

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH
* * * * *

Commercial Complex (BDA)
Indiranagar
Bangalore - 560 038

Dated : 8 SEP 1988

APPLICATION NO.

870

/ 87(F)

W.P. NO.

Applicant(s)

Shri G. Gopala Krishnan Nair

To

V/s

The Director, NAL, Bangalore & another

1. Shri G. Gopalakrishnan Nair
G-4, NAL Quarters
Kodihalli
Bangalore - 560 017

2. Dr M.S. Nagaraja
Advocate
35 (Above Hotel Swagath)
1st Main, Gandhinagar
Bangalore - 560 009

3. The Director
National Aeronautical Laboratory
Kodihalli
Bangalore - 560 017

4. The Director General
Council of Scientific &
Industrial Research (CSIR)
Rafi Marg
New Delhi - 110 011

5. Shri H. Sulaiman Sait
Advocate
No. 52, Infantry Road
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 29-8-88.

Enc] : As above

O/C

Hafee
for DEPUTY REGISTRAR
(JUDICIAL)

8.9.88

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: BANGALORE

DATED THIS THE TWENTYNINETH DAY OF AUGUST, 1988

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

APPLICATION NO.870/1987

Shri G. Gopalakrishnan Nair
G-4, NAL Quarters
Kodihalli
Bangalore - 560 017
(Dr. M.S. Nagaraja, Advocate)

.. Applicant

Vs.

1. The Director
National Aeronautical Laboratory
Bangalore - 560 017.
2. The Director General (SIR)
Council of Scientific and
Industrial Research
Rafi Marg
New Delhi - 110 001.

.. Respondents

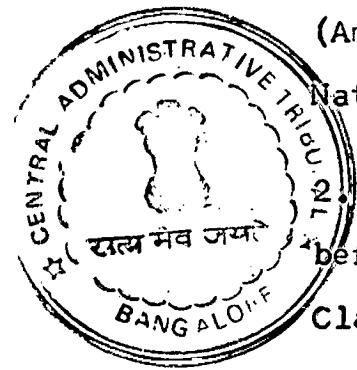
(Shri Sulaiman Sait, Advocate)

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

O R D E R

In this application made under section 19
of the Administrative Tribunals Act, 1985 (Act), the
applicant has challenged order No.10(4)/85-AI dated 20.6.1986
(Annexure A5) issued by the Administrative Officer (AO),
National Aeronautical Laboratory, Bangalore (NAL).

Shri G. Gopalakrishnan Nair, the applicant
before us, joined service in the NAL on 6.11.1963 in a
Class IV post. He was promoted as a Laboratory Attendant (LA)
in 1977. When he was working as LA, the Council of



Scientific & Industrial Research, New Delhi (CSIR) reformulated the promotional avenues in the various units including the NAL which are under its control.

3. On the basis of the new policy of CSIR the case of the applicant and several others, of whom two are members of Scheduled Castes (SC) were considered for promotion and the Director, NAL by his order dated 24.4.1986 (Annexure A4) promoted the applicant to Grade II(1) with effect from 22.12.1984. But on 20.6.1986 the Director had withdrawn that order on the ground that the same had been made by mistake. Hence this application.

4. In justification of the impugned order, the respondent have filed their reply and have produced their records.

5. Dr. M.S. Nagaraja, learned counsel for the applicant, contends that the order made by the Director on 24.4.1986 promoting his client was a correct, legal and valid order and the second order made by him on 20.6.1986 without a show cause notice to the applicant and affording him an opportunity to state his case, was erroneous and illegal. In support of his contention Dr. Nagaraja strongly relies on the ruling of the Supreme Court in Seena Panigrahi v. State of Orissa AIR 1967 SC 1267 and a ruling of the Cuttack Bench of this Tribunal in 1988 6 ATC 5.

6. Shri Sulaiman Sait, learned counsel for the respondents, refuting the contention of Dr. Nagaraja contends that the mistake, if any, in not issuing a

formal show cause notice, does not justify our interference.

7. In their reply the respondents have alluded to all the facts and circumstances which led to the second order made on 20.6.1986 (Annexure A5). We find that all the circumstances which led to the second order have been cogently and clearly set out in a note prepared by the administration on 4.6.1984 and that note reads thus:

" Ref: Assessment of staff members in Gr.II grades as on 31.3.1984 and 31.3.1985.

Director has approved the promotions of staff members on the recommendations of the Core Committee which met on 20th February 1986, as per notes on pp 8-14/ante. We have also issued individual memos to the staff members concerned. Since then it has been observed that a few cases (11 cases) of E.O.L. without pay availed of by the individuals which do not count for assessment have not been made known to the Committee when the recommendations were finalised by it. Most of these cases, even though there is a change in the actual date of promotion, does not affect the actual promotions because the revised date also falls in the same assessment year. However, in 2 cases viz. Shri J. Ramakrishna, JFM and Shri B. Sitaram, JFM, the revised date result in the change of assessment year and hence the recommendations of the Committee already recorded are to be reviewed.

In addition, in 3 cases, we have omitted inadvertently to indicate that they belong to Scheduled Caste community. According to our guidelines we have to add 5% of the total marks in respect of SC/ST candidates while drawing up the Merit List. This also has to be considered by the Committee and the Proceedings drawn up accordingly.

The effect of these changes would be as under:

- 1) Shri M. Ramaiah, Driver, who was not to be promoted even at the 3rd chance will be eligible for promotion during the assessment year ending 31.3.1983.



Consequently, Shri S. Parameswara, Driver's promotion which was w.e.f. 4.12.1982 would now be from 4.12.1983.

2) Shri G. Gopalakrishnan Nair, JFM of Aerodynamics Dvn was to be promoted w.e.f. 22.12.1984. This promotion cannot now be granted on account of the percentage limitations on the revised number of people who can be promoted during this assessment year ending 31.3.1985.

It is regretted that these errors have happened inadvertently.

Even though the Committee is *functus officio*, the genuine errors have to be corrected by the Committee. It is therefore proposed to reconvene the Core Committee on 6th June 1986, in consultation with the Chairman (Dr. P.A. Paranjpe, Head, Propulsion).

Director may kindly see for approval."

On the basis of this note, the competent authorities examined the matter in depth and found that if all the eligible officers had been promoted and the two members of the SC/ST had been given higher marks as they were entitled to, they should have been promoted to grade II (1) post in preference to the applicant and another person. The records clearly establish what is set out in the note.

8. An examination of the note and the records clearly establish that the promotion of the applicant as Grade II(1) on 20.12.1984 was erroneous and is a mistake. In the latter order made on 20.6.1986 the Director had only rectified that mistake.

9. Before rectifying the mistake the Director, somewhat regrettably, had not issued a show cause notice to the applicant and provided him an opportunity as required by the principles of natural justice.

10. After all principles of natural justice evolved by Courts are not mere rituals and have been evolved to do substantial justice. When we find that what was done earlier was by a mistake and the same had been rightly corrected, we should be loath to interfere with the same. The rulings relied by Dr. Nagaraja do not also hold to the contrary.

11. On what we have found earlier there is no justification for us to interfere with the second order made by the Director.

12. In a later communication addressed to the applicant on 11.9.1986, the administration had stated that he was eligible for promotion as on 22.12.1985 and his case for promotion to Grade II(1) post will be considered from that date. This letter addressed to the applicant reads thus:

" NATIONAL AERONAUTICAL LABORATORY
BANGALORE-17

No.10(4)/85-AI

September 11, 1986

OFFICE MEMORANDUM

Subject: Assessment of staff for promotion in Grade II(1) as on 31.3.1985.

With reference to the petition dated 15.7.1976 and the subsequent reminder dated 27.8.1986, from Shri G. Gopalakrishnan Nair, it is regretted that his promotion notified in O.M. No.10(4)/85-AI dated 24.4.1986, was cancelled since it was found to be erroneous. He may please note that this was his first chance for assessment in Grade II(1) and he is eligible for assessment again as on 22.12.1985, which is under consideration.

sd/-

(RADHIKA DORAISWAMY)
ADMINISTRATIVE OFFICER (S.G)



-- 6 :-

From this, it is clear that the case of the applicant will be considered for promotion from 12.12.1985 without reference to the events which had occurred earlier or to the decision we render in this case. On this view, we do not consider it necessary to issue any further directions to the respondents.

13. As all the contentions urged for the applicant fail 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.



Sd/-

VICE CHAIRMAN
29 AUG 1988

Sd/-

MEMBER (A) / 29.8.1988

TRUE COPY

Hase *STG*
for DEPUTY REGISTRAR (JDL)
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE