

BANGALORE BENCH

\*\*\*\*\*

Commercial Complex(BDA)  
Indiranagar  
Bangalore - 560 038

Dated : 19 MAR 1989

APPLICATION NO (S) 1074 / 88(F)

W.P. NO (S) \_\_\_\_\_

Applicant (s)

Respondent (s)

Shri P.H. Shinde  
To

V/s

The General Manager, Telecom, Karnataka Circle,  
Bangalore & another

1. Shri P.H. Shinde  
Assistant Engineer (Trunks)  
Mangalore - 575 001

2. Shri M. Raghavendra Acher  
Advocate  
1074-1075, Banashankari I Stage  
Sreenivasanagar II Phase  
Bangalore - 560 050

3. The General Manager  
Telecommunications  
Karnataka Circle  
'Maruthi Complex',  
No. 327, V Main, Gandhinagar  
Bangalore - 560 009

4. The Secretary  
Ministry of Communications  
Sanchar Bhavan  
No. 20, Ashoka Road  
New Delhi - 110 001

5. Shri M.S. Padmarajiah  
Central Govt. Srng 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 6-3-89.

*Issued*  
*K.M.*  
*9-3-89*

*9/3*

*Rev. V. Venkatesh*  
DEPUTY REGISTRAR  
(JUDICIAL)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH, BANGALORE.

DATED THIS THE SIXTH DAY OF MARCH 1989.

Present: Hon'ble Shri P.SRINIVASAN

.. MEMBER (A)

APPLICATION NO.1074/88(F)

P.H.Shinde,  
Assistant Engineer,  
(Trunks),  
Mangalore.

.. Applicant.

vs. (Shri M.R.Achar .. Advocate)

1. The General Manager,  
Telecom Circle,  
Bangalore.
2. The Secretary,  
Ministry of Communication,  
Dokke Tar Bhavan,  
Sansad Marg,  
New Delhi.

.. Respondents.

(Shri M.S.Padmarajaiah.. Advocate)

This application has come up today before this  
Tribunal for Orders. Hon'ble Member (A) made the following:

ORDER

In this application, the applicant who is working as  
Assistant Engineer (Trunks) in the Telecom Department at Mangalore,  
complains that he was illegally denied the benefit of crossing the  
EB with effect from 1.5.1985. He has however, been allowed to  
cross the EB with effect from 1.5.1986, i.e., one year after it  
became due to him.

2. Shri M.R.Achar, learned counsel appearing for the  
applicant submitted that in deciding not to allow the applicant to

*[Signature]*

..2/-



cross EB from 1.5.1985, the Departmental Promotion Committee(DPC) had taken into account adverse remarks recorded in his character roll for the financial year 1983-84 which were communicated to him long after the DPC met. Thus these remarks had been taken into account without giving him an opportunity to make a representation against them and to this extent the decision to stop him at EB was illegal.

3. Shri M.S.Padmarajaiah, learned counsel for the respondents, opposing the contention of Shri Achar, stated that though the adverse remarks for 1983-84 were communicated to the applicant in 1986, his representation against the same had been duly considered and rejected by the authorities and therefore, the decision would have been the same even the DPC had met after the applicant's representation against the adverse remarks had been disposed of. Shri Padmarajaiah also <sup>H</sup>pointed out that for 1984-85 the record of the applicant was not <sup>by and</sup> good so the decision of the DPC not to allow him to cross the EB on 1.5.1985 was perfectly justified.

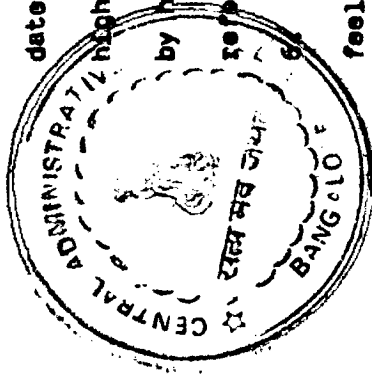
4. I have gone through the records produced by the respondents. I find that the applicant was stopped at the EB on 1.5.1985 because his service record as on that date was not satisfactory. The defect pointed out by Shri Achar, i.e., that the adverse remarks for 1983-84 were taken into account even though they had not been communicated to the applicant does not make much difference to this case because his record for the next year was also not satisfactory. I must, therefore, uphold

P. S. Be

the decision to stop him at EB on 1.5.1985.

5. At this stage Shri Acher pointed out that when the applicant was allowed to cross EB on 1.5.1986, his pay from that date should have been regulated as if he had crossed the EB on the due date, i.e., on 1.5.1985. In this connection he relied on the Office Memorandum dated 4.9.1968 issued by the Ministry of Finance and printed at page 97 of Swamy's Compilation of F.R.S.R. 8th Edition as also para 3 of page 33 of Swamy's Hand Book of 1988, 8th Edition. Shri Padmarajaiah on the other hand drew my attention to para 3 of page 93 of Swamy's Compilation of FRSR 8th Edition in which it is stated that where a person is allowed to cross the EB subsequent to the date on which it became due, if it is proposed to fix his pay at a higher stage on that date taking into account the service rendered by him after the due date for crossing the EB, the case should be referred to the next higher authority for a decision.

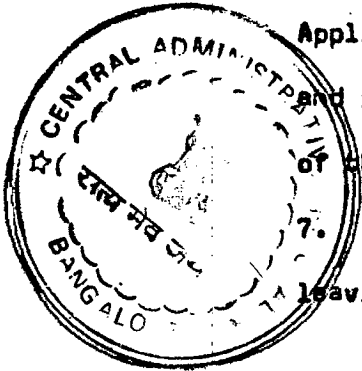
Having considered the contentions of both sides, I feel that the authorities should now take up the question of fixation of the applicant's pay from 1.5.1986 in terms of the O.M. dated 4.9.1968, the decision of the Government of India printed at page 97 of Swamy's Compilation of FRSR 8th Edition as well as para 33 of page 33 of Swamy's Hand Book of 1988 which purports to reproduce the substance of the instructions on the subject. Apparently the matter has not been considered from this angle so far. The respondent are therefore directed to consider whether the applicant's pay with effect from 1.5.1986 should be fixed as if he had been allowed to cross EB on the due date in terms of the O.M. dated 4.9.1968



*P. S. S. S.*

referred to above which they have not done so far. In order to enable them to do so, the letter dated 7.1.1988 issued by the Ministry of Communications which appears at Annexure F to the Application is set aside. This may be done as quickly as possible and in any case not later than 3 months from the date of receipt of this order.

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



Sd/-

MEMBER(A)

bk.

TRUE COPY

*[Signature]*  
DEPUTY REGISTRAR (JUL) *[initials]*  
CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE