

CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH

* * * * *

Commercial Complex (BDA)
 Indiranagar
 Bangalore - 560 038

Dated : 18 JAN 1989

APPLICATION NO.

469

/ 88(F)

W.P. NO.

Applicant(s)

Shri K. A. Madappa

V/s

The Secretary, M/o Defence, New Delhi & 2 Ors

To

1. Shri K. A. Madappa Lower Division Clerk Office of the Commander Works Engineer Dickenson Road Bangalore - 560 042	4. The Engineer-in-Chief Army Headquarters Engineer-in-Chief's Branch DHQ P.O. New Delhi - 110 011
2. Shri M. Narayanaswamy Advocate 544 (Upstairs), V Block Rajajinagar Bangalore - 560 010	5. The Commander Works Engineer Military Engineering Services Dickenson Road Bangalore - 560 042
3. The Secretary Ministry of Defence South Block New Delhi - 110 011	6. Shri M.S, Padmarajaiah 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/~~ ~~ORDER/~~
 passed by this Tribunal in the above said application(s) on 13-1-89.

Encl : As above

R. V. Venkatesh
 DEPUTY REGISTRAR
 (JUDICIAL)

O/C

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE

DATED THIS THE 13th DAY OF JANUARY, 1989

Present : Hon'ble Justice Sri K.S.Puttaswamy Vice Chairman

Hon'ble Sri P.Srinivasan Member (A)

K.A.Madappa,
LDC, O/o the
Commander Works Engineer,
Military Engineering Services,
Dickenson Road,
Bangalore - 42. ... Applicant

(Sri M.Narayanswamy ... Advocate)

vs.

1. The Union of India,
rep. by its Secretary,
Ministry of Defence,
New Delhi.
2. The Engineer-in-Chief,
Army Headquarters,
Engineer-in-Chief's Branch,
DHQ PO, New Delhi -11.
3. Commander Works Engineer,
Military Engineering Services,
Dickenson Road, Bangalore-42. ...

Respondents

(Sri M.S.Padmarajaiah ... Advocate)

This application having come up before the Tribunal
today, Hon'ble Member (A) made the following :

O R D E R

The applicant, who is working as a Lower Division Clerk (LDC) in the office of respondent-3 viz. Commander Works Engineer, Military Engineering Service, Bangalore, (Commander) was earlier in military service from which he was discharged on 13.5.1965. He was re-employed in the civilian wing of the army as LDC with effect from 20.7.1965.

He did not possess the minimum educational qualification prescribed for the post of LDC which was SSLC. This was discovered many years after he had been absorbed in civilian service. At that stage, the applicant made a request to the authorities to waive the minimum educational qualification in his case. When that was refused, he approached this Tribunal in application No.192/86. Disposing of this application by order dated 15.10.1986 a bench of this Tribunal consisting of one of us (Hon'ble Justice K.S.Puttaswamy) and Hon'ble Shri L.H.A.Rego, directed the respondents to dispose of the claim of the applicant regarding relaxation of the educational qualification bearing in mind the recommendations of the Commander dated 5.11.1985. The respondents have finally considered the matter and have by order dated 7.1.1987 relaxed the educational qualification in respect of the applicant. While doing so, it was clarified that the relaxation would take effect from the date of issue of the order ie., 7.1.1987 and that the service rendered by the applicant prior to that date would be treated as ad hoc and would not count for seniority, confirmation and promotion. It is this part of the order which the applicant complains against in this application.

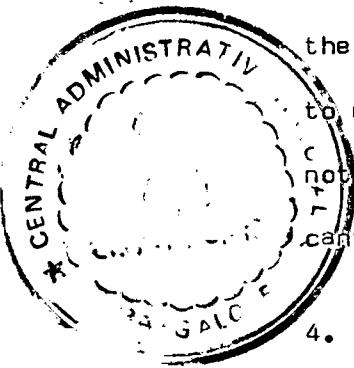
2. Sri M.Narayanaswamy, learned counsel appearing for the applicant, submitted that it was not proper for the respondents to deny the applicant the benefit of service rendered by him prior to the date on which the minimum educational qualification was relaxed in his case. The relaxation of educational qualification was required to validate his initial appointment as LDC and once it was done, his

P. S. 182

appointment as LDC right from the beginning should be treated as regular and he should be given seniority, confirmation and promotion on that basis.

3. Sri M.S.Padmarajaiah, learned counsel for the respondents, submitted that this Tribunal, in its order dated 15.10.1986 in application No.192/86, directed the respondents to take a decision about the applicant's claim for relaxation of educational qualification and to convey the same to the applicant. In terms of this order, the respondents had considered the matter and had come to a deliberate decision that the educational qualification would be relaxed but the relaxation would take effect only from the date of the order. That being so, the applicant cannot claim the benefit of relaxation from the date of his initial appointment in civilian service. On the subject of consequential reliefs to be given to the applicant in the event of the benefit of relaxation being given retrospective effect, Sri Padmarajaiah submitted that normally Upper Division Clerks(UDC) who are directly recruited have to be graduates and LDC's who are promoted as UDCs are generally matriculates. It was a special dispensation in the case of the applicant to relax the minimum educational qualification to enable him to hold the post of LDC, but the benefit could not be extended to an unreasonable extent to enable the applicant to get promotion to higher posts.

4. Having considered the rival contentions carefully, we are of the view that once the minimum educational qualification is relaxed, it should date back to the date of initial appointment of the applicant as LDC. The minimum educational



15-10-86

- 4 -

qualification is prescribed for appointment as LDC and the whole exercise of relaxing the said qualification was to validate the appointment of the applicant. That being so, we have no doubt in our mind that the relaxation of the qualification should date back to the date of initial appointment of the applicant in civilian service. As a result of this, the applicant will acquire the right of confirmation in that post from an earlier date. So far as his rights of promotion to higher posts are concerned, we are inclined to agree with Sri Padmarajaiah that when the applicant did not possess the minimum educational qualification to be a LDC and that requirement was specially relaxed in his case to enable him to hold that post, it would indeed be unfair to the respondents to direct them to give the applicant promotion to higher posts requiring higher skills and abilities. We are, therefore, not inclined to direct the respondents to give promotion to the applicant to the post of UDC on the basis that his initial appointment as LDC was a valid appointment.

5. In view of the above, we pass the following orders:-

(1) The impugned order dated 11.1.1987 will stand modified to the extent that the benefit of relaxation of educational qualification will enure to the applicant from the date from which he was initially appointed as LDC in 1965. Therefore his services from the date of his initial appointment till the date of relaxation of the educational qualification will not be treated as ad hoc but as regular appointment for the purpose of seniority and confirmation as a LDC.

P. S. (W)

(2) We, however, make it clear that the applicant will not acquire any right for promotion to the post of UDC as a result of the relaxation on the minimum educational qualification for the post of LDC.

6. The application is disposed of on the above terms leaving the parties to bear their own costs.

Sd/-

VICE CHAIRMAN

Sd/-

MEMBER (A)

12/1/89
TRUE COPY



R. D. Venkateshwaran
DEPUTY REGISTRAR (JDL)

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE