted to accommodate somebody who had been selected with him for promotion and had been placed above him in the panel. This did not amount to a reduction in rank as contemplated in Article 311 of the Constitution and the question of giving him an opportunity of being heard did not arise. Though the applicant was promoted on a regular basis, ~~but~~ he was only officiating in that post and the appointment was "until further orders".

After hearing counsel for both sides, we are of the opinion that this application should fail. When a panel of names is prepared by the DPC for promotion and when persons who appear at the top of the panel are not available, the vacancy in the higher post has to be filled in by the next senior person in that list. It also follows that if any of the persons who appear in the panel above the person so promoted come back to the department and become available for posting, the junior who was promoted has to be reverted and that is what happened in this case. The applicant was

not punished or reduced in rank. It was a routine reversion occasioned by a senior becoming available. In the circumstances we are satisfied that there was no infirmity in the order reverting the applicant. The application is therefore liable to be dismissed.

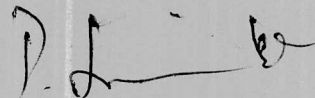
In the result, the application is dismissed Parties to bear their own costs.



(CH. RAMAKRISHNA RAO)

MEMBER (J)

24.11.86



(P. SRINIVASAN)

MEMBER (A)

24.11.86