

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: BANGALORE

TODAY THE SIXTEENTH APRIL, 1987

Present:

Hon'ble Mr Ch.Ramakrishna Rao - Member(JM)
and
Hon'ble Mr L.H.A. Rego - Member(AM)

APPLICATIONS NOS. 1321 TO 1326 OF 1986(T)
(WPs.Nos. 11961 to 11966 of 1984)

1. H.V.Gopalakrishna,
Telegraph Master,
r/o: Central Telegraph Office,
Raja Bhavan Road,
Bangalore. (Applicant in A.No
1321/86)
2. G.H. Chauhan,
Telegraph Master,
r/o Central Telegraph Office,
Raja Bhavan Road,
Bangalore. (Applicant in A.No.
1322/86)
3. D.H.Manthra Shetty,
Telegraph Master,
r/o -do- (Applicant in A.No.
1323/86)
4. V.Vaidyanathan,
Telegraph Master,
r/o -do- (Applicant in A.No.
1324/86)
5. K.Mohana Velu,
Telegraph Master,
r/o -do- (Applicant in A.No.
1325/86)
6. Sharanappa Shettar,
Telegraph Master,
r/o -do- (Applicant in A.No.
1326/86)

(Shri G.A.Anthony Cruze Advocate)

Vs

1. The Union of India
by the Director General,
of Posts & Telegraphs,
Parliament Street,
New Delhi
2. The Chief Superintendent,
Central Telegraph Office,
Bangalore 1.
3. Shri C.G.Hegde,
Assistant Telegraph Master,
Ce Central Telegraph Office,
RajBhawan Road, Bangalore.
4. M.V. Sorade,
Asst. Telegraph Master,
District Treasury Office,
Raichur.

5. B.G.Shenoy,
Asst. Telegraph Master,
Mangalore C.T.O.
Mangalore.
6. Siddamada B.
Asst. Telegraph Master,
Mysore Central Telegraph Office,
Mysore.
7. Abdul Rawoof Sab.A.
A.T.M.
Mysore C.T.O. Respondents

(Shri N.Basavaraju advocate)

These applications coming on for hearing,
Member(AM) made the following:-

O R D E R

These are in all six writ petitions which are transferred to this Bench under Section 29 of the Administrative Tribunals Act, 1985, by the High Court of Judicature, Karnataka, and re-numbered as applications, wherein the applicants pray, that the Order dated 17-3-1983(Annexure-B) passed by respondent(R)1 and the Order dated 30-3-1984 (Annexure-A) passed by R-2 be quashed with appropriate order or direction to the respondents to meet the ends of justice. Since these applications are analogous in regard to facts and the point of law involved, we propose to hear them together and dispose them of, by a common order.

2. The salient background to these applications is as follows: The applicants entered service in the Post and Telegraphs(P&T, for short) Department of Service (Testing) Telegraphists, in the Mysore Circle. In accordance with the resolution dated 20-5-1968 of the P&T Board, the Telegraph Traffic Services were recognised by forming Telegraph Traffic Divisions in 1968, in order to improve efficiency. One of the

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measures adopted towards this aim and object, in pursuance of the said Resolution was, to merge all "allowanced posts" (viz., Teleprinter Supervisors, Testing Telegraphists and Asst. Telegraph Masters (ATM, for short) into a new cadre known as Asst. Telegraph Masters (ATMs). The mode of recruitment to this cadre was as under:

- (i) Those who had worked against "allowanced posts" as on 1-7-1968 regularly for a period of 6 months were to be given the first preference.
- (ii) Others who had worked against these posts for less than 6 months were to be given the next preference.
- (iii) Selection was to be strictly on the basis of seniority subject to rejection of the unfit.
- (iv) Those selected were required to undergo training for a period of 8 weeks.
- (v) Thereafter volunteers from among the cadre of of Telegraphists working in the entire circle were to be invited and a panel was to be drawn up strictly on the basis of seniority subject to rejection of the unfit.

3. Those finally selected were to be absorbed in the cadre of ATMs, on the basis of seniority-cum-fitness, in accordance with the instructions of R-1 in his letter dated 18-3-1969 and their seniority was to be governed according to the instructions of R1 in his letter dated 6-9-1971.

4. The cadre of ATMs was not an exclusive one for promotion by seniority, but was an intermediate cadre, between the cadres of Telegraphists and Telegraph Masters, the actual base being the cadre of Telegraphists for all purposes, including promotions. Consequently, such of the volunteers who were appointed as ATMs, were borne on their basic parent cadre namely, that of Telegraphists and shown on the Gradation List of Telegraphists, their inter se seniority in that cadre, remaining unchanged.

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5. The above new intermediate cadre of ATMs, came to be formed in 1974, according to the instructions of R1 in his letter of 7-12-1974. Appointments to this cadre were made purely on an ad hoc basis. The following were the pay scales of the respective cadres:

S.No.	Cadre	Pay scale
(1)	(2)	Rs. (3)
(i)	Telegraphists	260 - 480
(ii)	Asst. Telegraph Masters (Intermediate cadre)	380 - 560
(iii)	LSG Telegraph Masters	425 - 640

6. In 1983, the P & T Department (vide letter dated 17-~~6~~-1983 of R1) evolved a scheme, (referred to as "Scheme" hereinafter) of upgrading 85% of the existing sanctioned posts of ATMs, to that of L.S.G. (Lower Selection Grade) Telegraph Masters and of downgrading the remaining 15%, to that of Telegraphists. Promotions to the post of LSG Telegraph Masters, were to be based on seniority (cum merit) in the basic parent cadre of Telegraphists as hitherto, regardless of the position of the incumbent, in the intermediate ATM's cadre. The pay of those who were reverted to the post of Telegraphists on this account, was to be protected by grant of Personal Pay, to be absorbed against future increase in pay.

7. The applicants were appointed as ATMs as volunteered by them, their inter se seniority in their basic parent cadre, namely that of Telegraphists remaining unaltered. The seniority of such of the Telegraphists, who did not volunteer for the post of ATM was not disturbed, even though their juniors volunteered for this post.

8. 85% of the posts of ATMs upgraded as LSG Telegraph

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Masters, according to the above "scheme", were therefore filled in, strictly in accordance with the criteria of seniority and merit of the incumbents in their basic parent cadre, namely that of Telegraphists, irrespective of the consideration, that some of them were appointed to the intermediate cadre of ATMs. Such of the incumbents among ATMs, who could not be considered for promotion in the aforesaid 85% posts, were reverted to their basic parent cadre, namely that of Telegraphists, but their pay was to be protected, as explained in para-6 supra. The applicants fell into this category. Accordingly, R2 by his Order dated 30-3-1984(Annexure-A), reverted the applicants to their original post of Telegraphists, with effect from 1-4-1984 with a direction, that their pay be protected in the manner indicated in para-6 supra, according to the instructions contained in Letter dated 17-8-1983 from R-1.

9. The applicants state that they have been working as ATMs since 1978 and that R2 reverted them by his above Order dated 30-3-1984, against the canons of law, deviating particularly from the principle:"first come, last go". They further state that R3 to 7, were promoted as ATMs, 3 years later to them but according to Annexure A they are not sought to be reverted as Telegraphists. They allege, that this is violative of the provisions of Articles 14,16 and 311 of the Constitution. They further allege, that R2 held no enquiry and gave them no opportunity, through a show cause notice to explain as to why they should not be reverted, which offends the principles of natural justice. They also urge, that R1 should not have implemented the "scheme", without hearing the persons in the cadre of ATMs, and therefore, his

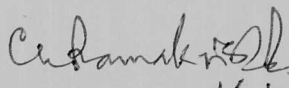
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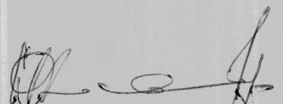
of the posts of ATMs upgraded to those of ISG Telegraph Masters, by protecting their pay in the manner described in para-6 supra.

15. When a person is appointed to a higher post in an officiating capacity he does not acquire any legal right to hold that post for any period whatsoever as held in STATE OF MYSORE VS. NARAYANAPPA (1966) S.C.

(C.A. 1420/66) and accordingly there is no "reduction in rank" within the meaning of Article 311(2) of the Constitution, if he is merely reverted to his substantive post as held in STATE OF ASSAM VS. BIRAJA(1969)1U.J. S.C. 675. The applicants cannot, therefore, contend that they were not given an opportunity to explain their case before reverting them to their subordinate cadre and therefore the principles of natural justice were not offended as alleged by them.

16. As all the contentions urged by the applicants fail, in the final analysis, the applications are liable to be dismissed. We, therefore, dismiss the same accordingly, but with no order as to costs.


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action infracts the provisions of Article 311(a) of the Constitution. Aggrieved, the applicants filed writ petitions in the High Court of Judicature, Karnataka, in 1984, which have since been transferred to this Bench, as mentioned at the outset and are now before us for adjudication.

10. Shri G.A. Anthony Cruze, learned counsel for the applicants contends, that the order dated 17-8-1983 by R-1, promoting only 85% of the persons in the cadre of ATMs and reverting the remaining 15% to the lower cadre is arbitrary, illegal and discriminatory, as it violates the provisions of Articles 14, 16 and 311 of the Constitution; that by the said order of R-1, those similarly circumstanced are meted unequal treatment, which is also violative of the principles of equality, enshrined in Articles 14 and 16 ibid; that the principles of natural justice have been offended, by not affording an opportunity to the applicants to explain their case, before ordering their reversion which is also violative of the provisions of the Central Civil Services (Classification, Control and Appeal) Rules, 1965; that the well-recognised principle of "last come, first go" has been given a go-by in that, while the applicants have been reverted as Telegraphists, their juniors who were promoted as ATMs three years later have not been reverted; that a Gradation List was maintained exclusively for the cadre of ATMs, which revealed that it was a cadre apart from that of Telegraphists which carried a lesser scale of pay viz., Rs. 260-480 as compared to the scale of pay of Rs. 380-560 sanctioned for the post of ATMs, which was higher and therefore, the seniority of the applicants for promotion to the post of LSG Telegraph Masters, should have been considered

unaffected even though their juniors had volunteered for the cadre of ATMs and were actually appointed therein. The latest Gradation List in the cadre of Telegraphists in which the names of both Telegraphists and ATMs figured, shown to us was upto July 1983. The applicants among others who were appointed as ATMs were shown to be junior to quite a number of Telegraphists who were senior to them in the cadre of Telegraphists but had not volunteered for appointment as ATMs. The applicants had not challenged this Gradation List and nearly 4 years have since elapsed.

13. It is evident from the foregoing that the ATMs were borne on the Gradation List of Telegraphists, which was their basic cadre for the purpose of seniority and promotion to the next higher regular cadre, namely, that of LSG Telegraph Masters. That being the case, when under the scheme 85% of the posts in the cadre of ATMs were upgraded to that of LSG Telegraph Masters, it was but proper promotions were regulated to the latter posts on the basis of the Gradation List in the basic cadre of Telegraphists and merit. We notice that no person junior to the applicants in the basic cadre of Telegraphists has been promoted to the cadre of LSG Telegraph Masters superseding the claim of the applicants. R3 to R7 were clearly senior to the applicants in the basic cadre of Telegraphists, though they came to be appointed as ATMs later. They were therefore not similarly circumstanced as the applicants, as claimed by the latter and the provisions of Articles 14 and 16 of the Constitution, were not violated as contended by them. Nevertheless the Department has been gracious enough to safeguard the interests of such of the ATMs who could not be promoted within the 85%

with reference to this Gradation List and not to that in the lower post of Telegraphists.

