

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

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

Dated: 1 NOV 1993

APPLICATION NO(S) 223 of 1993.

APPLICANTS: B.L.Gopal

TO.

RESPONDENTS: Divisional Personnel
Officer, Southern Railway, Bangalore
and Others.

1. = Dr.M.S.Nagaraja,
Advocate, No.11,
Second Floor,
First Cross,
Sujatha Complex,
Gandhinagar,
Bangalore-560 009.
2. The Chief Personnel Officer(General),
Southern Railways, Park Town, Madras-600003.
3. The Divisional Personnel Officer,
Bangalore Division, Southern Railways,
Bangalore.
4. Secretary,
Ministry of Railways,
Rail Bhavan, Railway Board,
New Delhi.
5. Mrs.M.V.Nirmala,
Advocate, No.53,
N.S, Iyengar Street,
Seshadripuram,
Bangalore-560 020.

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 13-10-1993.

for DEPUTY REGISTRAR
JUDICIAL BRANCHES.

gm*

Forued
gn

11/11/93

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH : BANGALORE

DATED THIS THE THIRTEENTH DAY OF OCTOBER 1993

Present:

Hon'ble Mr. Justice P.K. Shyamsundar ... Vice-Chairman

APPLICATION NO.223/93

B.L. Gopal,
S/o B.R. Lakshmana Setty,
Aged 57 years,
No.1, Upstairs,
III Temple Road,
Mallewaram, Bangalore-3.

... Applicant

[Dr. M.S. Nagaraja ... Advocate]

v.

1. The Divisional Personnel Officer,
Bangalore Division,
Southern Railway,
Bangalore.
2. The Chief Personnel Officer,
Southern Railway,
Park Town,
Madras-600 003.
3. The Railway Board,
represented by its
Secretary,
Railway Board,
Rail Bhavan, New Delhi.
4. Union of India represented
by its Secretary to Government,
Ministry of Railways,
Rail Bhavan,
New Delhi.

... Respondents

[Ms. Nirmala ... Advocate]

This application having come up for admission before this
Tribunal today, Hon'ble Vice-Chairman, made the following:

O R D E R

1. The applicant was an employee of the Southern Railways, Bangalore Division, where he ultimately superannuated while holding the post of Senior Labour Welfare Inspector on 28.2.1993.



On 5.5.1992 his pay scale was revised by granting two advance increments as per Annexure A-2. This fortutious hike in his pay scale was made available to the applicant on obtaining a diploma in Social Science with Industrial Welfare and Labour Relationship as specialised subject from one of the Academic institution ie., Institute of Social Sciences, Loyola College, Madras. I notice the man had acquired the specialised qualification long long ago ie., on 9.4.1964. I have before me an authenticated copy of the Diploma issued by that institution which reads:

Sri B.L. Gopala Krishna Setty, B.Sc. having completed the two year Post Graduate Diploma Course in Social Service, conducted by the Institute of Social Sciences, Loyola College, Madras, under the direction of this Institute, and according to its syllabus, with Industrial Relations and Labour Welfare, as the field of specialisation, and having passed the required examinations in Third Class has been awarded this POST GRADUATE DIPLOMA IN SOCIAL SERVICE recognised by the Ministry of Labour and Employment, Government of India, under the Labour Officers' Recruitment and Conditions of Service Rules, 1951, and under the Mines Rules, 1955, and by the Governments of Madras, Andhra and Kerala.

2. The action for stepping up of his pay by granting two advance increments was the result of a circular issued by the Railway Board dated 14.2.1990 as per Annexure A-1. Thereunder the Railway Board extended to the staff of Stores and Personnel Department to which the applicant belonged the scheme of granting two advance increments by way of incentive to those who had acquired any special qualification. The applicant being accredited to the Personnel Department, under the said Board's directive became eligible for two advance increments, on acquiring post graduate diploma in personnel management or industrial relations conducted by the University or any other recognised institution. In para 3 of the boards directive it is clarified that the aforesaid

fortutious benefit of accelerated increments be granted only to such of the employees who had acquired the prescribed higher qualifications at their expense and without detriment to the Railway in any manner.

3. It appears that after the issuance of the directive under Annexure A-1 the applicant made a representation to the Railway Board asking them to extend to him the benefit of the scheme supra claiming that he was eligible for grant of increments since he had acquired the proficiency prescribed for people of the Personnel Department and would become eligible for such bonus incentive under the scheme. His representation was considered and upon its acceptance an order dated 5.5.1992 vide Annexure A-2 was passed by the Divisional Office of the Personnel Branch, Bangalore, granting the applicant two advance increments. But subsequently the Railways withdrew the bounty granted to the applicant under Annexure A-2 by passing the impugned ^{order} Annexure A-3 dated 20.5.1993 stating that the applicant being one of those persons who had acquired the qualification prior to the issue of the Board's circular he would not be eligible for the benefit under the scheme and, therefore, his pay as fixed under Annexure A-2 will stand revised in that the bonus increments being withdrawn and the pay refixed without the same. Aggrieved by that order resulting in taking away the incentive increments with antecedent effect, the applicant made a representation but that representation was rejected by the Board and hence this application. As noticed earlier the applicant had retired in the meanwhile on 28.2.1993 and, therefore, if the benefit under Annexure A-2 is restored to him it will probably augment only his pension.



