

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Second Floor,
Commercial Complex,
Indiranagar,
Bangalore-560 038.

Miscellaneous Application No.416/93 Dated: 3 NOV 1993

APPLICATION NO(s). 493 and 609 of 1993.

Applicant(s) N.Balakrishna & Others v/s Respondent(s) Divisional Railway Manager, S.Railway, B'lore & Others.

1. Sri.S.Ranganatha Jois, Advocate,
No.36, Vagdevi,Shankarapark,
Shankarapuram,Bangalore-4.
2. Sri.A.N.Venugopala Gowda, Advocate,
No.8/2, Upstairs,R.V.Road,
Opp:Bangalore Hospital,Bangalore.

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

Please find enclosed herewith a copy of the ORDER/
STAY/INTERIM ORDER passed by this Tribunal in the above said
application(s) on 28-10-1993.

N. Venkatesh 3/11/93
for DEPUTY REGISTRAR
JUDICIAL BRANCHES.

Issued

JW

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- 10 -

In the Central Administrative Tribunal
Bangalore Bench
Bangalore

Application No. 493 & 609/93 of 199

ORDER SHEET (contd)

Date	Office Notes	Orders of Tribunal
		<p>VR (MA) / <u>ANV (MJ)</u> 28.10.93</p> <p>The applicant and his counsel are absent. Shri ANV for respondents 1 and 2 present. MA 416/93 filed by the applicant seeking stay of the judgement passed in <u>OA 493/93 & 609/93</u>. There is no provision to stay the operation of the order passed. Consequently, the said MA is rejected.</p>

Sd/-

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Member (J)

Member (A)



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SECTION OFFICER
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE
31/11/93

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Second Floor,
Commercial Complex,
Indiranagar,
Bangalore-560 038.

Dated: 3 SEPT 1993

APPLICATION NO(s). 493 of 1993 and 609 of 1993.

Applicant(s) N.Balakrishnan & Or. v/s. Respondent(s) Divisional Railway Manager, Southern Rly, Bangalore-9 and Others.

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1. Sri.N.Balakrishnan, S/o.N.Deranna, Clerk, Permanent Way Inspector's Office, Southern Railway, Whitefield, Bangalore-560 067.
2. Sri.M.Iqbal Khan, S/o.M.Mazal Khan, Clerk, Senior Divisional Engineer's Divisional Office, Southern Railway, Bangalore.
3. Sri.S.Ranganatha Jois, Advocate, No.36, Vagdevi, Shankerapark, Shankarapuram, Bangalore-4.
4. The Divisional Railway Manager, Southern Railway, Bangalore-9.
5. The Divisional Personnel Officer, Southern Railway, Bangalore-9.
6. Sri.P.R.Bhadran Nair, Senior Gangman, Southern Railway, Bangalore.
7. Sri.T.Venkatesh Choudhari, Senior Gangman, Southern Rly, Bangalore.
8. Sri.H.Prasanna Rao, Senior Gangman, Southern Rly, Bangalore.
9. Sri.A.N.Venugopal Gowda, Advocate, No.8/2, Upstairs, R.V.Rao, Opp: Bangalore Hospital, Bangalore.

SUBJECT:- Forwarding of copies of the Order passed by
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application(s) on -----
20-08-93.

Issued

9/9/93
Gnd

31/9/93
Ofc for DEPUTY REGISTRAR
JUDICIAL BRANCHES.

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH : BANGALORE

DATED THIS THE 20TH DAY OF AUGUST 1993

Present:

Hon'ble Shri V. Ramakrishnan ... Member [A]

Hon'ble Shri A.N. Vujjanaradhy ... Member [J]

APPLICATION NO.493/93 & 609/93

1. N. Balakrishnan,
S/o N. Deranna,
Aged 43 years,
Clerk,
Permanent Way Inspector's Office,
Southern Railway,
Whitefield,
Bangalore-67.
2. M. Iqfal Khan,
Aged 39 years,
S/o M. Mazal Khan,
Clerk,
Senior Divisional Engineer,
Divisional Office,
Southern Railway, Bangalore. Applicants

[Shri S. Ranganatha Jois ... Advocate]

v.

1. The Divisional Railway Manager,
Southern Railway,
Bangalore-9.
2. The Divisional Personnel Officer,
Southern Railway,
Bangalore-9.
3. P.R. Bhadran Nair,
Senior Gangman,
4. T. Venkatesh Choudhari,
Senior Gangman,
5. Sri H. Prasanna Rao,
Senior Gangman. Respondents

[Shri A.N. Venugopal ... Advocate for R-1 and 2]

This application having come up for orders before this Tribunal today, Hon'ble Shri A.N. Vujjanaradhy, Member [J] made the following:



O R D E R

1. The applicants who are aggrieved by order dated 7.4.1993 [Annexure A-7] by which they were reverted, have come up with this application under Section 19 of the Administrative Tribunals Act, 1985.

2. The facts which are not in dispute may be succinctly stated thus:

The applicants are working as Clerks since 1990 on which date they were promoted from the cadre of Gangmen and Senior Gangmen in accordance with the quota fixed for promotion from Group D to Group C. Annexure A is the copy of the notification dated 20.10.1989 by which the applicants were alerted for taking up examination and thereafter were promoted as per Annexure A-1 dated 20.7.1990. Because the applicants were reverted by order dated 29.1.1992 [Annexure A-2], the applicants filed O.A. NO.93/92 challenging the said order of reversion on various grounds. In the meanwhile Respondent ['R' for short] No.4 had filed another application in O.A. No.537/91 both of which were disposed of by a common order as in Annexure A-3 dated 18.12.1992. In pursuance of the said order, the applicants made representations as in Annexures A-4 and A-5. But without considering the same, the impugned order dated 7.4.1993 as in Annexures A-6 and A-7 came to be passed by the official respondents and, therefore, the present application seeking the following reliefs:

[a] for declaration that orders dated 7.4.1993 [Annexure A-7] and the endorsement issued in pursuance of the same directing the reversion of the applicants as arbitrary, illegal and without application of mind and opposed to the principles of natural justice and estoppel;

[Signature]

[b] for further direction to reinstate the applicants and to continue them as Clerks with all consequential benefits and such other orders deemed fit.

3. The official respondents while not disputing the facts, plead further that after due consideration of the representation of the applicants, the impugned orders came to be passed and the same are legal and justifiable.

4. After the application was filed an order of stay of reversion of the applicants for a period of two weeks was passed on 23.4.1993 and again on 5.5.1993 the stay order was continued for one more week. Thereafter the interim order of stay was not continued.

5. We have heard Shri Ranganath Jois for the applicant and Shri A.N. Venugopal for official respondents and have perused the records.

6. The present applicants as well as one C.D. Lakshminarayana had filed O.A. NO.93/92 which came to be disposed of on 18.12.1992 along with O.A. No.537/91 filed by R-4 herein viz. T. Venkatesh with the following directions:

"i. The applicants in O.A. No.93/1992 are directed to give any further representation, if they so desire, within 10 days from today, giving any additional information they may have regarding their inter-se seniority position with reference to the 3 private respondents.

ii. The official respondents, based on the replies already submitted by the applicants in O.A. No.93/1992 to the show cause notices that they may submit within 10 days from today, shall take a final decision within a period of one month from the date of receipt of a copy of this order regarding the final inter-se seniority position.

iii. Based on such decision regarding the inter-se seniority, the official respondents shall also give effect to the amended panel dated 29.1.1992 with due modifications, if any, with the approval of the competent authority and implement the same within 2 months from the date of receipt of this order.



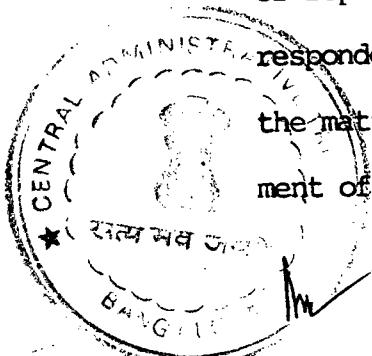
iv. In case it is finally decided to include the name of the applicant A-1 in O.A. No.537/91 in the amended panel he shall be promoted with retrospective effect from the date his immediate junior was promoted with all consequential benefits including seniority and arrears of pay and allowances. The arrears shall also be paid to A-1 within 3 months from the date of issue of the amended panel."

Having regard to this order and the previous application filed by the applicants and another, we have to consider the present contentions of the learned counsel for the applicants.

7. Shri Jois for the applicants at the outset contended that the select panel was current for a period of one year which was validly prepared and, therefore, official respondents were not entitled to either amend or cancel the said panel and as such the order of reversion of the applicants is bad and cannot be sustained. This contention of the learned counsel is not tenable inasmuch as the applicants have already suffered orders in O.A. No.93/92 in which specific directions as quoted above came to be issued. The applicants were required to make representation giving any additional information that they may have regarding their inter-se seniority position with reference to the three private respondents who are also the same respondents in this application. No doubt the applicants did make representations as in Annexures A-4 and A-5 but no additional grounds relating to inter-se seniority were sought to be made out by the applicants. As a matter of fact the learned counsel for the applicants did not dispute the fact that private respondents are seniors than the applicants. When such is the position, it is rather curious as to how the applicants can re-agitate the same issue over again. Because of this reason only it was rightly contended by the learned counsel for the official respondents that the

present application is barred by principles of constructive res judicata in view of the earlier order in O.A. No.93/92. When the order passed in O.A. No.93/92 has become final and the applicants have not sought to challenge the same before the competent court and have suffered an order it is not open to them to contend that the selection panel was not open for cancellation or amendment. This contention of the learned counsel for the applicants was already considered in their previous application in O.A. No.93/92 and it was observed that since all the applicants and the private respondents had qualified in the selection and there were only 5 vacancies, only five senior most could be included in the panel and further that departmental promotion committee had again met and prepared a revised selection list and the Chief Personnel Officer as the next higher authority to the Divisional Railway Manager has given his approval to the amendment of the panel and, therefore, the applicants who have not produced adequate grounds to set aside the revised panel issued on 29.1.1992 had to fail. In view of this observation, it is not now open to the learned counsel for the applicants to re-agitate the matter over again. Thus the claim of the applicants in the present application is barred by principles of res-judicata.

8. The applicants have not placed any additional information regarding their inter-se seniority position with reference to the respondents and as a matter of fact, to repeat at the cost of repetition, the applicants did not dispute the fact of private respondents being senior to the applicants. In this view of the matter it is not open to the applicants to question the amendment of panel and consequential reversion of the applicants.



9. The next contention of the learned counsel for the applicants is that sufficient number of vacancies existed and, therefore, there was no question of reverting the applicants. This contention is not open to the applicants inasmuch as such a plea has not been taken in the application itself. If at all, the applicants are also now qualified for consideration for promotion, they would be eligible for such consideration by the department. Even though the applicants have continued in the promotional post because of the interim order which was subsequently not continued, Shri Venugopal was fair enough to submit that because of the pendency of this application, the respondents have not taken any action to give effect to the order of reversion. The fact that the applicants have not produced any additional material to show their inter-se seniority position vis-a-vis R 3 to 5 they are not entitled to re-agitate the same grounds over again in this application as those contentions were already considered in their O.A. No.93/92. Thus we find no merit in this application and the same is liable for dismissal and is hereby dismissed but without any order as to costs.

Sd-

20/8/93
H/ MEMBER [J]

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20/8/93
H/ MEMBER [A]

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