

CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH

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

Dated: 23 NOV 1993

APPLICATION NO(s) 664 of 1993.

APPLICANTS: N.R.Venkatesh

RESPONDENTS: Chief Secretary,  
Government of Karnataka & Others.

TO.

1. Dr.M.S.Nagaraja,  
Advocate, No.11,  
First Cross,  
Second Floor,  
Sujatha Complex,  
Gandhinagar,  
Bangalore-9.
2. Sri.M.H.Motigi,  
Govt. Advocate,  
Advocate General's Office,  
KAT Unit, Commercial Complex,  
Indiranagar, Bangalore-38.
3. Sri.M.S.Padmarajaiah,  
Central Govt. Stng.Counsel,  
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 18-11-1993.

*M. Deo*  
DEPUTY REGISTRAR  
JUDICIAL BRANCHES.

*23/11/93*

gm\*

*C Served*  
*gm*

CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH

ORIGINAL APPLICATION No.664/93

DATED THIS THE 18TH DAY OF NOVEMBER, 1993

SHRI JUSTICE P.K. SHYAMSUNDAR ... VICE CHAIRMAN

SHRI V. RAMAKRISHNAN ... MEMBER (A)

Sri N.R. Venkatesh, I.A.S.,  
(Ex-Captain)

aged 55 years,  
S/o Sri V. Narayana Rao,  
54/A, 100 feet Road,  
Koramangala 2nd Block,  
Bangalore - 560 034.

... Applicant

(By Advocate Dr. M.S. Nagaraja)

Vs.

1. State of Karnataka  
represented by  
Chief Secretary to Government  
of Karnataka, Vidhana Soudha,  
Bangalore - 560 001.

2. Secretary to Government,  
Dept. of Personnel & Admn, Reforms,  
Government of Karnataka,  
Vidhana Soudha,  
Bangalore - 560 001.

3. Union of India  
represented by  
Secretary to Government  
Dept. of Personnel & Training  
New Delhi. ... Respondents

(By Advocate Shri M.H. Motigi for R-1 and 2 and  
Shri M.S. Padmarajaiah for R-3)

ORDER

Per Shri V. Ramakrishnan, Member (A).

The applicant Shri N.R. Venkatesh started his career as an Emergency Commissioned Officer in the Indian Army when he was commissioned in the rank of Second Lieutenant in February, 1964.



He was released from the Emergency Commissionon 1.7.1969 and was again recalled for active military service in 1971 and later on released from the Army in 1972. In 1970, he took the competitive examination for Karnataka Administrative Service and came out successful. He was appointed as a Class I Officer reserved for released Emergency Commissioned Officers on 6.6.1972. He was confirmed by the Government of Karnataka by a notification issued in 1981. He seems to have submitted various representations to the Government for recommending him for promotion to the I.A.S., but, this was not done as he was yet to be confirmed in K.A.S. He was, however, considered for selection to the I.A.S. in the year 1982 and was appointed to the service in September, 1982 and was assigned 1978 as the year of allotment.

2. We may refer at this stage to a development which has a bearing on this case. Government of Karnataka had granted higher seniority to Emergency Commissioned Officers with professional qualifications as Engineers and Doctors who had served in the Military during the period from 1.1.1962 to 10.1.1968 and later appointed to State Government and they were entitled to seniority from the date on which the first recruitment took place after the date of their joining military service vide their orders dated 28.9.1963. Since, the applicant was appointed to a non-technical post in the State Civil Service after release from the Military, this benefit was not extended to him. Subsequently, the State Government, vide their order dated 30.5.1990 (Annexure-A4) extended the benefit of seniority granted to Doctors and Engineers to holders of non-technical posts also who had taken up military service during the period from 1.11.1962 to 10.1.1968 and who were recruited to the State Civil Service on their release from the Military service.

In the light of this order, Shri Venkatesh's seniority in the K.A.S. Group 'A' service was upgraded vide Government order dated 25.10.1991 as at Annexure-A5 and the State Government decided that his deemed date of appointment to the State Civil Service will be 9.2.1964 the date on which he was granted Emergency Commission. The orders at Annexure-A4 extending the benefit to non-technical categories have since been cancelled to which we will advert later.

3: The applicant submitted a representation dated 25.10.1990 addressed to the Union Government claiming that his seniority in the I.A.S. to which he was appointed in 1982 should be revised and he should be re-assigned the year of allotment in I.A.S. as 1972, instead of 1978 which was actually assigned. One of the main grounds taken in the representation is that his seniority in the State Civil Service had been upgraded. The Government of India, however, turned down that representation stating as follows:

"I am directed to refer to the State Government's letter No.DPAR 544 SAS 87 the 5th December, 1991 on the subject mentioned above and to say that the request of the officers for holding Review Selection Committee meeting to consider the case of officers whose service records have undergone change subsequently, cannot be accepted as there is no provision to that effect in the Promotion Regulations. In the absence of any such provision, it is not possible to give any relief to Shri Venkatesh either for considering him by the Selection Committee or to revise his seniority in the IAS after taking into consideration his military service in the State Civil Service. The representation of Shri Venkatesh is therefore, rejected and he may be informed accordingly."

  
This was communicated to the applicant by the State Government vide their letter dated 24.3.1992 as per Annexure-A7. The applicant had submitted further representation against this decision but to no avail. He has approached this Tribunal to quash the letter dated 24.3.1992 Annexure-A7 containing a copy of Government of India's letter rejecting his claim for higher seniority in the I.A.S. and he <sup>seeks</sup> that his case should be reviewed taking into account the subsequent changes which has resulted in his higher ranking in the seniority list in the State Civil Service vide notification dated 25.1.1991 as at Annexure-A5. He has also referred to his representations where the

main thrust is that his Army service entitles him to retrospective seniority in the I.A.S. He has also referred to the proviso to Regulation 5(2) of the I.A.S. (Appointment by Promotion) Regulations which states that Emergency Commissioned Officers appointed to State Civil Service are eligible for consideration to the I.A.S., if they have completed not less than four years of actual continuous service in a Class I State Civil Service. He states that as he was appointed to the K.A.S. (Group 'A') in 1972, he was eligible to be considered for promotion to I.A.S. after 1976 whereas he was actually considered only in 1982 and contends that this has resulted in injustice to him.

4. Regulation 5 of the I.A.S. (Appointment by Promotion)  
Regulations states that the case of members of the State Civil Service shall be considered in the order of their seniority in that service. It further requires that the officer should be a substantive member of the State Civil Service and he should have completed 8 years continuous service at the appropriate level. In the case of released Emergency Commissioned Officers, the relevant provision reads as follows:

"Provided also that in respect of any released Emergency Commissioned or Short Service Commissioned Officers appointed to the State Civil Service, eight years of continuous service as required under the preceding proviso shall be counted from the deemed date of their appointment to that service, subject to the condition that such officers shall be eligible for consideration if they have completed not less than four years of actual continuous service, on the first day of the January of the year in which the committee meets, in the post of Deputy Collector or in any other post or posts declared equivalent thereto by the State Government."

The above proviso does not change the requirement as contained in the main provision of sub-regulation (2) of Regulation 5 which states:

"The Committee shall consider for inclusion in the said list, the cases of members of the State Civil Services in the order of seniority in that service of a number which is equal to five times the number referred to in sub-regulation (1) (emphasis supplied)".

VI

In other words, such officers shall be considered for appointment to the I.A.S. only on the basis of their seniority in the State Civil Services. The requirement of *a minimum of* eight years of continuous service in the State Civil Service shall be counted from the deemed date of their appointment to that service provided they have completed not less than four years of actual continuous service. It is, therefore, not correct to contend that irrespective of his seniority in the State Civil Service, the applicant should automatically be considered for promotion to I.A.S. in 1976, i.e., on completion of four years of service in the K.A.S. The applicant has also argued that the subsequent improvement in his seniority in the State Civil Service as a result of higher ranking assigned to him would entitle him to be assigned an earlier year of allotment in the I.A.S.

5. We have heard Dr. M.S. Nagaraja, the learned counsel for the applicant and Shri M.H. Motigi and Shri M.S. Padmarajaiah, the learned standing counsel for the State Government and the Union Government respectively.

6. The respondents argued that any change in the seniority in the State Civil Service would not entitle the officer automatically to be assigned an earlier year of allotment in the I.A.S. Apart from the contention, we find that the principal ground adduced by the applicant, viz., that his seniority in the K.A.S. has been revised *upwards* no longer holds good. We have been given a copy of the Government of Karnataka's order No.DPAR 14 SSR 91 dated 28.9.1993 (translated into English from Kannada), which has cancelled the earlier order dated 30.6.1990 as at Annexure-A4. The English



translation of paras 3 and 4 of this order read as follows:

"3. The Karnataka Administrative Tribunal in its order dated 4.2.1992 in application No.3822/91 has quashed the Government Order dated 30.5.1990. Since the Supreme Court in its order dated 23.7.1993 has dismissed the Special leave Petition filed by the State Government in this behalf, the Government Order No.DPAR 12 SSR 80 dated 30.5.1990 stands quashed.

4. In this background, since the Government Order No.DPAR 12 SSR 90 dated 30.5.1990 stands quashed; it is instructed that the benefit of the said order shall not be extended to any Government servant."

7. It is, therefore, clear that the applicant's seniority in the K.A.S. is being brought down to the original level on his appointment in the year 1972 and there is no earlier "deemed date of appointment" to the State Civil Service. He has been considered for promotion to the I.A.S. on the basis of his original position in the seniority list of K.A.S. (prior to improvement of his seniority on the basis of the order dated 30.5.1990 which has since been cancelled) which position he has not disputed. As such, the main plank on which the application rests, viz., that his case should be reviewed "taking into account the subsequent change as a result of higher ranking assigned to the applicant in the seniority list in notification dated 25.10.1991" no longer holds good.

8. We, accordingly, hold that this application is devoid of merit and dismiss the same with no order as to costs.

Sd-

(V. RAMAKRISHNAN)  
MEMBER (A)

Sd-

(P.K. SHYAMSUNDAR)  
VICE CHAIRMAN

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R. Ollie S  
CENTRAL ADMINISTRATIVE TRIBUNAL  
ADDITIONAL BENCH  
BANGALORE