

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH : BANGALORE

DATED THIS THE 23RD DAY OF APRIL, 1993

PRESENT

HON'BLE SHRI S. GURUSANKARAN ... MEMBER (A)

HON'BLE SHRI A.N. VUJJANARADHYA ... MEMBER (J)

APPLICATION No.116/1992.

Sri S.K. Halasangi,
Aged about 37 years,
S/o Sri S. Kasiraya,
C-6/1, P&T Staff Quarters,
Kavalbhyrasandra,
Bangalore - 560 032.

... Applicant

(Dr. M.S. Nagaraja ... Advocate)

Vs.

1. The Executive Engineer,
Postal Electrical Division,
Bangalore.

2. The Superintending Engineer (Elec)
Postal Electrical Circle,
Bangalore.

3. The Union of India,
Represented by the Secretary to
Government of India,
Ministry of Communication,
New Delhi.

4. Sri S. Shivanna,
Wireman,
Telecom Electrical Division,
Bangalore.

... Respondents

(Shri M.V. Rao, Advocate for official Respondents
No.1-3 and Shri P.A. Kulkarni for Respondent No.4)

This application, having come up before this Tribunal
today for orders, Hon'ble Shri S. Gurusankaran, Member (A) made
the following :

ORDER

In this application filed under Section 19 of the
Administrative Tribunals Act, 1985, the applicant is aggrieved

by the promotion of Respondent (R for short) No.4 to Wireman cadre from the cadre of Assistant Wireman ignoring the legitimate claim of the applicant, who was senior to R-4 in the cadre of Assistant Wireman. He has prayed for quashing the order dated 3.2.1992 (Annexure-A2) and directing the respondents to consider and promote the applicant with retrospective effect from the date R-4 was promoted with all consequential benefits, including payment of arrears of pay.


2. The facts of the case are not in dispute and lie in a narrow compass. The applicant joined in Telecommunication department as Khalasi on 22.7.1982 and was promoted as Assistant Wireman with effect from 15.11.1983. He was also confirmed as Assistant Wireman with effect from 1.4.1988 and the seniority list of Assistant Wireman as on 1.9.1991 prepared by the respondents vide Annexure-A1 shows the position of the applicant at Sl.No.1, while R-4 is shown at Sl.No.4. Further, while the applicant was working as Assistant Wireman since 15.11.1983, R-4 was promoted as Assistant Wireman only on 7.5.1986. As a result of bifurcation of the co-ordinate function of erstwhile Madras Electric Circle, options were called from non-gazetted electrical staff in the states of Andhra Pradesh, Karnataka, Kerala, Tamil Nadu and Pondicherry as per instructions dated 4/5.12.1990 (Annexure-R2). Accordingly, the applicant and R-4 duly exercised their options to serve in Karnataka Circle and the options were accepted by the Superintending Engineer (Electrical), Madras Circle vide order dated 2.5.1991 (Annexure-R3). Based on these options, the provisional seniority list of staff in the various ^{grades} ~~grades~~ was published on 5.9.1991 vide Annexure-A1. Since the provisional seniority list did not contain the names of three officials, who had since been appointed to higher grade or expired while in service, a revised seniority list of the officials in the grade of Wireman

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appointed by the earlier recruiting committee has now been prepared and attached as Annexure-R4. After the bifurcation, when a further vacancy of wireman arose, new roster points were operated and since the first point in the 40 point roster is reserved for Scheduled Caste (SC for short), R-4 was promoted vide order dated 3.2.1992 (Annexure-A2). Aggrieved by the same, the applicant has filed this application.


3. The respondents 1-3 have filed their reply contesting the application. R-4 has not filed any reply.

4. On 2.4.1993, we heard Dr. M.S. Nagaraja for the applicant and Shri M.V. Rao for R1-3. Dr. Nagaraja appearing for the applicant vehemently contended that even as per Annexure R-4, there has been more than adequate representation of SCs in the cadre of Wireman, since out of 8 posts 5 are occupied by OCs and 3 by SCs. He, therefore, submitted that there is no justification for making further promotions against the vacancies by operating the roster points in favour of SC candidates. Dr. Nagaraja also pointed out that the department of Telecommunication vide their letter dated 7.4.1989 (ANNEXURE-A4) has already directed that keeping in view the interim orders of the Supreme Court in the case of J.C. Malik, it has been decided in consultation with the department of Personnel and Training that the said interim orders may be implemented for the time being. The learned counsel for the applicant also drew our attention to the interim orders passed by a Full Bench of this Tribunal sitting at Hyderabad on 27.2.1992 in O.A.759/1987 and other connected O.A.s between V. Lakshminarayanan and Union of India and stressed the fact that the Full Bench has approved the interim order passed by the Hyderabad Bench in O.A.759/1987 to the effect that the vacancies available from time to time are to be filled up in accordance with 40 point roster system subject to the condition that the posts held by the members of SC & ST do not exceed 15% and 7½% respectively at any given point of time and if a person belonging to SC or ST is

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promoted on his own merits and not in a reserved vacancy, then for the purpose of this interim order such appointment will be excluded while computing the required percentage. He also pointed out that the Full Bench has stated that if the Tribunal had already passed any order not in conformity with the order of the Supreme Court inadvertently, such order may be recalled and fresh orders passed in terms of the order of the Supreme Court to avoid conflicting directions and interim orders by various benches of this Tribunal.

5. Shri M.V. Rao appearing for R1-3 submitted that since after the bifurcation a new roster is being operated and the first vacancy is reserved for SC, R-4 was promoted in preference to the applicant in accordance with the reservation policy. He further pointed out that in para 8 of the reply the respondents have mentioned that out of the 8 officials indicated in R-4, 3 belong to SC community and they were promoted on the basis of their seniority-cum-fitness. Shri Rao also submitted that the Director of SC and ST Government of India, Bangalore, had clarified the position vide his letter dated 22.11.1991 (Annexure-R5) that reserved vacancy falling in promotion quotas, which cannot be filled in ^{by direct} non-availability of eligible SC/ST persons in feeder cadre, may be temporarily diverted to direct recruitment quota and filled by recruitment of candidates belonging to SC/ST and in subsequent years when reserved vacancies from direct recruitment quota is available, these vacancies may be diverted to promotion quota and filled from SC/ST in the feeder cadre who might ^{then be} ~~now~~ become eligible for promotion.

6. After hearing Dr. M.S. Nagaraja for the applicant and Shri M.V. Rao for R1-3 on 2.4.1993, the orders were reserved on 8.4.1993. However, on 6.4.1993, Shri P.A. Kulkarni appearing for R-4 submitted a memo stating that he could not be present in the Tribunal on 2.4.1993 to present the case ~~and~~ on behalf of R4 due to transportation problem and prayed that he may be given an



opportunity of being heard before the orders are pronounced. Accordingly, on 8.4.1993, Shri P.A. Kulkarni was heard on behalf of R-4, since Dr. M.S. Nagaraja for the applicant and Shri M.V. Rao for the official Respondents did not also have any objection. Even though, no reply had been filed on behalf of R-4 earlier, Shri Kulkarni submitted a brief reply after serving copies of the same on Dr. Nagaraja and Shri M.V. Rao. Shri Kulkarni pointed out that the Respondents in para 8 of their reply have stated that "out of these 8 officials 3 belong to S.C. community and were promoted on the basis of Seniority-cum-fitness". He stressed the fact that the applicant has not produced any material before the Tribunal to contravene this statement. He submitted, in all fairness, that R-4 does not have any material to produce before this Tribunal to show whether he was promoted as Wireman in his turn as per seniority in the grade of Assistant Foreman.

7. Having heard the submissions of all the parties, we are of the view that the applicant has to succeed. As pointed out by the counsel for the applicant, the department of Telecommunication has already issued order dated 7.4.1989 (Annexure-A4) that the interim orders of the Supreme Court should be implemented for the time being. The respondents have not produced before us any other orders or instructions reversing the order dated 7.4.1989. Further, the clarifications issued by the Director, SC/ST vide his letter dated 22.11.1991 (Annexure-R5) does not make any reference to Annexure-A4, which has been issued in consultation with Department of Personnel and Training, ^{and do not also} ~~it does not~~ clarify the position as to what procedure has to be followed, when in the promotional cadre there is already adequate representation of SC/STs. It is nobody's case that the number of SCs in the cadre of Wireman is more than adequate and is much higher than the 15% of the posts reserved for SCs. In view of the fact that 2 OCs have been promoted to higher

