

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Commercial Complex(BCA)
Indiranagar
Bangalore - 560 038

Dated : 17 MAR 1989

APPLICATION NO (S) 1688 /88(F)

W.P. NO (S) _____

Applicant (s)

Respondent (s)

Smt A. Shanthamma
To

V/s

The General Manager, Telecom, Karnataka Circle,
Bangalore 4 Qrs

1. Smt A. Shanthamma
Telephone Operator
Office of the Sub-Divisional
Officer for Telegraph
Belt Road
Chickmagalur - 577 101
2. Shri G.R. Ramesh
Advocate
65-68, Krishna Vasa I Floor
1st Main Road, Seshadripuram
Bangalore - 560 020
3. The General Manager
Telecommunications
Karnataka Circle
Harathi Complex
Gandhinagar
Bangalore - 560 009
4. The Director of Telecommunications
Mangalore Area
Near Mangalore Telephone Exchange
Mangalore

5. The Telecom District Engineer
Chickmagalur District
Chickmagalur - 577 101
6. The Sub-Divisional Officer
Telegraph
Belt Road
Chickmagalur - 577 101
7. Shri B.M. Shantharam Kamath
Telephone Supervisor
Office of the Sub-Divisional
Officer for Telegraphs
Belt Road
Chickmagalur - 577 101
8. 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 a copy of ORDER/STAY/INTERIM ORDER
passed by this Tribunal in the above said application(s) on 9-3-89.

8/4/89
K. M. J.
17-3-89

of

DEPUTY REGISTRAR
(JUDICIAL)

DATED THIS THE 9TH DAY OF MARCH, 1989

APPLICATION NO. 1688/1988

.... Applicant.

v.

- Shri B.M. Shantharam Kamath,
Telephone Supervisor,
O/o the Sub-Divisional
Officer for Telegraphs,
Belt Road, Chickmagalur.

.... Respondents.

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

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

O R D E R

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

2. Prior to 15.6.1988, Smt. A. Shanthamma, the applicant and Shri B.M. Shantaram Kamath- Respondent no.5, were working as Telephone Operators (TO) in the Office of the Sub-Divisional Officer for Telegraph, Chickmagalur. In that cadre, respondent no.5 is senior to the applicant.

3. On the event of transfer of one Shri K.R. Shanker Swamy on or about 15.6.1988, who was then working as a Telephone Supervisor (TS) in the Telephone Exchange, Chickmagalur, a vacancy in that cadre of that office arose. On that development, the Sub-Divisional Officer, Telegraphs, Chickmagalur (SDO) in his letter no: E-6/88-89/48 dated 15.6.1988 (Annexure-A) ascertained from the applicant, respondent no.5 and other eligible senior TO's their willingness for promotion and posting as a TS in that office. On that requisition, while the applicant expressed her willingness to be promoted, Respondent no.5 expressed his unwillingness for such promotion. On that, one Shri C.S. Thimmaiah senior to the applicant and had expressed his willingness for promotion, was promoted and posted as TS.

4. Some time after the promotion of Shri Thimmaiah, another vacancy of TS arose, in the same office in July 1988. On that, the Telecom District Engineer, Chickmagalur (TDE) had promoted Respondent-5. On this, the applicant made representation to the TDE pleading that Respondent-5 who had earlier forgone his promotion was non-entitled for such promotion and re-calling the same, she should be promoted in his place, who on 19.8.1988 (Annexure-B) had rejected the same. Hence this application.

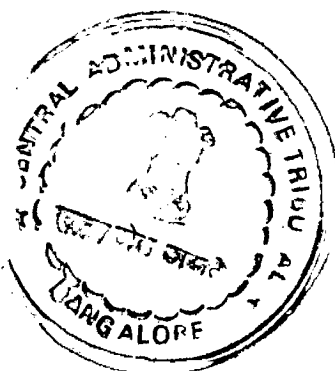
5. The applicant has urged that Respondent no.5 who had declined promotion in June 1988, could not have been promoted within the prohibited period and that she should be promoted in his place.

6. In resisting this application Respondents nos.1 to 4 have filed their reply. Respondent no.5 who has duly been served, has remained absent and is unrepresented.

7. Shri G.R. Ramesh, learned counsel for the applicant, contends that in terms of the orders/instructions issued by Government in its Memorandum no.DP&AR., OM. No.22034/3/81-Estt.(D) dated the 1st October, 1981, which is printed on pages 100&101 of Swamy's compilation on "Seniority and Promotion in Central Government Services" Respondent no.5 who had declined promotion in June 1988, was not entitled to such promotion in July 1988 and annulling the same we should direct the promotion of the applicant in his place.

8. Shri M. Vasudeva Rao, learned Additional Central Government Standing Counsel appearing for Respondent Nos. 1 to 4 sought to support the promotion of Respondent No.5 on more than one ground which will be noticed and dealt by us.

9. In their reply Respondents nos. 1 to 4 have asserted, that the arrangement made was only a local officiating arrangement and was not a regular or temporary promotion to justify our interference under the Act. Shri Rao supported the very plea at the very threshold.




10. We are constrained to say that this contention urged by respondents nos. 1 to 4 had only to be stated to be rejected.

11. The post of TS is higher than the post of TO. If that be so, then when another person is posted to that higher post, then the same is nothing but promotion. This is not the same as making an in-charge arrangement to look after the current duties of another officer who proceeds on one or two day's leave which is an event of frequent occurrence in any Government office. An inapt and a meaningless jargon employed cannot be put forward as a ground to sustain an illegal action or defeat a legal claim of another. We have no doubt whatsoever on the fact, that respondent no.5 had only been promoted and it was not a case of looking after the current duties of the higher post. We see no merit in this contention of Respondent nos. 1 to 4 and we reject the same.

12. In their reply, Respondent nos. 1 to 4 have asserted that the competent officer to make promotions to the posts of TS, was Chief General Manager, Telecom, Karnataka Circle, Bangalore (GM) and not the TDE and therefore, the promotion if any of the respondent no.5 was unauthorised. Shri Rao supported this contention with considerable vehemence.

13. We will assume that what is stated by Respondent Nos. 1 to 4 is correct and examine its merit on that very basis.

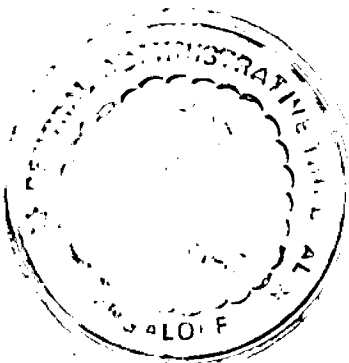


14. We have earlier held that what had been done was a promotion and not an arrangement of looking after current duties. On this finding and the very plea of respondent nos. 1 to 4, it follows that the authority who was competent to effect promotion of respondent no.5 was the GM only and not the TDE. On this it follows that the promotion of Respondent no.5 was by an authority who was incompetent to make the same. If that is so, then the promotion of respondent no.5 cannot be upheld.

15. We have earlier noticed and found that Respondent no.5 had foregone his promotion in June 1988.

16. On promotion and refusal of promotions, Government in exercise of its executive powers had issued detailed orders/instructions and the one pertaining to refusals which is material for our purpose, reads thus:

When a Government employee does not want to accept a promotion which is offered to him he may make a written request that he may not be promoted and the request will be considered by the appointing authority, taking relevant aspects into consideration. If the reasons adduced for refusal of promotion are acceptable to the appointing authority, the next person in the selected list may be promoted. However, since it may not be administratively possible or desirable to offer appointment to the persons who initially refused promotion, on every occasion on which a vacancy arises during the period of validity of the panel, no fresh offer of appointment on promotion shall be made in such cases for a period

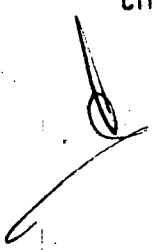


of 6 months (now one year) from the date of refusal of promotion or till a next vacancy arises, whichever is later."

This para regulates the period for which a refusal will be effective. A refusal which is voluntary and is permissible will be effective for a period of one year from the date of refusal or till a next vacancy occurs whichever is later. On the terms of this O.M., Respondent no.5 who had declined promotion in June 1988, cannot get promotion for a period of one year from the date of his refusal as that event occurs earlier and not later. Unfortunately, in making the promotion of respondent no.5 the TDE had lost sight of this requirement or prohibition, which was binding on him. On this conclusion also we cannot uphold the promotion of respondent no.5.

17. In pursuance of the promotion given to him, Respondent no.5 has been working from about July 1988.

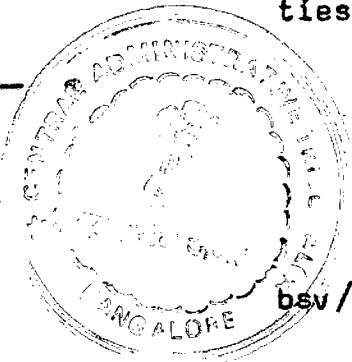
18. On what we have expressed and the directions to be made by us, it will necessarily take sometime for the GM to re-examine the whole matter and make his orders thereon. But till then we consider it proper to permit respondent no.5 to function as TS in public interest, without any right to claim promotion on that score before the GM..



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

- a) we annul the promotion of respondent no.5 to the post of Telephone Supervisor. But notwithstanding the same, we permit respondent no.5 to continue to hold that post till 31.3.1989 without any right thereto.
- b) We direct the Chief General Manager to examine the claims of the applicant, respondent no.5 and all other eligible officials for promotion to the post of Telephone Supervisor and make promotion to that post in accordance with law and the observations made in this order however making that effective from 1.4.1989.

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



bsv/Mrv.

sd/-

VICE-CHAIRMAN

9/10/87

TRUE COPY

sd/-

MEMBER (A)

11/10/87

[Signature]
DEPUTY REGISTRAR (JUDICIAL)
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Commercial Complex(BDA)
Indiranagar
Bangalore - 560 038

Dated : **11 APR 1989**

IA I IN APPLICATION NO (9) 1688 /88(F)

W.P. NO (S) _____

Applicant (s)

Respondent (s)

Smt A. Shanthamma
To

V/s

The General Manager, Telecom,
Karnataka Circle, Bangalore & 4 Ors

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Telephone Operator
Office of the Sub-Divisional
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W. N. S. 11-4-89
dc
DEPUTY REGISTRAR
(JUDICIAL)

**In the Central Administrative
Tribunal Bangalore Bench,
Bangalore**

A. NO. 1688/88(F)

Smt A. Shanthamma

V/s The GM, Telecom, Karnataka Circle,
Order Sheet (contd) Bangalore & 4 Ors

G.R. Ramesh

M. Vasudeva Rao

Date

Office Notes

Orders of Tribunal



Shri M Vande Rao for the respondents who have filed J.A.No 1 seeking extension of time for implementing our order dated 9/3/89. He submits that inspite of his efforts he has not been able to serve ~~a notice~~ a notice of the IA to or the applicant or her today Counsel.

After hearing Shri
KVRao we are of the
view that the respondents
should be allowed to
implement our order within
a further period of one
month. Respondents are
allowed to do so by 30/4/89.

sd/-

Sdl-

31/3/87

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R. Venkatesh
DEPUTY REGISTRAR (JULY) *1974*
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE