

CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH

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

Dated:- 27 JUN 1994

APPLICATION NUMBER: 769 Of 1993

APPLICANTS:

RESPONDENTS:

Sh. Sadashiva Puranik vs Regional Provident Fund Commissioner
T.O. Bangalore and Others.

- ① Dr. M. S. Nagaraja, Advocate, No 11, Second Floor,
First cross, Sujatha Complex, Gandhinagar,
Bangalore-9
- ② The Regional Provident Fund Commissioner,
Karnataka Region, Bharishyamichi Bharan,
30, Rayaram Mohan Roy Road, Bangalore-25
- ③ Sri. M. Vasudeva 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
to R-2.

gm*

Parvez
28/6/94

S. Shankar 23/6
for DEPUTY REGISTRAR
for JUDICIAL BRANCHES.

CENTRAL ADMINISTRATIVE TRIBUNAL,
BANGALORE BENCH.

ORIGINAL APPLICATION NO. 769/ 1993

THURSDAY, THE 9TH DAY OF JUNE, 1994

Shri V. Ramakrishnan

... Member (A)

Shri A.N. Vujjanaradhya

... Member (J)

Shri Sadashiva Puranik,
Aged 35 years,
S/o Shri Venketaramana Puranik,
Swamy Prasad Compound,
Doddalakadu,
Ashoknagar Post,
Mangalore - 575006.

... Applicant

(By Advocate Dr. M.S. Nagaraja)

Vs.

1. The Regional Provident Fund Commissioner,
Karnataka Region,
Bhavishyanidhi Bhavan,
30, Rajaram Mohan Roy Road,
Bangalore - 560 025.
2. Central Provident Fund Commissioner,
9th Floor, Mayur Bhavan,
Connaught Place,
New Delhi.
3. Union of India,
Represented by Secretary to
Government, Ministry of Labour,
New Delhi.
4. Shri Janardhana Alva,
Head Clerk,
Sub-Regional Office,
Office of Regional Provident Fund
Commissioner, Mangalore.

Shri M. Seenappa Gowda,
Head Clerk,
Sub-Regional Office,
Office of the Provident Fund Commissioner,
Mangalore.

... Respondents

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



ORDER

Shri V. Ramakrishnan, Member (A)

The applicant in this case has sought for a direction that he should be promoted to the cadre of head clerk based on his seniority as UDC from the date his juniors have been promoted, as he has 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 $66 \frac{2}{3}$ for promotion and $33 \frac{1}{3}$ percent for examination quota as against the 75% and 25% respectively and that there is no other change in the relevant recruitment rules. The applicant had taken the examination for being considered under the 25% quota as it then existed and he came out successful in the qualifying examination as could be seen in the office memo. dated 29.3.93 (Annexure A-2). The applicant has obtained the rank of 39. 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 applicant is aggrieved that even though he is senior to the promoted candidates, referred to above as per order dated 26.5.93 as at Annexure A-4, he has not been

promoted to the level of head clerk/ section supervisor. His contention is that the promotion is only on the basis of a qualifying examination and once he has qualified, his seniority at the lower cadre of UDC should be the relevant factor and not his 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 then held that the proviso cannot override 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 arguments. 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 20 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 Rule, Annexure A-1 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 applicant and Shri M.V. Rao for the respondents. Dr. Nagaraja contends that we should follow the decision of the Tribunal in OA 692/ 1989 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. There is some dispute regarding the inter se seniority of the applicant and Respondent 4. Following the decision in OA 692/89 we quash the order dated 26.5.93 as at Annexure A-4 so far as it relates to Respondents 4 & 5, if they are ^{actually} ~~also~~ juniors to the applicant 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 applicant is promoted to the cadre of head clerk/ section supervisor on the basis of this principle, his ~~salary~~ should be fixed notionally with effect from the date his juniors have been promoted and he 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

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A.N. Vujjanaradhy
Member (J)

S. Balachari¹
SECTION OFFICER 28/6 ²
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE

V. Ramakrishnan
Member (A)

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

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

Miscellaneous Applications No.451 & Dated: 7 OCT 1994
452 of 1994 IN
APPLICATION NO: 769 of 1993.

APPLICANTS:- Sri. Sadashiva Puranik

V/S.

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

To

1. Dr. M. S. Nagaraja, Advocate,
No. 11, Second Floor,
First Cross, Sujatha Complex,
Gandhinagar, Bangalore-560009.
2. Sri. M. Vasudeva Rao,
Addl. Central Govt. Stng. Counsel,
High Court Bldg, Bangalore-560001.

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 04-10-1994.

Issued on

7/10/94 R.

9/c for DEPUTY REGISTRAR
JUDICIAL BRANCHES

Sri. Sadashiva Puranik, 1/3, - 8, Regional Provident Fund Commissioner,
MA 451 & 452/94 in OA 769/93

Date	Office Notes	Orders of Tribunal
		<p><u>ORDERS ON MA 451/94</u></p> <p>VR (MA)/ <u>ANV (MO)</u></p> <p>4.10.94</p> <p>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 & 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 451/94 by a period of two months.</p> <p>Heard. Time extended by a period two months from today.</p> <p>MA 452/94 for condonation of delay is allowed.</p> <p>Srin Sd/- M(J) 4/11/1994 b/MA(A)</p> <p style="text-align: center;">T. K. S. GOWD Chairman Secretary Central Administrative Tribunal Bangalore - 57</p> <p style="text-align: right;">Dated 10/10/94</p>

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

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

Dated: 24 JAN 1995

Miscellaneous APPLICATION NO. 31 & 32 of 1995 in OA.NO. 769/93.

APPLICANTS:- Sri.Sadashiva Puranki,
V/S.

RESPONDENTS:- Regional Provident Fund Commissioner,
Bangalore, and 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, First Cross, Second Floor, 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
20/01/95
AM

9c for DEPUTY REGISTRAR
JUDICIAL BRANCHES.

gm*

Sadasiva Puranik, V/ Regional Provident Fund Commissioner, Bangalore

Date	Office Notes	Orders of Tribunal
		<p>VR (MA)/ANV (AJ) 13.1.95 <u>MANO. 31 & 32 of 95.</u></p> <p>We have heard Shri MV Rao for the department and Shri Sreedhar for Dr. MSN for applicant in OA 769/93. 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 769/93 and keeping in view the observations of the Supreme Court in their order dated 11.11.94, we modified the order dated 9.5.94 by granting more time for the department to not to to make copy now with the directions of this Tribunal till such time a decision is rendered on the SLF pending before the Supreme Court. We also once again make it clear that our decision in OA 769/93 will be subject to the final outcome of the SLF.</p>

Sd/-

Sd/-

MEMBER (J)

MEMBER (A)



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13/1/95
Section Officer
Central Administrative Tribunal
Bangalore Bench
Bangalore

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

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

Misc. Appln. No. 395 of 1995 in

Dated: 6 OCT 1995

APPLICATION NO.

769 of 1993.

APPLICANTS: **Sadashiva Puranik,**
v/s.

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

To

1. Dr. M. S. Nagaraja, Advocate, No. 11,
Second Floor, Sujatha Complex,
First Cross, Gandhinagar, Bangalore-9.
2. Sri. M. Vasudeva Rao, Additional Central
Government Standing Counsel, High Court
Building, Bangalore-1.

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

V
for DEPUTY REGISTRAR
JUDICIAL BRANCHES.

gm*

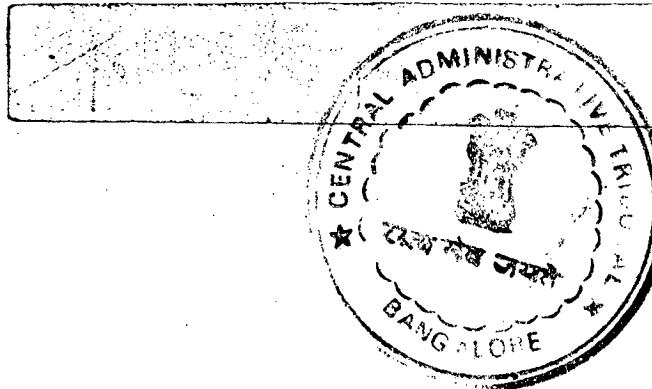
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In the Central Administrative Tribunal
Bangalore Bench
Bangalore

Application No. 769 of 1993

Sri. Sadashiva Puranik, ORDER SHEET (Contd.)
1/6, Regional Provident Fund Commissioner,

Date	Office Notes	Orders of Tribunal
		<p>PKS (VC) / VR (MA) 22.9.95</p> <p>We see no reason to modify the order passed by us. Accordingly, we dismiss M.A. No. 395/95.</p>



Sd/-

Sd/-

MA

VC

TRUE COPY

04/10/95
Section Officer
Central Administrative Tribunal
Bangalore Bench
Bangalore