

## CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH

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Commercial Complex (BDA)  
 Indiranagar  
 Bangalore - 560 038

Dated :

11 JAN 1989

APPLICATION NO.

767

/88(F)

W.P. NO.

Applicant(s)

Shri D.A. Kundagol

To

1. Shri D.A. Kundagol  
 Senior Telephone Supervisor  
 Auto Telephone Exchange  
 Hubli

2. Shri S.K. Srinivasan  
 Advocate  
 35 (Above Hotel Swagath)  
 1st Main, Gandhinagar  
 Bangalore - 560 009

3. The General Manager  
 Telecommunications  
 Karnataka Circle  
 Bangalore - 560 009

4. The Telecom District Engineer  
 Hubli - 21  
 Dharwad District

5. The Chairman  
 P & T Board  
 Sanchar Bhavan  
 New Delhi - 110 001

Respondent(s)

V/s

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

6. Shri P.G. Kadni  
 Senior Telephone Supervisor  
 Office of the Assistant Engineer  
 Trunks  
 Hubli

7. Shri R.N. Kulkarni  
 Senior Telephone Supervisor  
 Telephone Exchange  
 Hubli

8. 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/STAN/INTERIM ORDER  
 passed by this Tribunal in the above said application(s) on 2-1-89.

Encl : As above

*JK*  
 DEPUTY REGISTRAR  
 (JUDICIAL)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE

DATED THIS 2nd DAY OF JANUARY, 1989

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

Hon'ble Sri P.Srinivasan Member (A)

APPLICATION No. 767/88(F)

D.A.Kundgol,  
Telephone Supervisor,  
Auto Telephone Exchange,  
Hubli. ... Applicant  
( Sri S.K.Srinivasan ... Advocate )

vs.

1. The General Manager,  
Telecommunications,  
Karnataka Circle,  
Bangalore.
2. The Telecom District Engineer,  
Hubli - 21.
3. The Chairman,  
P & T Board,  
New Delhi.
4. Sri P.G.Kadni,  
Senior Telephone Supervisor,  
D/o the Assistant Engineer  
Trunks, Hubli.
5. R.N.Kulkarni,  
Senior Telephone Supervisor,  
Telephone Exchange,  
Hubli.

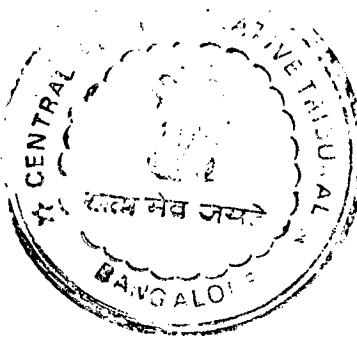
Respondents

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

This application having come up before the Tribunal  
today, Hon'ble Vice Chairman made the following :

O R D E R

This is an application made by the applicant under  
Section 19 of the Administrative Tribunals Act, 1985.



2. Prior to 11.3.1988, the applicant was working as a Telephone Supervisor (TS). On 11.3.1988 the Telecom District Engineer, Hubli, (TDE) by his Memo No.E10-9/108 of that date (Annexure A-4) promoted the applicant from that very date as Senior Telephone Supervisor (STS) on an officiating basis. While he was so working a Departmental Promotion Committee (DPC) constituted for the purpose, considered the case of the applicant, Respondents 4 and 5 and several others with whom we are not concerned on 17.3.1988 for regular promotion to the posts of STS,. On an evaluation of the service records of the applicant and others, the DPC in its proceedings held on 17.3.1988, found the applicant notfit for regular promotion and found R-4 and 5 who were juniors to him and others with whom we are not concerned as fit for promotion and accordingly recommended their promotion to the vacant posts of STS. On the recommendation of the DPC, R-4 and 5 have been promoted and the applicant who was not found fit, has been reverted by the TDE in his Memo dated 11.4.1988 (Annexure A-6). In this application made on 25.5.1988 the applicant has challenged the order of reversion on 11.4.1988 and has sought for a direction to promote him as STS on regular basis over Respondents 4 and 5. But during the pendency this application, the applicant has again been promoted as STS on an officiating basis from 12.7.1988 from which date he is working as an STS without interruption.

3. In justification of their action R-1 to 3 have filed their reply and have produced their records. R-4 and 5 who have been duly served have remained absent and are unrepresented.

4. Shri S.K.Srinivasan, learned counsel for the applicant strenuously contends that the decision of the DPC, holding the applicant not fit for promotion, was contrary to the rules of recruitment under which it was only a non-selection post and that in any event the decision of the DPC was contrary to the applicant's service records and is illegal, improper and unjust.

5. Shri M.S.Padmarajaiah, learned senior standing counsel for respondents 1 to 3, refuting the contention of Shri Srinivasan sought to support the action of r-1 to 3.

6. The post of STS under the Recruitment is a non-selection post is admitted by respondents no. 1 to 3. But they contend that the selections to that post also, is subject to seniority and fitness and, therefore, only a person who is found fit for promotion can only be promoted and cannot be promoted as a matter of course. We are of the view that this contention of r-1 to 3 is correct. If promotion to a post is subject to seniority and fitness, then it is undoubtedly open to the DPC to evaluate the merit of an official and hold that he is not fit for promotion on a regular basis. On this view, the claim of the applicant that he was entitled for promotion as a matter of course has no merit.

7. We have perused the proceedings of the DPC held on 17.3.1983 and the relevant service records of the officials. We are of the view that the decision of the DPC in holding the applicant not fit for promotion does not suffer from any legal flaw to justify our interference. On this view the challenge of the applicant for his non-promotion cannot be upheld.

8. As noticed earlier the applicant has again been promoted from 12.7.1988 and is functioning in the higher post of STS from that date without interruption. We are informed that the applicant has hardly another two years more of service and this will be the very last promotion he can aspire before he retires from service. As and when his case is again considered for regular promotion, we consider it proper to state that on the peculiar facts of this case only that the adverse report earned by the applicant in 1985 shall not weigh with the DPC, since he had already suffered the consequences of the same in the DPC proceedings on 17.3.88.

9. In the light of our above discussion we hold that his application is liable to be dismissed. We, therefore, dismiss this application. But this does not affect the promotion already given to the applicant on 12.7.1988.

10. 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

2/1/1989

an.

TRUE COPY

Sd/-

MEMBER (A)

By Deputy Registrar (W)  
DEPUTY REGISTRAR (W)  
CENTRAL ADMINISTRATION TRIBUNAL  
BANGALORE