

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

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

Dated: 27 OCT 1994

APPLICATION NO: 1007 of 1993.

APPLICANTS:- Sri. B. S. Ravindrakumar,
V/S.

RESPONDENTS:- The Director, General (Posts) NDelhi-1

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1. Sri. V. V. Balan Advocate for
Sri. S. K. Mohiyuddin, Advocate,
No. 11, Jeeran Building,
Kumarapark East, Bangalore-2.
2. Sri. G. Shanthappa,
Addl. CGSC
High Court Bldg,
Bangalore-1

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

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Please find enclosed herewith a copy of the ORDER/
~~STAY ORDER/INTERIM ORDER~~/ passed by this Tribunal in the above
mentioned application(s) on 07-10-94

Issued on 28/10/94
(Gh) ok

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DEPUTY REGISTRAR
JUDICIAL BENCH

CENTRAL ADMINISTRATIVE TRIBUNAL: BANGALORE BENCH

ORIGINAL APPLICATION NUMBER 1007 OF 1993

FRIDAY, THIS THE 7TH DAY OF OCTOBER, 1994.

Mr. Justice P.K. Shyamsundar, .. Vice-Chairman.

Mr. T.V. Ramanan, ... Member (A)

B.S. Ravindra Kumar,
S/o Bhima Rao,
Major, Postal Assistant,
Head Post Office, Gulbarga. .. Applicant.

(By Advocate Shri V.V. Balan for
Shri S.K. Mohiyuddin)
v.

The Director General (Posts)
Dak Bhavan, Sardar Patel Chowk,
New Delhi-110 001. .. Respondents.

(By Standing Counsel Shri G. Shanthappa)

O R D E R

Mr. Justice P.K. Shyamsundar, Vice-Chairman:-

Admit. This application is by one Ravindra Kumar, who sought selection for the post of Inspector of Post Offices following a test conducted at a departmental examination that was held in the year 1992. It is common ground that he had passed in all the subjects prescribed in the departmental examination and had in fact scored 261 marks in the aggregate. It is his case that despite scoring sufficiently high marks he had been somehow side lined for non-justifiable reasons and also felt that totalling of the marks obtained by him was suspected to be wrong. He therefore, asked us to direct the department to retotal the marks obtained by him at the said examination.



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2. When this matter was on the anvil we had occasion to peruse the records pertaining to the tabulation of marks made by the departmental officers with reference to the examination in question. In the course of our roving investigation we found one S.N.Koppal, also a Scheduled Caste candidate, had been declared successful in the examination and assigned probably the higher position of an Inspector although he had actually failed in Paper-I in which he had secured only 31 marks whereas the minimum marks to be secured by a Scheduled Caste candidate being 33. When this mistake was pointed out, the department undertook to file an affidavit setting out the true position as regards the marks obtained by the applicant as also that gentleman called Koppal besides another gentleman called Navin Chander, yet another Scheduled Caste candidate. It transpired, whereas the applicant and the said Navin Chander had secured identical number of marks of 261 out of 500, Koppal had apparently failed in Paper-I having secured only 31 marks. In the affidavit filed by one Smt. Poonam Juneja, Director (VP & DE) this aspect has been made clear. The officer states -

3. The Hon'ble Tribunal while hearing the application on 8-8-1994 and while scrutinising the records produced before it had observed that in the case of one of the successful candidate i.e., Shri S.N.Koppal (S.C) whose roll number is 173 at Sl.No.65 of the tabulation register had secured only 31 marks in paper No.I whereas the rule stipulate that the minimum marks for SC candidate should be 33. In compliance with the orders of the CAT No.(PKS)VC/(TVR)M(A) dated 8-8-1994, all the relevant documents have been examined and the position that emerges is as follows:-

- a) As regards the selection of Sh.S.N.Koppal (Roll No.173) the same is admitted to be an inadvertent error for which the explanations of the dealing assistant who made the entries in the tabulation register as well as the supervising officer who verified the entries is being obtained.
- b) As regards the impact of this mistake on the candidature of Sh.Ravindra Kumar the position is as follows. Shri B.S.Ravindra Kumar, Roll

NO.KN/IPO/96/92 Serial No.63 of the tabulation register has obtained the following marks:-

Paper-I	69/100
Paper-II	47/100
Paper-III	54/100
Paper-IV	56/100
Paper-V	35/100

	261/500

Another candidate Sh.Navin Chander (Roll No.96) KN/IPO/96/92 at serial No.32 of the tabulation register has obtained the following marks:

Paper-I	55/100
Paper-II	40/100
Paper-III	65/100
Paper-IV	61/100
Paper-V	40/100

	261/500

It is apparent from the foregoing that there is, therefore, a tie between these two candidates. In such cases where there is a tie for the last vacancy the principle is to include the candidate with the longer length of service in the select list. In this case as per the information given by the CPMG, Karnataka Sh.Navin Chander had entered service on 10-6-1983 whereas Sh.B.S.Ravindra Kumar had entered service on 10-9-1983. Therefore, if any benefit is to be extended on account of the Department's mistake the same should rightfully go to Sh.Navin Chander.

In view of the position explained above, it would not be appropriate for the department to promote Sh.B.S.Ravindra Kumar, instead of Sh.Koppal"

The statement as aforesaid made by the deponent Smt. Poonam Juneja undoubtedly admits that Shri Koppal had been wrongly declared successful whereas he had actually failed and they would conduct some enquiry to ascertain how such a grievous error could have been committed. But, in regard to the applicant and the other gentleman Navin Chander who had tied for the last position having obtained identical number of marks, it was pointed out, under the Rules a candidate with longer length of service is to be selected and appointed., Ofcourse the technique suggest-



ed can be said to be laudable, but that methodology came into vogue after fresh instructions were issued in that behalf only on 8th September, 1994 by the Department of Posts. The said instructions are contained in the Department of Posts letter No.5-10/93/DE dated 8-9-1994 as also the Department of Personnel and Training U.O.No.6-6/93/Estt.'D' dated 18-5-1993 which is referred to therein are reproduced below:-

"Department of Posts
JE Section
Dak Bhawan, Sansad Marg
New Delhi-110 001.

No.5-10/93/DE

Dated 8-9-1994

To

All Heads of Circles (By name)

Sub: Competitive examination - candidates obtaining equal marks - Selection and determination of inter-se merit.

Sir,

I am directed to refer to DGP&T letter No.27-24/65/NOG dated 7-4-1966 (copy enclosed) on the subject mentioned above and to forward nerewith a copy of Deptt. of Personnel and Training U.O.No.6-6/93/Estt.'D' dated 18-5-1993 for information.

2. Instructions contained in DGP&T letter dated 7-4-1966, therefore, stand amended to the extent as stated in the DOP&T U.O.dated 18-5-1993.

Yours faithfully,

Sd/-
(G.CHANDRASEKHAR)
Asstt.DIR.GEN (DE)"

"Department of Personnel and Training
Estt(D) Section
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Reference proceeding notes.

2. It is seen that both the ST candidates have secured equal marks in the departmental examination. Hence, in order to determine their merit position their inter-se seniority in the feeder post may be taken into account if they belong to common seniority list. If not their length of regular service in the feeder post may be taken into account for this purpose. The instructions dated 7-4-1966 issued by P&T Directorate may also be amended in the light of the above position. Department of Posts may please see.

Sd/- K.Muthukumar
Desk Officer."

3. We notice that the instructions supra promulgated in the year 1994 were wholly prospective in nature and could not possibly affect the position vis-a-vis an examination held in August, 1992 which in fact is the subject matter currently under investigation before us. Therefore, it is too much to rely on the subsequent instructions of the Department of Personnel regarding selection of candidates who took the departmental examination in the year 1992 admittedly governed by instructions then prevalent being the instructions obtained in the circular dated 7-4-1966 which read as follows:-

"SELECTION

If two or more candidates are bracketted for the last position in the merit list, as determined by the number of vacancies to be filled on the basis of the examination or selection, all such bracketted candidates will be selected and the number of vacancies will be deemed to have been increased, if necessary, in relaxation of the general rule that the number of vacancies once announced should not be increased."

(Emphasis supplied)

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The above instructions being the extant Rules are applicable to the applicant and the other candidate who had appeared in the departmental examination in the year 1992. What becomes obvious and very apparent is that the bracket system that prevailed then being of ensuring that in the case of two or more candidates obtaining the same number of or identical marks all of them will have to be provided with the higher position in the purported relaxation of the general rule vis-a-vis number of vacancies for which selections had to be made at a particular point of time. The above being the rule applicable to the case of the applicant what becomes obvious is that both he and the other man Navin Chander who is now put forward as a foil to the applicant and is sought to be foisted over and above the applicant on the ground that he had longer length of service

is of no avail. The position under the extant Rules, 1966 is that both the applicant and Navin Chander would be entitled to be selected to the post. Now that Navin Chander is already appointed on the basis of the subsequent examination, the applicant will also have to be promoted and appointed as Inspector of Post Offices with reference to his performance in the 1992 examination. If Navin Chander has also claimed the benefit of 1966 instructions it is only proper he also gets the advantage of selection in the 1992 examination alongside the applicant. That ofcourse is a matter for the department to consider and make amends if it so desires. But, in regard to the non party Koppal who has admittedly failed in the 1992 examination but nonetheless promoted it is up to the department to rectify the situation in any manner known to law. By this we should not be understood as having ~~been~~ given any directions in that regard.

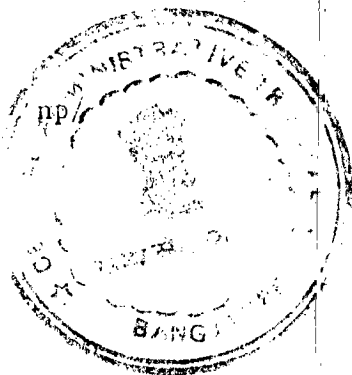
4. In the result, therefore, this application succeeds and is allowed. The respondents are directed to promote the applicant as Inspector of Post Offices from the date of passing of the departmental examination in the year 1992 along with others who were selected and appointed on the basis of the 1992 examination. No costs.

Sd-

MEMBER(A)

Sd-

VICE-CHAIRMAN.



TRUE COPY

[Signature]
Section Officer
Central Administrative Tribunal
Bangalore Bench
Bangalore