

CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH  
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Commercial Complex (BOA)  
Indiranagar  
Bangalore - 560 038

Dated 25 AUG 1988

APPLICATION NO.

898

/87(F)

W.P. NO.

Applicant(s)

Shri S.R. Selvaraj

Respondent(s)

The Joint Chief Controller of Imports & Exports,  
Bangalore & 4 Ors

1. Shri S.R. Selvaraj  
Section Head  
Office of the Joint Chief  
Controller of Imports & Exports  
BUSSB Wing, Cauvery Bhavan  
Bangalore - 560 009

5. Shri T.M. Sampath  
Controller of Imports & Exports  
Office of the Joint Chief  
Controller of Imports & Exports  
BUSSB Block, Cauvery Bhavan  
Bangalore - 560 009

2. Shri S.K. Srinivasan  
Advocate  
35 (Above Hotel Swagath)  
1st Main, Gandhinagar  
Bangalore - 560 009

6. Shri R. Purushothaman  
Controller of Imports & Exports  
Office of the Joint Chief  
Controller of Imports & Exports  
197, Peter's Road, Royapet  
Madras - 600 014

3. The Joint Chief Controller of  
Imports & Exports  
Cauvery Bhavan  
B.W.S.S.B. Block  
Bangalore - 560 009

7. Shri D.C. Benjamin  
Controller of Imports & Exports  
Office of the Joint Chief  
Controller of Imports & Exports  
BUSSB Block, Cauvery Bhavan  
Bangalore - 560 009

4. The Joint Chief Controller of  
Imports & Exports  
197, Peter's Road  
Royapet  
Madras - 600 014

8. Shri M.S. Padmarajaiah  
Central Govt. Sng 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 18-8-88.

Encl : As above

DEPUTY REGISTRAR  
(JUDICIAL)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH: BANGALORE

DATED THE 18TH DAY OF AUGUST, 1988.

Present

THE HON'BLE MR. JUSTICE K.S. PUTTASWAMY .. VICE CHAIRMAN  
THE HON'BLE MR. P. SRINIVASAN .. MEMBER(A)

APPLICATION NO. 898 OF 1987(F)

Sri S.R.Selvaraj,  
Section Head,  
Office of the Joint Chief-  
Controller of Imports and Exports,  
Cauvery Bhavan,  
BANGALORE-560 009

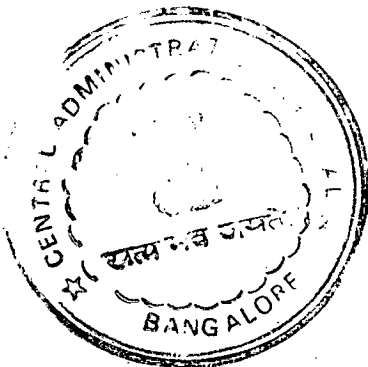
.. Applicant

(Sri S.K.Srinivasan, Advocate for the applicant)

-vs.-

1. The Joint Chief Controller  
of Imports and Exports,  
Cauvery Bhavan,  
BWSSB Block,  
Bangalore-560 009
2. The Joint Chief Controller of  
Imports and Exports,  
197, Peter's Road,  
Royapetta, Madras-14.
3. Sri T.M.Sampath  
Controller of Imports & Exports,  
Office of the J.C.C.I & E  
Bangalore.
4. Sri K.Purushothaman,  
Controller of Imports & Exports,  
Office of the J.C.C. I & E  
Madras.

.. Respondents  
(contd...)



5. Sri D.C.Benjamin  
Controller of Imports & Exports,  
Office of the J.C.C. I & E,  
Bangalore. .. Respondents.

(Sri M.S.Padmarajaiah, Senior Central Government  
Standing Counsel for respondents 1 and 2)

This application coming on for hearing  
this day, HON'BLE VICE CHAIRMAN made the following:

ORDER

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

2. From about 31-12-1986, the applicant who  
had commenced his career as a Clerk and had been  
promoted as a Section Head, was working in the  
office of the Joint Chief Controller of Imports  
and Exports (JCCIE), Bangalore. When he was work-  
ing in that office, the JCCIE, Madras, promoted  
respondents 3 to 5 as Controllers, with effect from  
1-9-1987, on ad hoc basis until further orders. The  
applicant who claims to be senior to respondents  
3 to 5 in the cadre of Section Heads, was not promo-  
ted. In Office Order No.116/87, dated 27-10-1987,  
stated to have been received by the applicant on  
2-11-1987, the JCCIE, Madras, transferred the appli-  
cant from Bangalore to Vizag. But, in pursuance of

this



this order of transfer, the applicant had not joined the new office, at any rate, till he presented this application before this Bench. On one or the other ground, the applicant was on leave till very recently.

3. On 2-11-1987, the applicant filed this application challenging the promotion of respondents 3 to 5 and his non-promotion to the post of Controller on diverse grounds.

4. In resisting this application, respondents 1 and 2 have filed their reply. In their reply, respondents 1 and 2 have urged that on the transfer of the applicant from Bangalore to Vizag, by the order dated 27-10-1987, this application cannot be entertained by this Bench of the Tribunal. On merits, respondents 1 and 2 have urged that the supersession of the applicant was for justifiable reason. Notices issued to respondents 3 and 4 have not been received, but, we are informed by the officers working in the office of the JCCIE that those respondents, have been served. Respondent 5, who has been duly served, is stated to have retired from service on 31-5-1988.

5. Shri M.S.Padmarajaiah, learned Senior Standing Counsel for Central Government appearing for respondents 1 and 2, contends at the

threshold



threshold that this application made by the applicant after he had been transferred from Bangalore to Vizag, cannot be entertained by this Bench of the Tribunal and it can only be entertained by the Hyderabad Bench of this Tribunal.

6. Shri S.K.Srinivasan, learned Counsel for the applicant, refuting the contention of Shri Padmarajaiah, contends that having regard to all the facts and circumstances of the case, and the true import of Rule 6 of the Central Administrative (Procedural) Rules, 1987 ('Rules') this application made on 2-11-1987, was undoubtedly maintainable ~~and~~ before this Bench and this Bench was competent to adjudicate the same on merits.

7. We have earlier noticed that the grievance of the applicant is in relation to an Order passed by the JCCIE on 1-9-1987 on which day the applicant was admittedly working in Bangalore. If that is so, <sup>then</sup> we must necessarily hold that the applicant was posted for the time being at Bangalore. If the applicant had been posted for the time being at Bangalore, then this Bench would undoubtedly have jurisdiction to entertain this application. Even otherwise, we are of the view that the cause of action for the applicant in relation to his non-promotion and the promotion

of



of respondents 3 to 5, had arisen within the jurisdiction of this Bench. If that is so, then also, this Bench is competent to entertain this application and deal with the same on merits.

8. On any view of the matter, we are of the opinion that this application made by the applicant before us on 2-11-1987 is maintainable and can be dealt with on merits by us. For these reasons, we reject the primary objection raised by Shri Padmarajaiah and proceed to examine the case on merits.

9. Shri Srinivasan contends that the supersession of the applicant from 1-9-1987, who happened to be senior to respondents 3 to 5, was for an irrelevant reason and was impermissible.

10. Shri Padmarajaiah contends that the case of the applicant had been properly considered by the competent authority and he had been passed over for an ad hoc promotion on relevant considerations and therefore, there is no justification to interfere with the non-promotion of the applicant and the promotion of respondents 3 to 5.

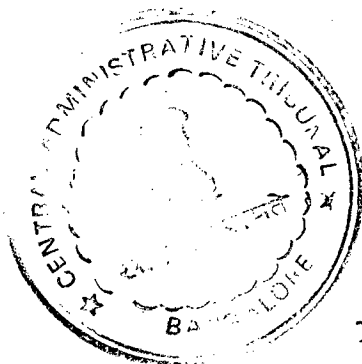


11. As on 1-9-1987, on which date the JCCIE considered the case of the applicant and respondents 3 to 5 and promoted the latter, there is no dispute that the applicant was senior to respondents 3 to 5. If the applicant was senior, then the authority was bound to consider his case for ad hoc promotion also on that day. In recognition of this fact, the authority had rightly considered the case of the applicant and respondents 3 to 5 and another person with whom we are not concerned. On such an examination, the JCCIE superseded the applicant for the following reasons:

"Shri S.R.Selvaraj, the second senior-most SH in the list cannot be promoted even on ad hoc basis in view of an adverse report received from SP, CBI. The SP, CBI in-charge of Bangalore office has informed me over phone that they have conducted raid in the premises of Shri S.R.Selvaraj and therefore, CBI would be sending a report recommending some suitable action against the Government official. The report of the SP, CBI is awaited and therefore, it is not proposed to promote Shri S.R.Selvaraj at this juncture. ...."

This was the one and the only reason on which the JCCIE had superseded the applicant for promotion.

From



From this minute of the JCCIE, it is clear that he had superseded the applicant on the ground that there was certain investigations or inquiries pending against the applicant with the CBI. Even after the supersession of the applicant on 1-9-1987, for the reasons stated by the JCCIE, there has been no material development either in the prosecution of the applicant or in the initiation of any disciplinary proceedings against him.

12. As to how the cases of officials who are under a cloud should be dealt with for promotion which necessarily includes ad hoc promotion, has been spelt out by Government itself in its O.M.No.22011/1/3/77-Estt.(A), dated the 14th July, 1977. In that O.M., Government has inter alia, directed thus:

"2. The matter has been considered carefully and it has been decided that the 'sealed cover' procedure prescribed above should be followed in those cases where after investigation the evidence collected indicates a prima facie case against the officer concerned. The mere fact that a PE or a RC has been registered by the Central Bureau of Investigation against an officer or complaints are being looked into in a preliminary departmental enquiry or otherwise, but no conclusion has been reached about the prima facie guilt of the officer, should not be a ground for treating the said official as one whose conduct is under investigation."

On the day the JCCIE considered the case of the applicant and superseded him, this O.M. was in force.

Unfortunately,





Unfortunately, the JCCIE had ignored this O.M. which was undoubtedly binding on him and had superseded the applicant, contrary to the specific instructions of the Government itself. We need hardly say that, it was not open to the JCCIE to ignore the instructions issued by Government which were binding him. On this ground itself, we should annul the supersession of the applicant by the JCCIE on 1.9.1987 and necessarily direct him to reconsider the case of the applicant for promotion as Controller as on 1.9.1987 without reference to the investigation of the CBI referred to in his minute.

13. Even otherwise, what is stated by Government in its OM dated 14.7.1977 is a correct and sound principle. The mere fact that there are complaints or investigating are in progress, do not constitute relevant grounds for supersession of an eligible official. On this view also we must take exception to the action of the JCCIE and direct him to reconsider the case of the applicant.

14. In reconsidering the case of the applicant, the authority has necessarily to take into consideration the suitability of the applicant for which purposes, he has necessarily take into consideration the C.Rs. preceding the date of promotion.

15. As respondent No.5 has already retired from service, the question of annulling his promotion does not arise.

16. On reconsideration also it is possible for the JCCIE to accommodate the applicant. On this view, we donot deem it necessary to annul the promotions of respondents 3 and 5.

17. In the light of our above discussion, we allow this application in part, annul the supersession of the applicant to the post of Controller as on 1.9.1987 and direct the JCCIE to reconsider the case of the applicant for promotion from that date without reference to the CBI investigation, and if he finds that the applicant was fit for promotion then promote him from that date extending all such consequential and financial benefits flowing from the same.

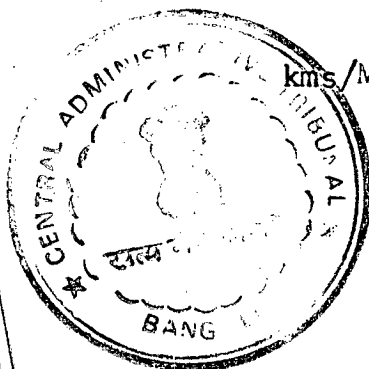
18. Application is disposed of in the above terms. But, in the circumstance of the case, we direct the parties to bear their own costs.

Sd/-  
VICE-CHAIRMAN

Sd/-  
MEMBER (A)

TRUE COPY

kms/Mrv.



*[Signature]*  
DEPUTY REGISTRAR (JDL)  
CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE