

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

Commercial Complex (BDA)  
Indiranagar  
Bangalore - 560 038

Dated : 8 DEC 1992

MISCELLANEOUS PETITION  
NO. 222/92 IN

APPLICATION NO (\*)

462

/ 89

W.P. NO (S)

Applicant (s)

Respondent (s)

Shri B.S. Hegde

V/s The Secretary, Dept of Legal Affairs, M/o  
Law & Justice, New Delhi & 3 Ors

To

1. Shri B.S. Hegde  
No. 302, 'Akshaya Apartments'  
13th Cross, 11th Main  
Malleswaram  
Bangalore - 560 003

5. Dr S.C. Jain  
Joint Secretary & Legal Adviser  
Ministry of Law & Justice  
IV Floor, Shastri Bhavan  
New Delhi - 110 001

2. Dr M.S. Nagaraja  
Advocate  
No. 11, II Floor  
'Sujatha Complex'  
1st Cross, Gandhinagar  
Bangalore - 560 009

6. Shri G.N. Srinivasan  
Legal Adviser  
Railway Board  
Rail Bhavan  
New Delhi - 110 001

3. The Secretary  
Department of Legal Affairs  
Ministry of Law & Justice  
IV Floor, Shastri Bhavan  
New Delhi - 110 001

7. Shri M. Vasudeva Rao  
Central Govt. Sng Counsel  
High Court Building  
Bangalore - 560 001

4. The Secretary  
Department of Personnel, Public Grievances  
and Pensions  
Ministry of Home Affairs  
North Block  
New Delhi - 110 001

Subject : FORWARDING COPIES OF THE ORDER PASSED BY THE BENCH

Please find enclosed herewith a copy of the ORDER /~~STAY~~/

~~INTERIM ORDER~~ passed by this Tribunal in the above said M.P.

~~application~~ on 30-11-92.

*Copies recd  
JMS  
9/12/92  
(P.R. Srinivasan)  
Advocate for  
the applicant.*

*For*  
DEPUTY REGISTRAR  
(JUDICIAL)

*dc*

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH : BANGALORE

DATED THIS THE 30TH DAY OF NOVEMBER 1992

Present :

Hon'ble Shri Syed Fazlulla Razvi ... Member (J)

Hon'ble Shri S. Gurusankaran ... Member (A)

M.P.NO.222/92 IN

APPLICATION NO.462/89

B.S. Hegde,  
Aged 52 years,  
S/o Sri S. Hegde,  
Additional Legal Adviser,  
Branch Secretariat,  
Department of Legal Affairs,  
Ministry of Law & Justice,  
Bangalore.

... Applicant

(Dr. M.S. Nagaraja ... Advocate)

v.

1. Union of India represented  
by the Secretary to  
Government of India,  
Department of Legal Affairs,  
Ministry of Law & Justice,  
IV Floor, Shastri Bhavan,  
New Delhi.
2. The Secretary to Govt.  
Department of Personnel,  
Public Grievances & Pension,  
Ministry of Home Affairs,  
North Block,  
New Delhi.
3. Dr. S.C. Jain,  
Joint Secretary & Legal Adviser,  
Ministry of Law & Justice,  
Shastri Bhavan, IV Floor,  
New Delhi.
4. G.N. Srinivasan,  
Legal Adviser,  
Railway Board,  
Railway Bhavan,  
New Delhi.

... Respondents

(Shri M.Vasudeva Rao ... for R-1 and 2)

This M.P. having come up for orders before this Tribunal  
today, Hon'ble Shri Syed Fazlulla Razvi, Member (J), made the  
following;

*MV*  
*20/11*



ORDER

1. The Miscellaneous Petition (MP for short) under consideration is one filed by the applicant in O.A. No.462/89 (hereinafter referred to as the petition) praying "to revise the order dated 13.12.1989 and to post the case for hearing without any further delay in the interest of justice and equity". This MP has been opposed by the official respondents and by way of the objections filed to the MP, they have pleaded that in view of the order passed on 13.12.1989 by the Tribunal and till the judgment of the Hon'ble Supreme Court is delivered in the case of Union of India v. Dhanani and others, this MP may not be admitted and may be dismissed.

2. To appreciate the contentions urged in this MP, it is necessary to give in brief, the background leading to the filing of this MP. The petitioner has filed OA No.462/89 seeking the following reliefs.

- i. To call for all the records relating to the proceedings of the departmental promotion committee and the appointment committee of the cabinet leading to the promotion of Sri G.D. Banerjee, in 1987 and promotions of Respondents 3 and 4 in March 1989 and on perusal, to quash the promotions of Respondents 3 and 4 as arbitrary and illegal;
- ii. to direct the respondents to consider and promote the applicant with effect from the date Mr. G.D. Banerjee was promoted in May 1988, besides giving him seniority and the benefits flowing therefrom.
- iii. to grant all consequential benefits including placing the applicant senior to Respondents 3 and 4;
- iv. to award the cost of this application, and
- v. to grant such other reliefs as deemed fit in the circumstances of the case in the interest of justice and equity.

3. The application came to be admitted. The respondents have filed reply contesting the application and have claimed privilege

HA  
20/11

for production of certain documents under Sections 123 and 124 of the Evidence Act on the grounds mentioned in the affidavits filed by Dr. P.C. Rao, Secretary to the Government of India in the Ministry of Law and Justice and by Shri Manish Bahl, Secretary to the Government of India in the Ministry of Personnel, Public Grievance and Pensions. In those affidavits, the deponents have unequivocally stated that they have no objection whatsoever to the relevant record being produced for perusal by this Tribunal for satisfying itself about the bona fide and genuineness of the plea of the privilege. On the question of privilege claimed by these official respondents, a Bench of this Tribunal presided by the then Hon'ble Chairman heard arguments and passed the following order on 13.12.1989.

"Counsel Dr. M.S.Nagaraja for the applicant.

Shri M. Vasudeva Rao for Respondents 1 and 2.

Respondents 3 and 4 absent.

We have considered the various decisions cited at the Bar. We have been informed that there are several cases fixed for hearing before the Hon'ble Supreme Court on 7.12.1989, where the question is about privilege being claimed regarding documents before the Appointments Committee of the Cabinet. We find that in the case of S.P. GUPTA & ORS. VS. UOI (1982) 2 SCR Part II their Lordships laid down the following:



'The documents falling within this class are granted immunity from disclosure not because of their contents but because of the class to which they belong. This class includes cabinet minutes, minutes of discussions between heads of departments, high level inter-departmental communications and despatches from ambassadors abroad, papers brought into existence for the purpose of preparing a submission to cabinet and indeed any documents which relate to the framing of government policy at a high level'

A question that arises is whether the minutes before the meeting of the Appointments Committee of the Cabinet would be classified within the term 'Cabinet Minutes'. We are told that this very question is for consideration before their Lordships of the Supreme Court. We think we should not express an opinion at this stage on the question of privilege claimed by the respondents. We should rather await the decision of the Supreme Court. We, therefore,

21/12/89

adjourn the hearing of this case to a date to be fixed after the decision of the Supreme Court is known.

Call on 1.3.1990"

Subsequently the case came to be adjourned awaiting the decision of the Hon'ble Supreme Court in the matter and when the respondents could not produce any order passed by the Apex Court in the matter even after adjourning the case from time to time for well over a period of more than 2½ years, the applicant has filed the present MP.

4. There can be no doubt that the order dated 13.12.1989 is in the nature of an interlocutory order. It is not in the nature of a final order disposing of OA No.462/89. What is contended on behalf of the official respondents is that in essence the petitioner seeks the review of the order dated 13.12.1989 and such review is permissible only on the filing of a Review Application contemplated by Section 22(3)(f) of the Administrative Tribunals Act, 1985 and on the grounds permissible under Order 47 Rule 1 of the Code of Civil Procedure. It was contended that since none of the grounds available under Order 47 Rule 1 CPC are attracted and no such grounds are also canvassed on behalf of the petitioner, this Tribunal has no competence to review, modify or set aside the order dated 13.12.1989. Admittedly the order dated 13.12.1989 came to be passed not on the basis of any stay order passed by the Hon'ble Supreme Court staying the proceedings in O.A. No.462/89. As is evident from a reading of the said order after hearing the parties on the question of privilege claimed by the official respondents and on being informed that there were several cases pending before the Hon'ble Supreme Court involving the <sup>same</sup> point at issue and those cases had been fixed for hearing before the Apex Court on 7.12.1989, this

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Tribunal felt that "we think we should not express an opinion at this stage on the question of privilege claimed by the respondents. We should rather await the decision of the Supreme Court" (emphasis supplied) and accordingly came to adjourn the hearing of the case to a date to be fixed after the decision of the Supreme Court is known. In the said order there is no particular reference to any particular case pending before the Apex Court and which was scheduled for hearing on 7.12.1989. In the reply filed to MP under consideration we find the official respondents mention that in the case of UNION OF INDIA V. DHAMANI AND OTHERS, the Union of India has claimed privilege under Article 74 of the Constitution of India and that case is pending before the Hon'ble Supreme Court and the same was listed for hearing in the month of April 1992 and was heard for some time and the same will be coming after summer vacation for final hearing. Even on the day this MP was heard ie., on 13.11.1992, the learned counsel for the Union of India was not able to tell us as to when Dhamani's case referred to in their reply to the MP is likely to come up for hearing further and is likely to be disposed of. It is manifest that at the time this Tribunal passed the order on 13.12.1989, the Tribunal felt that since it was brought to its notice that a similar question was under consideration by the Apex Court in some cases, which were listed for hearing on 7.12.1989 and were likely to be disposed of in the immediate future, this Tribunal felt that it should rather await the decision of the Apex Court in those cases and should not express any opinion at that stage. Now as things stand, more than 2½ years have elapsed after the passing of that order and still the Union of India has not been able to produce before us any decision by the Apex Court on the issue involved. Merely because



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the Hon'ble Supreme Court is seized of a particular issue and such issue is under consideration by the Apex Court in a particular case and in the absence of any stay order staying the proceedings it would not be proper for this Tribunal to indefinitely postpone the hearing of the case for years awaiting the decision of the Apex court on that particular issue. Section 22(3) of the A.T. Act 1985 enjoins that a Tribunal shall decide every application made to it as expeditiously as possible. Apart from this it was also mentioned at the Bar that there are at least two more cases before this Tribunal, in which the applications have been admitted and the cases are ready for hearing, wherein also the similar question of privilege claimed by the official respondents regarding production of certain documents have to be decided. If the present application o.A. No.462/89 is to be indefinitely postponed, other applications involving similar privilege issues would also get postponed indefinitely and the same would not be in consonance with the requirements of expeditious disposal of applications.

5. In our opinion the conditions necessary for reviewing an order contemplated in Order 47 Rule 1 CPC are not strictly attracted for recalling or modifying an interlocutory order passed in a pending proceeding. As already pointed out, the order dated 13.12.1989 is not a final order and only interlocutory in nature. This Tribunal has wider and larger powers in recalling or modifying an interlocutory order than its power while reviewing a final order.

6. In the facts and circumstances of this case and having regard to the nature of the interlocutory order passed on 13.12.1989 and the period that has elapsed since the passing of that order,

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we think that the grievance of the petitioner is just and proper and the order dated 13.12.1989 is required to be revised. We accordingly allow the MP and revise and modify the interlocutory order dated 13.12.1989 and post this case for hearing on the question of privilege claimed by the official respondents.

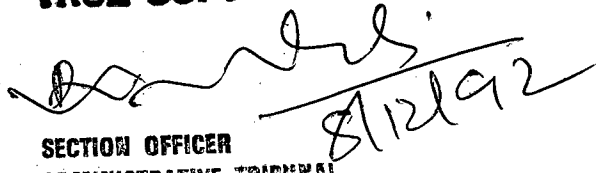
Sd-  
MEMBER (A)

Sd-  
MEMBER (J) 30/11/92

bsv



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SECTION OFFICER  
CENTRAL ADMINISTRATIVE TRIBUNAL  
ADDITIONAL BENCH  
BANGALORE



CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH

Second Floor,  
Commercial Complex,  
Indiranagar,  
Bangalore-560038.

Dated: **22 SEP 1993**

APPLICATION NO(S) 462 of 1989.

APPLICANTS: B.S. Hegde v/s. RESPONDENTS: Secretary, M/o. Law and  
Justice, New Delhi and Others.

TO.

1. Dr.M.S.Nagaraja,  
Advocate, No.11,  
Second Floor,  
First Cross,  
Sujatha Complex,  
Gandhinagar,  
Bangalore-9.
2. Sri.M.Vasudeva Rao,  
Central Govt.Stng.Counsel,  
High Court Building,  
Bangalore-1.
3. Secretary,  
Department of Legal Affairs,  
Ministry of Law & Justice,  
IV Floor, Shastri Bhavan,  
New Delhi-110001.
4. Secretary,  
Department of Personnel, Public Grievances and Pensions,  
North Block, New Delhi-110001.
5. Dr.S.C.Jain, Joint Secretary & Legal Adviser,  
Ministry of Law & Justice, Shastri Bhavan,  
New Delhi-110001.
6. Sri.G.M.Srinivasan, Legal Adviser, Railway Board,  
Railway Bhavan, New Delhi.

Subject:- Forwarding of copies of the Order passed by  
the Central Administrative Tribunal, Bangalore.

Please find enclosed herewith a copy of the  
ORDER/STAY/INTERIM ORDER, passed by this Tribunal in the  
above said application(s) on 02nd September, 1993.

Copies for R 2, 3 & 4

*22/9/93*

*[Signature]*  
DEPUTY REGISTRAR  
JUDICIAL BRANCHES.

*22/9/93*

gm\*

*Issued  
E. G.*

*[Signature]*

CENTRAL ADMINISTRATIVE TRIBUNAL: BANGALORE

DATED THIS THE 2ND DAY OF SEPTEMBER, 1993.

PRESENT:

Hon'ble Mr. Justice P.K. Shyamsundar,

.. Vice-Chairman.

And

Hon'ble Mr. V. Ramakrishnan,

.. Member(A)

APPLICATION NUMBER 462 OF 1989

B.S. Hegde,  
Aged 52 years, S/o S. Hegde,  
Additional Legal Adviser,  
Branch Secretariat,  
Department of Legal Affairs,  
Ministry of Law & Justice,  
Bangalore-560 080.

.. Applicant.

(By Dr. M.S. Nagaraja, Advocate)

v.

1. Union of India  
represented by the Secretary  
to Government of India,  
Department of Legal Affairs,  
Ministry of Law & Justice,  
IV Floor, Shastri Bhavan,  
NEW DELHI 110 001.
2. The Secretary to Government,  
Department of Personnel,  
Public Grievances & Pensions,  
Ministry of Home Affairs,  
North Block, New Delhi-110 001.
3. Dr. S.C. Jain,  
Joint Secretary & Legal Adviser,  
Ministry of Law & Justice,  
Shastri Bhavan, IV Floor,  
New Delhi-110 001.
4. G.N. Srinivasan,  
Legal Adviser, Railway Board,  
Railway Bhavan, New Delhi.

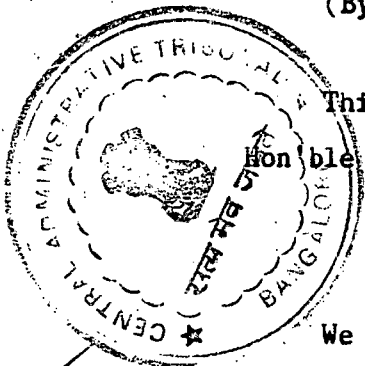
.. Respondents.

(By Sri M. Vasudeva Rao, Standing Counsel for R1 and R2)

This application having come up for 'being spoken to',  
Hon'ble Vice-Chairman made the following:-

ORDER

We disposed off this matter by recording a short order  
on 26-8-1993. Therein we held that the grievance now aired

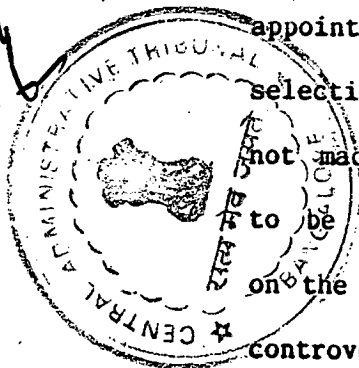


by the applicant concerning the denial of the post of Joint Secretary, Law was to a large extent vapourised by the circumstance that he had since crossed over to a different cadre having become a Member of the Central Administrative Tribunal in which capacity he functions as monitor of the judicial orders affecting service conditions of Government servants are concerned. But, then we find the applicant was claiming promotion as Joint Secretary (Law) from 1987 and that, if conceded, would give him some financial benefits. Mainly in that view of the matter, we thought it proper to recall our order dated 26-8-1993 and rehear the matter once more to-day. We have done that. After having heard Dr. M.S.Nagaraja, learned counsel for the applicant, we find our conclusions would not be in any different than what it was on the previous occasion, the penultimate order being dismissal of the application. We now proceed to state our reasons as follows:-

The applicant stood for and contested for the post of Joint Secretary (Law) when he was the Additional Law <sup>Secretary</sup> Secretary, Bombay. He was in the run for the Joint Secretary's post on two occasions, once in 1987 and on second time in 1988. On both the occasions it is not denied he was considered for the top slot and unfortunately for him on both the occasions his claim stood negated in favour of somebody else. On the latest occasion in the year 1988 when he again asked for improving his prospects by staking his claim for the post of Joint Secretary, he was again considered along with three others. This time the candidatures of respondents 3 and 4 found favour with the ACC. On the recommendations of the ACC they were appointed leaving behind the applicant.

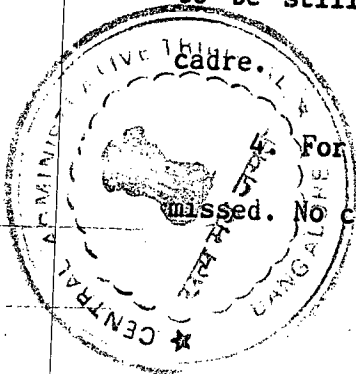
2. Not unnaturally the applicant feeling strongly aggrieved has come before us alleging that his promotion as Joint Secretary had been turned down not once but twice although on each occasion he was considered for promotion and notwithstanding such consideration he did not get the job, somebody did get it. At this stage, Dr. Nagaraja joins and submits that his client being a person with an unblemished record having to his credit a satisfactory track record in the performance of his duties it was somewhat incomprehensible that he should have been denied the top spot not once but twice. Counsel maintains there is no application of mind by the ACC and its action is totally mechanical, the result of the consideration not being objective in that it had to be presumed that the claim of the applicant has been overlooked not for want of anything on his side but for reasons undisclosed.

3. Strong as his argument is, we would like to invite counsel's attention to the very well established principle in service law, i.e, all that the Government servant can look forward for, is the consideration of his claim whenever there is a chance for advancement in his career, in that if there is a chance for promotion, his claim had to be considered and once that is done, the fact that the result of such consideration was not to the liking of the contender is a different matter. We are quite sure and certain that our jurisdiction does not extend to <sup>pinning</sup> ~~pinning~~ the consideration that had weighed with the appointment's committee in not selecting the applicant and in selecting respondents 3 and 4. We notice, the applicant has not made any allegations of mala fides and therefore, it has to be presumed that our consideration to be brought to bear on the issue in the given circumstances is to treat the whole <sup>as raised by any malafides</sup> controversy <sup>there</sup> to be bona fide. But, if we were considering it



on ~~apery~~<sup>apery</sup> basis we ~~would~~<sup>might</sup> have come to a different conclusion. But, that is not a matter on the basis of which we can strike down the appointments of respondents 3 and 4 and in consequence direct the applicant's appointment. We are sure this is a case in which the ACC comprising as it ~~does~~<sup>depl</sup> of the Secretary of the Department, the Minister and the Prime Minister had taken steps to deliberate and reflect before taking a decision to appoint respondents 3 and 4 in preference to the applicant. In that view of the matter, we see no reason to interfere with the order appointing respondents 3 and 4. Dr. Nagaraja also brought to our attention the decision of the Principal Bench of the Central Administrative Tribunal in J.N.KAUL v. UNION OF INDIA AND ANOTHER [1992 (20) AT 142] and we have ~~noted~~<sup>used</sup> the same. We also notice that the dismissal of this proceeding would not affect the applicant in any manner and as such it would be unnecessary for him to be still worried in the matter of promotion in the regular cadre.

For the foregoing reasons, this application, ~~stands~~<sup>is</sup> dismissed. No costs.



*Sd/-*  
MEMBER(A)

*Sd/-*  
VICE-CHAIRMAN.

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*M. S. S.*  
SECTION OFFICER

CENTRAL ADMINISTRATIVE TRIBUNAL  
ADDITIONAL BENCH  
BANGALORE

22/9/93

Recd. by post. Enter in  
18/4/94 Suplist, Sup Register,  
main Register &  
add to file & note.  
H. make a photocopy of this &  
submit in O.A. with a copy of  
O.A. order to Hon. V.C. & members.  
18/4/94  
Sd/- (JII) S.I.B.

D.NO. 928/94 /SEC. DA  
SUPREME COURT OF INDIA  
NEW DELHI.

From :-

Dated:- 8/4/94

The Registrar,  
Supreme Court of India,  
New Delhi.

To,

The Registrar  
Central Administrative Tribunal  
Bangalore Bench  
Bangalore.

PETITION FOR SPECIAL LEAVE TO APPEAL (CIVIL/CPL.) NO. 803/94

(Petition under Article 136(1) of the Constitution of India  
from the judgment and order dated 2.9.93

of the ~~High Court of Judicature at~~ CAT at Bangalore  
in Appn. No. 462/88

B.S. Hegde

...Petitioner(s)

Versus

Union of India & Ors. ....Respondent(s)

Sir,

I am directed to inform you that the petition above  
mentioned filed in the Supreme Court was dismissed  
by the Court on 18.2.94.

Yours faithfully,

R.L. 12/4  
FOR REGISTRAR

8/5/94  
19/4/94