

REGISTERED

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH
.....

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

Dated: 30-10-87

APPLICATION NO. S. 404 & 405 /87(F)

W.P.No. _____

APPLICANT

Vs

RESPONDENTS

Shri K. Ganesha Naik & another

The PMG, Karnataka Circle, Bangalore

To

1. Shri K. Ganesha Naik
Mail Guard
RMS 'Q' Division
RMS Bhavan
Bangalore - 560 026
2. Shri V. Narayana
15/2, I Main Road
4th Cross, Kalappa Block
Ramachandrapuram
Bangalore - 560 021
3. Shri M. Raghavendra Achar
Advocate
1074-1075, Banashankari I Stage
Bangalore - 560 050
4. The Post Master General
Karnataka Circle
Bangalore - 560 001
5. Shri M.S. Padmarajaiah
Central Govt. Stng Counsel
High Court Buildings
Bangalore - 560 001

Subject: SENDING COPIES OF ORDER PASSED BY THE BENCH

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

~~ORDER~~ passed by this Tribunal in the above said applications
on 8-10-87.

RECEIVED

Diary No. 1348/CR/87

Date: 2.11.87

Encl: as above.

SECTION OFFICER
(JUDICIAL)

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PMG.*

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH BANGALORE

DATED THIS THE 8TH OCTOBER, 1987

Present: Hon'ble Justice Shri K.S. Puttaswamy, Vice-Chairman
Hon'ble Shri L.H.A. Rego, Member (A)

APPLICATION NO. 404 & 405 of 1987

1. K. Ganesha Naik,
s/o K. Annappa Naik,
Ages 27 years,
Mail Guard,
RMS Q Division,
RMS Bhavan,
BANGALORE-560 026.

2. V. Narayana,
s/o Veerappa,
15/2, I main Road,
4th Cross, Kalappa Block,
Ramachandrapuram,
Bangalore-560 021.

Applicants

(Shri M. Raghavendrachar....Advocate)

1. Post Master General,
in Karnataka,
Karnataka Circle,
Bangalore-560 001.

Respondent

(Shri M.S. Padmarajaiah.....Advocate)

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

O R D E R

These are applications made by the applicants
under Section 19 of the Administrative Tribunals
Act, 1985.

2. Sarvasri K. Ganesh Naik and B. Narayana,
applicants, in A.Nos. 404 and 405 of 1987
are working as a Mail Guard and Mail Man from
1983 and 1972 respectively in the Postal
Department Bangalore.

3. For a departmental examination called

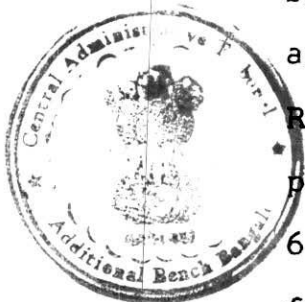


'Sorters' Examination ('SE') scheduled on 24.5.1987, the applicants who claimed to be eligible were not permitted to appear for the same by the Post Master General, Karnataka (PMG). Hence the applicants moved this Tribunal on 22.5.1987 for appropriate directions. On the same day, this Tribunal, while admitting the applications, permitted the applicants to appear for the examination with a direction to the PMG to withhold their results, with which he had complied.

4. The applicants have urged that they were eligible to appear for the SE and the action of the PMG in not permitting them to appear for the same was unauthorised and illegal.

5. In their common reply, the respondent had asserted that the applicants who had suffered minor penalties under the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (CCA Rules) were not eligible to appear for the SE, under the general orders made by the Director-General, P&T ('DG') on 21.9.1960 as authorised by the Indian Posts and Telegraphs (Time Clerks and Sorters) Recruitment Rules, 1971 ('1971 Rules'), and therefore they had not been rightly permitted to appear for the same.

6. Shri M. Raghavendrachar, learned counsel for the applicants, contends that the action of the PMG in not permitting his clients to appear for the SE was unauthorised and illegal.



7. Shri M.S. Padmarajaiah, learned senior Central Government Standing Counsel appearing for the respondent contends, that the action of the PMG was in conformity with the general circular issued by the DG on 21-9-1960 and was legal and valid.

8. In a disciplinary proceeding initiated under the CCA Rules, the Superintendent, RMS 'Q' Division (Superintendent), had imposed a minor penalty against the applicant in A.No.404/87 as hereunder:

"I, M.Ramaiah, Superintendent, RMS 'Q' Division, B-20 in exercise of the disciplinary powers conferred on me, hereby order that the next one increment of Shri K. Ganesh Naik, MG, be postponed for a period of six months without cumulative effect."

On 3.10.1984, the Senior Superintendent, RMS, Bangalore Sorting Division, Bangalore (Sr.Suptd.) under the CCA Rules had imposed a minor penalty on the applicant in A.No.405/87 as hereunder:

"I, BIR DATT, Senior Superintendent RMS, Bangalore Sorting Division, B-20, hereby order that the next increment of Shri V. Narayana, Mailman, when it next falls due, may be withheld for one year without cumulative effect."

These penalties imposed had become final and they are relied on by the PMG to debar the applicants from appearing for the examination scheduled on 24.5.1987. Whether this is legal is the only question that calls for our examination.



9. Column No.10 of the 1971 Rules that empowers the DG to prescribe conditions of eligibility to officials working in the Department to appear for the Sorters Examination, reads thus:

"Permanent or quasi-permanent officials below the time-scale clerical and sorters grade in accordance with the orders issued by the posts & Telegraphs Board from time to time."

In exercise of the powers conferred by the proviso, the DG had made a general order on 21.9.1960, stipulating the terms and conditions of eligibility. That order reads thus:

"Indian Posts and Telegraphs Department
Office of the Director-General of Posts and Telegraphs
To

All Head of Circles
and
Dy. Director, Army Postal Services.

No. 35/2/60-SPB-II. Dated New Delhi-1, the 21st Sept., 1960.

Subject:- Admission of candidates who took part in the recent illegal strike to Departmental promotion examinations.

.....

Sir,

I am directed to say that the question regarding the policy to be adopted towards the officials who participated in the recent illegal strike vis-a-vis those who did not join it and remained loyal to Government, in the matter of admission to the ensuing Inspectors' examination to be held in 1960 has been under consideration for some time. The following decisions have been taken by Government:-

- (i) Officials who took part in the strike and were reduced in rank (including reduction in pay) as a measure of punishment will not be admitted to any Departmental promotion examination for the period for which the punishment is effective or for two years whichever is the longer;



- (ii) Officials on whom minor penalties were imposed will not be admitted for one year;
- (iii) Officials who have not been punished with either a major or a minor penalty but who have entries in their confidential records for having taken part in the **strike** will be admitted to the examination if they fulfil other conditions and if their general record of conduct before and after the strike has been satisfactory.
- (iv) In the first examination to be held after the strike, a bonus of 5% marks i.e., 25 in the case of Inspectors' examination (to be added to the aggregate) will be given to each candidate who has not taken part in the strike before the merit list is drawn.
- (v) Officials affected by the decisions under sub-paras (i) and (ii) will be entitled to relaxation of upper age limit, if they are disqualified on that account only, for appearing at the first examination after they are free from the disqualification;
- (vi) These orders will apply to all Departmental promotion examinations.

Yours faithfully,

sd/-
(S.N. DAS GUPTA)
Deputy Director-General(PE)

This order is made by the DG as authorised or empowered by the 1971 Rules.

10. The applicants have not challenged the 1971 Rules or the order made by the DG and therefore we must proceed to examine the validity of the action of the PMG only with reference to each applicant separately.

11. On the applicant in A.No.404/87, the

.....6/-



Superintendent had imposed the penalty on 28.4.1986. In terms of clause (ii) of order dated 21.9.1960 of the DG, this applicant will not be eligible to appear for the SE scheduled on 24.5.1987. From this, it follows that application No.404/87 is liable to be dismissed.

12. On the applicant in A.No.405/87 the order made on 3.10.1984, directs that his increment when it next falls due, shall be withheld for a period of one year without cumulative effect. According to the PMG, the next increment of this applicant was to fall due on 1.12.1987 and on the terms of the order dated 3.10.1984, that increment was to be withheld for a period of one year from 1.12.1987. We will assume for purposes of this case only that these statements made by Shri Padmarajaiah before us are correct and proceed to examine the merits of the case.

13. While Shri Achar urges that the punishment of one year must be reckoned from the date of the order, Shri Padmarajaiah urges that the same should be reckoned for one year from the date, the punishment takes effect from 1.12.1987.

14. We are of the view that the construction placed by Shri Padmarajaiah on the order of DG is not in consonance with the spirit, intendment, object and its terms.

15. We are of the view, that the period of one year must be reckoned from the date the punishment is imposed and not from the date the actual punishment, if any, that takes



effect in terms of the order imposing punishment. In other words, the period of one year had to be reckoned from the date the order of punishment was made and not with reference to the nature of punishment and its operation or its period of operation as the case may be. This would be at once apparent in the case of a 'censure' a minor penalty under the CCA Rules for which no period can at all be stipulated. We are of the view that this conclusion is fortified from the later order made by DG on 25.6.1965 though the same does not in terms govern the question.

16. On the above analysis, it follows that the period of punishment imposed on this applicant expired on 3.10.1985 and therefore this applicant was eligible for the examination to be held on 24.5.1987.

17. We have earlier noticed, that this applicant, who had been permitted to appear for the Examination had appeared for the same. On the above conclusion, all that remains to be done is to direct the respondent to declare the results of this applicant.

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

- (1) We dismiss Application No.404/87
- (2) We declare that the applicant in A.No.405/87 was eligible to appear for the examination scheduled on 24.5.1987. We therefore direct the respondent to declare the result of this applicant and



- 8 -

regulate his further conditions of service on the basis of such results in accordance with law.

19. 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 - - -

Sd - - -

(K.S. PUTTASWAMY)
VICE-CHAIRMAN

(L.H.A. REGO) S. X. C. 987
MEMBER (A)

8/10/87

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CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE