

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

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

Misc. Application No. 366/93 in

Dated 27 SEP 1993

APPLICATION NO(S) 20 of 1993.

APPLICANTS: B. Hulagappa v/s. RESPONDENTS: Deputy Collector of
Central Excise (P&V), B'lore & Ors.

TO.

1. Sri.R.U.Goulay,
Advocate, no. 90/1,
Post Office Road,
Second Block,
Thyagarajanagar,
Bangalore.
2. Sri.M.Vasudeva Rao,
C.G.S.C., High Court Bldg,
Bangalore-1
3. Deputy Collector of Central Excise (P&V),
Central Revenue Building, Queens's Road,
Bangalore-1.

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 22nd Sept', 1993.

Issued

gm*

for *M. Devesh*
DEPUTY REGISTRAR
JUDICIAL BRANCHES.

28/9/93

In the Central Administrative Tribunal
Bangalore Bench
Bangalore

-7-

Misc Application No. 233 of of 1993

ORDER SHEET (contd)

MANO. 366/93

Date	Office Notes	Orders of Tribunal
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PKS [VC]/VR [MA]

22nd September 1993

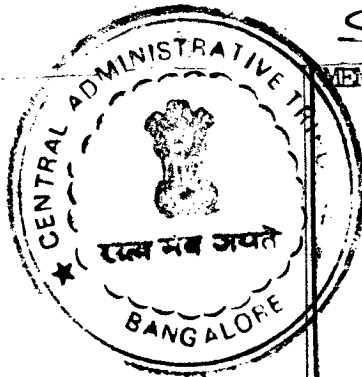
Heard Shri M.V.Rao for the applicant. Time to comply with the direction of this Tribunal extended for a further period of 3 months. No further extension.

Sd-

MEMBER [A]

Sd-

VICE-CHAIRMAN



TRUE COPY

SECTION OFFICER
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE

29/9/93

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Commercial Complex (BDA)
Indiranagar
Bangalore - 560 038

Dated :

APPLICATION NO (S)

20/1993

W.P. NO (S)

Applicant (s) B. Hulagappa & other vs Respondent (s) Deputy Collector (P&V)
Central Excise and others.

To

1) B. Hulagappa
Upper Division Clerk,
of Central Excise,
Bellary Division
Bellary

2) K. Ramappa, WDC.
of Assistant Collector of
Central Excise,
Bellary.

3) R. U. Gowlay
Advocate, 90/1,
II Block,
Post Office Road,
Jyagananagar
Bangalore

4) The Collector of Central Excise,
Central Revenue Building,
Queens Road P.O. No. 5400,
Bangalore-560001

5) Deputy Collector (P&V)
Central Excise, C.R. Bldgs.
Queens Road, Bangalore

6) Secretary
Central Board of Excise & Customs,
North Block, New Delhi-1

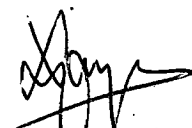
7) Sri. M. Vasudeva Rao
Central Govt Sgng Counsel,
High Court Bldg.
Bangalore

Recd
7/4/93

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
application (s) on 29-03-93.

OK


DEPUTY REGISTRAR
(JUDICIAL)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BANGALORE

DATED THIS DAY THE 29TH OF MARCH, 1993

Present: Hon'ble Shri V. Ramakrishnan Member(A)
Hon'ble Shri A.N. Vujjanaradhya Member(J)

APPLICATION NO.20/1993

1. Shri B. Hulagappa,
Upper Division Clerk,
Office of the Central Excise,
Bellary Division,
Bellary
2. Shri K. Ramappa,
Upper Division Clerk,
Office of the Assistant Collector
of Central Excise, Bellary
Bellary

Applicants

(Shri R.U. Goulay - Advocate)

1. The Collector of Central Excise,
Central Revenue Buildings,
Queens Road,
P.B.No.5400,
Bangalore - 560 001
2. The Deputy Collector(P&V),
Central Excise, C.R. Buildings,
Queens Road,
Bangalore - 560 001
3. The Secretary,
Central Board of Excise and Customs,
Central Secretariat, North Block,
New Delhi - 110 001

Respondents

(Shri M.V. Rao - Advocate)

This application has come up before
this Tribunal for orders. Hon'ble Shri V.
Ramakrishnan, Member(A) made the following:

ORDER

The applicants S/Shri Hulagappa and K.
Ramappa have approached this Tribunal seeking



redressal against the action of the Deputy Collector of Central Excise, Bangalore and the Central Board of Excise & Customs which has resulted in issue of an order to them reverting them from the posts of UDC to that of Sepoys. The matter came up before this Tribunal on earlier occasions by A.Nos.1645 and 1690 of 1988 disposed off on 14.2.89 and A.No.386/90 disposed off on 10.10.91.

2. The first applicant entered service as Sepoy on 23.7.76 in the Department of Central Excise. In the month of April, 1983, he was appointed as LDC by an order C.No.II/31/51/82-A.I dated 5.4.83 (Annexure A.1). Subsequently, by an order dated 19.1.87 (Annexure A-2), he was confirmed as LDC along with others. He subsequently came to be promoted on ad hoc basis to the post of UDC by an order dated 29.11.89 (Annexure A-3) and he came to be appointed on regular basis as UDC by order dated 13.6.90 (Annexure A-4).

As regards the second applicant, he was appointed as Sepoy on 28.6.76 and was appointed as LDC on 20th October, 1983. He was promoted to the post of UDC by an order dated 18.12.89 and appointed on regular basis as UDC by an order dated 27.9.90.

3. The Central Excise and Land Customs Department Group 'C' posts Recruitment Rules, 1979 made by the President in exercise of the powers conferred on him by the proviso to Article 309 of the Constitution and published in the

Gazette on 2.6.79 provided inter alia that the method of recruitment to the post of L.D.C. will be by direct recruitment subject to the provisions as follows:

"By direct recruitment

Note

(1) 10% of the vacancies in the grade of Lower Division Clerk to be filled by direct recruitment will be reserved for being filled up by Group 'D' employees (borne on regular establishment) subject to the following conditions namely:

(a) selection would be made through a departmental examination confined to such Group 'D' employees who fulfil the requirement of minimum educational qualification, namely, matriculation or equivalent:

(b) the maximum age for this examination would be 45 years (50 years for Scheduled Caste or Scheduled Tribe candidates).

(c) at least five years service in Group 'D' would be essential.

(d) the maximum number of recruits by this method would be limited to 10% of the vacancies in the cadre of Lower Division Clerks occurring in a year: unfilled vacancies would not be carried over.

4. Apparently, on the basis of a request from the Customs and Central Excise Federation, a decision was taken to bifurcate the 10% quota into two components as follows:

- i) 5% vacancies in a calendar year shall be filled on the basis of seniority subject to rejection of unfit; and
- ii) the remaining 5% on the basis of qualifying examination with typing test to be held departmentally (in other words the examination is a qualifying one and not a competition test).



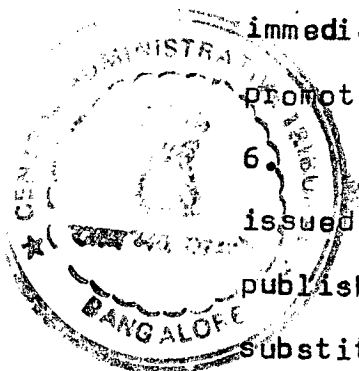
8

This was communicated to all the Collectors by the Board by its letter No.B-12014/3/82-Ad.III-B dated the 9th December, 1982. The Collector conducted an examination in which the applicant was successful. He was promoted as LDC on 5.4.83. Subsequently, the Board in its letter No.A-12014/3/SSC/87-Ad.III-B dated 2.9.88 informed the Collector that those Group 'D' employees who qualified the 1982 examination may be appointed first to the post of L.D.C. by reverting the 1985 appointees and vacancies of 1985, 1986 and 1987 may be filled up first from the 1982 panel. It further stated that the persons qualified in the examination will be senior to the ones who qualified in the subsequent examinations. After getting this communication, the Collector reverted the applicant without giving him an opportunity to state his case. When similarly placed persons approached this Tribunal against such reversion order, the latter by its order dated 14.2.89 in O.A.No.1645 and 1690/1988 quashed the order of reversion for the reason that no show cause notice was given to the affected persons and also that the decision to bifurcate the 10% quota was not given statutory force by amendment of the Recruitment Rules(RRs for short). The Tribunal, however, gave the liberty to the Collector for re-examining the whole matter re-adjusting the promotions and reversions in conformity with law.

5. There was another application before this Tribunal in A.No.386/90 filed by one Shri Govinda seeking directions to re-adjust his seniority in the grade of LDC and for promoting him as UDC on the basis of re-fixed seniority. In that case Shri Ramappa, the second applicant in this case was one of the respondents as Shri Govinda had claimed that he would be senior to Shri Ramappa. The Tribunal in its order dated 10.10.91 directed the official respondents to re-adjust the promotions and reversions and re-fix the seniority of the applicant in the cadre of LDC in accordance with law and in the light of the observations made by this Tribunal in its order dated 14.2.89 in A.Nos.1645 and 1690 of 1988. It further directed that if on such re-fixation, ^{Shri Govinda} ~~the applicant~~ becomes entitled to be appointed as LDC from an earlier date, he should be awarded consequential benefits in respect of pay and allowances including arrears. Further, the case of the applicant ~~Govinda~~ should be considered for promotion to the grade of UDC on such re-fixation and he should be promoted if he is suitable with effect from the date his immediate junior in the list of LDCs came to be promoted as UDC, with all consequential benefits.

6. In the meantime, a Notification was issued in 1991 amending the RRs vide GSR 589 published in the Gazette on 19.10.91. It substituted the RRs for the post of LDC as follows:

*(a) against serial No.7 relating to the post of Lower Division Clerk, in



column:1, for the existing entries the following shall be substituted namely:

By direct recruitment

(i) 90% by direct recruitment through the Staff Selection Commission;

(ii) 5% from amongst the Group 'D' staff and Record Keepers who possess Matriculation or equivalent qualification and rendered 5 years' regular service in Group 'D' or in Group 'D' and Record Keeper, taken together, as the case may be, on the basis of a departmental qualifying examination with typing test:

The maximum age limit for eligibility for examination is 45 years.

(50 years for the SC/ST)

Note -1 (a) Unfilled vacancies pertaining to a particular year shall not be carried over.

(b) If more of such employees than the number of vacancies available under clause (ii) qualify at the said examination, such excess number of employees shall be considered for filling the vacancies arising in the subsequent years so that the employees qualifying at an earlier examination are considered before those who qualify at a later examination.

Note - 2

Educationally qualified Laboratory Attenders who have initially been recruited through Employment Exchange can also compete for the post of Lower Division Clerk against 5% vacancies reserved for Group 'D' employees by allowing them to deduct the period of service rendered as Laboratory Attender including service, if any, in Group 'D' earlier from their actual age for the purpose of reckoning age limit. Laboratory Attenders promoted from Group 'D' posts will also be eligible.

(iii) 5% from amongst Group 'D' employees, Laboratory Attender and Record Keepers who -

(a) have passed Matriculation or equivalent examination and (b) have rendered 5 years' regular service in Group 'D' or in Group 'D' Laboratory Attender and Record Keeper, taken together, as the case may be on seniority-cum-fitness basis. There shall be no age limit.*



The Notification further provided that this amendment ^{as for (a) is concerned} shall be deemed to have come into force w.e.f. 9.12.82. The explanatory Memo to the amendment stated as follows:

"Following representations from the Staff side, the Government had issued instructions on the 9th December, 1982 that out of 10% quota reserved for Group 'D' Staff, in the Lower Division Clerk's grade, 5% vacancies will be filled up by seniority and 5% vacancies on the basis of a qualifying examination. Since these instructions are being followed and amendments of the rules is to regularise the said position formally no one will be adversely affected as a result of retrospective effect being given in this regard."

7. Suddenly, In June, 1992, vide communication No. II/31/34/91-A.I dated 9.6.92 (Annexure A-7) issued by the Collector to the applicants, the applicants were asked to show cause as to why their promotions as UDCs and the order confirming them in the grade of LDC should not be withdrawn and they should not be reverted to the grade of Sepoy. The applicants responded to the show cause notice protesting against such action. The Collector, however, passed an order dated 31.12.92 (Annexure A-9) holding that consequent on issue of amended RRs, the appointment of the applicants as LDCs in the year 1983 on the basis of the exam held on ~~20.12.85~~ was not in order as they were appointed on the basis of the marks obtained in the said exam without considering their seniors who had qualified in the earlier examination. It was further found that even against the vacancies which arose subsequently

they could not be adjusted against either the 5% seniority quota or 5% examination quota. The Collector proceeded to cancel the earlier orders appointing them as LDCs, their confirmation in the grade of LDC and promoting them as UDCs subsequently. The orders further stated that they will stand reverted to the grade of Sepoy. This was done entirely on the ground that in terms of the amended RRs, they are not eligible to be appointed as LDCs.

8. Shri Goulay appeared for the applicant and Shri M.V. Rao for the official respondents.

9. The applicants have further prayed for an interim order to stay the order dated 31.12.92. The Tribunal vide its order dated 12.1.93 stayed the operation of order dated 31.12.92.

10. The learned counsel for the applicants has also drawn attention to the judgment of the Supreme Court in the case of State of Bihar and others v. Shri Akhourī Sachindra Nath and others - AIR 1991 SC 1244 where the Apex Court has ruled that promotion with retrospective effect when it affects others in service adversely is impermissible. He has accordingly contended that the reversion of the applicant with a view to promoting others retrospectively is not permissible.

11. It is clear from the records that the applicants were appointed as LDCs on the basis of an examination held in 1983 ~~and also in 1985~~ on merit. The earlier RRs which were promulgated

on 2.6.79 provided that 10% of the vacancies in the grade of LDC to be filled by direct recruitment will be reserved for Group 'D' subject to certain conditions. In other words, it is the performance in the examination and not the seniority in Group 'D' which is relevant for consideration and appointment as LDC. The subsequent stand of the Department that the 10% will be reduced to 5% for Group 'D' staff who took the examination and that such examination is in the nature of qualifying examination where seniority and not the position in the examination will be the criterion was not given statutory backing till 19.10.91. When the rules were amended on 19.10.91, the revised pattern was given retrospective effect from 9.12.82 with a further assertion that no one will be adversely affected as a result of retrospective effect being given in this regard. Such a statement obviously was incorrect as the applicants and others who came out successful and got a higher rank in the examination for LDCs are in fact being adversely affected. As regards the reference to the Supreme Court decision, it may be stated that the present case is one where the applicant has been reverted to a lower post with a view to promoting some others. It has not been brought out clearly that such promotion of others is sought to be given retrospectively. However, we hold that retrospective amendment of rules adversely affecting persons who had received

certain benefits as per the earlier set of rules will not stand judicial scrutiny. We have to observe that the Department has not properly appreciated the spirit of the judgments given by this Tribunal by its order dated 14.2.89 in A.Nos.1645 and 1690 of 1988 and 10.10.91 in A.No.386/90. We, therefore, quash the Notification GSR 589 dated 19.10.91 in so far as it seeks to give retrospective effect to Rule 2(a). We also quash the order dated 31.12.92 (Annexure A-9) which seeks to revert the applicants from the posts of LDCs to that of Sepoys and which cancels their appointment in the grade of UDC, their confirmation in that grade and their promotion as UDCs. We further direct that the Department should implement the directions contained in this Tribunal's order dated 10.10.91 para 6(i) to (iii) within a period of two months from the date of receipt of a copy of this order. No costs.

