

CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH

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

Dated: 31 OCT 1994

APPLICATION NO: 344 of 1994

APPLICANTS:- Mr. V. Banneppa  
V/S.

RESPONDENTS:- Secretary, Dept of Posts, New Delhi and Six Others.

I.

1. Sri. H. Kankaraja, Advocate,  
No. 4, 2nd floor, 1st Main,  
Kumbharasanga Building,  
Gandhinagar, BANGALORE-9.

2. Sri. C. Shankappa,  
Addl. C.G.S.C.,  
High Court Bldg,  
BANGALORE-1

Subject:- Forwarding of copies of the Orders 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 18th October 94.

Issued on  
31-10-94 (Gaj) DC

for

DEPUTY REGISTRAR  
JUDICIAL BRANCHES.

CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH

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

Dated: 31.10.94

To

1. Sri.Sanjeev Malhotra,  
All India Services Law  
Journal, No.22, Tagore  
Park, Near Model Town,  
D E L H I - 110 009.
2. M/s. Administrative Tribunal  
Reporter, No.90, Bhagat Singh  
Market, NEW DELHI - 110 001.
3. The Administrative Tribunals  
Judgements, No.3857, Sector-32D,  
C H A N D I G A R H - 160047.
4. The Editor, Administrative  
Tribunal Cases, C/o. Eastern  
Book Company, No.34, Lalbagh,  
L U C K N O W - 226 001.
5. M/s. Services Law  
Reporter, No.108,  
Sector-27-A,  
C H A N D I G A R H.
6. The Chief Editor,  
Weekly Law Notes,  
Khanda Falsa,  
J O D H P U R
7. The Dy. Secretary,  
Indian Law Academy,  
Rajajipuram,  
L U C K N O W - 226017.
8. The Manager,  
Swamys Publishers(P)  
Ltd., PB.Nc.2468,  
No.164, R.K. Mutt Road,  
Sandhya Mansions,  
Raja Annamalaipuram,  
M A D R A S - 600 028.

Sir,

I am directed to forward herewith a copy each of  
the undermentioned Orders passed by a Bench of this Tribunal  
with a request for publication in the journals.

APPLICATION NUMBER.

DATE OF THE ORDER.

1. O.A. No. 3440 of 1994 - Dated 18th Oct '94

Yours faithfully,

*Varma*  
DEPUTY REGISTRAR  
JUDICIAL BRANCH.

gm\*

Copy, for information is forwarded to the following Benches:

1. The Registrar, Central Administrative Tribunal, Principal Bench, Faridkot House, Copernicus Marg, NEW DELHI - 110 001.
2. The Registrar, Central Administrative Tribunal, Fifth Floor, B.D. Patel House, Near Sardar Patel Colony, Navjivan Post, Naranpura, Ahmedabad-380014.
3. The Registrar, Central Administrative Tribunal, No.23-A P.B.No.13, Thorn Hill Road, Allahabad-211001.
4. The Registrar, Central Administrative Tribunal, Gulistan Bldg, 4th Floor, Near Bombay Gymkhana, Opp: B.M.C.ENT Hospital, Prescot Road, Bombay-400001
5. The Registrar, Central Administrative Tribunal, C.G.O.Complex, 234/4, A.J.C. Bose Road, Nizam Palace, Calcutta-700 020.
6. The Registrar, Central Administrative Tribunal, S.C.O., No.102/103, Sector-34-A, Chandigarh-22.
7. The Registrar, Central Administrative Tribunal, Kandamkulathil Towers, 5th & 6th Floor, M.G.Road, Opp: Maharaja College, Ernakulam, Cochin-682 001.
8. The Registrar, Central Administrative Tribunal, 4th Floor, Rajaswa Bhavan, Cuttack-753 002.
9. The Registrar, Central Administrative Tribunal, Rajgarh Road, Bhangagark, PB No.58, GPO, Guwahati-781005.
10. The Registrar, Central Administrative Tribunal, No.5-10-193, 1st Floor, H.A.C.A. Bhavan, Opp: Public Gardens, Hyderabad-500 004.
11. The Registrar, Central Administrative Tribunal, No.C-12, Civil Lines, Bhat Vatika, Jaipur.
12. The Registrar, Central Administrative Tribunal, No.69, Paata, PB.No.619, Jodhpur-342 006 (Rajasthan).
13. The Registrar, Central Administrative Tribunal, Caravas Complex, No.15, Civil Lines, Jabalpur-482001.
14. The Registrar, Central Administrative Tribunal, No.2, Moti Mahal, Rana Pratap Marg, Lucknow.
15. The Registrar, Central Administrative Tribunal, First Floor, Additional City Civil Court Building, High Court Campus, Madras-600 104.
16. The Registrar, Central Administrative Tribunal, No.B-8-A, Sri Krishna Nagar, Patna-800 001 (Bihar).

DEPUTY REGISTRAR  
JUDICIAL BRANCH

gm\*

CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH: BANGALORE

APPLICATION NO. 344/1994

DATED THIS THE EIGHTEENTH DAY OF OCTOBER, 1994

Mr. JUSTICE P.K. SHYAMSUNDAR, VICE CHAIRMAN

Mr. T.V. RAMANAN, MEMBER(A)

Mr. V. Banneppa  
S/o. Mr. Siddalingappa  
Aged about 23 years  
Resident of Kottur  
Kudligi Taluk  
Bellary District.

.... Applicant

(Mr. H. Kantha Raja, Advocate)

vs.

1. Union of India by its Secretary,  
Department of Posts (India)  
New Delhi.
2. Sub-Divisional Inspector  
Kudligi, Department of Post &  
Telegraph, Kudligi  
Bellary District.
3. Post Master  
Sub Post Office, Temple Street  
Kottur, Kudligi Taluk  
Bellary District.
4. Superintendent of Posts  
Office of the Superintendent of  
Posts, Bellary.
5. Post Master General, Dharwad.
6. Chief Post Master General  
Karnataka Circle, Bangalore.
7. Mr. B. parasappa  
S/o. B. Halappa, Kottur,  
Kudligi Taluk, Bellary District. .... Respondents

(Mr. G. Shanthappa, Advocate, for R-1 to 6)

O R D E R

(Mr. Justice P.K. Shyamsundar, Vice Chairman)

Heard. Admit.

2. This is an application under Section 19 of the  
Administrative Tribunals Act, 1985, wherein the applicant feels

aggrieved by an order made by the Postal Department functioning in the Karnataka Region, Apparently, Respondent no.7, viz., Shri B. Parasappa, who admittedly belonged to the Scheduled Caste (SC for short) was appointed as ED packer at the Kottur Temple Street Post Office in Bellary Division. This appointment as ED Packer in the Postal Department is/ part-time position which enables the appointee to pursue another avocation of his choice alongside the position offered by the Postal Department in the Extra Departmental category.

3. Without elaborating all the disputation, however, suffice it to mention that the applicant and the 7th respondent were both candidates aspiring for the post of ED Packer of Kottur Village pursuant to a notification put out by the Department calling for applications as per Annexure-A3. The standard qualification was that the aspirants should be residents of Kottur Village, should be in a possession of some property etc., and should have also acquired the prescribed educational qualification of 8th standard, subject, however, to the covetability of a higher standard viz., SSLC qualification.

4. It is common ground that both the applicant and the 7th respondent now appointed to the post in question had the requisite educational qualification; in fact, by the standards prescribed, they were over qualified, both of them having completed SSLC examination, the applicant having secured an aggregate of 291 marks, vis-a-vis respondent no.7 who had only 260 marks to his credit. Nonetheless, it is

the 7th respondent who got the official nod and in fact secured the job on the ground that he belonged to the SC category since it transpired that representation of SC within the Bellary Division in the Postal Department being found to be inadequate. This is an aspect which transpires from the files of the case produced before us. The Department has filed more than one set of pleadings in this case, One of them is an affidavit dated 16.8.1994 in which they have asserted an oath that in the Bellary division, the SC personnel working against ED Agents post were under-represented to the extent of 68 and that therefore, the need to recruit more SC people. Reference was also made regarding the instructions issued by the Director General of the Posts and Telegraphs communication no.43-117/80-pen dated 8th October, 1980 in which it was enjoined that representation to the SC and ST candidates in the employment of E.D.staff, be kept up to the prescribed minimum limit regarding Group 'C' and 'D' posts in the Department and that such representation should be given on a divisional basis. Apparently, in the context of the aforesaid instructions, a decision was taken to appoint the 7th respondent, to the post in question although the applicant was more meritorious having secured higher marks in the SSLC examination. In the ordinary course if the selection of a less meritorious candidate than a more meritorious one is thrown open for consideration, then it would be difficult in the usual course to support the selection of the less meritorious person when a more meritorious person was available. But, then in the case on hand, selection has gone no doubt to a less meritorious candidate belonging to the SC, who has got to be

specifically protected economically as enjoined under the Constitution. Reference in this connection may be made to Article 46 of the Constitution which reads:

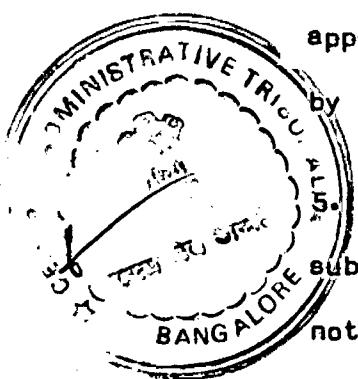
"The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitations."

Although Article 46 is a part of the Directive Principles of State Policy, which is not enforceable in a Court of law but juxtaposed to fundamental rights enumerated in the Constitution. It is an axiomatic principle, which is well accepted that justification in the matter of affording opportunity of employment to socially backward classes on the basis of Directive Principles of State Policy arising for consideration, then a Court should not intervene to set at naught the choice made of a member of the scheduled caste on the ground that somebody else merited selection much more than the selectee. In The U.P. State Electricity Board and Another Vs. Hari Shanker Jain and Others (AIR 1979 SC 65) the Supreme Court had while enquiring into the role of Directive Principles of State Policy, vis-a-vis the duty of courts ensured the pursuit to such policy. It is held therein that:

"The Constitution has expressed a deep concern for the welfare of workers and has provided in Art.42 that the State shall make provision for securing just and humane conditions of work and in Art.43 that the State shall endeavour to secure, by suitable legislation or economic organisation or in any other way, to all workers agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure etc. These are among the 'Directive Principles of State Policy'. The mandate of Article 37 of the Constitution is that while the Directive Principles of State Policy shall not be enforceable by any Court,

the principles are 'nevertheless fundamental in the governance of the country' and 'it shall be the duty of the State to apply these principles in making laws'. Addressed to Courts, what the injunction means is that while Courts are not free to direct the making of legislation, Courts are bound to evolve, affirm and adopt principles of interpretation which will further and not hinder the goals set out in the Directive principles of State Policy. This command of the Constitution must be ever present in the minds of Judges when interpreting statutes which concern themselves directly or indirectly with matters set out in the Directive Principles of State Policy. 1976 Lab IC 1720 (All), partly Reversed. Observations in 1968 Lab IC 1567 (Mad), overruled. "

The fillip or leverage given to scheduled caste, in the matter of employment opportunity is based on the social philosophy enjoined by the Constitution which stipulates that with the advent of the Constitution it becomes the duty of everyone, and, of course, the Court will ensure that the socially backward classes get their just dues. We think this is one such case in which although technically speaking the applicant may have a point but cannot prevail. As the target figure of job opportunity available to the members of the scheduled caste in the region fell short by more than 60, it seems to us the State did well in reducing the inequality atleast by one appointing an SC in the instant case not being otherwise overwhelmed by the higher marks secured by the disgruntled applicant.



Mr. Kantha Raja, counsel for the applicant submitted that appointments should be made in accordance with the notification issued for appointment/in so far as that notification did not indicate that/SC candidate will be given weightage or preference but mentioned that the educational qualification would be the only break-even factor, he urges that in this case the applicant being better qualified than the

selectee, we should step in and strike down the appointment made by the impugned order and in the context give directions to the department to select the applicant. We are not impressed by the aforesaid argument. Merely because the notification did not give any indication that preference will be given to an SC or ST candidate, we do not see how it would have improved the position of the applicant. Mr. Kantha Raja joined in and submitted that had there been this "beware stipulation" his client would not have applied for the job at all, if such was the position at the time of making the application. We do not agree with this submission because if no SC/ST candidate was in the field, the applicant would have surely walked away with the job. We have referred to the Government of India's circular of 1980 which enjoins selection of a SC candidate if the representation in the department fell short of the target figure. It is mentioned therein that while making selection representation of SC/ST candidate in the employment of ED staff should at least be kept to the prescribed minimum limit as far as Group 'C' & 'D' posts available in the Department. We think it unnecessary for the department to have mentioned in the notification that selection of SC/ST will be made in accordance with the extant instructions in the matter of such appointments. All this was done as a matter of course. In that view of the matter the argument that omission to mention in the notification that there was every likelihood of a SC candidate being preferred to a general candidate, the selection of a SC candidate being rendered otiose does not commend itself to us. Mr. Kantha Raja also relies on the decision of the Supreme Court in the case of N.T. Bevin Katti etc., vs. Karnataka Public Service Commission & Others (AIR 1990 SC 1233). That case is entirely distinguishable from the case under consideration.

6. The Department may, having regard to his past experience, consider the applicant, for future appointment in the postal Department. We would like to mention that it would have been proper for the department to make it very clear in the notification that preference will be given to SC/ST tribe depending on the representation quantum contemplated in terms of the instructions. But as we have held the omission will not militate against the selection.

7. In the result, this application fails and is dismissed. No costs.

Sd-



(T.V. RAMANAN)  
MEMBER(A)

Sd-

(P.K. SHYAMSUNDAR)  
VICE CHAIRMAN

TRUE COPY

*[Handwritten signature]*  
Section Officer  
Central Administrative Tribunal  
Bangalore Bench  
Bangalore