4. I have heard Dr. M.S. Nagaraja for the applicant and Smt. Nirmala for the respondents. Dr. Nagaraja asked me to remit the case back to the Railways for a de novo consideration after hearing the applicant as according to him the impugned order Annexure A-3 has been passed without notice to the applicant and it has repurcussion on his financial outlay particularly the applicant having since retired the same is likely to be felt more deeply than a man in service. Smt. Nirmala, learned counsel for the Railways pointed out that the applicant's representation made pursuant to the impugned order Annexure A-3 has been considered and rejected. Counsel invites attention to the stand taken in the objection statement which possibly is that the applicant was not qualified originally for receiving the advance increments and incidentally it is contended that the increments can be granted only to those who qualify subsequent to Boards order Annexure A-1. It is said that the applicant having qualified long ago in the year 1964 could not take advantage of the benefit offered by the Board some 26 years thereafter.

5. But then I find the order Annexure A-3 mainly rested on the ground that the applicant had not qualified after the scheme was promulgated as it was found that he had acquired the necessary qualification long prior to the Board's order Annexure A-3. The additional ground now put forward in the course of the submissions that the man is not qualified at all is surely not a ground raised in support of the impugned order Annexure A-3 under which money paid earlier was sought to be taken away. Annexure A-3 is self-contained and is advantageous to set it out.

"In terms of CPO/MAS letter No.P[GS]359/XII/Incentive/Stenos dt.5.1.93. The employees who have acquired higher qualification prior to issue of Board's letter No.E[NG]1-87/IC.2/I dated 14.2.90 are not eligible for the benefit of incentive scheme hence the pay already fixed vide O.O. No.PG.48/5/92 dt.5.5.92 is now revised as under:

Name/ B.L. Gopal, SLWI/SBC
degn/stn

Pay already fixed	pay	scale	w.e.f.
	2750	2000-3200	1.4.89
	2900	-do-	14.2.90 [2 increments]
	2975	-do-	1.4.90
	3050	-do-	1.4.91
	3125	-do-	1.4.92
Now revised	2750	2000-3200	1.4.89
	2825	-do-	1.4.90
	2900	-do-	1.4.91
	2975	-do-	1.4.92"

The above order makes it clear that the applicant was not being deprived of the increments he had earned because he had not acquired the requisite qualification but that he had acquired the same long prior to the Board's circular introducing the scheme of granting advance increments. On the point of time, it is clear that the applicant had acquired some qualification which was treated as rendering him eligible for advance increments stipulated under the Board's order Annexure A-1 long prior thereto in the year 1964. In other words he was certainly cashing in on a qualification that he had acquired in 1964 at a time when he was not expecting any advancement in salary but that did happen some 26 years later and, therefore, he got benefit from the higher learning that he had acquired long back.



6. But I am not quite sure whether I should allow the Railways to assert that the advance increment given to the applicant be taken back as he is not qualified at all and not eligible for such benefit since under Annexure A-3 there is virtually an admission that he did have the qualification but he had to be denied the increment because the scheme under which it was granted was clearly prospective and was attracted only to those who had acquired the higher qualification subsequently. If that is the ground on which increments granted to the applicant was sought to be taken away from the date of granting the same it is quite clear that it was available to him because under Annexure A-1 pursuant to which scheme for granting incentive increment was put forward did not make it a condition precedent in that it did not state that the bonus increments would be granted only to those who had acquired the prescribed qualification subsequent to the formulation of the scheme. As I have already pointed out the two conditions essential for earning the increments i.e., qualification and acquisition of that qualification on his own and without monetary assistance from the railways. It is not denied the applicant had acquired the qualification on his own and, therefore, that part of the covenant in Annexure A-1 restricting the grant of increment did not exist and, therefore, the only other question of eligibility for grant of increments is whether he had acquired the qualification prescribed for earning increments. By the very fact that increments given earlier were being withdrawn on the ground that the man had acquired the qualification prior to the scheme itself would put an end to this controversy since the benefit was withdrawn on the ground of his having been

acquired the qualification earlier to the Board's order at Annexure A-1. The Railways do, however, contend that the man did not qualify or did not have the necessary qualification for earning increments. I think that to be an erroneous assumption to make to justify the withdrawal of financial benefits extending to him under Annexure A-3. I now come back again to the scheme under Annexure A-1 and with reference to the eligibility criteria prescribed for the staff of Personnel Department that people aspiring for the advance increments it is enough that they should have acquired post graduate diploma in social science or industrial relation by a University or recognised institution. The said order is very plain and does not present any difficulty in either understanding or interpreting it. It clearly means that one should have a post graduate diploma in personnel management or industrial relation conducted by a University or recognised institution. The applicant had a post graduate diploma in social science conducted by the Indian Institute of Social Order, Loyola College, Madras. Nobody denies that the man had acquired that qualification by passing prescribed examination. A thorough and complete reading of the certificate issued in that behalf makes it clear that the applicant had obtained a diploma in social science which included industrial relation and labour welfare. In other words the man did really have a diploma in industrial relation and in this manner was qualified for earning the increments. Hence it is I must hold that the demand made vide Annexure A-3 is clearly contrary to the law and facts. In this view the application will succeed. The impugned order Annexure A-3 dated 25.1.1993 shall stand quashed and in lieu the order at Annexure A-2 dated 5.5.1992 stands restored. The Railways are directed



to implement Annexure A-2 and comply with it. The compliance will include payment of all consequential benefits and the same shall be done within three months from the date of this order. I make it clear that quashing of Annexure A-3 is restricted to the applicant and not to anybody else to whom it may also be applicable.

Sd-

VICE-CHAIRMAN

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11/6/93

SECTION OFFICER
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE

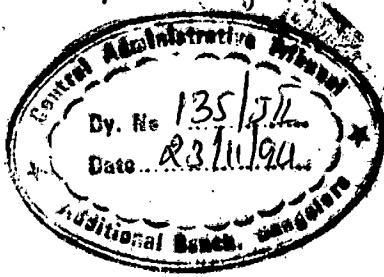


Recd. by post
R
21/11/94

Enter in SLP file, SL Registered & main Register & add
to file & note. Thereafter, @ least per R/LAB of 10/93,
a photocopy of this with a copy of O.A. order.

From:-

The Registrar
Supreme Court of India
New Delhi.



23/11/94 V
24/11/94 JII
24/11/94 Sub
D.NO. 15560/94 /SEC. IV-A
SUPREME COURT OF INDIA
NEW DELHI.

DATED:- 24-10-94

To

The Registrar,
Central Administrative Tribunal Bench, Bangalore,
Second floor, Commercial Complex, Gokhale Nagar,
at Bangalore.

PETITION FOR SPECIAL LEAVE TO APPEAL (CIVIL/CRL.) NO. 16292/94
(Petition under Article 136(1) of the Constitution of India
from the Judgment and Order dated 13-10-93
of the High Court of Judicature at C.A.T. at Bangalore,
in O.A. No. 223/93).

The Divisional Personnel Officer

...PETITIONER(S)

VERSUS

B. L. Gopal

...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 19-9-94.

Yours faithfully,

N Shetty/871
For Registrar

B-652

CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH

C.P.No.15/94 IN O.A. No.223/93

TUESDAY, THIS THE 5TH DAY OF APRIL, 1994

SHRI JUSTICE P.K. SHYAMSUNDAR .. VICE CHAIRMAN

SHRI T.V. RAMANAN .. MEMBER (A)

Sri B.L. Gopal,
Aged 59 years,
S/o Sri B.R. Lakshman Shetty,
69, Jaladarshini Layout,
New BEL Road, R.M.V. Extension,
2nd Stage, Bangalore-560 094. .. Petitioner

(By Advocate Dr. M.S. Nagaraja)

Vs.

1. Sri P.P. Kunikrishnan,
Chief Personnel Officer,
Southern Railway, Park Town,
Madras - 600 003.

2. Sri Mohan A. Menon,
Divisional Personnel Officer,
Southern Railway,
Bangalore Division, Bangalore-23.

3. Sri Mazihuzzaman,
Secretary,
Railway Board,
Rail Bhavan, New Delhi.

4. Sri Mazihuzzaman,
Secretary to Govt. of India,
Ministry of Railway,
Rail Bhavan, New Delhi. .. Respondents

(Advocate by Shri A.N. Venugopal)
Standing Counsel for the Railways

ORDER

Shri Justice P.K. Shyamsundar, Vice Chairman:

We have heard both sides and notice in particular the order passed by the Railway Authorities copy of which is produced before us today by the learned counsel for the applicant in the

original application for our perusal. From the order placed before us, we find that the directions of the Tribunal have been amply complied with. In terms of the order, the applicant will become entitled to monetary benefits. We, however, direct the department Railways to ensure payment before the 30th of April, 1994.

2. With this observation, this contempt petition is ordered to be filed.

3. At this stage, Shri A.N. Venugopal files a reply statement in which there is nothing more than what we have just now uttered. The reply statement is also placed on record.

4. No costs.

Sd/-

(T.V. RAMANAN)
MEMBER (A)

Sd/-

(P.K.SHYAMSUNDAR)
VICE CHAIRMAN

TRUE COPY

psp.

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SECRETAIRY
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE