

CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH

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

Dated: 1 MAR 1994

APPLICATION NO(s) 481 of 1993.

APPLICANTS:

D.Rajasekharan  
T.O.

RESPONDENTS:

v/s. General Manager, Railways Southern,  
Bangalore and Others.

1. Sri.K.V.Shamanna, Advocate, No.1465, 14th Main Road,  
West of Chord Road, Mahalakshmiapuram, Bangalore-86.
2. The General Manager, Southern Railways, Park Town,  
Madras-600003.
3. The Chief Personnel Officer, Southern Railways,  
Park Town, Madras-600003.
4. The Chief Engineer(Construction),  
Southern Railway, 18 Millers Road,  
Bangalore-560046.
5. Sri.A.N.Venugopal Gowda, Advocate,  
No.8/2, Upstairs, R.V.Road, Bangalore-4.

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 22-02-1994.

gm\*

OLC  
9  
Issued  
1-3-94  
Gah

*Se Shamanna*  
for DEPUTY REGISTRAR 1/3  
JUDICIAL BRANCHES.

CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH: BANGALORE

APPLICATION NO. 481/1993

TUESDAY, DATED THE 22ND DAY OF FEBRUARY, 1994.

Present: Mr. Justice P.K. Shyamsunder, Vice Chairman

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

D. Rajasekharan  
S/o. M. Dandapani  
Aged about 49 years  
Confidential Assistant  
O/O Chief Engineer (Construction)  
Southern Railway, 18, Millers Road  
Bangalore - 560 046.

... Applicant

(By Advocate Shri K.V. Shamanna)

Vs.

1. Union of India, represented by  
The General Manager  
Southern Railway, Park Town  
Madras-600 003.

2. The Chief Personnel Officer  
Southern Railway, Park Town  
Madras - 600 003.

3. The Chief Engineer (Construction)  
Southern Railway  
18, Millers Road  
Bangalore - 560 046.

... Respondents

(By Shri A.N. Venugopal, learned Standing  
Counsel for the Railways)

O R D E R

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

Admit.

We have heard the learned counsel for the applicant and the learned Standing Counsel for the Railways, Shri A.N. Venugopal. The applicant, an employee of the Southern Railway, was promoted to the post of Confidential Assistant by the order at Annexure-A1. Subsequently, it was discovered that his

Annual Confidential Report (ACR for short) for the year 1991-92 had not been taken into account at the time of his selection for the post of Confidential Assistant. The said report contained adverse remarks in relation to the applicant, ~~as such~~, the authorities decided that his promotion as Confidential Assistant should be deemed to be adhoc and that he should be communicated the adverse remarks for further necessary action. Accordingly, the adverse remarks were communicated to him. His representation was considered and it was rejected. The applicant thereafter came with an application before this Tribunal in O.A. 722/1993. The Tribunal disposed of the application on the 19th day of January, 1994 quashing the order passed by the Appellate Authority rejecting the representation of the applicant and remitted the case back to the Appellate Authority with a direction to pass an appropriate order in the light of the observations made in the order and in accordance with law within a period of 3 months from the date of receipt of a copy of that order. The applicant's grievance is that he was not being considered for the post of Personal Assistant because his promotion to the lower post of Confidential Assistant was being treated as adhoc, which is totally incorrect and illegal. Just because the adverse entries in his ACRs for the year 1991-92 had been overlooked at the time of his selection the respondents could not have treated his promotion already made to the post of Confidential Assistant as adhoc. In support

U  
m

of his contention, the learned counsel drew our attention to paragraph 8.2 of Ministry of Railways, Railway Board's Master circular no.E(NC)I/90/CR/4 dated 17.6.1991 addressed to the General Managers of All Indian Railways and others in which instruction have been given as to how to deal with matters relating to confidential reports of non-gazetted railway servants. para-8.2 reads as follows:-

" 8.2: All representations against adverse remarks should be dealt with and decided upon expeditiously by the competent authority, i.e. normally the authority next above the Reviewing authority and in any case within three months from the date of submission of the representation. The competent authority in consultation with the Reporting and/or Reviewing authority, if such consultation is necessary, should consider the representation and pass orders on the representation, either

- (a) expunging the adverse or critical remarks in toto; or
- (b) toning down the adverse or critical remarks, or
- (c) rejecting the representation.

Pending the final disposal of the representation, if submitted within the prescribed time limit, the adverse remarks should not be treated as operative, for purposes of any consideration including promotion. If no representation has been submitted or the representation submitted has been finally disposed of, there is no bar to the adverse remarks being taken note of. The orders passed on the representation shall be final and the Railway servant concerned should be informed suitably of the decision, duly keeping a copy of the order in his CR folder. "

In view of the specific and clear instruction that pending the final disposal of representation against adverse remarks, if submitted within the prescribed time limit, the adverse remarks should not be treated as operative for purposes of any consideration, including promotion, we are surprised as to why the applicant's promotion to the post of Confidential Assistant



should be treated as adhoc by the respondents. In fact, these remarks had not even been communicated to the applicant prior to the date of his appointment as Confidential Assistant after due selection. These remarks were communicated subsequently and he had filed a representation also within the prescribed time. It is all the more surprising, therefore, as to how the applicant's appointment as Confidential Assistant could be treated as adhoc. Once his appointment is treated as regular to the post of Confidential Assistant his eligibility for being considered for the post of Personal Assistant cannot be questioned. In this view of the matter, we would direct the respondents to keep a post of Personal Assistant available for the applicant and also consider him against that post for promotion subject to the outcome of the disposal of the

representation made by the applicant to the Appellate Authority

in accordance with the direction given by this Tribunal in

O.A. No.772/1993. Let a copy of this order be sent to the Appellate Authority. The application is thus finally disposed of.

No order as to costs.

Sd-

(T.V. RAMANAN)  
MEMBER(A)

Sd-

(P.K. SHYAMSUNDER)  
VICE CHAIRMAN

MR.

TRUE COPY

*S. Shanmugam*

SECTION OFFICER

CENTRAL ADMINISTRATIVE TRIBUNAL

ADDITIONAL BENCH

BANGALORE

1/3