

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

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

Dated: 1 NOV 1993

APPLICATION NO(S) 40 of 1993.

APPLICANTS: Vincent Furtado

RESPONDENTS: Secretary, Deptt. of Telecom,
New Delhi and Others.

TO.

1. Sri, D.T. Devendran, Advocate, No. 27, Chandrashekar Complex,
First Main Road, First Floor, Gandhinagar, Bangalore-9.
2. The Chief General Manager, Telecommunications,
Karnataka circle, ulsoor, bangalore-8.
3. Sri. M. Vasudeva Rao, Central Govt. Stng. Counsle,
High Court Building, 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 27-10-1993.

for *N. V. S.*
DEPUTY REGISTRAR
JUDICIAL BRANCHES.

1/11/93

Issued
[Signature]

gm*

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BANGALORE

DATED THIS DAY THE 27TH OF OCTOBER, 1993

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

APPLICATION NO. 40/93

Vincent Furtado,
s/o F.X. Furtado,
aged about 29 years,
now working as Lower Division
Clerk, but, performing the
duties of Telephone Junior
Accountant, office of the
General Manager, Telecom
District, Dakshina Kannada,
Mangalore-575 001, and

residing at C/o Margaret Veigas
Compound, Behind Mission Ceme-
tery, Souterpete I Left Cross,
Valencia, Kankanady Post,
Mangalore-575 002.

... Applicant

(Shri D.T. Devendran - Advocate)

vs.

1. The Union of India,
represented by the Secretary to
Government, Department of
Telecommunications,
New Delhi.
2. The Chairman,
Telecom Commission,
New Delhi.
3. The Chief General Manager,
Telecommunications,
Karnataka Circle,
Bangalore-9.
4. The General Manager,
Dakshina Kannada, Telecom
District, Mangalore-575 001,
Dakshina Kannada District.

... Respondents

(Shri M.V. Rao - Advocate)

....2/-



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

O R D E R

The applicant, Shri Vincent Furtado is aggrieved as he was not promoted to the level of Telecom Junior Accountant despite his having qualified in the competitive examination held on 18th and 19th July 1991. He prays that he should be appointed in the cadre of Junior Accountant from the date on which persons similarly situated and who had come out successful in the aforesaid competitive examination were so appointed.

2. The facts in brief are that the applicant was appointed as a LDC in Telecom Department in December, 1986. He appeared in the competitive examination for promotion from LDC to Junior Accountant held on 18th and 19th July, 1991. The Department notified by its order dated 22.11.1991 (Annexure-A) that the applicant had been declared "qualified" in the said examination. He was, however, not appointed as Junior Accountant for want of vacancies. The applicant has filed the present OA in January, 1993. He has since been appointed as Junior Accountant by the department by its order dated 23.2.1993.

3. The main part of the relief, namely, promotion to the level of Junior Accountant having been accorded to him, the question that remains now is whether the applicant is entitled for such appointment from a date

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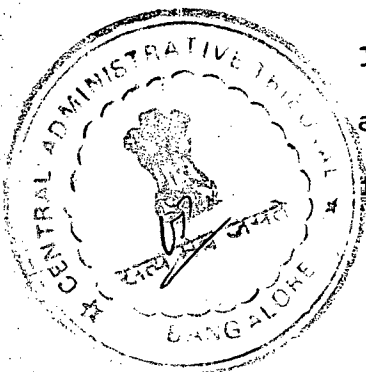
earlier than 23.2.93. The applicant has urged the following grounds in support of his contention that he should have been appointed from an earlier date:-

- (a) As he had qualified in the competitive examination held in July 1991, as indicated in the order dated 22.11.91, he had a right to be appointed as Junior Accountant from that year itself.
- (b) The department by its order dated 30.12.92 (Annexure-L) had given promotion as Junior Accountant to candidates who had not qualified in the examination held in July, 1991.

4. As regards the first ground, the department has contended that he had qualified in the said examination but persons who secured higher rankings were appointed against the existing vacancies. They have referred in this connection to a letter dated 30.10.91 from the department, as at Annexure-E, which, inter alia, states as follows:

- "(i) The Departmental Examination for Lower Division Clerks (TA) for appointment as Junior Accountants is a QUALIFYING-CUM-COMPETITIVE one. All candidates who secure the prescribed minimum or more are declared as qualified. The list of qualified officials in a particular year is to be made in order of merit and appointment is to be given to the qualified candidates depending upon the number of vacancies earmarked for departmental examination quota.
- (ii) In case of all those who have qualified in any year cannot be absorbed in that year they may be appointed in the next year(s). For appointment as Junior Accountant, the candidates who have qualified in an earlier examination will be given preference."

It is further seen that in the communication dated 22.11.91 as at Annexure-A, three officials have been declared successful in the competitive examination, whereas the applicant



had been declared 'qualified' in the above examination. It clearly shows that the persons who ranked higher in order of merit were appointed against the available vacancies. We find that the department notified holding of another examination in November, 1992 as at Annexure-J. The applicant was appointed in February, 1993 against such vacancies. The learned counsel for the respondents submits that no person junior to him had been appointed superseding the applicant subsequent to 1991. We note this submission. As such, the applicant's contention that since he had qualified in the examination held in July 1991, he should straightaway have been appointed as Junior Accountant lacks substance.

5. As regards the second ground, namely, promotion of certain persons as Junior Accountant by order dated 30.12.92 (Annexure-L), the department has brought out that the persons who were covered by ^{the} order aforesaid, were given promotion on the basis of the quota earmarked for seniority-cum-fitness and not on the basis of the competitive examination. The recruitment rules provide that the vacancies at the level of Junior Accountants will be filled as follows:-

Direct recruitment	-	60 per cent
Seniority-cum-fitness	-	20 per cent
Competitive Examination	-	20 per cent.

On the basis of representations from the employees' side, the department had taken a decision communicated vide letter dated 20.10.91 that the quota meant for direct recruitment to the cadre of Junior Accountants may be diverted to the promotion quota, as a one time measure, if sufficient

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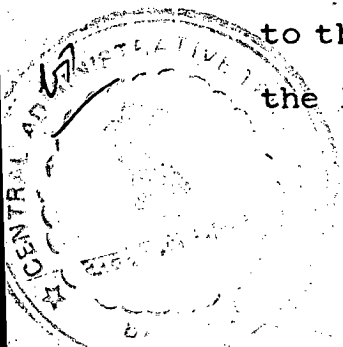
justification exists in the concerned circle. On the basis of this circular, the Karnataka Circle could get 16 posts to be filled up on the basis of seniority-cum-fitness. Accordingly, 16 persons were promoted as per Annexure-L. Of these, two were earmarked for Scheduled Caste candidates and two for Scheduled Tribe candidates and the balance of 12 for general categories. The twelve persons belonging to unreserved categories who were promoted as at Annexure-L were all senior to the applicant as is evident from the gradation list enclosed with the application. Since the applicant's position in the seniority list was 13, he could not be covered by promotion on the basis of seniority-cum-fitness made in 1992.

6. The applicant's counsel contends that as per Department of Telecommunication's letter dated 21.11.92 (Annexure-G), 18 posts were diverted to the promotional quota. If this has been implemented, even after providing for reservation for Scheduled Castes and Scheduled Tribes, the applicant, whose position is at No. 13 would have got promotion along with others. At our request, the respondents have produced the relevant file, dealing with this issue. We find from the note dated 3/4.12.92 that there were only 20 vacancies in the Karnataka Circle and the position of each quota would be as follows:-

Competitive Examination quota	- 4 posts (20%)
Seniority-cum-fitness quota	- 4 posts (20%)
Direct recruitment quota	- 12 posts (60%)

After diversion of the direct recruitment quota of twelve to the seniority-cum-fitness quota, the posts available for the latter quota would be 16. As such, the communication

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dated 21.11.92 as at Annexure-G, proposing diversion of 18 posts, was not based on the correct factual position and there seems to have ^{been} some mix up in the department at that time about the number of posts available. In view of the clear position that has now been indicated, there were only 16 vacancies to be filled up on the basis of seniority-cum-fitness of which 12 were available to the candidates belonging to unreserved categories. As the applicant's position admittedly was No.13 in the gradation list, he missed the opportunity of being promoted in December, 1992, but has however, since been promoted from February, 1993.

7. In view of the above, we hold that the application *is devoid of merit and accordingly dismiss the same. No costs.*

Sd-

27/10/92
Member (J)

Sd-

Member (A)

no time
1/11/92