

## CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH

\* \* \* \* \*

Commercial Complex (BDA)  
 Indiranagar  
 Bangalore - 560 038

Dated :

24 JAN 1989

APPLICATION NO. 601

/ 88(F)

W.P. NO.       /      Applicant(s)

Shri M. Muthu Karuppan

To

1. Shri M. Muthu Karuppan  
 Quarter No. 362, Railway Colony  
 Gandhinagar  
 Bangalore - 560 009
2. Shri M.S. Anandaramu  
 Advocate  
 128, Cubbonpet Main Road  
 Bangalore - 560 002
3. The Secretary  
 Ministry of Railways  
 Rail Bhavan  
 New Delhi - 110 001

Respondent(s)

V/s The Secretary, M/o Railways, New Delhi &amp; 2 Ors

4. The General Manager  
 Southern Railway  
 Park Town  
 Madras - 600 003
5. Shri K. Megavannan  
 Deputy Chief Controller of Stores  
 Southern Railway  
 Perambur  
 Madras
6. Shri Mohammed Abdul Azeem  
 Senior District Signal and  
 Telecommunication Engineer  
 Southern Railway Divisional Office  
 Madras Division  
 Park Town  
 Madras - 600 003
7. Shri K. Gajapathy  
 Senior District Signal &  
 Telecommunication Engineer  
 Office of the Chief Signal &  
 Telecommunication Engineer  
 Southern Railway Headquarters  
 Park Town  
 Madras - 600 003

8. Shri M. Sreerangaiah  
 Railway Advocate  
 3, S.P. Building, 10th Cross

Subject : SENDING COPIES OF ORDER PASSED BY THE BENCH Cubbonpet Main Road  
 Bangalore - 560 002

Please find enclosed herewith the copy of ORDER/SPRAY/INTERIM ORDER  
 passed by this Tribunal in the above said application(s) on 20-1-89.

*Issued  
 16/1/89  
 24-1-89*

Encl : As above

*P. J. Venkatesh*  
 DEPUTY REGISTRAR  
 (JUDICIAL)

*(J)C*

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH, BANGALORE

DATED THIS THE TWENTIETH DAY OF JANUARY 1989

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

Hon'ble Shri P. Srinivasan ... Member (A)

APPLICATION NO. 601 OF 88(F)

Sri M. Muthu Karuppan,  
Son of Mari Muthu,  
Divisional Signal and  
Telecommunication Engineer,  
Bangalore Division,  
Southern Railway, Bangalore.

... Applicant

(Shri M.S. Ananda Ramu ... Advocate)

V

Union of India represented  
by the Secretary to Government  
of India,  
Ministry of Railways,  
Railway Bhawan, New Delhi.

The General Manager,  
Southern Railway,  
Park Town, Madras.

Shri K. Megavannan,  
Deputy Chief Controller of Stores,  
Southern Railway,  
Perambur, Madras.

... Respondents

(Shri M. Srirangaiah ... Advocate)

This application has come up for orders today. Hon'ble  
Shri P. Srinivasan, Member (A), made the following:

ORDER

The applicant, an officer belonging to the Indian Railway  
Service of Signal Engineering (IRSSE) to which he was recruited  
in 1979, as a result of selection by the Union Public Service  
Commission, complains in this application that his junior  
Shri K. Megavannan (R-3) had been wrongly promoted to the

Junior Administrative Grade (JAG) of the Service overlooking

*? Justice*



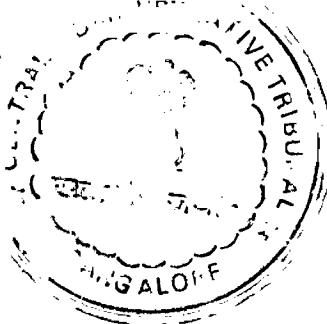
him. He prays that order dated 30.3.1988 (Annexure B) by which R-3 was promoted be quashed and the R-1 and 2 be directed to promote the applicant to the said JAG post from the date from which he was due for it.

2. After selection to the IRSSE and appointment as a probationer in that service in 1979, the applicant underwent training and after completion of the training period was posted at Madras as Assistant Signal and Telecommunication Engineer (Microwave)(ASTE). He underwent several transfers thereafter and is now working as Divisional Signal and Telecommunication Engineer (DSTE) at Bangalore in the Southern Railway. He was promoted to the senior scale of Class 1 (Group A) on 9.3.1984. Under the rules governing the subject, he was eligible to be promoted on a regular basis to the JAG of the Service on completion of eight years of service and such promotion, as and when given, had to be made by the Ministry of Railway or the Railway Board on an All India basis. However, the railway rules provide that if any "interregnum <sup>vacancies</sup>" arise, senior Group A officers in the zonal Railway concerned who had put in a minimum of six years of service could be promoted to the vacancies on an ad hoc basis in which case they would be allowed to draw pay in their own scale with an additional charge allowance for discharging of duties of the higher post: they would not be eligible to draw pay in the JAG grade till they completed 8 years of service. The ad hoc promotion on completion of six years of service can be

P. Srinivas

made by the General Manager (GM) in each Zonal Railways and normally the seniormost official in Group A would be given ad hoc promotion for short periods. As is evident from what we have said earlier, the applicant is working in the Southern Railway. By the impugned order dated 30.3.1988 which was said to have been approved by the GM, R-3 Shri K. Megavannan was promoted to the JAG while the applicant still continues to work in the senior scale of Group A as DSTE.

3. Shri M.S. Ananda Ramu, learned counsel, appearing for the applicant, submitted that the applicant became entitled to be promoted to the JAG on ad hoc basis on completion of six years of Group A service in 1985 itself. He had been representing to the authorities that he should be so promoted immediately on completion of six years of service. During his service of about nine years till now, the applicant had been subjected to frequent transfers from place to place against some of which he had to protest. He had represented to the authorities that as a person belonging to/Scheduled Caste he had been subjected to harassment and that had been taken ill by the authorities. That was why ignoring his representations for promotion to the JAG from 1985 onwards, R-3 had been promoted to that grade in the impugned order superseding the applicant who was senior by 10 places. The respondents had stated in their reply that disciplinary proceedings for imposition of major penalty had been initiated against the applicant by the Railway Board by Memo dated 25.3.1987 and that



P. S. K.

till those proceedings are concluded, the question of giving the applicant promotion to JAG had to wait. Relying on a judgment of the Karnataka High Court in A.B. CHANDRAGUPTA V. DIRECTOR, POST AND TELEGRAPH BOARD 1970(4) SLR 284, Shri Ananda Ramu submitted that unless the charges levelled against the disciplinary proceedings are of a very serious nature involving moral turpitude, denying promotion would be arbitrary and violative of Article 14 of the Constitution. The applicant had not been placed under suspension. If he could be allowed to continue functioning as DSTE, there would be nothing wrong if he were promoted as JAG and asked to work in that grade. Even the disciplinary proceedings which had been initiated against him were the outcome of ill-will against him because of his representations against frequent transfers. He had received awards for meritorious work particularly when he was in charge of Electrification schemes of Bhopal. Shri Ananda Ramu also relied on the decision of the Madras Bench of this Tribunal in S. SUBRAMANIAN V. DIVISIONAL ENGINEER ATR 1988(2) CAT 350 and of another of the Bangalore in Application No. 1869 and 1703/86 P. RAJU V. UNION OF INDIA decided on 5.2.1987 for contending that the pendency of the disciplinary proceedings was no bar to the applicant's promotion to the JAG.

4. Shri M. Srirangaiah, learned Railway Advocate, sought to refute the contentions of Shri Ananda Ramu. No doubt a person joining IRSSE is eligible for regular promotion after eight years of service in Group A and for ad hoc

*1/14/1987*

promotion by way of local arrangement on completion of six years of service. The GM of each Divisional Railway was empowered to make ad hoc promotions for short periods. However, the Railway Board had issued instructions as to the procedure to be followed for promoting officers from Group B to Group A or within Group A who were under suspension or whose conduct was under investigation. Shri Srirangaiah produced a copy of the Railway Board letter dated 3.11.1977 in this connection which says, inter alia, that when an officer is under suspension or when departmental proceedings had already been initiated for imposition of a major or minor penalty he should not be promoted until finalisation of the proceedings. The Railway Board itself initiated disciplinary proceedings against the applicant by its memo dated 25.3.1987. The charges levelled against the applicant was that he had absented himself from duty without leave from 5.2.1986 to 21.10.1986, a period of over eight months. As a senior Group A officer of the Railways and that too in the Signal and Telecommunication Department which was vital for the proper running of trains, such long unauthorised absence on the part of the applicant was a very serious matter. A prima facie case of serious dereliction of duty having been found against the applicant and a charge sheet having been served on him in March 1987 and the proceedings not



