

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH
* * * * *

Commercial Complex (BDA)
Indiranagar
Bangalore - 560 038

Dated : 22 DEC 1988

APPLICATION NO.

1540

/88(F)

W.P. NO.

Applicant(s)

Shri B. Gopal

To

1. Shri B. Gopal
No. 134, 'B' Block
C.P.W.D. Quarters
Koramangala
Bangalore - 560 034

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

3. The Accountant General (Accounts)
Karnataka
Bangalore - 560 001

Respondent(s)

v/s

The Accountant General (Accounts), Bangalore
& 2 Ors

4. The Deputy Accountant General (Admn)
Office of the Accountant General (Accounts
Karnataka
Bangalore - 560 001

5. The Comptroller & Auditor General
of India
No. 10, Bahadur Shah Zafar Marg
New Delhi - 110 002

6. Shri M. Vasudeva Rao
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/~~ORDER~~/~~ORDER~~
passed by this Tribunal in the above said application(s) on 12-12-88.

[Signature]
SECTION OFFICER
DEPUTY REGISTRAR
(JUDICIAL)

[Signature]
K M M 3-12-88
Encl : As above

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE

DATED THIS THE 12TH DAY OF DECEMBER, 1988

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

APPLICATION NO. 1540/1988

Shri B. Gopal,
S/o Shri B.M. Ponnaiah Mudaliar,
Aged 52 years,
No.134 'B' Block,
C.P.W.D. Quarters,
Koramangala,
Bangalore.

.... Applicant.

(Shri Dr. M.S. Nagaraja, Advocate)

v.

1. Accountant General (Accounts),
Karnataka,
Bangalore.

2. Dy. Accountant General (Admn),
O/o the A.G. (Accounts),
Bangalore.

3. Comptroller and Auditor
General of India,
New Delhi.

.... Respondents.

(Shri M. Vasudeva Rao, C.G.A.S.C.)

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, 1935 (Act).

2. Shri B. Gopal, the applicant before us, with the
educational qualification of S.S.L.C. joined service in the
Office of the Accountant General in Karnataka, Bangalore (AG)
on 6.11.1959 as a Group-D official. In the year 1961, he

was promoted as a Junior Setter, in which post he was confirmed from 4.5.1974. He was thereafter promoted as a Lower Division Clerk ('LDC') on 21.4.1976, on an officiating basis.

3. One Shri V. Venkatappa, who was working as Senior Setter in the office retired from service from 29.2.1984 on attaining superannuation. On this on 26.3.1984, the applicant opted to revert as Junior Setter and for his promotion as Senior Setter. On accepting the same, the AG promoted the applicant as Senior Setter from 23.5.1984, in which capacity he was continuing from that date.

4. But as his misfortune would have it, the post of Senior Setter was abolished with effect from 1.3.1988. On that the AG, by his Order No.ES.I/AB/AF/151 Vol. IV / 87-88/610, dated 2.3.1988 (Annexure-A2), had transferred the applicant as Clerk/Typist in the scale of Rs.950-20-1150-EB-25-1500 however protecting the pay he was drawing on that date. In this application, the applicant has challenged the order of the AG abolishing the post of Senior Setter and the consequent order of transfer as Clerk/Typist and has sought for a direction to continue the post of Senior Setter with consequential directions to continue him in that post till he attains superannuation.

5. In justification of the orders made, the respondents have filed their reply and have produced their records.

6. Dr. M.S. Nagaraja, learned Counsel for the applicant, contends that on the very facts and circumstances pleaded by the respondents, there was no justification

for them to abolish the post of Senior Setter from 1.3.1988 and transfer the applicant as Clerk/Typist from that date.

7. Shri M. Vasudeva Rao, learned Additional Standing Counsel for the Central Government, appearing for the respondents, refuting the contentions of Dr. Nagaraja, contends that the abolition of the post was necessitated for want of work ~~and~~ and the continuation or otherwise of the post, which was essentially for the administration to decide, cannot be examined by us in exercise of our power of judicial review under the Acts.

8. On an examination of all the fact-situations, the AG, by his office order dated 29.2.1988 (Annexure-A1) had abolished the post of Senior Setter with effect from 1.3.1988. In their reply, the respondents have asserted that the abolition was necessitated for want of work, which is found true from the records.

9. Whether a post should be created and if so for what period the same should be created and continued or the same should be abolished, or not are all matters exclusively for the executive to decide. The act confers power of judicial review on this Tribunal over administrative actions. In exercise of our power of judicial review we cannot examine the action of the AG as if we are a Court of appeal and come to a different conclusion. On this short ground we cannot take exception to the order of the AG abolishing the post of Senior Setter from 1.3.1988.

10. When the post itself is abolished for whatever reason that be, the person holding the post automatically loses the right to hold and continue in that post. This legal position is well settled and does not require reference to decided cases. On this view, the order made by the AG transferring the applicant to a post where he can be properly accommodated without causing him any loss in the emoluments he was then drawing, is neither illegal nor improper. On this view, we cannot interfere with the orders of the AG.

11. On the abolition of a post and the consequent arrangements to be made, a civil servant cannot legitimately invoke the principles¹ of audi alteram partem we see no merit in this contention of Dr. Nagaraj.

12. As all the contentions urged by 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

12/12/88
TRUE COPY

kms/Mrv.

Sd/-
MEMBER (A) 12/12/88

AP 22/12/88
SECTION OFFICER
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE