

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH, BANGALORE

DATED THIS THE 21ST DAY OF NOVEMBER 86

Present : Hon'ble Shri Ch.Ramakrishna Rao ...Member (JM)  
Hon'ble Shri P.Srinivasan ... Member (AM)

Application No. 779/86

S.Sathyannarayana,  
Late Shankaranarayana, aged about  
44 years, Upper Division Clerk,  
(now working as Cashier),  
Aeronautical Development Establishment,  
Ministry of Defence, High Grounds,  
Bangalore-1.

... Applicant

(Shri M.Narayanaswamy, Advocate)

4 Vs.

1. The Scientific Adviser to the  
Minister of Defence & Director  
General, Research Development,  
Research and Development Orgn.,  
Director of Personnel,  
New Delhi.11,

2. The Director,  
The Directorate of Technical  
Development Production,  
Ministry of Defence, B-1, Block,  
New Delhi.

3. The Director,  
Aeronautical Development,  
High Grounds, Bangalore.

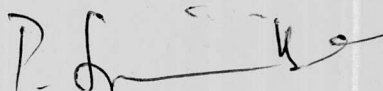
... Respondents.

( Shri M.S.Padmarajaiah, Advocate)

The application has come up for hearing before  
the Court today. The Member <sup>(AM)</sup> made the following :

ORDER

This is a transferred application received from  
the High Court of Karnataka. It was filed before the  
High Court of Karnataka on 15.6.1981.



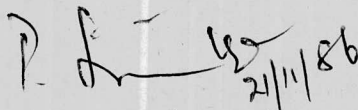
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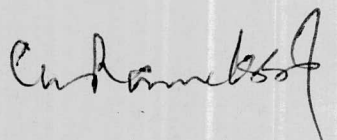
2. The applicant joined the Auxillary Service Corps (ASC), Bangalore, as a Lower Division Clerk (LDC) and was duly promoted to the post of UDC on 28.12.1966. As UDC, he was working in what the applicant's counsel calls, the combined formation of the Resident Technical Office and Inspectorate (RTO & I) under the DTD & P (Air) i.e. the Directorate of Technical Development and Production (Air). By an order dated 22.6.1967, the combined formation was bifurcated into its two units viz., RTO and Inspectorate. The administrative<sup>ve</sup> and functional control of RTO was transferred to the Director of Aeronautics, R & D organisation of the Ministry of Defence. The staff of RTO in the erstwhile combined formation were also transferred to the Directorate of Aeronautics. The Inspectorate Wing of the erstwhile combined formation continued to remain under DTD & P along with the staff working in it. The applicant was working in the RTO wing of the formation and so he went along with his organisation to the Directorate of Aeronautics. Four of his juniors in the cadre of UDC's in the erstwhile combined formation including a certain Shri B.P.Narasimhamurthy and Shri K.K. John who were at the time of the bifurcation working in the Inspectorate Wing continued to remain with DT & P (Air) along with their organisation. It is common ground that no member of the staff of the combined formation was given any option.

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of third parties that might have come into existence during this period. The application therefore deserves to be dismissed on the ground of laches. In this view of the matter we do not have to go into the merits of the applicants grievance. We may however observe in the passing that we do not perceive any arbitrariness in leaving the set up of each of the bifurcated units intact with all the staff working in it: conceivably that was considered to be in the best interests of efficiency in each unit and maintenance of continuity of work of each of them. As mentioned earlier no member of the staff of the erstwhile combined formation was given an option and not just the applicant. It was fortuitous that subsequently one unit opened up better prospect of advancement than the other, something that could not be anticipated at the time: for otherwise, the applicant himself would have protested immediately in 1967 itself. We leave the matter at that.

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

  
MEMBER ( AM )

  
MEMBER ( JM )

kam/1.12.86.

5. We have given the matter our most anxious thought. We feel that the application is so much delayed that we cannot entertain it. As urged by the learned counsel for the respondents, the change over with which the applicant is aggrieved occurred in 1967 and he was not diligent in pursuing what he considered to be his right of option. It was only when he realised that his juniors were being confirmed under DT & P (Air) and that was in 1970, that he made a representation but even then he only sought confirmation where he was and did not press his right of option. Shri Narayanaswamy informed us that Shri Narasimhamurthy was promoted as Office Superintendent in 21.1.1970 and Shri K.K. John on 11.9.1972. At least at that stage the applicant could have taken legal steps to agitate his grievance but he did not do so. The applicant's representation to the authorities was turned down by a letter dated 10.10.1975. It is stated that the applicant gave a legal notice to the respondents on 22.7.1975 (Annexure H) but even after that, he waited for nearly 6 years before he moved this application on 15.6.1981. Even if there were any merit in the applicant's grievance, much would have happened in the fourteen years after the bifurcation till the writ petition was filed in 1981 and in the five years thereafter which cannot be reversed at this late stage without causing considerable administrative inconvenience and affecting the rights

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denied him the opportunity of exercising a choice which was his right under Articles 14 and 16 of the Constitution.

4. Shri M.S.Padmarajaiah, learned counsel for the respondents sought to refuse<sup>the</sup> the contentions of Shri Narayanaswamy. He reiterates that the original combined formation of RTO & I was bifurcated on administrative grounds, by an administrative order and when this bifurcation was ordered, it was not stipulated that staff of the combined formation should be given the option to choose where they would like to work after bifurcation. The RTO with its staff had been moved over and so whoever was working there went over to the Directorate of Aeronautics. There was no arbitrariness in the action because the office of the organisation was shifted lock, stock and barrel to the control of the Directorate of Aeronautics. If the applicant had any grievance in 1967, that he was not given an option he should have agitated it immediately. But he did not. Even in his letter dated 22.4.1970 which is attached as Annexure-C to the petition, his request was only that he be confirmed, where he was working and not that he should be given the option to stay there or to go back to DT & P (Air). He could not, after the lapse of 14 years, move the Court for undoing things which had happened so long ago. Shri M.S.Padmarajaiah, therefore, urged that the application be rejected both on merits as well as on the ground of laches.

*P. S. Padmarajaiah*

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filed, two persons junior to the applicant in the erstwhile composite formation, i.e. Shri B.P.Narasimhamurthy and Shri K.K.John had been promoted as Administrative Officers, a post two steps higher than that of UDC, as early as in 1982 while the applicant had received only one promotion to the post of Office Superintendent in November 1981 and remains in that post till today. He contends that when an organisation is bifurcated the employees of the organisation should be given an option as to which of the bifurcated wings he would like to work with thereafter. That option was required to be given in view of Articles 14 and 16 of the Constitution guaranteeing equality of opportunity to all persons. Respondents violated the said Articles by not giving such an option and unilaterally transferring the applicant along with RTO to the Directorate of Aeronautics. Even though it is 19 years since then, the applicant's grievance is a continuing one and the application should not be dismissed for <sup>W</sup>laches. It does not lie in the mouth of the respondents to say that the applicant should have protested in 1967 because it was the respondents who should have given the option at the time to the applicant and not for the applicant to ask for it. The persons junior to the applicant who had received promotion after the bifurcation had not been impleaded as parties to this application because <sup>W</sup>the grievance of the applicant is not against them but against the respondents who had

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whether to continue under the control of DT & P or to go over to the Directorate of Aeronautics. It transpires that after the bifurcation took place, persons who were junior to the applicant in the cadre of UDC's in the erstwhile combined formation and continued in DT & P (Air) after the bifurcation were confirmed in that cadre earlier than the applicant who stood transferred to Directorate of Aeronautics. He, therefore, addressed representations to the authorities concerned complaining that no option had been given to him when the combined formation was split up, to remain under the control of DT & P or to go over to the Directorate of Aeronautics and as a result his juniors who remained in DT & P (Air) had obtained confirmation before him. One such representation is addressed to the Director of Aeronautical Development Establishment (ADE) appearing at Annexure C in which the applicant requested that he be considered for confirmation as UDC since his juniors in DT & P (Air) had already been confirmed. It is stated that he followed this up <sup>and</sup> that subsequently he made with further representations. He received a final reply from the ADE dated 10.10.1975 referring to an application made by him on 20.2.1975 and explaining that the bifurcation of RTO & I had taken place in the public interest and that the employees working in each of the wings at the time had

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enbloc been moved to the respective bifurcated establishments along with their work. There were no orders requiring that personnel should be given any option in the matter. The letter also stated that if he had any objection to being moved to the Directorate of Aeronautics, the applicant should have protested in 1967 itself when the bifurcation took place and he was shifted to that Directorate. His request was, therefore, rejected. Thereafter, he filed the present application as a writ petition before the High Court of Karnataka on 15.6.1981. The prayer in the application reads as follows :

- "a) Issue a writ in the nature of mandamus or any other writ, order or direction as the case may be, directing the respondents to grant seniority to the petitioner over and above his juniors in the combined formation of RTO & Inspectorate, DTD & P (Air) not withstanding the transfer along with R.T.O. to the R & D Organisation, with a further direction to grant all promotions and other benefits on the said basis; and
- b) Pass such other orders just and expedient in the circumstances of the case including the award of costs, in the ends of justice."

3. Shri M.Narayanaswamy, learned counsel for the applicant explains that after the writ petition was