Sd-

MEMBER (J)

Sd-

MEMBER (A)

COPIES

SECRETARY
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Second Floor,
Commercial Complex,
Indiranagar,
Bangalore-38.

Miscellaneous Application No. 507/93 Dated:

21 JAN 1994

in
APPLICATION NO(s) 20 of 1993.

APPLICANTS: B. Hulagappa

RESPONDENTS: Dy. Collector of Central
Excise, Bangalore & Others.

TO.

1. Sri. B. U. Goulay,
Advocate, No. 90/1,
Post Office Road,
Second Block,
Thyagarajanagar,
Bangalore.
2. Sri. M. Vasudeva Rao,
C.G.S.C. High Court Bldg,
Bangalore-1.

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

-xxx-

Please find enclosed herewith a copy of the
ORDER/STAY ORDER/INTERIM ORDER/, Passed by this Tribunal
in the above mentioned application(s) on 22-12-1993.

gm*


for *S. S. Shrivastava* 21/1/94
DEPUTY REGISTRAR
JUDICIAL BRANCHES.

a/c Issued
gm

**In the Central Administrative Tribunal
Bangalore Bench
Bangalore**

Application No.... O.A.No.20/93.....of 199

ORDER SHEET (contd) MA 507/93

Date	Office Notes	Orders of Tribunal
		<p>VR(MA)/ANV(MJ)</p> <p>22.12.1993</p> <p>Heard Shri M.V.Rao for the applicants herein. As requested by the department, time is extended for compliance with the directions for a period of two months from today. The department will not disturb the seniority position by effecting promotions, etc., before complying with the directions.</p> <p>Sd- MEMBER (J)</p> <p>Sd- MEMBER (A)</p> <p>TRUE COPY</p> <p><i>Sc Shreehar</i> SECTION OFFICER 21/1/94 CENTRAL ADMINISTRATIVE TRIBUNAL ADDITIONAL BENCH BANGALORE</p>

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Second Floor,
Commercial Complex,
Indiranagar,
Bangalore-38.

Miscellaneous Appln.No.131 and 132
of 1994 in

Dated: 9 MAR 1994

APPLICATION NO(s) 20 of 1993.

APPLICANTS: B.Hulagappa and
Other v/s.

RESPONDENTS: Dy. Collector of Central
Excise, Bangalore & Others.

TO,

1. Sri.R.U.Goulay, Advocate,
No.90/1, Post Office Road,
Second Block, T.R.Nagar,
Bangalore.-28.
2. Sri.M.Vasudeva Rao, Central Govt.
stng.counsel, high court bldg,
Bangalore-2.

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

-xxx-

Please find enclosed herewith a copy of the
ORDER/STAY ORDER/INTERIM ORDER/, Passed by this Tribunal
in the above mentioned application(s) on 03-03-1994.

gm*

OLC
issued on 9.3.94
Gub

for DEPUTY REGISTRAR
JUDICIAL BRANCHES. 9/3

B. Hulagappa & Other vs. Central Excise, Bangalore & Other

Date

Office Notes

Orders of Tribunal

VR(MA) / ANV(MJ)
3.3.94

Heard Shri M.V. Rao for the applicants in MA 131/94. They have filed MA 132/94 for condoning the delay. MA 132/94 is allowed and the delay condoned. Having regard to the fact that the respondents, that is, applicant in MA have partly complied with the directions of the Tribunal, the request for further extension of time for compliance of the further directions is extended till 21.5.94. Accordingly, MA is disposed off.



Sd-

M(J)

3/3/94

Sd-

M(A)

TRUE COPY

S. Shauhar
SECTION OFFICER
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE