

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Second Floor,
Commercial Complex,
Indiranagar,
BANGALORE - 560 038.

Misc. Appln. No. 394 of 1995 in

Dated: **4 OCT 1995**

APPLICATION NO. 706 of 1993.

APPLICANTS: Sundar Bhandary and another.,
V/S.

RESPONDENTS: The Regional Provident Fund Commissioner,
Bangalore and others.,

To


1. Dr. M. S. Nagaraja,
Advocate, No. 11,
Sujatha Complex,
First Cross,
Gandhinagar, Bangalore-9.
2. Sri. M. Vasudeva Rao,
Additional C.G.S.C.
High Court Bldg,
Bangalore-560 001.

Subject:- Forwarding copies of the Orders passed by the
Central Administrative Tribunal, Bangalore-38.

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Please find enclosed herewith a copy of the Order/
Stay Order/Interim Order, passed by this Tribunal in the above
mentioned application(s) on 22nd September, 1995.

Issued on
4/10/95

for 
DEPUTY REGISTRAR
JUDICIAL BRANCHES.

gm*

C/c

In the Central Administrative Tribunal
Bangalore Bench
Bangalore
MA 394/95-

Application No. 706 of 1993

ORDER SHEET (Contd.)

Sri. Sundar Bhandary & Anr vs. Regional Provident Fund Commissioner

Date	Office Notes	Orders of Tribunal
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PKS (VC)/VR (MA)
22.9.95

We see no reason to modify
the order passed by us. Accordingly,
we dismiss M.A.No.394/95.



Sd-
M(A)

Sd-
VC

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[Signature]
04/10/95
Section Officer
Central Administrative Tribunal
Bangalore Bench
Bangalore

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Second Floor,
Commercial Complex,
Indiranagar,
BANGALORE- 560 038.

Dated: 24 JAN 1995

Miscellaneous APPLICATION NO: 29 and 30 of 1995 in
Original Appln. No. 706 of 1993.

APPLICANTS:- Sri.B.Sundar Bhandary and another.,
V/S.

RESPONDENTS:- The Regional Provident Fund Commissioner,
Bangalore six others.,

To

1. Sri.M,Vasudeva Rao, Additional Central Government
Standing Counsel, High Court Building, Bangalore-1.
2. Dr.M.S.Nagaraja, Advocate, No.11, Second Floor,
First Cross, Sujatha Complex, Gandhinagar,
Bangalore-560009.

Subject:- Forwarding of copies of the Order passed by the
Central Administrative Tribunal, Bangalore.

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Please find enclosed herewith a copy of the ORDER/
STAY ORDER/INTERIM ORDER/ passed by this Tribunal in the above
mentioned application(s) on 13-01-1995.

Issued on
24/1/95
B.


% to DEPUTY REGISTRAR
JUDICIAL BRANCHES.

send to Bhandary & another vs Regional Provident Fund Commissioner, Blore.

Date	Office Notes	Orders of Tribunal
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VR (MA)/ANV (MD)
13.1.95 MA 29 and 30 of 95

We have heard Shri NV Rao for the department and Shri Sreedhar for Dr. MSN for applicants in OA 706/93. We condone the delay in filing MA for modification of order. We have gone through the observation of the Supreme Court in CC 27584 dated 11.11.94. As The department had gone to Supreme Court against the decision of this Tribunal in OA 692/89 on which we have relied while issuing directions in OA 706/93 and keeping in view the observations of the Supreme Court in their order dated 11.11.94, we modify the order dated 9.6.94 by granting time for the department to comply with the directions of this Tribunal till such time a decision is rendered on the SLP pending before the Supreme Court. We also once again make it clear that our decision in OA 706/93 will be subject to the final outcome of the SLP.

Sd/-

MEMBER (J)

Sd/-

MEMBER (A)



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[Signature]
29/01/95

Section Officer
Central Administrative Tribunal
Bangalore Bench
Bangalore

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Second Floor,
Commercial Complex,
Indiranagar,
BANGALORE- 560 038.

Miscellaneous Applications No.453 &
454 of 1994 in

Dated: 7 OCT 1994

APPLICATION NO: 706 of 1993.

APPLICANTS:- Sri.Sundar Bhandary and another,
V/S.

RESPONDENTS:- The Regional Provident Fund Commissioner,
Bangalore and others.

T.

1. Dr.M.S.Nagaraja,
Advocate, No.11,
Second Floor,
First Cross,
Sujatha Complex,
Gandhinagar,
Bangalore-560009.
2. Sri.M.Vasudeva Rao,
Additional Central Government
Standing Counsel, High Court Building,
Bangalore-560 001.

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

--xx--

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

Issued on

7/10/94

o/c

for DEPUTY REGISTRAR
JUDICIAL BRANCHES.

Sri. Sundar Bhandary & Am. V/s P.F. Commissioner,
- 14 -

MA 453 & 454/94² in OA 706/93.

Date

Office Notes

Orders of Tribunal

ORDERS ON MA 453/94

VR (MA)/ ANV (MJ)
4.10.94

On the ground that the seniority list of UDCs as on 1.5.92 was quashed by this Tribunal in OA 704/93 filed by Shri C.R. Venkatesh and others and the review application filed by the Department as well as by the private respondents is pending, respondents have sought for extension of time in MA 453/94 by a period of two months.

Heard. Time extended by a period of two months from today.

MA 454/94 for condonation of delay is allowed.

M(J)

M(A)

TRUE COPY

Section Officer
Administrative Tribunal
Bangalore Bench
Bangalore

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Second Floor,
Commercial Complex,
Indiranagar,
Bangalore-560 038.

Dated:- 27 JUN 1994

APPLICATION NUMBER: 706 of 1993

APPLICANTS:

Sh. Sundar Bhandary and another vs. Regional Provident Fund
Commissioner, Bangalore-1 and
Others.

RESPONDENTS:

- ① Dr. M.S. Nagaraja, Advocate. No.11, Second Floor,
First Cross, Sujatha Complex, Gandhinagar,
Bangalore-9.
- ② Regional Provident fund Commissioner, Karnataka Region,
30, Rajaram Mohan Roy Road, Bangalore-560025.
- ③ Sri. Janardhan Alva. A, Section Supervisor,
Regional Provident fund Commissioner-II,
Balamatta, MANGALORE-575002.
- ④ Sri. Lingappa Shetty, Section Supervisor,
Regional Provident Fund Commissioner-II,
Balamatta, MANGALORE-575002.
- ⑤ Sri. M. Vasudena Rao, Addl. C.G. S.C.
High Court Bldg, Bangalore-1

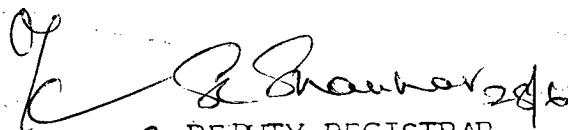
Subject:- Forwarding of copies of the Orders passed by the
Central administrative Tribunal, Bangalore.

Please find enclosed herewith a copy of the ORDER/
STAY ORDER/INTERIM ORDER/, passed by this Tribunal in the above
mentioned application(s) on 09-06-94.

Received for

R-2.

28/6/94


DEPUTY REGISTRAR
JUDICIAL BRANCHES.

CENTRAL ADMINISTRATIVE TRIBUNAL,
BANGALORE BENCH.

ORIGINAL APPLICATION NO. 706/ 1993

THURSDAY, THE 9TH DAY OF JUNE, 1994

Shri V. Ramakrishnan ... Member (A)
Shri A.N. Vujjanaradhya ... Member (J)

1. Shri Sundar Bhandary B.
Aged 36 years
S/o Shri K. Bhandary
Nethravathi Layout,
Kankanady,
Mangalore.
2. Shri L. Raghavendra Rao
Aged 32 years
S/o Shri Srinivas Rao
Quarters No. 2,
Near DC Bungalow
Balmatta
Mangalore. ... Applicants

(By Advocate Dr. M.S. Nagaraja)

Vs.

1. The Regional Provident Fund Commissioner,
Karnataka Region,
Bhavishyanidhi Bhavan,
30, Rajarammohan Roy Road,
Bangalore-560 025.
2. The Central Provident Fund Commissioner,
9th Floor, Mayur Bhavan,
Connaught Circus,
New Delhi.
3. The Union of India
represented by Secretary to Government
Ministry of Labour, Govt. of India,
New Delhi.
4. Shri Lingappa Shetty
Section Supervisor,
Sub-Regional Office of the
Provident Fund Commissioner,
Mangalore.
5. Shri Janardhana Alva,
Section Supervisor,
Sub-Regional Office of the
Provident Fund Commissioner,
Mangalore.

6. Shri M. Seenappa Gowda,
Section Supervisor,
Sub-Regional Office of
the Provident Fund Commissioner,
Mangalore.
7. Shri P. Sridhara Kakrannaya,
Section Supervisor,
Sub-Regional Office of the
Provident Fund Commissioner,
Mangalore.

... Respondents

(By Advocate Shri M.V. Rao, Additional
Standing Counsel for the Central Govt.)

O R D E R

Shri V. Ramakrishnan, Member (A)

The applicants of the case have sought for a direction that they should be promoted to the cadre of head clerks based on their seniority as UDC from the date their juniors have been promoted as they have passed the qualifying examination.

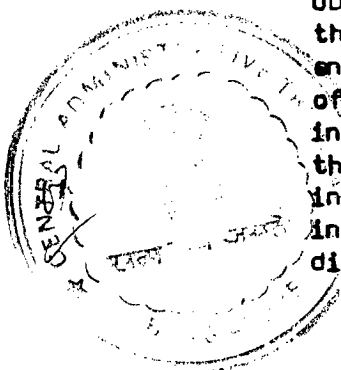
2. The facts of the case in brief are as follows;

According to the Recruitment Rules, the post of head clerk is filled up 75% by promotion of UDCs serving in the headquarters office and 25% by promotion of employees serving in headquarters and regional offices on the basis of a qualifying examination subject to completion of three years service. The recruitment rules, inter alia, contain a proviso that the inter se seniority of the successful candidates against the examination quota shall be determined according to merit on the basis of marks obtained by them. We are informed that the recruitment rules have subsequently been amended to change the percentage to 66 2/3 for promotion and 33 1/3 percent for examination quota as against the 75% and 25% respectively and that there is no other change in the relevant recruitment rules. The applicants had taken the examination for being considered under the 25% quota as it then existed and they came out successful in the qualifying examination as could be seen in the office memo. dated 29.3.93 (Annexure A-2).

The first applicant has obtained the rank of 22 and the second applicant has been ranked as 30th. Against the examination quota, the department has promoted persons securing the first 7 ranks in the qualifying examination besides a candidate belonging to Scheduled Caste who got the 29th rank. The applicants are aggrieved that even though they are senior to the promoted candidates, referred to above as per order dated 26.5.93 as at Annexure A-4, they have not been promoted to the level of head clerks/ section supervisors. Their contention is that the promotion is only on the basis of a qualifying examination and once they have qualified, their seniority at the lower cadre of UDC should be the relevant factor and not their ranking in the examination.

3. We find that this question has already come up before the Tribunal in OA 692/89 which was decided on 6.12.90 in the case of Shri Vijay Kumar. A copy of the judgement is attached to this application as Annexure A-6. The tribunal had ^{been} held that the proviso cannot ^{override} ~~over~~ write the main rule. We may extract para 5 of the decision in OA 692/89 which reads as follows:

"We are in perfect agreement with this argument. If a person does not qualify, then he is out of the field. But, once he qualifies in the case of a promotional post, he is to be promoted only on the basis of his seniority in service and not considering whether he has received one mark more or one mark less unlike in the case of a competitive examination. The whole concept of promotion would be defeated if seniority is to be reckoned on the basis of the marks obtained in the test. If it is a direct recruitment, then merit alone is the criteria. But, when it is promotion on the basis of a qualifying examination, once the person passes the qualifying examination, then he cannot be pushed back for the reason that a junior person has obtained half a mark more than him. Therefore, the proviso should not be allowed to swallow the spirit of the Rule. In this case, it is conceded that respondents 3 to 10 were juniors in the cadre of UDCs to the applicant. The applicant is not questioning the placement of respondent-9 as even otherwise he is entitled to be placed above the applicant on the ground of reservation. In view of our finding that the proviso in the Rules, Annexure-A1 should not be read as to defeat the right of a senior person, we are of the view that interests of justice would be met if it is directed that in the seniority list of Head Clerks the applicant is directed to be placed above respondents 3 to 8 and 10."



4. We are informed by Shri M.V. Rao, the learned counsel for the department that according to his knowledge, there is no contrary decision given by any other bench of the Tribunal. He further submits that the department has moved the Supreme Court against the decision of the Tribunal vide SLP No. 16376/ 1992 which is pending.

5. We have heard Dr. M.S. Nagaraja for the applicants and Shri M.V. Rao for the respondents. Dr. Nagaraja contends that we should follow the decision of the Tribunal in OA 692/89 and give appropriate relief to the applicants. The learned standing counsel, however, submits that the intention of the department is that it should be in the nature of 'competitive' examination and not 'qualifying' examination. He also refers to the fact that the matter is pending before the Supreme Court.

6. Following the decision in OA 692/ 89 we quash the order dated 26.5.93 as at Annexure A-4 in so far as it relates to Respondents 4, 5, 6 & 7, if they are actually juniors to the applicant No.1 in the cadre of UDCs and direct the respondents to fill up the quota meant for examination by those candidates who had come out successful in the qualifying examination, in the order of their seniority in the lower cadre of UDCs. The Department will also take into account the claim of Scheduled Caste candidate against the reservation quota. In case the applicants are promoted to the cadre of head clerks/ section supervisors on the basis of this principle, their salary should be fixed notionally with effect from the date their juniors have been promoted and they will not be entitled to draw any arrears. This exercise should be completed within three months from the date of receipt of a copy of this order. We make it clear that this decision will be subject to the final outcome of the SLP pending before the Supreme Court.

No costs.

A. N. V. V. (A.N. Vujjanaradhya)
Member (J)

TCV

SECTION OFFICER
CENTRAL ADMINISTRATIVE
ADDITIONAL SECRETARY
JAN 1994

(V. Ramakrishnan)
Member (A)

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