

REGISTERED

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

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

Dated: 20-11-87

APPLICATION NO 828 /8 7(T)
W.P.No. 816/82

APPLICANT

Shri Ajit Kumar Bolur

To

Vs

RESPONDENTS

The Administrative Officer, CPCRI & 2 Ors

1. Shri Ajit Kumar Bolur
Assistant
Central Plantation Crops
Research Institute (CPCRI)
Regional Station
Vittal - 574243
Dakshina Kannada District
2. Shri S. Ranganatha Josi
Advocate
36 'Vagdevi'
Shankarapuram
Bangalore - 560 004
3. The Administrative Officer
Central Plantation Crops
Research Institute (CPCRI)
(Indian Council of Agricultural Research)
Kasaragod - 670124
Kerala
4. The Secretary
Indian Council of Agricultural Research
(ICRI)
'Krishi Bhavan'
New Delhi - 110 001
5. Shri A.K. Shabarsaya
Assistant
Central Plantation Crops
Research Institute (CPCRI)
Regional Station
Vittal - 574243
Dakshina Kannada District
6. Shri M.S. Padmarajaiah
Central Govt. Stng Counsel
High Court Buildings
Bangalore - 560 001
7. Shri Munir Ahmed
Advocate
C/o Shri U.L. Narayana Rao
Advocate
581, 3rd Main Road
Sadashivnagar
Bangalore - 560 080

Subject: SENDING COPIES OF ORDER PASSED BY THE BENCH

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

~~EXTRA~~ passed by this Tribunal in the above said application

on 17-11-87.

RECEIVED 7 copies 23/11/87

Diary No. 1449/12/87

Recd Date: 23.11.87 AM

Encl: as above.

P.V. Venkatesh
DEPUTY REGISTRAR
(JUDICIAL)

OC:

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE

DATED THIS THE 17TH DAY OF NOVEMBER, 1987

Present: Hon'ble Shri Justice K.S. Puttaswamy, Vice-Chairman
and
Hon'ble Shri P. Srinivasan, Member (A)

APPLICATION NO. 828/1987

Shri Ajit Kumar Bolur,
Major, Assistant,
Central Plantation Crops
Research Institute,
Regional Station, Vittal,
Dakshina Kannada District. Applicant

(Shri S. Ranganatha Jois, Advocate)

v.

1. Central Plantation Crops Research Institute, (Indian Council of Agricultural Research), Kasaragodu - 670124 represented by its Administrative Officer, Kerala.
2. Indian Council of Agricultural Research, 'Krishi Bhavan' New Delhi represented by its Secretary.
3. Shri A.K. Shabaraya, Major, Assistant, Central Plantation Crops Research Institute, Regional Station, Vittal, Dakshina Kannada District. Respondents.

(Shri M.S. Padmarajaiah, S.C.G.S.C. for Respondents 1 and 2)

(Shri Munir Ahmed, Advocate for Respondent 3)


This application having come up for hearing to-day, Shri P. Srinivasan, Member (A), made the following:

ORDER

This is a transferred application originally filed as a writ petition before the High Court of Karnataka on 31.12.1981. *P.S. - 162*

2. The applicant, who is working as an Assistant in the Central Plantation Crop Research Institute ('CPCRI'), Vittal, Dakshina Kannada District, is aggrieved with an order dated 5.12.1981 (Annexure-C at page 13) passed by the Administrative Officer of CPCRI, promoting a certain A.K. Shabaraya - the 3rd respondent ('R3') to the post of Superintendent. The contention of the applicant is that in promoting R3, he (the applicant) has been overlooked.

3. Shri S. Ranganatha Jois, learned counsel for the applicant, made the following submissions:

A draft seniority list of Assistants in CPCRI as on 1.1.1981, which was holding the field when the D.P.C. met on 7.11.1981, showed the applicant at Sl.No.19 and R3 at Sl.No.20. Thus, the applicant was senior to R3 at that time. The DPC recommended R3 for promotion, overlooking the applicant ^{of the} ~~not~~ considering his case at all. This was an illegal action. No doubt, the draft seniority list as on 1.1.1981 was subsequently altered and a final seniority list as on the same date brought out on 29.4.1982, and in that final list, R3 was, indeed, shown as senior to the applicant. But since this seniority list was not available before the DPC when it met and since according to the then subsisting seniority list, whether called draft list or final list, the applicant was senior, the DPC should have considered the case of the applicant for promotion before R3. In so far as this was not done, the action of the DPC was illegal and the promotion of R3 as per order at Annexure-C was illegal and should be struck down.



4. Shri M.S. Padmarajaiah, Senior Central Government Standing Counsel, appearing for respondents 1 and 2, produced the record of the DPC and the names of persons submitted to the DPC for consideration for promotion as Superintendent. In the list of persons constituting the zone of consideration, the applicant appears at S1.No.5 and R3 at S1.No.4. Therefore, R3 was clearly senior to the applicant, and the DPC was right in considering the case of R3 before that of the applicant. No doubt, in the list as originally typed for the DPC, the applicant's serial number was 4 and that of R3 was 5. But a correction was carried out in the said list reversing the serial numbers. Therefore, the action of the DPC in recommending the name of R3 was perfectly valid. Shri Padmarajaiah also points out that objections were received against the draft seniority list as on 1.1.1981 to which reference has been made by Shri Jois and after considering the objections, R1 had finalised the seniority list in which R3 was placed above the applicant. The basis of promotion to the post of Superintendent was seniority-cum-fitness among Assistants. The seniority list brought out by R1 on 29.4.1982 which has not been challenged in any court of law, has therefore, become final, and it should, therefore, alone be the basis for promotion. That being so, it was only right for R3 to be promoted. He pointed out that the final seniority list as on 1.1.1981 brought out on 29.4.1982 had been attached by respondents 1 and 2 along with their reply filed before the High Court on



T. S. [Signature]

on 2.8.1982, and a copy of the same had been served on the applicant. Even after that, no attempt had been made by the applicant to challenge that list. It is too late in the day to complain against that seniority list, and since the promotion was in accordance with that seniority, this Tribunal should not interfere with the impugned order promoting R3. What has happened, namely, promotion of R3, is in conformity with the seniority ultimately determined and which has now become final, and that was according to the rules bearing on the subject.

5. Shri Munir Ahmed, appearing for R3, reiterated the same arguments which were advanced by Shri Padmarajaiah.

6. We have considered the rival contentions very carefully. We have also perused the record of the DPC which recommended R3 for promotion. We are satisfied that there is no merit in this application. Shri Jois no doubt, raised a technical objection that when the DPC met in November, 1981, the seniority list which held the field was the draft seniority list and according to that, the applicant was senior and his name should have been considered before that of R3. To this extent, the DPC acted in violation of that seniority list, and hence its recommendation and consequent promotion of R3 were illegal. Even assuming that this argument is acceptable, the subsequent finalisation of the seniority list in the grade of Assistants as on 1.1.1982 according R3 a higher place than the applicant, changes the situation drastically. Shri Jois has submitted that before publishing

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the final seniority list, the applicant was not given an opportunity of being heard. He could not naturally make a representation against the provisional list, because it was acceptable to him. Even if this be so, the applicant could have challenged the final seniority list after it was brought out. The record shows that he made a representation against the seniority list, and the same was rejected by a communication dated 4.5.1982. Nothing prevented him from challenging this rejection as well as the final seniority list in a court of law soon after. He not having done so, for whatever reason, the final seniority list has now to be accepted as conclusive. In the light of that seniority, the consideration and promotion of R3 in preference to the applicant cannot be said to suffer from any infirmity. In this view, this submission deserves to be rejected.

7. Shri Jois mentioned in the course of argument that subsequent to the impugned order dated 5.12.1981, and during the pendency of this litigation, more promotions have been made, in which persons junior to the applicant even according to the final list brought out on 29.4.1982, had been promoted, passing over the applicant. This is a separate matter, which the applicant will have to agitate separately through appropriate proceedings. We are just mentioning this since a reference was made to it by Shri Jois.

8. In the result, the application is dismissed. Parties to bear their own costs.

By Venkatesh Rao
DEPUTY REGISTRAR
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE

Scd/-
Vice-Chairman

17/1/87

Scd/-
Member (A)