

REGISTERED

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Commercial Complex (BDA)
Indiranagar
Bangalore - 560 038

Dated : 13 SEP 1988

APPLICATION NO. 1002 / 87(F)

W.P. NO. _____

Applicant(s)

Shri V. Baskaran

To

Respondent(s)

V/s

The Development Commissioner, New Delhi
(Handicrafts)

1. Shri V. Baskaran
Handicrafts Promotion Officer
Marketing & Service Extension Centre
Office of the Development Commission
(Handicrafts)
Bharath Commercial Complex
Alake Bridge, Kodroli
Mangalore - 575 003
2. Shri S.K. Srinivasan
Advocate
35 (Above Hotel Swagath)
1st Main, Gandhinagar
Bangalore - 560 009

3. The Development Commissioner
(Handicrafts)
Ministry of Textiles
West Block 7
R.K. Puram
New Delhi - 110 066
4. Shri M.S. Padmarajaiah
Central Govt. Stng Counsel
High Court Building
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(s) on 6-9-88.

Encl : As above

Assured
K. M. Srinivasan
13-9-88
c/c - *B. V. Venkatesh*
DEPUTY REGISTRAR
(JUDICIAL)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: BANGALORE

DATED THIS THE SIXTH DAY OF SEPTEMBER, 1988

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

APPLICATION NO. 1002/87(F)

Shri V. Baskaran
Handicrafts Promotion Officer
O/O Development Commissioner
(Handicrafts)
Ministry of Textiles
Bharath Commercial Complex
Alake Bridge
Mangalore - 575 003
(Shri S.K. Srinivasan, Advocate)

.. Applicant

Vs

The Development Commissioner
(Handicrafts)
O/O Development Commissioner
(Handicrafts)
West Block 7, R.K. Puram
New Delhi - 110 066
(Shri M.S. Padmarajaiah, Advocate)

.. Respondent

This application having come up for
hearing before this Tribunal today, Hon'ble Vice Chairman
made the following:

O R D E R

This is an application made by the
applicant under Section 19 of the Administrative Tribunals
Act, 1985 (Act).

2. Shri V. Baskaran, the applicant before
us joined service as Handicrafts Promotion Officer (HCPO)
a group B non-gazetted post on 13.6.1980. In the
revised seniority list of HCPOs prepared by the Development
Commissioner, Handicrafts, New Delhi (Commissioner) on
10.9.1986 the applicant has been assigned rank No.40,

.....2/-



with which, he has no dispute.

3. On 21.5.1987 the Commissioner, who is the head of the Department by an order of that date promoted the applicant to the post of Assistant Director (Handicrafts) (ADH) on an ad hoc basis for a period of six months or till that post is filled up on a regular basis whichever was earlier and posted him to Port Blair of the Union Territory of Andaman and Nicobar. On receipt of an earlier telegraphic advise thereto and the said promotion order and posting, the applicant did not report for duty at Port Blair. In that view, on 22.6.1987, the Commissioner cancelled the earlier promotion accorded to the applicant.

4. On 19.9.1986 a Departmental Promotion Committee (DPC) constituted for the purpose, considered the case of the applicant and 33 other eligible officers for the 12 vacant posts of ADHs on regular basis. On an evaluation of his Annual Confidential Reports (ACRs), the DPC graded the applicant as 'Good' and did not select him with due regard to the number of vacancies and the superior grading of other eligible officers. On accepting the said recommendations of the DPC, the Commissioner had appointed the other officers as ADHs in due course. Hence this application.

5. Firstly, the applicant has challenged the order dated 22.6.1987 of the Commissioner cancelling his earlier ad hoc promotion. Secondly,

he had claimed that his grading by the DPC as 'Good' was erroneous and the same, in any event calls to be re-done on grounds that will be noticed and dealt by us in due course.

6. In his reply, the respondent has justified the cancellation of ad hoc promotion of the applicant and his supersession for regular promotion and had produced the records at the hearing.

7. Shri S.K. Srinivasan, learned counsel for the applicant, contends that the Commissioner acted illegally and improperly in cancelling the earlier ad hoc promotion accorded to the applicant.

8. Shri M.S. Padmarajaiah, learned counsel appearing for the respondent contends that since the applicant had declined to accept the promotion and report for duty, the Commissioner was justified in cancelling the same and posting another officer in the public interest.

9. We have earlier noticed that the applicant had been promoted on an ad hoc basis with due regard to his seniority and posted to Port Blair. But the applicant instead of accepting the same and reporting for duty - at Port Blair, entered into needless correspondence on his posting. On that the Commissioner was justified in cancelling the earlier promotion of the applicant and take steps to promote another person and post him to



Port Blair. We see no illegality or impropriety in the said action of the Commissioner.

10. Shri Srinivasan next contends that the grading of the applicant as 'Good' by the DPC based on incomplete ACRs, and the uncommunicated adverse entries in some of the ACRs was illegal. In support of his contention, Shri Srinivasan strongly relies on a decision of this Tribunal in A. No. 731/86 (T) and 1842/86(T) Dr. (MRS.) RADHA NAYAR V. UNION OF INDIA decided on 25.2.1987 (Radha Nayar's case).

11. Shri Padmarajaiah has sought to support the grading of the applicant and his super-session by the DPC.

12. In determining promotions on regular basis, the normal rule is to take into consideration the ACRs of an Officer for a minimum period of three years or for a maximum period of five years immediately preceding such promotion.

13. We have carefully examined the proceedings of the DPC held on 19.9.1986 to decide which norm it had followed. But from the same it is difficult to say which norm it had followed at any rate in the case of the applicant with whom we are ^{primarily} ~~previously~~ concerned. We consider it proper to hold that the DPC had considered all the ACRs of the applicant in grading him as 'Good' and proceed to decide the controversies on that basis.

14. For the years 1980, 1982, 1984 & 1985 the ACRs of the applicant are complete and are available.

15. For the year 1981 there is an ACR for the period from 29.1.1981 to 5.5.1981 only. Even if we ignore the period 1.11.1981 to 28.1.1981 as ^(gale)neglite, we cannot ignore the non-availability of the ACR for the period from 6.5.1981 to 31.12.1981.

16. For the year 1983 the ACR of the applicant is not available in his ACR dossier and was not available to the DPC on 19.9.1986. On this there is no dispute. But it is stated that the ACR of the applicant for the said year had been forwarded to the Director, Eastern Region, Calcutta (Director) for communicating the adverse entries found therein to the applicant and that officer had not returned the same on or before 19.9.1986 or even thereafter also.

17. The legal position of DPC deciding cases of promotions, when the ACR were not available is no longer res-integra. In Radha Nair's case a Division Bench of this Tribunal consisting of one of us (KSPVC) and Hon'ble Shri P. Srinivasan examining the very question had expressed thus:



"But, for the year 1984 the CR of the applicant has not at all been written. When a CR for that year was not written the assessment made would be really in a vacuum. We will even assume that the applicant had not co-operated in getting the CR for that year written up or the reporting officer had even failed to discharge his duties. But those facts can hardly be a ground to hold that the CR for that year should not be got written up by the reporting officer or some other officer as that becomes necessary and the

entries completed and then an assessment made on the basis of the entries for that year."

On these principles which squarely govern the period from 6.5.1981 to 31.12.1981 and then the year 1983, we cannot uphold the grading of the applicant as 'Good' and his consequent supersession. From this it follows that we must necessarily direct reconsideration of the case of the applicant for promotion as on 19.9.1986.

18. We have earlier noticed that according to the respondent himself there were adverse entries for the year 1983 and the same had been directed to be communicated to the applicant through the Director which had not been done by him so far. Apart from this we find that there are certain adverse entries in the ACR of the applicant for the year 1982 and that also had not so far been communicated to the applicant.

19. Whether uncommunicated adverse entries in a ACR, can be relied or not is concluded by the Supreme Court in *Gurdayal Singh Fiji v. State of Punjab and others* AIR 1973 SC 1622. In conformity with the principles enunciated in this case, reiterated in other cases by the Supreme Court and this Tribunal, it is first necessary for the authorities to communicate the adverse entries to the applicant, consider the representations if any to be made by him thereto and then only consider his case for promotion. Even this conclusion, vitiates the grading of the applicant and his supersession.

20. In the ACRs of the applicant for the

year 1985 and 1986, it is stated that "disciplinary action is pending with the Headquarters for not obeying orders in handing over charge of M&SC Port Blair". Both sides are agreed that so far no disciplinary proceedings had been initiated against the applicant on what is stated above.

21. Whether any disciplinary proceedings at all should be initiated or not or the matter itself should be treated as closed is a matter for the Commissioner to examine and decide. But the same cannot be allowed to drift for an endless period. We do hope and trust that the Commissioner will take a decision one way or the other on the same with expedition.

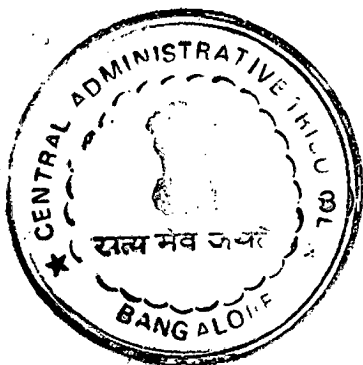
22. In the light of our above discussion, we make the following orders and directions:

1) We quash the grading of the applicant made by the DPC on 19.9.1986 as 'Good' and his consequent supersecession on that day by the DPC and the Commissioner.

2) We direct the Commissioner to first get the ACR of the applicant for the remaining period of the year 1981 written up from the officer under whom the applicant was working, get the same completed in accordance with the Rules, orders and practise regulating the same.

We do hope and trust that the Director will be able to trace the ACR of the applicant for the year 1983 and communicate the adverse entries to him. But, if the same is not traced, then we reserve liberty to the Commissioner to get the ACR of the applicant for that year written up in conformity with our directions contained in sub-para (2) of this para.

4) We direct the Commissioner and his subordinate if any, to communicate the adverse entries in the ACRs of the applicant for the years 1982 and 1983 with expedition, consider any representations to be filed before him or other higher authority and dispose of the same one way or other within a reasonable time.



- 5) We direct the Commissioner to call for a review DPC only after complying with the directions contained in sub-para(2) to (4) of this para and have the case of the applicant considered for promotion on the basis of the ACRs for all the years as on 19.9.1986 and if he is found fit for promotion on that date, then promote him from the date his immediate junior was promoted, extending him all consequential benefits flowing from the same.
- 6) We direct the Commissioner to comply with the directions contained supra 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.
- 7) We dismiss this application in all other respects.

23. Application is disposed of in the above terms. But, in the circumstances of the case, we direct the parties to bear their own costs.

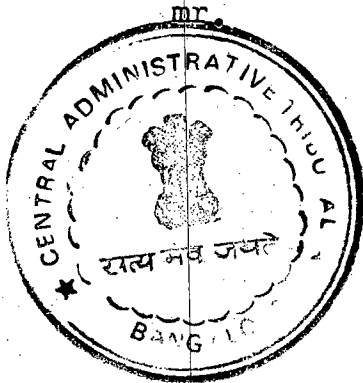
Sd/-

VICE CHAIRMAN 6/9/88

Sd/-

MEMBER (A) 18.08.1988

TRUE COPY



[Signature]
DEPUTY REGISTRAR (JDL) 3/9/88
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Commercial Complex(BDA)
Indiranagar
Bangalore - 560 038

Dated :

3 MAR 1989

CONTEMPT

PETITION (CIVIL) APPLICATION NO (2)
IN APPLICATION NO. 1002/87(F)
W.P. NO (S)

27

/89

Applicant (s)

Respondent (s)

Shri V. Baskaran
To

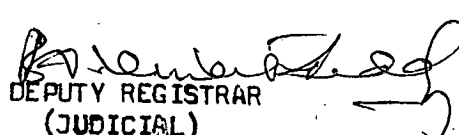
V/s

The Development Commissioner (Handicrafts),
M/o Textiles, New Delhi

1. Shri V. Baskaran
Handicrafts Promotion Officer
Marketing & Service Extension Centre
Office of the Development Commissioner
(Handicrafts)
Bharath Commercial Complex
Alake Bridge, Kodroli
Mangalore - 575 003

Subject : SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith a copy of ORDER/~~XXX~~/~~INTERIM ORDER~~
passed by this Tribunal in the above said ^{C.P. (Civil)} application(s) on 27-2-89.


DEPUTY REGISTRAR
(JUDICIAL)

Encl : As above

0861 MAM 1

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: BANGALORE.

DATED THIS THE 27TH DAY OF FEBRUARY, 1989

PRESENT: HON'BLE SHRI JUSTICE K.S. PUTTASWAMY ...VICE-CHAIRMAN

HON'BLE SHRI L.H.A. REGO

...MEMBER (A)

CONTEMPT PETN. (CIVIL) NO. 27/89

1. V. Baskaran
Handicrafts Promotion Officer
Marketing & Service Extension Centre
Bharath Commercial Complex
Alake Bridge Kodroli,
Mangalore -575 003.

...APPLICANT

vs.

1. Smt. Kasthuri Gupta Menon
Development Commissioner (Handicrafts)
West Block 7, R.K. Puram
NEW DELHI -110 066.

...RESPONDENTS

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

O R D E R

Cases called. Petitioner in person.

