

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Commercial Complex(BDA)
Indiranagar
Bangalore - 560 038

Dated : 25 JAN 1989

APPLICATION NO (2) 1549 / 88(F)

W.P. NO (S) _____

Applicant (s)

Respondent (s)

Shri B. Govinda Naik

V/s The Post Master General, Karnataka & another

To

1. Shri B. Govinda Naik
No. 76, 2nd Floor, 10th Cross
Coconut Avenue, Malleswaram
Bangalore - 560 003

4. The Director General (Posts)
Oak Tar Bhavan
New Delhi - 110 001

2. Shri S.K. Srinivasan
Advocate
No. 10, 7th Temple Road
15th Cross, Malleswaram
Bangalore - 560 003

5. Shri M.S. Padmarajaiah
Central Govt. Stng Counsel
High Court Building
Bangalore - 560 001

3. The Post Master General
Karnataka Circle
Bangalore - 560 001

Subject : SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith a copy of ORDER/~~STAY/INTERIM ORDER~~
passed by this Tribunal in the above said application(*) on 17-1-89.

Approved
K. N. Venk
25/1/89

d/c

RA Venkatesh
DEPUTY REGISTRAR
(JUDICIAL)

CENTRAL ADMINISTRATIVE TRIBUNAL: BANGALORE.

DATED THIS THE 17TH DAY OF JANUARY, 1989.

PRESENT:

Hon'ble Mr. Justice K.S. Puttaswamy,

.. Vice-Chairman.

And

Hon'ble Mr. L.H.A. Rego,

.. Member(A).

APPLICATION NUMBER 1549 OF 1988

B. Govinda Naik,
No. 76, 2nd Floor, 10th Cross,
Coconut Avenue, Malleswaram,
Bangalore-560 003.

.. Applicant.

(By Sri S.K. Srinivasan, Advocate)

v.

- 1) The Post Master General
Karnataka Circle,
Bangalore 560 001.
- 2) The Director General (Posts)
New Delhi.

.. Respondents.

(By Sri M.S. Padmarajaiah, SCGSC)

This application having come up for hearing this day, Hon'ble Vice-Chairman made the following:

ORDER

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

2. Shri B. Govinda Naik, the applicant before us, a member of Scheduled Tribe ('ST') was an Upper Division Clerk ('UDC') as on 31-8-1987 and was working in the office of the Post Master General, Karnataka Circle, Bangalore ('PMG').

3. On or after 1-9-1987 nine vacancies in the cadre of Lower Selection Grade Section Supervisor ('LSGSS') arose, to which UDCs were eligible for promotion and the vacancies had to be filled as hereunder:-

<u>Caste</u>	<u>No. of vacancies.</u>
Other Communities(OC)	6
Scheduled Caste(SC)	2
Scheduled Tribe (ST)	1

For filling in these vacancies, a Departmental Promotion Committee



('DPC') met on 20-10-1987 and made its recommendations as hereunder:-

" DEPARTMENT OF POSTS
OFFICE OF THE POSTMASTER GENERAL, KARNATAKA CIRCLE
BANGALORE-560 001

No. STA/2-3/1-II

Date: 20-10-1987

PROCEEDINGS

A Departmental Promotion Committee consisting of the undermentioned Officers met at Bangalore on 20-10-1987 to consider the promotion of UDCs in Circle Office to the cadre of LSG in C.O.

1. Shri B. Parabrahmam, Postmaster General, Bangalore.
2. Shri S.T. Baskaran, Additional Postmaster General, Bangalore.
3. Shri Vittaldas Pai, AGM (Admn.), O/O GM Telecom, BG.

