

Magister

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH
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BY REGISTERED POST

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

Dated : 9/9/87

APPLICATION NO 51/87 (CF)/86

W.P. NO

Applicant M. Kripakaran Vs General Manager, S. Ry. Madras & Ors

- To
1. Sri M. Kripakaran,
Chief Telegram Traffic Inspector,
(Grade II)
Telegraph Office, S. Ry.,
Mysore Jn.
 2. Smt. Prasanna, Advocate,
No. 1, II Floor, SSB Mitt Building,
K.G. Circle, Bangalore - 9.
 3. The General Manager (Personnel)
Southern Railway, Park Town,
Madras - 600 003.
 4. Divisional Rly. Manager
(Personnel)
Southern Railway, Mysore.
 5. Sri M. S. Narayana,
Signaller, Telegraph Office,
S. Ry., Mysore Jn., Mysore.
 6. Sri S. Manjunath,
Head Signaller, S. Ry.,
Mysore.
 7. Sri Chinnaswamy Naraka,
Senior Signaller,
Telegraph Office, S. Ry.,
Mysore Jn., Mysore.

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 4 Aug '87.

Encl : as above

8. Sri K.V. Lakshman Achar, Advocate,
(For Respondents)

High Court Buildings, Bangalore - 1.

9. Special Officer for Scheduled Caste and Scheduled Tribes,
Office of SC/ST Commissioner,
R.K. Puram, New Delhi

Ch. Pleam rine (CF)
2/19
Jesud

DEPUTY REGISTRAR
~~SECTION OFFICER~~
(JUDICIAL)

RECEIVED (CF) 9/9/87
Diary No. 11/3/CR/87
Date: 10/9/87

CENTRAL ADMINISTRATIVE TRIBUNAL: BANGALORE

DATED THIS THE 7TH DAY OF AUGUST, 1987.

PRESENT:

Hon'ble Mr. Justice K.S. Puttaswamy,

.. Vice-Chairman.

And:

Hon'ble Mr. L.H.A. Rego,

.. Member(A)

APPLICATION NUMBER 51 OF 1987.

M. Kripakaran,
S/o M. Munirathnam,
Chief Telegram Traffic Inspector,
Grade-II, Telegraph Office,
Southern Railway, Mysore Junction.

.. Applicant.

(By Smt. M.N. Pramila, Advocate)

v.

1. The General Manager,
Personnel, Southern Railway, Park Town,
Madras-3.
2. Divisional Railway Manager,
Personnel, Southern Railway, Mysore.
3. M.S. Narayana,
Age: Major, Head Signaller,
Telegraph Office, Southern Railway,
Mysore Division, Mysore.
4. K. Adinarayana Setty,
Head Signaller, Mysore
5. S. Manjunath,
Head Signaller, Mysore.
6. Chinnaswamy Naika,
Major, Senior Signaller,
Telegraph Office, Southern Railway,
Mysore Division, Mysore.
(Respondents 4 and 5 deleted)

.. Respondents.

(By Sri. K.V. Lakshmanachar, Advocate).

This application having come up for hearing this day, Vice-Chairman made the following:

ORDER

This is an application made by the applicant under Section



19 of the Administrative Tribunals Act, 1985 ('the Act').

2. The applicant who is a member of a scheduled caste, initially joined service on 23-8-1976 in the Guntakal Division of the South Central Railway ('SCR') as a 'signaller' in the then time scale of Rs.260-430. On his own request, he was transferred to Mysore Division from 16-4-1986 and from that day he is working in that division.

3. While working in Mysore Division, the applicant was promoted as 'senior signaller' ('SS') in the then time scale of Rs.350-560 from 24-6-1983 against the quota reserved to members of scheduled castes.

4. On 8-12-1985 the Division Personnel Officer, Mysore Division, Mysore ('DPO') retrospectively promoted the applicant to the posts of 'Head Signaller' ('HS') in the time scale of Rs.425-640 and 'Chief Telegraph Traffic Inspector (Grade-II)' ('CTTI') in the time scale of Rs.550-750 from 1-1-1984 and 1-8-1984 respectively on an ad hoc basis from the quota reserved to members of 'Scheduled Castes' ('SC'). On a re-examination of those promotions the DPO on 7-1-1987 had reverted the applicant to the post of SS. Aggrieved by this order of the DPO the applicant has approached this Tribunal challenging the same on diverse grounds, which will be noticed and dealt by us in due course.

5. In justification of the reversion order respondents 1 and 2 have filed their reply. One Sri S.Manjunath who had been arrayed as respondent No.5 but later deleted is present in Court. All other respondents who have been duly served have remained absent and are unrepresented.

6. In their reply, respondents 1 and 2 have asserted that the applicant was promoted to the posts of HS and CTTI on the ground



that reservations to those posts of the Division to members of SC demanded the same. But, later they found that there were no such reservations wherever the number of posts did not exceed four as in the present case and in that view, they have only corrected that mistake and had rightly reverted the applicant to the post of SS.

7. Smt.M.N. Pramila, learned counsel for the applicant, contends that even if the number of posts were more than two and were less than four then also there should be reservations to members of SC and Scheduled Tribes ('ST') as clarified by the Chief Personal Officer, Madras ('CPO') in his letter No.P(S)171/I/P/Repn./Vol.II dated 31-7-1986 and on that view, the reversions of the applicant were unjustified.

8. Sri K.V.Lakshmanachar, learned counsel for respondents 1 and 2 contends that the letter dated 31-7-1986 of the CPO stands superseded by the latest communication made on 4-11-1986 (Annexure-4) and the former no longer holds the field.

9. In the last and the final communication that holds the field, the CPO had stated that whenever the number of posts in any category or grade did not exceed four, then, there cannot be reservations to members of SC & ST. We must necessarily read this later communication as superseding the earlier communication on the same subject by the very authority or by a lower authority. If the communication dated 31-7-1986 stands superseded by the later communication and no longer holds the field, then the applicant cannot place any reliance on the earlier communication and sustain his reversions. We see no merit in this contention of Smt. Pramila and we reject the same.



10. Smt. Pramila, next contends that the posts of HS and CTTI to which her client had been promoted were not division-wise posts but were zonal posts of the southern railway zone and, therefore, the promotions accorded to the applicant were in conformity with the orders made by Government from time to time providing for reservations to members of SC and there was no justification for the DPO to revert the applicant to the post of SS.

11. Sri Lakshmanachar, contends that the posts of HS and CTTI in the Southern Railway were at all times division-wise posts and that in the Mysore Division where the applicant was working and promoted did not exceed four, for which there were no reservations to members of SC and the earlier mistake had been corrected and the applicant had been rightly reverted to the post of SS.

12. In their reply, respondents 1 and 2 have asserted that the posts of HS and CTTI were divisionwise posts and the same has been verified by Sri E.S.S.Rao, who is the personal officer of the Mysore Division. We must normally accept this responsible statement and should not even doubt the same. Even otherwise the very seniority list produced by the applicant and all other documents produced before us conclusively establish that the posts of HS and CTTI were Division-wise posts and were not zonal posts. We, therefore, hold that the posts of HS and CTTI were only division-wise posts and not zonal posts.

13. In his application at para 6, the applicant had given the number of posts of HS and CTTI and these particulars are not disputed by respondents 1 and 2. According to these particulars themselves, the number of posts of HS and CTTI in Mysore Division did not exceed four at all times.



14. On an indepth examination of the question whether reservations in promotions to posts whose number does not exceed four, the CPO in his letter dated 4-11-1986 (Annexure-4) had expressed to the contrary. In conformity with the same,, the DPO had issued the impugned order.

15. Smt. Pramila had not brought to our notice any order of Government, which expressly regulates the situation. Sri Lakshmanachar states that there is no order of Government regulating the situation. We presume that this is the correct situation.

16. We have carefully read atleast some of the orders made by Government and the Railway Board on the reservations to SC and ST in promotional posts and Chapter-V dealing with 'Rosters' in the Brochure on Reservation for Scheduled Castes and Scheduled Tribes in Railway Services ('Brochure'). On such an examination we cannot say that the interpretation placed by the railway administration runs counter to any of the orders made by Government from time to time and the orders regulating 40 Point Roster. In any event, the construction placed by the CPO on the question is a possible construction. In these circumstances, we cannot but hold that the CPO and DPO were justified in holding that there cannot be reservations, where the number of posts does not exceed four as in the present case.

17. When once we hold that there cannot be reservations, where the number of posts does not exceed four, then it follows from the same that the retrospective ad hoc promotions given to the applicant from 1-1-1984 and 1-8-1984 to the posts of HS and CTTI were not legitimately due to him and the same were given to him by mistake and the DPO was right in correcting his own mistake and reverting the applicant to the original post of SS.



18. But, notwithstanding the above, Smt. Pramila contends that before making the order of reservation, the DPO was bound to issue a show cause notice to the applicant and afford him an opportunity of hearing in conformity with the principles of natural justice as ruled by Rama Jois, J. in N.G.RANGASWAMY v. UNION OF INDIA AND OTHERS (Writ Petitions Nos. 10221 and 10240 of 1976 decided on 27-11-1980).

19. On the facts and circumstances a show cause notice and an opportunity to make representations, the highest that could have been claimed by the applicant, would not have made any difference to the ultimate decision to be reached against the applicant. We cannot uphold this plea as if it is a ritual to be performed by the DPO.

20. In Rangaswamy's case the Court was principally dealing with a de-confirmation made against the official without notice to him. But, that is not the position in the present case. Hence, the ratio in that case does not bear on the point.

21. On the foregoing discussion, we see no merit in this contention of Smt. Pramila and we reject the same.

22. Smt. Pramila next contends that the re-structuring or re-distribution of the posts of HS and CTTI to the eight Divisions of the Southern Railway Zone was deliberately resorted to by the Railway Administration with the sole object of defeating the legitimate claims of the members of the SC and ST and was illegal.

23. In its order No.(P)PI35/II/Group 'C'/Signallers/II dated 7-6-1985 the Railway Administration had re-structured and allocated the posts



to the eight Divisions of the Zone. The applicant has not challenged this order. If that is so, we cannot examine its validity and annul the same. On this short ground, we should reject this challenge of the applicant. But, we will also assume that the applicant had challenged the order and examine its validity also.

24. Whether there should be re-structing of any posts and in what manner that the same should be done are essentially for the Railway Administration to examine and decide. The Tribunal is ill-equipped to decide the same.

25. The competent authority on an indepth examination had re-structured the posts and the same does not suffer from an error of jurisdiction or illegality. We are satisfied that the re-structuring and allocation of posts had not been deliberately done solely with the object of defeating the legitimate and just claims of the members of SC and ST.

26. On the foregoing discussion, we hold that there is no merit in this contention of Smt. Pramila and we reject the same.

27. We have upheld the stand of the Railway Administration that there cannot be reservations for members of SC and ST when the number of posts do not exceed 'four'. In cases of single vacancies also Government and Railway Board had made various orders providing for reservations on the terms and conditions indicated(vide: Chapter VII of the Brochure). We fail to see why the same should not be done where the number of posts in any particular category does not exceed 'four'. Whether that should be done and if so, in what manner that should be done are matters for Government and the Railway Board to examine and decide. We have no doubt that Government and Railway Board will earnestly examine the same



and make orders for suitable reservations even if the number of posts were two and more and below five also. When that is so done, we have no doubt that the case of the applicant will be re-examined and decided with due regard to those orders without considering our order as an impediment for the same.

28. In the light of our above discussion, we hold that this application is liable to be dismissed. We, therefore, dismiss this application. But, in the circumstances of the case, we direct the parties to bear their own costs.

29. Let a copy of this order be communicated to the Special Officer for Scheduled Castes and Scheduled Tribes, New Delhi for his information and such action as he deems fit in the circumstances. /



Sd/-
VICE-CHAIRMAN

7/8/1987
"True copy"

Sd/-
MEMBER(A)(R). 7.8.87

for *9/9*
DEPUTY REGISTRAR
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

.....

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

Dated: 10.9.87

To

1. Shri.Sanjeev Malhotra,
All India Services Law Journal,
Hakikat Nagar, Mal Road,
New Delhi- 110 009.
2. Shri.R.Venkatesh Prabhu, Member,
Editorial Committee,
Administrative Tribunal Reporter,
67- Lower Palace Orchards,
Bangalore- 560 003.
3. The Editor,
Administrative Tribunal Cases,
C/o. Eastern Book Co.,
34, Lal Bagh,
Lucknow- 226 001.
4. Delhi Law Times Office,
5335, Jawahar Nagar,
(Kolhapur Road),
Delhi- 110 007. (Rep.by Miss.Alka Kulkarni, Reporter, Bangalore)
5. M/s.All India Reporter,
Congressnagar,
Nagpur.
6. Services Law Reporter,
108, Sector 27-A,
Chandigarh- 160 019.

Sir,

I am directed to forward herewith a copy of the under
mentioned order passed by a Bench of this Tribunal comprising of
Hon'ble Mr. Justice K.S. Puttaswamy, Vice-Chairman/
Member (J) and Hon'ble Mr. LHA Rego Member(A)
with a request for publication of the order in the Journals.

Order dated 7.8.87 passed in A.Nos 51/87 (A).

Yours faithfully,

sd/-
(B.V.VENKATA REDDY)
DEPUTY REGISTRAR(J).

RECEIVED

Diary No. 1119/CR/87

Date: 12/9/87

CR

Please issue (18)
B.T. 1079

18 comes 11/9/87

.. Copy with enclosure; forwarded for information to:

1. The Registrar, Central Administrative Tribunal, Principal Bench, Faridkot House, Copernicus Marg, New Delhi- 110 001.
2. The Registrar, Central Administrative Tribunal, Tamil Nadu Text Book Society Building, D.P.I.Compounds, Nungambakkam, Madras- 600 006.
3. The Registrar, Central Administrative Tribunal, C.G.O.Complex, 234/4, AJC Bose Road, Nizam Palace, Calcutta- 700 020.
4. The Registrar, Central Administrative Tribunal, CGO Complex(CBD), First Floor, Near Kankon Bhavan, New Bombay- 400 614.
5. The Registrar, Central Administrative Tribunal, 23-A, Post Bag No.013, Thorn Hill Road, Allahabad- 211 001.
6. The Registrar, Central Administrative Tribunal, S.C.O.102/103, Sector 34-A, Chandigarh.
7. The Registrar, Central Administrative Tribunal, Rajgarh Road, Off Shilong Road, Guwahati- 781 005.
8. The Registrar, Central Administrative Tribunal, Kandamkulathil Towers, 5th and 6th Floor, Opp.Maharaja College. M.G.Road, Ernakulam, Cochin- 682 001.
9. The Registrar, Central Administrative Tribunal, CARAVS Complex, 15, Civil Lies, Jabalpur(MP).
10. The Registrar, Central Administrative Tribunal, 88-A, B.M.Enterprises, Shri Krishna Nagar, Patna- 1.
11. The Registrar, Central Administrative Tribunal, C/o.Rajasthan High Court, Jodhpur(Rajasthan)
12. The Registrar, Central Administrative Tribunal, New Insurance Building Complex, 6th Floor, Tilak Road, Hyderabad.
13. The Registrar, Central Administrative Tribunal, Navrangpura, Near Sardar Patel Colony, Usmanapura, Ahmedabad.
14. The Registrar, Central Administrative Tribunal, Dolamundai, Cuttack-753001.

Copy with enclosures also to:

1. Court Officer(Court I)
2. Court Officer (Court II)


(B.V.VENKATA REDDY)
DEPUTY REGISTRAR(J).

CENTRAL ADMINISTRATIVE TRIBUNAL: BANGALORE

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.. Applicant.

(By Smt. M.N. Pramila, Advocate)
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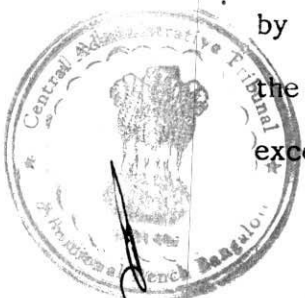


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and make orders for suitable reservations even if the number of posts were two and more and below five also. When that is so done, we have no doubt that the case of the applicant will be re-examined and decided with due regard to those orders without considering our order as an impediment for the same.

28. In the light of our above discussion, we hold that this application is liable to be dismissed. We, therefore, dismiss this application. But, in the circumstances of the case, we direct the parties to bear their own costs.

29. Let a copy of this order be communicated to the Special Officer for Scheduled Castes and Scheduled Tribes, New Delhi for his information and such action as he deems fit in the circumstances. /



np/

84 —
VICE-CHAIRMAN

sd/-

MEMBER(A)(R). 17-8-87

7/8/87
"True copy"

Free
DEPUTY REGISTRAR
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE