

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH : BANGALORE

DATED THIS THE 30TH OCTOBER, 1986

Present

The Hon'ble Justice Shri K.S. Puttaswamy : Vice-Chairman

The Hon'ble Shri L.H.A. Rego : Member (AM)

Application No. 1368 of 1986  
W.P. No. 4897 of 1984

Shri G. Ramachandra,  
R/o No. 64 "Dhruva",  
5th Main Road,  
Chamarajpet,  
Bangalore-560018

... Applicant

(Shri A.C. Rajasekhar, Advocate)

1. The Director & Chairman DPC III,  
Electronics and Radar  
Development Establishment,  
Ministry of Defence,  
Government of India,  
High Grounds, Bangalore-560001.
2. The Government of India,  
represented by its Secretary,  
Ministry of Defence, New Delhi-110011.
3. The Scientific Advisor to Raksha Mantri &  
Director General, Research and Development,  
Organisation, "Sena Bhavan",  
Ministry of Defence,  
New Delhi-110011.
4. Shri M.C. Naidu, L.R.D.E., Bangalore-560001
5. Shri T.R. Kanakasabai, -do-
6. Shri A. Abdul Azeez, "
7. Shri John Michael "
8. Shri Syed Habeeb "
9. Ushal Rao "
10. Shri Amjed Ali "
11. S. Nizar Hussain "
12. Shri K. Aravindakshan "
13. Shri Karam Ram "
14. Shri A. Thangaraj "
15. Shri B.T. Gopal "
16. Shri K.G. Vasantha Kumar "
17. N.R. Bhageerathamma "

Respondents

18. P. Ramachandran, L.R.D.E., Bangalore-560001.
19. P.M. Chathu "
20. C.C. Keshavan "
21. N. Krishnappa "
22. Kartar Singh "
23. T. Thimmaiah "
24. C. Chudaiah "
25. M.W. Fernandez "
26. K. Govindaraj "
27. H. Sardar "
28. Syed Jalal "
29. D.R. Raju "
30. V. Doraiswamy Reddy "
31. M. Joseph "
32. L. Anantaramaiah "
33. R. Jayaraman "
34. A.K. Sugunan "
35. M.C. Mangain "
36. P.I. Pushkaran "
37. M.P. Kannan "
38. K.T. Srinivasaiah "
39. T.K. Bhaktavasalam "
40. K. Laxmana "
41. N. Venu Gopal "
42. V. Adikesavan "
43. M. Padmanabhan "
44. R.V. Raju "
45. S. Mahadevaiah "
46. K. Janardhan "

Respondents

(Shri M.S. Padmarajaiah, Advocate)

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This application has come up for hearing before this Tribunal today, Hon'ble Justice Shri K.S. Puttaswamy, Vice-Chairman, made the following:

O R D E R

In this transferred application received from the High Court of Karnataka under Section 29 of the Administrative Tribunals Act 1985 (ACT), the applicant has challenged the orders dated 1.10.1983 (Annexure C) and 2.2.1984 (Annexure C1) of the Director, Electronics & Radar Development Establishment (Director).

2. The applicant joined service as a Fitter in LRDE which is a unit of the Defence Research & Development Organisation (DRDO). On 23.4.1980 the applicant was appointed as Supervisor Technical in the same office from which date he has been working in that capacity. He had completed 3 years of service as Supervisor Technical on 23.4.1983. The next post to which the applicant was eligible for promotion under the Defence Research & Development Organisation Class II non-gazetted (Technical/Scientific and other non-ministerial) posts Recruitment Rules 1979 (RULES) amended from time to time <sup>was</sup> ~~as~~ Chargeman II.

3. As on 30.9.1983 respondents 4 to 46 were working as Group A Tradesmen. On 1.10.1983 and 2.2.1984 the Director had promoted them as Chargemen II w.e.f. 30.9.1983 and 31.1.1984 respectively.

4. In challenging the two orders of the Director, the applicant claims that he was eligible and suitable for promotion as Chargeman II under the Rules as on 30.9.1983 and 31.1.1984 but the Director had not considered his case and promoted him and the same was violative of Articles 14 & 16 of the Constitution.

5. In their statement of objections filed before the High Court, respondents 1 to 3, have asserted that respondents 4 to 46 were stagnating in the posts of Tradesmen 'A' for more than 15 years. With the avowed object of ameliorating their service conditions, the Director on 22.3.1983 (Annexure R 2) recommended

to Government to create additional posts of Chargemen II and exclusively promote them to these posts, and Government accepting these recommendations made an order on 28.5.1983 (Annexure R 1) in terms of which only, the Director had promoted respondents 4 to 46. On this basis, these respondents claim that the applicant who was not similarly situated as respondents 4 to 46 was not entitled for promotion as Chargeman II.

6. Respondents 4, 6, 15, 21, 23, 24, 26 to 30, 32, 33, 41 and 42 have also filed replies before the Tribunal supporting respondents 1 to 3.

7. Shri A.C. Rajasekhar, learned counsel for the applicant, contends that the promotions of respondents 4 to 46 by the Director were contrary to the Rules and illegal.

8. Shri M.S. Padmarajaiah, learned C.G.S.C. appearing for respondents 1 to 3 and Shri Munir Ahmed appearing for respondents 4, 6, 15, 21, 23, 24, 26 to 30, 32, 33, 41 and 42 contended that the posts of Chargemen II to which respondents to which respondents 4 to 46 had been promoted by the Director were specially created to alleviate their conditions only and therefore the Rules had no application to their promotions.

9. As on the dates, the Director made the promotions, there were 'Rules' regulating recruitment to the posts of Chargemen II. Column Nos. 11 & 12 of the Rules in great detail stipulated the quota and the method of recruitment to the posts of Chargemen II. The promotions to the posts of Chargemen II had to be in conformity with that provision only and not in any other manner at all.

10. We are not really concerned with the creation of posts of Chargemen, their necessity and the object with which they were created. We do not therefore propose to investigate that aspect of the matter. But when the posts were created by whatever process that may be, the promotions to these posts in the

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absence of amendments made to meet the special situation, even assuming that was so permissible, had to conform ~~it~~ with the Rules as they stood on the dates, the Director made promotions. Without any doubt they were not done so. In other words the promotions made by the Director were in contravention of the Rules.

11. When once we find that the promotions made are in derogation of the Rules, we cannot uphold them on any sympathetic or other grounds made out by the Director.

12. The applicant claims that he was eligible and suitable for promotion under the Rules when respondents 4 to 46 were promoted and his case had not even been considered for promotion, which fact is not denied by respondents Nos. 1 to 3.

13. Whether the applicant is eligible for promotion and if so is suitable for promotion, have necessarily to be examined and decided by the promoting authority at least in the first instance. If the promoting authority finds that the applicant was eligible for promotion as on 30.9.1983 and 11.5.1984, then it is bound to consider his case for promotion vis-a-vis others, as on those dates, with due regard to the number of vacancies then available and re-do the matter in conformity with the Rules.

14. Shri Rajashekar next contends that the number of posts sanctioned by the Government were only 20 but the Director had promoted another 23 persons in excess.

15. Shri Padmarajaiah and Shri Ahmed contend that the promotions made were against the vacancies available and were not in excess of the available posts.

16. Which of the two rival claims made before us is correct has to be examined and decided by the Director before redoing the matter. We therefore leave this matter open to be decided by the Director.

17. Shri Ahmed urges that respondents 4 to 46 who have been discharging the duties of Chargemen II from the dates they were promoted, should be permitted to hold and function in those



posts as was directed by the Supreme Court in Gurnam Singh v. Rajasthan (1971 S.L.R. 799) and the High Court of Karnataka in Vijayadevaraja Urs v. G.V. Rao (1982 KLJ 97) till the matters are redone by the Director. Shri Rajashekar in our opinion very fairly and rightly does not oppose this request of Shri Ahmed.

18. Whatever may be the illegality committed by the Director, it cannot be denied that respondents 4 to 46 have been discharging the duties of Chargemen II from the dates they were promoted to those posts. We are of the view that the continuance of respondents 4 to 46 in these posts till the matters are redone by the Director is in public interest and on the principles enunciated in the cases relied on by Shri Ahmed should be permitted.

19. We need hardly say that the relative seniority of the applicant and others had to be reexamined and decided on the basis of the fresh decision to be reached by the Director.

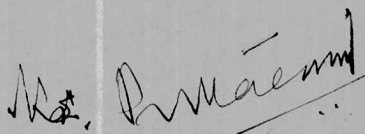
20. In the light of our above discussions, we make the following orders and directions:

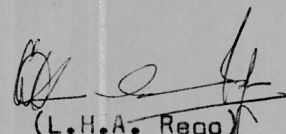
- (1) We quash orders dated 1.10.1983 and 2.2.1984 of the Director (Annexure C & C1).
- (2) We direct the Director - respondent 1 - to reexamine the claims of the applicant, respondents 4 to 46 and all other eligible officials working in the department as on 30.9.1983 and 31.1.1984 for promotion to the posts of Chargemen II under the Rules and then make promotions as on those dates or on such other dates as the circumstances justify in accordance with law and the observations made in this order, with all such expedition as is possible in the circumstances of the case and in any case within six months from the date of receipt of this order.

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(3) We direct the Director to permit respondents 4 to 46 to hold and discharge the duties of Chargemen II till the matters are redone by him and then regulate their continuation or otherwise in conformity with his decision on promotions.

21. Applications are disposed of in the above terms. But in the circumstances of the cases we direct the parties to bear their own costs.

  
(K.S. Puttaswamy)  
Vice-Chairman  
30.10.1986

  
(L.H.A. Rego)  
Member (AM)  
30.10.1986

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