2. The vacancies to which promotion is required are as follows:-

OC	6
SC	2
ST	1

3. The Committee considered the cases of the undermentioned officials:-

- | | |
|----|--|
| OC | 1. Sri G.V. Sundararam
2. Sri T.S. Srikantaiah
3. Sri N. Rajappa
4. Smt. M.V. Jayalakshmi
5. Sri N. Kasturi Rangan
6. Sri A. Shivaraman
7. Sri D. S. Madhava Rao
8. Sri D. Eswaran. |
| SC | 1. Sri A.M. Krishnamurthy
2. Sri Chandrashekaraiah
3. Smt. D. Vasanthamala |
| ST | 1. Sri B.V. Krishnamurthy(*)
2. Sri B. Govinda Naik
3. Sri Mukunda Naik. |

4. The Committee after going through the records recommended the promotion of the undermentioned officials to LSG.

- | | |
|----|--|
| OC | 1. Sri G.V. Sundararam
2. Sri T.S. Srikantaiah
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4. Smt. M.V. Jayalakshmi
5. Sri N. Kasturi Rangan
6. Sri A. Shivaraman |
| SC | 1. Sri A.M. Krishnamurthy
2. Sri Chandrashekaraiah |
| ST | 1. Sri B. Govinda Naik (on adhoc basis only) |

*Shri B.V. Krishnamurthy claims to be belonging to Maleru community and a Scheduled Tribe. The single Bench of Karnataka High Court had decided that the community is not ST and an appeal is pending before the Division Bench. The case of the official is also under enquiry. He is not therefore considered as ST and not recommended.

So the promotion of Shri B.Govinda Naik for the ST quota on ad hoc basis is recommended.

Sd/-".

From these proceedings it is seen, that one Shri B.V.Krishnamurthy ('Murthy') senior to the applicant in the cadre of UDCs' was claiming that he was a member of a ST called 'Maleru', which had not been accepted by the department and therefore he was passed over for promotion to the quota reserved to STs on that ground. On this finding the DPC recommended the promotion of the applicant, who was next in seniority to the post reserved for STs. In conformity with these recommendations of the DPC, the PMG by his Order dated 2-11-1987 (Annexure-A6) promoted the applicant to the post of LSGSS and posted him to Dharwad. That order which is material, reads thus:-

"

"DEPARTMENT OF POSTS

OFFICE OF THE POSTMASTER GENERAL, KARNATAKA
CIRCLE, BNAGALORE-1

Memo No.STA/2-3/1-II

2-11-1987

The following promotions/postings are ordered with immediate effect.

1. Shri Chandrshekaraiiah, UDC C.O. is promoted to LSG cadre on regular basis in the scale of Rs.1400/2300 and posted as Section Supervisor, O/O DPS Dharwad.

2. Shri B.Govinda Naik, UDC C.O. is promoted to LSG cadre purely on adhoc. basis in the scale of Rs.1400/2300 and posted as Section Supervisor, O/O DPS Dharwad. The appointment being adhoc in nature will not bestow any right for regularisation to the official and the officiating service in LSG cadre will not count for the purpose of seniority for promotion to higher cadre. The adhoc appointment is liable to be terminated at any time without notice.

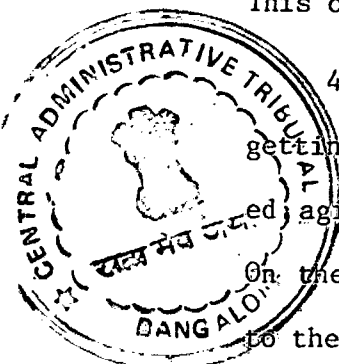
Sd/- N.D.Bhakta,
for Postmaster General."

This order was served on the applicant on 2-11-1987.

4. On receipt of the said order of the PMG, the applicant without getting himself relieved and joining the higher post at Dharwad started agitating on the terms and conditions stipulated in that order.

On them, the applicant claimed that he should be regularly promoted to the promotional post against the quota reserved for STs and

represented if that was not done, he would not accept the said promotion and report for duty at Dharwad or any other place. The PMG did



not accede to the same and rejected his representation on 12-11-1987. On this, the PMG without however de-reserving the post earmarked for STs had cancelled his order dated 2-11-1987 and by his order dated 14-1-1988 promoted one Smt. P.S. Naik working at Dharwad as LSGSS on an ad hoc basis. Hence, this application by the applicant praying for appropriate reliefs.

5. In justification of their action, the respondents have filed their reply and produced their record.

6. Sri S.K.Srinivasan, learned counsel for the applicant, strenuously contends that the DPC on rightly passing over the claim of Murthy, who did not belong to ST should have only recommended promotion of his client, (who belonged to ST and was next in line) on a regular basis and that in any event, the PMG should have done so. Having not done so, Sri Srinivasan pleaded that this illegality be corrected by us with appropriate directions to the respondents to extend to the applicant all consequential benefits including monetary reliefs to which he was entitled from 1-9-1987 on which date the vacancy in question in the cadre of LSGSS arose.

7. Sri M.S.Padmarajaiah, learned Senior Central Government Standing Counsel appearing for the respondents sought to support the recommendations of the DPC and the orders made by the PMG against the applicant and in favour of Smt. P.S.Naik from time to time.

8. In terms of the orders made by Government on reservation for members of SC and ST, in promotional posts from time to time, one post of LSGSS had been reserved for STs and the fact, that post if an eligible and suitable officer from ST category was available had to be filled in only by a member of ST and not others is not in dispute. On that basis only, the DPC rightly recommended ad hoc promotion of the applicant to the post of LSGSS. The DPC adopted the ad hoc basis for the reason, that it was not accepting the disputed claim of Murthy who was senior to the applicant. While this was

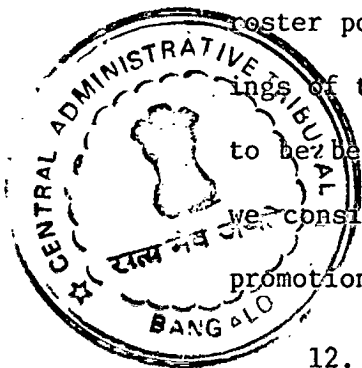
the position, the PMG in issuing the promotion order on 2-11-1987 and in rather stereotype manner but apparently as ex abundanti cautela specified somewhat inaptly the terms and conditions, generally adopted in regard to ad hoc promotions though the present case, was not of the type, all and sundry. In these circumstances all that was required to be done by the DPC and the PMG was to make the promotion of the applicant as subject to the claims of Murthy and the orders if any to be made on his claim by a superior authority or Court as the case may be and nothing more. Unfortunately both of them failed to do so.

9. As the post earmarked for STs had neither so far been de-reserved nor any other person so far promoted against that post on a regular basis, necessarily in the place of the applicant, we deem it proper to do that even, now on terms. From this it follows that we should necessarily reserve liberty to the PMG to terminate the ad hoc promotion of Smt. P.S.Naik in the first instance.

10. The fact that a vacancy arose as on 1-9-1987 by itself does not entitle the applicant to claim that promotion from that very date itself. We need hardly say that he can secure this promotion only on the DPC considering his case and making its recommendations and the promoting authority issuing its order thereon. On this it necessarily follows that the applicant cannot in any event be promoted before 2-11-1987.

11. The fact, that the applicant had been promoted against a roster point post reserved for STs is not in dispute. In the proceedings of the DPC he has been so placed, which incidentally also happens to be below all others from other categories. In the circumstances, we consider it proper that for purpose of notional seniority, the promotion of the applicant should be recognised from 2-11-1987.

12. We have earlier found that the applicant of his own volition had indiscreetly spurned the promotion and had not reported for duty



in the higher post. If so, he cannot claim the benefit of salary of the higher post till he actually reports for duty and discharges the responsibility therein. On this view, the fanciful and unjust claim of the applicant for salary of the higher post till he reports for duty must necessarily be rejected by us.

13. We have earlier noticed, that on failure of the applicant to report for duty one Smt. P.S.Naik had been promoted on an ad hoc basis from 14-1-1988. The applicant who is present in Court has filed a memo undertaking to report for duty at Dharwad. On this it is necessary for the PMG to terminate the ad hoc arrangement of Smt. P.S.Naik and then give a posting to the applicant. If on that, the applicant does not again report for duty at Dharwad within the joining time allowed by the Rules, then it is open to the PMG to fill in the vacancy that will then arise, in accordance with law.

14. In the light of our above discussion, we make the following orders and directions:

- 1) We reserve liberty to the PMG to terminate the ad hoc arrangement of Smt. P.S.Naik in the first instance.
- 2) We declare that the DPC in its meeting held on 20-10-1987 had recommended promotion of the applicant against the post reserved for STs and on accepting the same, the PMG by his order dated 2-11-1987 had promoted the applicant against the same subject to decision by the competent Court or authority as the case may be on the claim of Sri B.V.Krishnamurthy that he belongs to the ST.
- 3) We direct the PMG to give a posting to the applicant at Dharwad only after terminating the ad hoc arrangement of Smt. P.S.Naik, making it subject to the decision by the competent Court or authority as the case may be, on the aforesaid claim of Sri B.V.Krishnamurthy. On such posting if the applicant reports for duty at Dharwad after availing of the joining time allowed to him in accordance with the Rules, the PMG or his competent subordinate authority shall take him on duty at Dharwad and regulate his seniority notionally, below all other persons recommended by the DPC on 20-10-1987 denying him salary and allowances in respect of the post of promotion till he actually reports for duty therein. If the applicant does not report for duty at Dharwad within the joining time

allowed to him in accordance with the Rules, the PMG is free to fill in the vacancy which thereafter arises in the cadre of LSGSS, in accordance with law.

15. The 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. 12/1

Sd/-

MEMBER(A) 12.1.89

Kms/np.

TRUE COPY



R.V. Venkatesh
DEPUTY REGISTRAR (JDL) 12/1/89
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Commercial Complex(BDA)
Indiranagar
Bangalore - 560 038

Dated : 27 JAN 1989

To

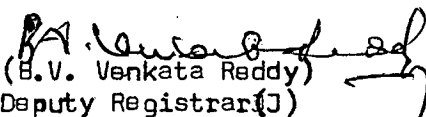
1. Shri Sanjeev Malhotra
All India Law Journal
Hakikat Nagar, Mal Road
Delhi - 110 009
2. Administrative Tribunal Reporter
Post Box No. 1518
Delhi - 110 006
3. The Editor
Administrative Tribunal Cases
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Lucknow - 226 001
4. The Editor
Administrative Tribunal
Law Times
5335, Jawahar Nagar
(Kolhapur Road)
Delhi - 110 907
5. M/s All India Reporter
Congressnagar
Nagpur

Sir,

I am directed to forward herewith a copy of the undermentioned order passed by a Bench of this Tribunal comprising of Hon'ble Mr Justice K.S. Puttaswamy Vice-Chairman/~~Member~~ (S) and Hon'ble Mr L.H.A. Rego Member (A) with a request for publication of the order in the journals.

Order dated 17-1-89 passed in A. Nos. 1549/88(F).

Yours faithfully,


(B.V. Venkata Reddy)
Deputy Registrar(J)

488ued
K.V. In
27-1-89

9/c

Copy with enclosures forwarded for information to:

1. The Registrar, Central Administrative Tribunal, Principal Bench, Faridkot House, Copernicus Marg, New Delhi - 110 001.
2. The Registrar, Central Administrative Tribunal, Tamil Nadu Text Book Society Building, D.P.I. Compounds, Nungambakkam, Madras - 600 006.
3. The Registrar, Central Administrative Tribunal, C.G.O. Complex, 234/4, AJC Bose Road, Nizam Palace, Calcutta - 700 020.
4. The Registrar, Central Administrative Tribunal, C.G.O. Complex (CBD), 1st Floor, Near Konkon Bhavan, New Bombay - 400 614.
5. The Registrar, Central Administrative Tribunal, 23-A, Post Bag No. 013, Thorn Hill Road, Allahabad - 211 001.
6. The Registrar, Central Administrative Tribunal, S.C.O. 102/103, Sector 34-A, Chandigarh.
7. The Registrar, Central Administrative Tribunal, Rajgarh Road, Off Shillong Road, Guwahati - 781 005.
8. The Registrar, Central Administrative Tribunal, Kandamkulathil Towers, 5th & 6th Floors, Opp. Maharaja College, M.G. Road, Ernakulam, Cochin - 682 001.
9. The Registrar, Central Administrative Tribunal, CARAVS Complex, 15, Civil Lines, Jabalpur (M.P.).
10. The Registrar, Central Administrative Tribunal, 88-A, B.M. Enterprises, Shri Krishna Nagar, Patna - 1 (Bihar).
11. The Registrar, Central Administrative Tribunal, C/o. Rajasthan High Court, Jodhpur (Rajasthan).
12. The Registrar, Central Administrative Tribunal, New Insurance Building Complex, 6th Floor, Tilak Road, Hyderabad.
13. The Registrar, Central Administrative Tribunal, Navrangpura, Near Sardar Patel Colony, Usmanapura, Ahmadabad (Gujarat).
14. The Registrar, Central Administrative Tribunal, Dolamundai, Cuttak - 753 009 (Orissa).