11. Shri N.Basavaraju, learned counsel for respondent, repudiating each of these contentions submits that the cadre of ATMs was only an ephemeral cadre between that of Telegraphists and LSG Telegraph Masters, which was filled in by inviting volunteers who were selected and appointed with due regard to the criteria outlined in para-2 supra. Such of the Telegraphists who had not volunteered for the posts of ATMs, did not however lose their seniority, even though their juniors in the said cadre, had volunteered for appointment as ATMs, in the intermediate ephemeral cadre between that of Telegraphists and LSG Telegraph Masters.

12. We have examined carefully the pleadings of both sides and the material placed before us. Shri Basavaraju submits that at the time of appointment to the cadre of ATMs, the incumbents were clearly given to understand that their appointment was purely on an ad hoc basis and that their seniority for promotion to the next higher promotion would be governed by their rank in the Gradation List in the cadre of Telegraphists which was their basic cadre. The Gradation List for the post of ATMs was being maintained only for administrative reasons and not for any other purpose such as promotion to the next higher grade. We perused the latest Gradation Lists maintained both for the posts of Telegraphists as well as that of ATMs. We noticed therefrom that the names of the applicants were appearing in both the Gradation Lists and that the seniority of such of the incumbents in the grade of Telegraphists, who had not volunteered for the cadre of ATMs, had remained

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CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Commercial Complex(BDA),
Indiranagar,
Bangalore - 560 038

Dated : **6 MAY 1987**

Application No 8 1321 to 1326 /86(T)

W.P. No S 11961 to 11966 of /84

Applicant
H.V.Gopalakrishna & Ors

Vs

U.O.I. Director General of P&T
& Ors

To

1. Sri H.V.Gopalakrishna,
Telegraph Master,
r/o Central Telegraph Office,
Raja Bhavan Road,
Bangalore.
2. Sri G.H.Chauhan,
Telegraph Master,
r/o Central Telegraph Office,
Raja Bhavan Road,
Bangalore.
3. Sri D.H.Manthra Shetty,
Telegraph Master,
r/o Central Telegraph Office,
Raja Bhavan Road,
Bangalore.

4. Sri V.Vaidyanathan,
Telegraph Master,
r/o Central Telegraph Office,
Raja Bhavan Road,
Bangalore.
5. Sri K.Mohana Velu,
Telegraph Master,
r/o Central Telegraph Office,
Raja Bhavan Road,
Bangalore.
6. Sri Sharanappa Shettar,
Telegraph Master,
r/o Central Telegraph Office,
Raja Bhavan Road,
Bangalore.

~~xxxxxxVaidyanathanx~~

Subject: SENDING COPIES OF ORDER PASSED BY THE BENCH IN
APPLICATION NO: 1321 to 1326/86(T)

Please find enclosed herewith the copy of the Order/~~Interim Order~~
passed by this Tribunal in the above said Application on 16.4.1987.

Encl : as above.

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SECTION OFFICER
(JUDICIAL)

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7. The Union of India by the Director General ~~of Posts and Telegraphs~~, Parliament Street, New Delhi.
8. The Chief Superintendent, Central Telegraph Office, Bangalore.
9. Sri. C.G.Hegde, Assistant Telegraph Master, Central Telegraph Office, Raj Bhavan Road, Bangalore.
10. Sri M.V.Sorade, Assistant Telegraph Master, District Treasury Office, Raichur.
11. Sri B.G.Shenoy, ~~Assistant Telegraph Master~~, *Asst.* Mangalore C.T.O. Mangalore.
12. Sri B. Siddamada, Assistant Telegraph Master, Mysore Central Telegraph Office, Mysore.
13. Sri Abdul Rawoof Sab.A. A.T.M. Mysore C.T.O.
14. Sri G.A.Anthony Cuze, Advocate, No. 42 'A' Street, New Korachar Palya, Shivajinagar, Bangalore-560001.
15. Sri N.Basavaraju, Advocate, High Court Buildings, Bangalore-1.