P. J. 4/2

having been reached a conclusion when promotion to the JAG had to be made in the ~~Railway~~ Southern Railway in 1988, the person next in seniority to the applicant in the said Railway Shri Megavannan, R-3, was promoted instead. It was not as if the case of the applicant was not considered. As the seniormost official his case was considered by the GM decided not to grant him ad hoc promotion because of the disciplinary proceedings already initiated against him and pending at the time. This was perfectly legal and in conformity with the instructions of the Board and the applicant can have no grievance.

5. We have given the matter most anxious consideration. The question round which the whole case centres is as to whether after initiation of disciplinary proceedings the authorities ~~can~~ <sup>could have held</sup> held back promotion to a higher post in this case on an ad hoc basis, ignoring seniority. It is well known that even when regular promotion has to be considered by a duly constituted Departmental Promotion Committee ~~the~~ cases of persons against whom disciplinary proceedings have been initiated are to be kept in a sealed cover and they cannot be promoted till the sealed cover is opened after the proceedings get concluded. The sealed cover procedure cannot be adopted where complaints against an official are being inquired into but no inquiry proceedings <sup>have</sup> ~~has~~ been initiated. It is only when a memo of charges is served on the official concerned can his case be kept in a sealed cover and his promotion withheld till the disposal of these proceedings. If this is the position in regard to regular promotion, we see nothing wrong in

P. S. b/s

promotion on ad hoc basis being denied to an official against whom regular disciplinary proceedings had already been initiated. We may here mention that in all the cases cited by Shri Ananda Ramu, learned counsel for the applicant, actual disciplinary proceedings had not only been initiated but were/under contemplation. It was in that context that it was held that denial of promotion was improper. In this case such departmental proceedings had actually been initiated long before orders were passed promoting R-3. Therefore, when a vacancy in JAG arose and had to be filled in by ad hoc promotion, the GM considered the case of the applicant but did not consider it fit to promote him and promoted the next senior person who was R-3. In these circumstances when there was a valid reason for not promoting the applicant, the promotion of his junior in preference to him cannot be treated as an act of discrimination against him.

6. In view of what we have stated above the application is devoid of merit. We, therefore, dismiss it leaving the parties to bear their own costs.



b6v

Sd/-

VICE CHAIRMAN

20/1/89

TRUE COPY

Sd/-

MEMBER (A)

*P. J. Venkateshwaran*  
DEPUTY REGISTRAR (JDL)  
CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE

CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH  
\* \* \* \* \*

Commercial Complex(BDA)  
Indiranagar  
Bangalore - 560 038

Dated : 25 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  
C/o Eastern Book Co.,  
34, Lal Bagh  
Lucknow - 226 001
4. The Editor  
Administrative Tribunal  
Law Times  
5335, Jawahar Nagar  
(Kolhapur Road)  
Delhi - 110 007
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 (A) and Hon'ble Mr. P. Srinivasan Member (A) with a request for publication of the order in the journals.

Order dated 20-1-89 passed in A. No. 601/88(F).

Yours faithfully,

*Sdt*

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

*Received  
K. N. Iyer  
25/1/89*

*gc*

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. Compound, Nungambakkam, Madras - 600 006.
3. The Registrar, Central Administrative Tribunal, C.G.O. Complex, 234/4, A.J.C. Bose Road, Nizam Palace, Calcutta - 700 020.
4. The Registrar, Central Administrative Tribunal, C.G.O. Complex(CBD), 1st Floor, Near Konkan 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 - 692 001.
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, Cuttack - 753 009 (Orissa).

Copy with enclosures also to :

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

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

*dc*

*4/85*  
*25/1/85*