posts and one DC has expired the position given in Annexure-A1 and substantially correct, in that out of 5 posts of Wireman 3 are occupied by SCs. Even though the respondents have contended in para-8 of their reply that the 3 officials belonging to SC category were promoted as Wireman on the basis of Seniority-cum-fitness, it has not been clarified whether these SCs/promoted in their own turn as per the seniority as Assistant Wireman. The respondents have also not produced sufficient materials to support their vague submission. On the other hand from Annexure-R4 it is seen that S/Shri G. Loganathan and S. Munichinnappa at Sl.Nos. 5 & 6 were appointed as Assistant Wireman on 12.4.1982 and 7.7.1982 only, whereas shri V. Manohar at Sl No.7 has also entered the department on 7.7.1982. Even apart from this, we find that only one vacancy of Wireman occurred in 1992 and that being the first vacancy, as per reservation policy, should not have been treated as reserved for SC since otherwise the reservation in that year would amount to 100%. When the learned counsel for R1-3 was specifically asked to explain this position, he could not throw any light on the same. Dr. Nagaraja has also drawn our attention to the interim orders dated 27.2.1992 passed by a Full Bench of this Tribunal in O.A.759/1987. Paras 50, 51 and 52 of the above interim orders are extracted below:

"50. However, pending decision of the Supreme Court in Malik's case, Tribunals are bound to pass interim orders on applications challenging reservation on the basis of 40 point Roster and promotion of SC & ST candidates consistent with the interim order already passed by the Supreme Court in Malik's case dated 24.9.1984 as extracted above. We approve the interim order passed by the Division Bench in this case in the reference order dated 16th May, 1988 as having been passed in terms of the interim order passed by the Supreme Court in Malik's case. We also direct that in similar cases, the Tribunals shall pass similar orders taking into account the directions of the Supreme Court. Inadvertently, such order may be recalled and fresh orders passed in terms of the order of the Supreme Court, so that conflicting directions and interim orders by various Tribunals can be avoided.

⑤ If the Tribunal has already passed any order not in conformity with the order of the Supreme Court

51. In the result all the cases heard by this Bench are ordered to be posted before the Division Bench immediately after the decision of the Supreme Court for final disposal following the directions and final decision of the Supreme Court in Malik's case.

52. In this view of the matter we are not finally disposing of the cases. But the Registry may issue copy of the order to the parties for information."

8. In view of the above and particularly the fact that the respondents have not placed adequate material before us to show that the 3 SC candidates at sl. nos. 4, 5 and 6 at Annexure R4 have been promoted as Wireman as per their seniority in the cadre of Assistant Wireman, the applicant has to succeed and as directed in the interim orders of the Full Bench, we have to pass suitable interim orders in this application.

9. In the result, we allow this application partly and pass the following interim orders:

- i) Order dated 3.2.1992 (Annexure-A2) promoting R-4 is quashed.
- ii) R-1 to 3 are directed to consider the applicant for promotion as Wireman in the vacancy against which R-4 was promoted by order dated 3.2.1992 and in case R-1 to 3 find the applicant suitable for promotion, he should be deemed to have been retrospectively promoted from the date R-4 was promoted, i.e., 3.2.1992. This direction shall be complied with by R-1 to 3 within a period of two months from the date of receipt of a copy of this order. In case the applicant is not found suitable for promotion R-1 should intimate the applicant in writing about the same.

iii) In the conspectus and circumstances of the case and in view of the fact that the applicant has not shouldered the higher responsibility of the post of Wireman from 3.2.1992, the applicant will not be entitled to any arrears of pay and allowances in the cadre of Wireman with effect from 3.2.1992. However, he will be entitled to proforma promotion, fixation of pay and seniority in the cadre of Wireman from 3.2.1992 and will be allowed pay and allowances as Wireman from the date he is actually promoted.


10. Since we are not finally disposing of the case and have passed only interim orders, this case should be posted before the Division Bench immediately after the final decision of the Supreme Court in Malik's case is received.

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MEMBER (J)

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MEMBER (A)

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SECTION OFFICER
CENTRAL ADJUTANT GENERAL
ADDITIONAL DEPT
BANGALORE

30/11/93

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

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

Dated: 10 SEP 1993

REVIEW APPLICATION NO.25 of 93 in
APPLICATION NO(S) 116 of 1992.

APPLICANTS: S.Shivanna v/s. RESPONDENTS: Executive Engineer,
Postal Electrical Division, B'lore
and Others.

TO.

1. Sri.P.A.Kulkarni, Advocate, No.48, 57th 'A' Cross,
Fourth Block, Rajajinagar, Bangalore-560 010.
2. Sri.M.Vasudeva Rao, Central Government Standing Counsel,
High Court Building, Bangalore-1.
3. Dr.M.S.Nagaraja, Advocate, No.11, Second Floor, First Cross,
Sujatha Complex, Gandhinagar, Bangalore-9.

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 27th August, 1993.

for *M. Deek*
DEPUTY REGISTRAR
JUDICIAL BRANCHES.

10/9/93

Issued
gm

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: BANGALORE

DATED THIS THE TWENTYSEVENTH DAY OF AUGUST, 1993

Present: Hon'ble Shri S. Gurusankaran, Member(A)

Hon'ble Shri A.N. Vujjaneradhya, Member(J)

REVIEW APPLICATION NO.25/1993

IN O.A. No.116/1992

Shri S. Shivanna
Wireman,
Telecom Electrical Division
Bangalore

.... Applicant

(Shri P.A. Kulkarni, Advocate)

Vs.

1. The Executive Engineer
Postal Electrical Division
Bangalore.

2. The Superintendent Engineer (Elec)
Postal Electrical Circle
Bangalore.

3. The Union of India
represented by the Secretary
to Government of India
Ministry of Communication
New Delhi.

4. Shri S.K. Halasangi
S/o. Shri S. Kasiraya
C-6/1, P&T Staff Quarters
Kavalbyrasandra
Bangalore-560 032

.... Respondents

(Shri M.V. Rao, Advocate for R-1 to R-3 and
Dr. M.S. Nagaraja, Advocate for R-4)

This Review Application having come up for
hearing before the Tribunal today, Hon'ble Shri S. Gurusankaran,
Member(A), made the following:

O R D E R

This Review Application has been filed by the
applicant, who was respondent no.4 in O.A.116/1992, which
came to be disposed off by order dated 23.4.1993. On the
filing of the review application, notice was issued to the
official respondents and R-4, who was the applicant in O.A.
116/1992. R-1 to R-3 have filed their reply. R-4 has not
filed any reply, but he is represented by Dr. M.S. Nagaraja.

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2. The only 2 grounds on which the review applicant has sought for review of the order dated 23.4.1993 are as follows: (1) The department had made an assertion in their reply that out of the 8 officials promoted to the Wireman category, 3 belonged to SC^{who} were promoted on the basis of seniority-cum-fitness. At that point of time the department should have produced the necessary documents to support this statement and the review applicant^{was} bonafidely believed that they^{would} do so, particularly, since he did not have in his possession these documents. However, since he has obtained this document and produced as Annexure-R1 and hence there are sufficient grounds to review the judgement after rehearing the case on merits in view of the materials now produced. (2) At the time of arguments on behalf of the applicant herein, who was R-4 in the original application, it was submitted that the promotion of the review applicant^{was made} not under filling up of backlog vacancies meant for SC/ST and in that view of the matter, promotion of the review applicant has nothing to do with his seniority position.

3. We have heard Shri P.A. Kulkarni for the review applicant, Shri M.V. Rao for R-1 to R-3 and Dr. M.S. Nagaraja for R-4. Since the review applicant was impleaded specifically as R-4, it was equally the duty of the review applicant to have produced the necessary documents if they had not been produced by R-1 to R-3. Mere statement that the documents were not in his possession would not bring this under the grounds for review, since only if the review applicant had made all the necessary efforts with due diligence and still could not get it and has been able to get it after the judgement has been delivered, there will be sufficient grounds for reviewing the application. Even in the review application the review applicant has not brought out any facts to prove that before the judgement was delivered, he had made all the efforts

for obtaining the necessary documents. Hence, the review applicant has to fail.

4. Regarding the second ground, we find that this is one, which is going into the merits of the case. Even otherwise whether the very roster points as per roster register has to be followed, leave alone filling up the backlog vacancies, was the main question under adjudication in the main application and we have given our finding on the same following the Full Bench judgement.

5. In view of the above, we find no sufficient grounds for admitting this review application and the same is rejected at the admission stage itself.

Sd-
27/8/73
(A.N. VUJANARADHYA)
MEMBER (J)

Sd-
27/8/73
(S. G. RUSANKARAN)
MEMBER (A)



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SECTION OFFICER
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE

26/9/83