Heard the petitioner.

In this petition made under Section 17
of the Administrative Tribunals Act, 1985 and the
Contempt of Courts Act, 1971, the petitioner has
moved this Tribunal to punish the respondent for

non-implementation of our order made in his favour on 6.9.1988 in A.No.1002/87(F) (Annexure A-1).

3. In A.No.1002/87 the petitioner challenged his non-promotion to the post of Assistant Director, Handicrafts, as on 19.9.1986 which was resisted by the respondent which we substantially allowed on 6.9.1988 and issued the various directions as set out in para 22 of our order. In pursuance of our order the respondent had re-examined the case of the petitioner and had found him unfit for promotion. On that the respondent had written a letter on 13-2-1989 to this Tribunal which reads thus :-

" In pursuance of orders dated 13.9.1988 of the Central Administrative Tribunal, Bangalore Bench in the Tribunal Case No. 1002 of 1987 (F) Shri V. Baskaran, Handicrafts, Promotion Officer Marketing & Service Extn. Centre, Office of the Development Commissioner (Handicrafts), Mangalore, Office of the Development Commissioner (Handicrafts), New Delhi, the meeting of the Review Departmental Promotion Committee was held on 18.1.1989 to consider promotion in the grade of Assistant Director (Handicrafts in the pay scale of Rs. 2000-3500 of Shri V. Baskaran who had earlier been considered for the same by the Departmental Promotion Committee meeting held on 19.9.1986.

After careful examination of complete ACR upto 1985 performance and service records of Shri V. Baskaran, the Departmental

-: 3 :-
Promotion Committee did not recommend him for inclusion in the panel for promotion to 12 vacancies in the grade of Assistant Director (Handicrafts) relating to the year, 1986."

We have shown this letter to the petitioner who has perused the same in Court. On this letter, it is clear that the respondent had complied with our order in letter and spirit.

4. We will assume that there is some delay in implementing our order as claimed by the petitioner. But that even if true is not such that justifies us to initiate contempt of court proceedings against the respondent.

5. On what we have expressed earlier, there is no justification to initiate contempt of court proceedings against the respondent.

6. In contempt of court proceedings, the validity of the decision taken by the authorities in not promoting the petitioner, cannot be examined by us. If the petitioner is still aggrieved by the same it is undoubtedly open to him to challenge the same in a fresh application under the Act on all such grounds as are available to him.

7. In the light of our above discussion we hold that this petition is liable to be rejected. We, therefore, reject this contempt of court petition at the admission stage without notice to the respondent.



TRUE COPY

DEPUTY REGISTRAR (JULY 31 1987)
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE

sd/-
VICE-CHAIRMAN 27/1
sd/-
MEMBER (A) 27/1

By Regd. Post

No.52/1/87-Admn.I
Government of India
Ministry of Textiles
Office of the Development Commissioner(Handicrafts)

....

West Block No.7, R.K.PURAM,
New Delhi-110066

Dated: 13.2.1989

20/2 To,
Sd/-
The Registrar,
Central Administrative
Tribunal, Commercial
complex (BDA),
Indiranagar,
Bangalore-560038.

Subject: APPLication No. 1002 of 1987 on the file of
CAT, Bangalore-Shri V.Baskaran V/S Union
of India and others.

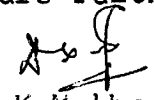
.....

Sir,

In pursuance of orders dt. 13.9.1988 of the
Central Administrative Tribunal, Bangalore Bench in the
Tribunal Case No. 1002 of 1987 (F) Shri V. Baskaran,
Handicrafts Promotion Officer Marketing & Service Extn.
Centre, Office of the Development Commissioner(Handicrafts)
Mangalore V/S the Development Commissioner(Handicrafts),
New Delhi, the meeting/Review Departmental Promotion / of the
Committee was held on 18.1.1989 to consider promotion
in the grade of Assistant Director(Handicrafts in the pay
scale of Rs. 2000-3500 of Shri V.Baskaran who had earlier been
considered for the same by the Departmental Promotion
Committee meeting held on 19.09.1986.

After careful examination of complete ACR upto
1985 performance and service records of Shri V.Baskaran,
the Departmental Promotion Committee did not recommend
him for inclusion in the panel for promotion to 12 vacancies
in the grade of Assistant Director(Handicrafts) relating
to the year, 1986.

Yours faithfully,


(D.K. Mukhopadhyay)

Jt. Development Commissioner (Hc)

CP 27/89

Noted on 27/2/89

~~20/2~~
Dy no. 41/89-511
20/2