Copy with enclosures also to :

1. Court Officer (Court I)
2. Court Officer (Court II)

Sd/-
(B.V. Venkata Reddy)
Deputy Registrar (J)

Issued
K. Inf
27-1-88

9c

CENTRAL ADMINISTRATIVE TRIBUNAL: BANGALORE.

DATED THIS THE 17TH DAY OF JANUARY, 1989.

PRESENT:

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And

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APPLICATION NUMBER 1549 OF 1988

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.. Applicant.

(By Sri S.K. Srinivasan, Advocate)

v.

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.. Respondents.

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No.STA/2-3/1-II

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3. Sri Mukunda Naik. |

4. The Committee after going through the records recommended the promotion of the undermentioned officials to LSG.

- | | |
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"

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Memo No.STA/2-3/1-II

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7. Sri M.S.Padmarajaiah, learned Senior Central Government Standing Counsel appearing for the respondents sought to support the recommendations of the DPC and the orders made by the PMG against the applicant and in favour of Smt. P.S.Naik from time to time.

8. In terms of the orders made by Government on reservation for members of SC and ST, in promotional posts from time to time, one post of LSGSS had been reserved for STs and the fact, that post if an eligible and suitable officer from ST category was available had to be filled in only by a member of ST and not others is not in dispute. On that basis only, the DPC rightly recommended ad hoc promotion of the applicant to the post of LSGSS. The DPC adopted the ad hoc basis for the reason, that it was not accepting the disputed claim of Murthy who was senior to the applicant. While this was

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10. The fact that a vacancy arose as on 1-9-1987 by itself does not entitle the applicant to claim that promotion from that very date itself. We need hardly say that he can secure this promotion only on the DPC considering his case and making its recommendations and the promoting authority issuing its order thereon. On this it necessarily follows that the applicant cannot in any event be promoted before 2-11-1987.

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in the higher post. If so, he cannot claim the benefit of salary of the higher post till he actually reports for duty and discharges the responsibility therein. On this view, the fanciful and unjust claim of the applicant for salary of the higher post till he reports for duty must necessarily be rejected by us.

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14. In the light of our above discussion, we make the following orders and directions:

- 1) We reserve liberty to the PMG to terminate the ad hoc arrangement of Smt. P.S.Naik in the first instance.
- 2) We declare that the DPC in its meeting held on 20-10-1987 had recommended promotion of the applicant against the post reserved for STs and on accepting the same, the PMG by his order dated 2-11-1987 had promoted the applicant against the same subject to decision by the competent Court or authority as the case may be on the claim of Sri B.V.Krishnamurthy that he belongs to the ST.
- 3) We direct the PMG to give a posting to the applicant at Dharwad only after terminating the ad hoc arrangement of Smt. P.S.Naik, making it subject to the decision by the competent Court or authority as the case may be, on the aforesaid claim of Sri B.V.Krishnamurthy. On such posting if the applicant reports for duty at Dharwad after availing of the joining time allowed to him in accordance with the Rules, the PMG or his competent subordinate authority shall take him on duty at Dharwad and regulate his seniority notionally, below all other persons recommended by the DPC on 20-10-1987 denying him salary and allowances in respect of the post of promotion till he actually reports for duty therein. If the applicant does not report for duty at Dharwad within the joining time

allowed to him in accordance with the Rules, the PMG is free to fill in the vacancy which thereafter arises in the cadre of LSGSS, in accordance with law.

15. The 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. 12/1

Sd/-
MEMBER (A) 13.1.69

Kms/np.

TRUE COPY

[Signature]
DEPUTY REGISTRAR (JULY 27, 1969)
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE