

REGISTERED

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

Dated : 21-12-87

APPLICATION NO 240 /87(F)

W.P. NO _____

Applicant

Shri Ajit Karmarker

V/s

The Secy, Dept of Space, Bangalore
& 2 Ors

To

1. Shri Ajit Karmarker
Scientist/Engineer 'SD'
Thermal System Station
ISRO Satellite Centre
Vimanapura Post Office
Kodihalli
Bangalore - 560 017
2. Shri M. Narayanaswamy
Advocate
844 (Upstairs)
Vth Block, RAJAJINAGAR
Bangalore - 560 010
3. The Secretary
Department of Space
Cauvery Bhavan
Bangalore
4. The Director
ISRO Satellite Centre
Vimanapura Post Office
Kodihalli
Bangalore - 560 017
5. The Controller
ISRO Satellite Centre
Vimanapura Post Office
Bangalore - 560 017

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 on 8-12-87.

6. Shri M.S. Padmarajaiah
Central Govt. Sng Counsel
High Court Building
Bangalore - 560 001

Encl : as above

for DEPUTY REGISTRAR
~~SECTION OFFICER~~
(JUDICIAL)

Received copies for
all the respondents
K. G. P. DMANA o/c
BHAM
ISAC.
22/12/87

21/12/87
(PRAKASH)
for Applicant

RECEIVED
Diary No. 1562/24/87
Date: 22-12-87

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE

DATED THIS THE 8TH DAY OF DECEMBER, 1987

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

APPLICATION NO. 240/1987

Shri Ajit Karmarkar,
S/o. Vaman Chintaman Karmarkar,
aged 40 years,
Scientist/Engineer (SD),
Thermal System Station,
ISRO Satellite Centre,
Vimanapura Post Office,
Kodihalli,
Bangalore.

.... Applicant

(Shri M. Narayanaswamy, Advocate)

v.

1. The Government of India
represented by its Secretary,
Department of Space,
Cauvery Bhavan, Bangalore.
2. The Director,
ISRO Satellite Centre,
Vimanapura Post Office,
Kodihalli,
Bangalore.
3. The Controller,
ISRO Satellite Centre,
Vimanapura Post Office,
Bangalore.

.... Respondents.

(Shri M.S. Padmarajaiah, SCGSC)

This application having come up for hearing to-day,
Vice-Chairman made the following:

ORDER

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



2. On 21.1.1987, the applicant joined service as Engineer SC in the Formal System Division of the ISRO Satellite Centre, unit of the Indian Space Research Organisation, under the Department of Space, Government of India ('ISRO'). On 1.7.1982, he was promoted as Engineer SD and has been working in that capacity ever since then.

3. The applicant claims, that he should have been promoted as Engineer SE from 1.7.1986 and that the same had been illegally withheld by the respondents, for the redressal of which he has approached us, under the Act.

4. In their reply, the respondents admit the eligibility of the applicant for promotion as on 1.7.1986. But they claim, that a High Level Screening Committee constituted for that purpose ('SC') considered his case for promotion and had passed him over, on relevant considerations.

5. Shri M. Narayanaswamy, learned counsel for the applicant, contends, that the SC was wholly incompetent to withhold promotion of his client and its action was unauthorised, illegal and improper.

6. Shri M.S. Padmarajaiah, learned Senior Central Government Standing Counsel, appearing for the respondents, refuting the contention of Shri Narayanaswamy, sought to support the action of the SC.

7. As stated by the respondents in their reply, which is also borne out from the records produced, the case of the applicant for promotion, was considered by the SC, which held, that he should be 'checked out' or was not suitable for promotion. His case for promotion was not considered by the Departmental Promotion Committee ('DPC') constituted for that purpose, and the Director of ISRO, who was the appointing authority.

8. Promotion to this post, is not regulated by law made by Parliament or the Rules made under the proviso to Article 309 of the Constitution and was regulated by orders made by Government from time to time in exercise of its executive powers, which is not disputed by both sides.

9. With due regard to the special needs of the Department, Government in its Memorandum dated 13.12.1975 and 30.9.1976 (Annexure-R1) had laid down guidelines for making promotions to this post and other posts. These orders provide for consideration/examination of promotions by two Committees, the first one namely a Screening Committee, and the second, a Review Committee or Departmental Promotion Committee ('DPC'), and thereafter, approval by the appointing authority, as in the case of all other Departments of Government.

10. What then is the true role of the SC, is the real question that calls for our examination. The answer depends on the construction to be placed, on the provisions made for the same, by Government, in its order dated 30.9.1976 and those that are material, read thus:



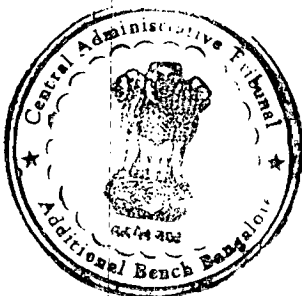
"1. Uniform dates for Review and Promotion:

Review will be held normally only after the employee has completed the prescribed number of years, of service in a particular grade. For employees in grades SC and above, the effective date of promotion consequent on review will be 1st or 1st July. For those in grades below SC, it will be 1st April or 1st October. The Review Committee, depending upon the performance, may recommend promotion of an employee from any of the due dates applicable to the two categories. This may entail either advancement of the date of promotion by a maximum of six months or delaying it by a maximum of six months. Thereafter, their next review will fall on the rationalised dates.

2. Process of Review.

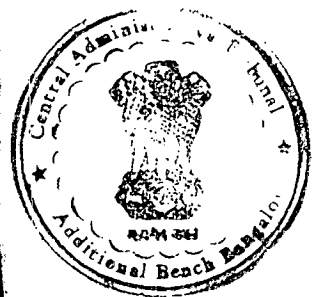
2.1. Screening:

Screening should be done before review. For scientific posts, the screening should be done by a panel of scientists or Area Boards as in VSSC and their views on those screened out should be submitted to the appropriate review committee. The letter should consider whether any of the persons screened out should be interviewed. The recommendations of the review committee in this regard should be put up to the Director for orders."



On the terms of para 2.1, read in its context and the scheme of Promotions, the SC is required or assigned the task, of only screening the eligible candidates and place its views, as also the material, on which its views are based before the DPC and the Director, for further action and decision. The role of the SC is only to carefully evaluate the material and place its assessment for consideration of the DPC and the Director. The DPC and the Director are the final arbiters. On the very terms of this para, it is clear, that the SC is not the final arbiter. In other words, the power to supersede, 'weed out' or 'check out', is not conferred on the SC. On the other hand, that power is expressly reserved to or conferred only on the DPC and the Director, and not the SC.

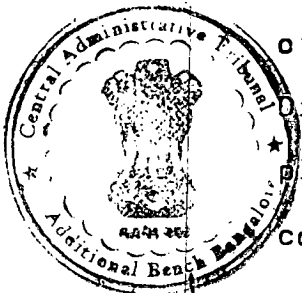
11. The word 'out' following the word 'screened' in the second sentence of para 2nd seems to us, in the context, inapt, in terms of which the SC is seen to have used the expression, 'screened in' and 'screened out', inappositely. The words 'screened out' occurring in para 2.1 mean nothing more than reviewing or evaluation by the SC. We are of the view that the inapt expression 'out', which is really a superfluity, cannot be construed as empowering the SC to supersede, eliminate or weed out an eligible candidate for promotion. Without any doubt, that power had to be exercised only by the DPC and the Director.



12. On receipt of the views/opinion and the material collected by the SC, the DPC is required to independently evaluate the same, and arrive at its own decision and then place the same before the Director for his final decision. Such a power necessarily comprehends in itself, the power to accept the recommendation/opinion of the SC or reject the same. In so doing, the DPC cannot proceed as if it was bound by the opinion of the SC. The DPC must and should, act independently and fairly in the matter.

13. What emerges from the above is, that the supersession of the applicant by the SC, was unauthorised and the same is required to be reexamined and decided by the DPC and the Director. Before those authorities examine and decide the matter anew, we cannot examine the case of the applicant. We must only compel them to perform their duties, independently and objectively in the first instance.

14. In the light of our above discussion, we allow this application in part and direct the respondents to place the case of the applicant for promotion to the post of Engineer SE as on 1.7.1986, before the DPC and the Director, who are free to consider the same, on the material placed before them and such other material that they may consider necessary to collect and take a decision on the



promotion or otherwise of the applicant to the said post as on 1.7.1986 in accordance with law and the observations made in this order, with all such expedition as is possible in the circumstances of the case.

15. 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 *8/12/14*

Sd/-
Member (A)

- True Copy -

bsv/Mrv.

11/2/14
SECTION OFFICER
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE