y

REGISTERED

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

APPLICATION Nos. 343 & 344, 400, 401, 406, 407 & 411/87

(WP.NO.

COMMERCIAL COMPLEX, (BDA)
INDIRANAGAR,
BANGALORE-560 038.

DATED: 12-6-87

APPLICANT

Shri G. Venkatesh & 6 Ors

TO

1. Shri G. Venkatesh
No. 2, II Cross
Matadahalli
Bangalore - 560 032

2. Shri K. Thyagaraja
No. 2, Nandanavanam 'D' Street
Ulsoor
Bangalore - 560 008

3. Shri H.Y. Jyoti Prakash Kumar
No. 3098, Dodda Basti Road
Hassan

4. Shri D. Shiva
No. 22, Bazaar Road
Vannarpet
Viveknagar Post
Bangalore - 560 047

5. Shri A. Krishna Naik
Income Tax Office
Bharath Building
P.M. Rao Road, Mangalore - 1

Vs

RESPONDENTS

The Chief Commissioner(Adm) & Commissioner of Income Tax, B'lore and another

6. Shri B. Krishna Rao
Income-Tax Office
Bharath Building
P.M. Rao Road
Mangalore - 1

7. Shri R. Rama Gowda
Income Tax Office
Nazarabad
Mysore

8. Dr M.S. Nagaraja
Advocate
No. 35 (Above Hotel Swagath)
I Main Road, Gandhinagar
Bangalore - 560 009

9. The Chief Commissioner (Adm) & Commissioner of Income-tax
Karnataka I
Central Revenue Buildings
Queens' Road, Bangalore - 560 001

SUBJECT: SENDING COPIES OF ORDER PASSED BY THE BENCH IN APPLICATION NOs. 343, 344, 400, 401, 406, 407 & 411/87

....

Please find enclosed herewith the copy of the Order passed by this Tribunal in the above said Application on 27-5-87.

Copy to D.No. 4w/87

for DEPUTY REGISTRAR
(JUDICIAL)

ENCL: As above.

10. The Income Tax Officer(HQ) (Adm)
Office of the Chief Commissioner(Adm)
Central Revenue Building
Queens' Road, Bangalore - 560 001

12. Shri M.S. Padmarajaiah
Central Govt. Stng Counsel
High Court Buildings
Bangalore - 560 001

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

DATED THIS THE 27th MAY 1987

Present : Justice Sri K.S. Puttaswamy - Vice Chairman

Hon'ble Sri P. Srinivasan - Member (A)

A.Nos. 343 & 344, 400, 401, 406, 407 & 411 of 1987

1.C. Venkatesh (A.No. 343/87)
No.2, II Cross,
Matadahalli,
Bangalore 560 0232

2.K.Thyagaraja (A.No. 344/87)
No.2, Nandanavanam 'D' Street
Ulsoor, Bangalore 560 008

3.H.Y. Jyoti Prakash Kumar (A.No. 400/87)
No.3098, Dodda Basti Road
Hassan

4.D. Shiva (A.No. 401/87)
No. 22, Bazaar Road,
Vannarpet
Viveknagar Post
Bangalore 560 047

5.A.Krishna Naik (A.No. 406/87)
Income-tax Office
Bharath Building, P.M. Rao Road,
Mangalore 1

6.B.Krishna Rao (A.No. 407/87)
Income tax Office
Bharath Building, P.M. Rao Road,
Mangalore 1

7.R. Rame Gowda (A.No. 411/87)
Income tax Office
Nazarabad,
Mysore

- Applicants

(Dr. M.S. Nagaraja, Advocate - in A.Nos. 343,344, 400 & 401/87)

and

1. The Chief Commissioner (Adm) &
Commissioner of Income-tax, Karnataka I
Central Revenues Building,
Queens Road, Bangalore 560 001

2. The Income-tax Officer (HQ) (Adm)
Office of the Chief Commissioner (Adm)
Central Revenue Building,
Queens Road, Bangalore 560 001

.....2

These applications came up for hearing before this Tribunal to-day and Justice Sri K.S.Puttaswamy, Hon'ble Vice Chairman made the following

ORDER

A.Nos. 406 & 407 and 411/87 were posted before us to-day for admission with interim prayers. These applications are connected with application Nos. 343, 344, 400 and 401/87 which are listed to-day for confirmation of stay. For the very reasons stated in A.Nos. 343 & 344/87, we admit applications Nos. 406, 407 & 411. At our direction, Sri M.S.Padmarajaiah. learned Senior C.G.S.C. takes notice for the respondents in A.Nos. 406, 407 & 411 of 1987. He is permitted to file his memo of appearance for the respondents in these and the connected cases within 15 days from this day. As agreed to by both sides, all these cases are treated as listed for final hearing to-day and are accordingly heard.

2. All the applicants initially joined service as Group D officials in the Income Tax Department, Government of India and were working in one or the other office of that Department under the charge of the Chief Commissioner, Income Tax, Bangalore ('Commissioner'). On different dates by separate but identical orders the applicants were promoted as Lower Division Clerks ('LDCs') on an ad hoc basis and ever since their promotions, they were working in that capacity. On 7.5.1987 the Commissioner had reverted all the 7 applicants and

.....3

5 others from the posts of LDCs to Group D category and had also posted them in the very offices they were previously working. In these seperate but identical applications made under Section 19 of the Administrative Tribunals Act ('ACT') the applicants have challenged their reversions made by the Commissioner.

3. The applicants have urged that their reversions were unjustified and illegal.

4. In their common reply the respondents have asserted that the reversions had been made in compliance with the policy directions of the Central Board of Direct Taxes ('CBDT') that all ad-hoc appointments should be discontinued and in their place regular appointments should be made.

5. Dr. M.S. Nagaraja, learned Advocate appeared for the applicants in A.Nos. 343, 344, 400 & 401/87. Applicants in A.Nos. 406, 407 & 411/87 appeared in person. Sri Padmarajaiah has appeared for the respondents in all the cases.

6. Dr. Nagaraja contends that the reversions of the applicants were unjustified, illegal and contrary to the directions of the CBDT.

7. Sri Padmarajaiah sought to support the order of the Commissioner.

8. In the promotion orders issued to the applicants the Commissioner had inter-alia stipulated

.....4

that their promotions were on ad hoc basis and they will be continued on that basis only till regular appointments to the posts are made. The continuance of the applicants was dependent on making regular appointments to the posts. It is not the case of the respondents that they have made regular appointments and to accommodate them the reversions of the applicants had been made. If that is so, then the reversions of the applicants are unjustified and cannot be upheld.

9. In it's letter No. F.No. A/12034/84/85/Ad VII dated 11.4.86 reiterated in its letter dated 6.4.87, Government had conveyed its policy decisions on making ad hoc appointments and their continuance. We are not called upon to decide the validity of the policy decisions of Government and therefore, we refrain to examin it's validity.

10. The very first letter dated 11.4.86 of Government reiterated in it's letter dated 6.4.87, on which very strong reliance is placed by Sri Padmarajaiah to support the order of the Commissioner reads thus:

"To
The Chief Commissioner of Adm &
Commissioner of Income-Tax,
West Bengal, Calcutta/Bangalore/Bombay

Subject: Appointment of employees on ad hoc basis instruction regarding.

Sir,

Reference is invited to Board's letter of even number dated the 17th April, 1986 and

....5

"subsequent reminders dated 4th April, 1986, 10th December, 1986, 11th February, 1987 and 9th March, 1987 respectively. Vide letter dated the 17th April, 1986 it was pointed out that even though a procedure for appointing staff through surplus cell/SSC has been laid down yet ad hoc appointments, in violation of the prescribed procedure of recruitment, continues to be made in various cadres of the staff. It was also pointed out that such ad hoc employees were allowed to continue in some charges for a period of more than one year and were even allowed to contribute to GPF and given annual increments, etc. Since this practice is highly irregular, the Board desired that the cases of all ad hoc appointees in your charge should be reviewed and action taken to dispense with the services of all such ad hoc employees who have been appointed and still continue to be in service in violation of the prescribed procedure of recruitment. It has also come to the notice of the Board that in some charges neither the requisitions are being sent in time nor are SSC being kept informed of the vacancies that are occuring from time to time. It was, therefore, desired in our letter dated the 7th April, 1986 that all such recruitments in violation of the prescribed procedure should be identified for replacement by personnel recruited through the Staff Selection Commission. Your report in this regard has still not been received in spite of issue of five reminders.

2. You are requested to kindly look into the matter personally and send details of all such persons who have been so recruited in various cadres for the information of the Board immediately so as to reach the Board within a week of receipt of this letter."

We must read this decision as a whole and give effect to every part of the same without creating a hiatus or a problem in the smooth functioning of the Department in the public interest. We cannot read any part of it in isolation or out of context also. When we so read this decision, we are of the view, that the discontinuance of ad hoc appointments and

.....6

their replacement by regularly recruited candidates either by direct recruitment or by promotion must go hand in hand or should be done simultaneously. We do not read this decision as compelling the Commissioner to mechanically discontinue the earlier ad hoc appointments - even before making regular appointments and the necessity for their discontinuance really arises. We are, therefore, of the view that what had been done by the Commissioner, was not justified.

11. Sri Padmarajaiah submits that Government had also taken a decision to abolish certain number of posts of LDCs under the charge of the Commissioner and that to give effect to the same, reversons had necessarily to be made.

12. The reversions had not been made on the ground of abolition of posts. But we need hardly say that as and when posts are abolished by Government it is undoubtedly open to the Commissioner to make reversions applying the principle of 'last come first go'.

13. In his order dated 7.5.87 the Commissioner had reverted 12 persons out of whom only 7 persons had approached us. We can quash the reversions against the applicants only and not against those that had not approached us. But we do hope and trust that the Commissioner will examine the cases of those who had not approached us and give them also similar relief.

.....7

14. In the case of some applicants, the authorities had enforced reversions and had relieved them from the posts of LDCs they were earlier holding. We have nowquashed their reversions. In this view, it is necessary for the authorities to continue them as LDCs and give them postings as LDCs with expedition.

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

(1) We quash Order No. E.No. 335/LDC(A)/1987-KTK dated 7.5.1987 of the Chief Commissioner of Income Tax, Bangalore as ~~xx~~ against the applicants only.

(2) We direct the respondents to continue the applicants as LDCs and give them appropriate postings with expedition. But this does not prevent the Commissioner to revert the applicants in future in accordance with laws.

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

Sd/-
(K.S. Puttaswamy)
Vice Chairman

Sd/-
(P. Srinivasan)
Member (A)

SECTION OFFICER 6/87
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE

"True copy"

bsg/-