

REGISTERED

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH
.....

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

Dated: 10-11-87

APPLICATION NO 1393 /86 (T)

W.P.No. 806/84

APPLICANT

Vs

RESPONDENTS

Shri M.S. Venugopal
To

The Vice-Chief of Army Staff,
GS Branch & another

1. Shri M.S. Venugopal
'Sadashiva Nivas'
41, Model House Street
Basavanagudi
Bangalore - 560 004
2. Shri S.K. Srinivasan
Advocate
35 (Above Hotel Swagath)
1st Main, Gandhinagar
Bangalore - 560 009
3. The Vice Chief of Army Staff
General Staff Branch
MT 15(a), Army Headquarters
New Delhi

4. Shri V.N. Purohit
Master Gazetted
Military School
Chail, Simla Hills
Himachal Pradesh - 173218
5. Shri M.S. Padmarajaiah
Central Govt. Sing Counsel
High Court Buildings
Bangalore - 560 001

Subject: SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith the copy of ORDER/~~STAY~~

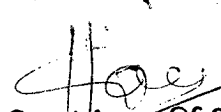
~~INTERIM ORDER~~ passed by this Tribunal in the above said application
on 26-10-87.

RECEIVED 25 Copies 10/11/87

Diary No. 12 Feb 1987

Forwarded Date: 12.11.87 By

Encl: as above.


Section Officer
(JUDICIAL)

9c

- BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE

DATED THIS THE 26th DAY OF OCTOBER, 1987

Present : Hon'ble Justice Sri K.S. Puttaswamy Vice-Chairman

Hon'ble Sri L.H.A. Rego Member (A)

APPLICATION No. 1393/86

M.S. Venugopal,
Assistant Master,
Bangalore Military School,
and residing in 'Sadasiva Nivas',
41, Model House Street, Basavanagudi,
Bangalore - 4.

Applicant

(Sri S.K. Srinivasan ... Advocate)

vs.

1. Union of India,
represented by the Vice-Chief of
Army Staff, General Staff Branch,
MT 15(a), Army Headquarters,
New Delhi.

2. V.M. Purohit,
Master Gazetted,
Military School,
Chail, Simla Hills,
Himachal Pradesh, - 173218. ...

Respondents

(Sri M.S. Podmarajaiah ... Advocate for Respondent-1.)

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

ORDER

This is a transferred application and is received
from the High Court of Karnataka U/s 29 of the Administrative
Tribunals Act, 1985.

2. In the country, there are five military schools
under the control and supervision of the Defence Ministry of
Government of India, and one of them is situated in the city
of Bangalore. The other four are situated at Chail, Ajmer,



Dholpur and Belgaum. The Principals and teachers of the schools are, however, civilian employees. As in other colleges and schools, there are various subjects/disciplines/faculties and we are concerned with the teachers appointed to the faculty of English only.

3. M.S.Venugopal, the applicant and V.N.Purohit, respondent No.2(R2) were appointed as Assistant Masters in English(AM) on temporary basis from 27.12.1971 and 17.8.1972 in the Bangalore and Ajmer schools respectively. But notwithstanding the same, they were appointed on regular basis in their respective schools from 24.10.1973 and 27.9.1973 respectively in the vacancies that occurred in those schools. On this basis, in the seniority list of AMs of Military Schools prepared as on 30.1.1982 (Annexure-B), the applicant and R2 have been assigned rank Nos. 4 and 3 respectively.

4. On 17.8.1982, a Departmental Promotion Committee (DPC) constituted for the purpose, considered the case of the applicant and R2 and another person, with whom we are not concerned, for the one vacant post of Master-Gazetted in English(MG) and recommended the promotion of R2 to the said post and accepting the same, the appointing authority had promoted R2 as MG.

5. On 2.4.1983, the applicant approached the High Court in W.P.No. 806 of 1984, challenging the seniority list and the promotion of R2 as MG, which on transfer, has been registered as A.No.1393/86(T).

6. The applicant has urged that the assignment of a higher rank to R2, appointed later than him, was illegal.



On this basis, the applicant has urged that the promotion of R2 to the post of MC, ignoring his superior claim, was illegal.


7. In its reply, respondent No.1(F1) had asserted that since the applicant was appointed on regular basis from a later date, or that R2 was so appointed earlier in a vacancy that arose earlier in the Ajmer School, R2 had been rightly ranked senior to him and the same was legal and valid. On promotion to the post of MC, F1 had urged that the case of the applicant and R2 was duly considered for promotion and that the latter who was found more meritorious than the applicant, had been rightly promoted to the said post.

8. R2, who has been duly served, but is absent, has filed a separate reply, by post, supporting F1.

9. Sri S.K.Srinivasan, learned counsel for the applicant, contends that the higher seniority assigned to R2, who had been appointed later than the applicant, was illegal and impermissible.

10. Sri M.S.Padmarajaiah, learned senior C.G.S.C., appearing for R1, contends that R2, though initially appointed later than the applicant, was appointed on a regular basis from 27.9.1973 or earlier than the applicant, in a vacancy that arose earlier in the Ajmer School and the seniority determined on that basis was legal.

11. All the five military schools in the country are under the control and supervision of the Defence Department of Government. The recruitment of Class III posts in all the military schools, with which we are concerned, is regulated by 'The Military Training Directorate (Class III and



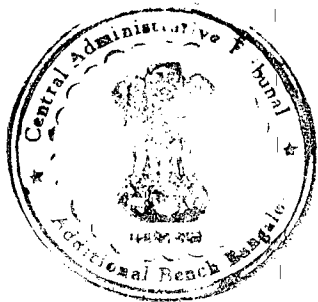
Class IV Posts) Recruitment Rules, 1975' (the Rules).

12. The Rules made by the President under the proviso to Article 309 of the Constitution regulate the recruitment of all posts of AMs in all the 5 military schools. If anything, the Rules treat all the posts of AMs in all the 5 military schools as one unit only. The Rules do not recognise each military school as a separate and distinct unit, for purposes of recruitment. The fact that the schools are situated at different centres or places, does not mean that they are also separate and distinct for purposes of recruitment to all the posts of the schools. The Rules expressly and impliedly treat all military schools as one unit or one entity for purposes of recruitment.

13. When the Rules made by the President in exercise of the legislative powers conferred on him by the proviso to Article 309 of the Constitution treat all the military schools in the country for purposes of recruitment, as one unit, then it is not open to Government, the Department or the schools, to treat them differently, or treat each school as a separate and distinct unit, either for purpose of initial recruitment, or for other purposes also.

14. We have noticed in the foregoing, that the applicant was appointed earlier than R2. In normal circumstances, the person appointed earlier than another in the same cadre has to be treated as senior to the person appointed later in the same cadre. On this basis, the applicant should have been treated as senior to R2.

15. But it is urged by the respondents that R2 was appointed in a regular vacancy that arose earlier in the Ajmer school, and therefore, he is senior to the applicant.



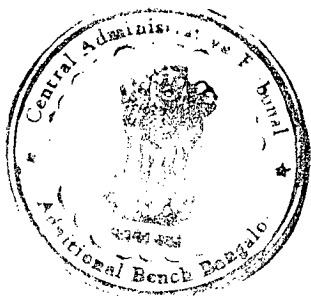
In other words, Government/Department, as the case may be, had treated each school as a separate unit for purposes of recruitment.

16. We need hardly say that what had been done, was in derogation of the Rules, analysed earlier, and was clearly unauthorised and illegal. On what we have held earlier, the applicant who was appointed regularly, counting his regular appointment against a vacancy at the Bangalore school, should have been appointed and counted against the earlier vacancy that arose in the Ajmer school. We propose to do so, without unnecessarily remitting the matter to F1 at this distance of time.

17. On the foregoing, it follows that the applicant will be senior to R2. On this conclusion, all that is required to be done is only to direct the mutual exchange of ranks assigned to the applicant and F2 in the seniority list.

18. Sri Srinivasan, contends that the promotion of R2 and the supersession of the applicant on 17.8.1932 by the DPC and by the appointing authority, was illegal and unjustified, and calls for a re-examination on the finding recorded by us on the relative seniority of the applicant and R2.

19. Sri Padmarejaiah contends that the case of the applicant and F2 had been duly considered by the DPC and that R2 graded as 'very good' had been rightly promoted and there were no grounds to undo what had been done, even if the applicant was held to be senior to R2.



20. As on 17.3.1982, there was one vacancy of MG in English of the schools, which was and is a 'selection post', under the Principal (Group-A) and Master(Group-B), Military Schools Recruitment Rules of 1981.

21. When the post is a selection post, merit takes precedence over seniority. It is well-settled, that only when merit of two persons selected, is equal in all respects, the balance is tilted in favour of the senior and not otherwise.

22. In making selections to selection posts, a DPC is required to grade eligible officers as 'Outstanding', 'Very Good', 'Good' and 'Unfit', and that methodology had also been approved by the Supreme Court in R.S.DASS vs. UNION OF INDIA (AIR 1987 SC 593).

23. In conformity with the executive orders made by Government and the principles enunciated by the Supreme Court in DASS' case, it was open to the DPC to grade the eligible officers as 'Outstanding', 'Very Good', 'Good' and 'Unfit, and make a selection on the basis of those gradings. If that had been properly done, then our earlier finding on seniority, by itself, will not justify us to undo the selections.

24. Whether there has been a proper selection to the post of MG or not, is the primary question that calls for our examination. In order to decide this, it is necessary to read the proceedings of the DPC, held on 17.3.1982.

25. The proceedings of the DPC held on 17.3.1982, in so far as that relates to the selection of MG in English,



reads thus :-

"Master Gazetted in English :

3. The Committee considered the question of selection of an officer for officiating promotion to one post of Master Gazetted in English. Having examined the character rolls of the following eligible officers, the committee assessed them as indicated against each :-

<u>S.No.</u>	<u>Name</u>	<u>Assessment.</u>
1.	Shri VN Purohit	Very good.
2.	Shri MS Vahugopal	Not outstanding.
3.	Shri AK Awasthi	

4. On the basis of the assessment, therefore, the committee recommended Shri VN Purohit, the senior most, for officiating promotion to the post of Master Gazetted in English."

In this proceeding, R2 has been graded as 'Very Good', and the applicant has been graded as 'Not Outstanding'. We will assume that the grading of R2 is correct.

27. On the grading of the applicant as 'Not Outstanding', while Sri Strinivasan contends that the same was below 'Outstanding and was above 'Very good', Sri Padmarajaiah contends that the same was below 'Very Good', or 'Good' only, and was not above 'Very Good'.

28. The executive orders issued by Government require the DPCs to grade eligible officers as 'Outstanding', 'Very good', 'Good' and 'Unfit'. These gradings are a positive assessment and determinate of the performance of an officer. The executive orders and the principles enunciated in JASS' case, provide for positive and not negative grading, as done in the case of the applicant. On this score itself, we cannot uphold the grading of the applicant and therefore his supersession on this account.



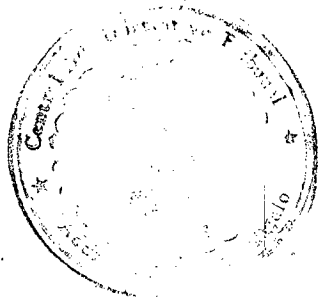
29. A negative grading, besides being really no grading, is incapable of precise import and formulation. When such a grading is made by a DPC, as in the present case it only opens the case for different constructions by the contestants, as has happened before us. We cannot obviously accept either of them, and can only ask the DPC to do its job properly. On this view, we decline to accept either of the two rival constructions placed on the grading of the applicant.

30. On our earlier finding, there is no other alternative for us than to quash the proceedings of the DPC and the promotion of R2 and direct a re-examination, in accordance with law, which will necessarily take some time. But till then, we consider it proper to permit R2 to work in the promoted post, without any right for selection on that ground.

31. Before making a fresh selection, it is open to Government to create a supernumerary post or make a fresh selection to the one post that existed as on 17.8.1982. As to which of them should be done, is a matter for Government to examine and decide.

32. When there is a fresh selection for only one post of MG, as on 17.8.1982, and if the applicant is selected to that post in preference to R2, then we consider it proper to direct R1 to extend to him only notional benefits from such date and the benefit of promotion from the date of actual promotion only.

33. In the light of our above discussion, we make the following orders and directions :



1) We declare that the applicant and R2 had been appointed on a regular basis as AMs in English in the vacancies which occurred in the Ajmer and Bangalore Schools from 27.9.1973 and 24.10.1973 respectively;

2) We declare that the applicant is senior to R2 in the cadre of AMs in English. We direct R1 to assign rank No.3 to the applicant and rank No.4 to R2, as against rank Nos. 3 and 4 assigned to them respectively in the seniority list drawn up as 03.1.1982;

3) We quash the promotion of R2 and the proceedings of the DPC which met on 17.8.1982 in so far as the same relate to selection to the post of MG in English only and direct R1 to re-determine the case of the applicant and R2 for promotion to the post of MG as on 17.8.1982 afresh with the assistance of a DPC and then make a fresh selection to the vacant post of MG in English only between them, 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 event, within a period of four months from the date of receipt of this order. If in the fresh selection, the applicant is selected to the post of MG in English in preference to R2, then he should be given only notional promotion from the earlier date and the benefit of promotion from the date of actual promotion. But till then, R2 is permitted to hold the post of MG he is now holding, which fact however, shall not be taken into consideration when the DPC or Government makes a fresh selection to the post of MG in the light of this order.

34. Application is disposed of in the above terms.

But in the circumstances of the case, we direct the parties to bear their own costs.



an.

Sd/-
Vice-Chairman

26/10/87

Sd/-
Member (A)

28.10.87

- True copy -

SECTION OFFICER
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE