

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

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

Dated: 17 FEB 1995

APPLICATION NO: 1125 of 1994.

APPLICANTS:- Sri.C.S.Subba Rao, Mysore.

V/S.

RESPONDENTS:- The Divisional Personnel Officer, Southern Railways,
Mysore and two others.,

T.

1. Dr.M.S.Nagaraja, Advocate, No.11,
Second Floor, First Cross,
Sujatha Complex, Gandhinagar,
Bangalore-560 009.
2. Smt.M.V.Nirmala, Advocate,
No.53, N.S.Iyengar Street,
Seshadripuram, Bangalore-20.
3. The Divisional Personnel Officer,
Southern Railways, Mysore Division,
Mysore-570021.

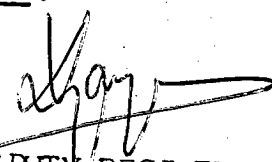
Subject:- Forwarding of copies of the Orders passed by the
Central Administrative Tribunal, Bangalore.

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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 09-02-1995.

Issued on
17/02/95

9/c


DEPUTY REGISTRAR
JUDICIAL BRANCHES.

CENTRAL ADMINISTRATIVE TRIBUNAL: BANGALORE BENCH: BANGALORE

ORIGINAL APPLICATION NUMBER 1125 OF 1994

THURSDAY, THIS THE 9TH DAY OF FEBRUARY, 1995.

Mr. Justice P.K. Shyamsundar,

Vice-Chairman.

Mr. T.V. Ramanan,

.. Member (A).

C.S. Subba Rao,
Aged 60 years,
S/o Suryanarayana Sastry,
R/o 1063/50, II Main, 7th Cross,
Vidyaranyaapuram, Mysore-570 008.

.. Applicant.

(By Advocate Dr. M.S. Nagaraja)

v.

1. The Divisional Personnel Officer,
Mysore Division,
Southern Railway, Mysore-570 021.
2. Chief Personnel Officer,
Southern Railway Headquarters,
Madras-600 003.
3. Union of India,
represented by Chairman, Railway Board,
Rail Bhavan,
New Delhi-110 001.

.. Respondents.

(By Standing Counsel Smt. M.V. Nirmala)

ORDER

Mr. Justice P.K. Shyamsundar, Vice-Chairman:-

We have heard both sides in this application wherein the applicant complains of having been wrongly denied financial benefits to which he was entitled to following pro-forma promotion to a higher position with retrospective effect. We have the order under which he was promoted from an antecedent date and therefrom it becomes clear that he was promoted with effect from 28-4-1981 but later on was treated as having been promoted with effect from 25-7-1979 i.e., the date of promotion of his junior etc. etc. but he was however allowed to draw arrears



of salary in the higher post only with effect from 28-4-1981 and not from the actual date of promotion which is now recorded as 25-7-1979. The applicant says that he has been wrongly denied financial benefits due from 1979 after he was promoted w.e.f. 1979. He had made some representations to the Railway administration but they were all turned down based on a circular of the Railway Board of the year 1977 which provided for promotion from an antecedent date but did not provide for financial benefits albeit the promotion being from an earlier date and that benefit had been wrongly denied by an administrative faux pas. We have the relevant circular incorporated in para 228 of the Indian Railway Establishment Manual (Volume I) (Revised Edition 1989) which reads:-

"228. Erroneous Promotions - (1) Sometimes due to administrative errors, staff are overlooked for promotion to higher grades could either be on account of wrong assignment of relative seniority of the eligible staff or full facts not being placed before the competent authority at the time of ordering promotion or some other reasons. Broadly, loss of seniority due to the administrative errors can be of two types:-

- (i) Where a person has not been promoted at all because of administrative error, and
- (ii) Where a person has been promoted but not on the date from which he would have been promoted but for the administrative error.

Each such case should be dealt with on its merits. The staff who have lost promotion account of administrative error should on promotion be assigned correct seniority vis-a-vis their juniors already promoted, irrespective of the date of promotion. Pay in the higher grade on promotion may be fixed proforma at the proper time. The enhanced pay may be allowed from the date of actual promotion. No arrears on this account shall be payable as he did not actually shoulder the duties and responsibilities of the higher posts."

What is germane for the purpose of the present application is the penultimate rule which enjoins non-payment of financial benefits from the date on which the applicant had been notionally

promoted albeit such promotion had to be made from that date but not done due to an administrative lapse. We are unable to see the logic or reason behind the enactment of the rule as aforesaid denying the financial benefits to which the officer was entitled to but denied to him not because of any lapse on his part, but because of the lapse on the part of the administration itself. The denial of such financial benefits is violative of Articles 14 and 16 of the Constitution of India and has been so held by the Karnataka High Court in the case of SHAIKH MEHABOOB v. RAILWAY BOARD AND OTHERS [1982(1) Service Law Reporter 455]. The dicta of the Court is found adumbrated in para 4 of the judgment and suffice it for our purpose to extract the same as follows:-

4. The last portion of the above circular states that even if a civil servant was denied promotion at proper time, he was not entitled to arrears of salary on the ground that he did not shoulder the duties and responsibilities of the higher post. In my view, the denial of arrears of salary to the petitioner cannot be supported. The petitioner had a right to be considered for promotion on the dates when it was due in view of the right to equality guaranteed under Article 14 of the Constitution and right to equal opportunity in matters relating to employment guaranteed under Clause (1) of Article 16 of the Constitution. The said valuable rights guaranteed by the Constitution cannot be denied in the first instance and thereby deny the civil servant the opportunity to render service in the higher post and subsequently make it a ground for justifying the arrears of salary even after according retrospective promotion, at some point of time later. The giving effect to the circular as against the petitioner having regard to the facts and circumstances of the case, would amount to the violation of the fundamental rights guaranteed to the petitioner under Article 14 read with Clause (1) of Article 16 of the Constitution.

(emphasis supplied)

We are in respectful agreement with the decision of the Karnataka High Court cited supra and follow the same. In that view of the matter we quash communications of the Railway Administra-



tion Annexures A3, A5 and A6 declaring grant of financial benefits from an anterior date and make an order directing the Railway administration to compute and pay all arrears of emoluments and consequential benefits with effect from the date he was notionally promoted i.e., from 25-7-1979. This direction to be complied with within 3 months from the date of receipt of a copy of this order. Dr.Nagaraja suggests that some interest may also be awarded on the amounts due to the applicant. We agree and direct that the financial benefits accruing under this order shall carry interest at 12 per cent payable from one year prior to the date of this application till realisation.

Sd/-

MEMBER(A)

Sd/-

VICE-CHAIRMAN.



TRUE COPY

Section Officer
Central Administrative Tribunal
Bangalore Bench
Bangalore

Sr. COS. Subbarao, 7/8 The Div. Per. Officer. S. Railway
Mysore & two others.
MA NO. 285/95 in of 1125/94

Date

Office Notes

Orders of Tribunal

PKS VC/TVR MA

5th July 1995

Orders on MA No.285/95:

Heard. This is not a fit case for extension of time. MA rejected.

Sd-

Sd-

MEMBER [A]

VICE-CHAIRMAN



TRUE COPY

[Signature] 7/7/95
Section Officer
Central Administrative Tribunal
Bangalore Bench
Bangalore

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Second Floor,
Commercial Complex,
Indiranagar,
BANGALORE - 560 033.

Contempt Petition No.90/1995 in
APPLICATION NO. 1125 of 1994.

Dated **27 NOV 1995**

APPLICANTS: **Bri, C.S. Subba Rao,**
V/S.

RESPONDENTS: **Sri.M.B.Ramaswamy, Divisional Personnel Officer,
Southern Railway, Mysore and two others.,**

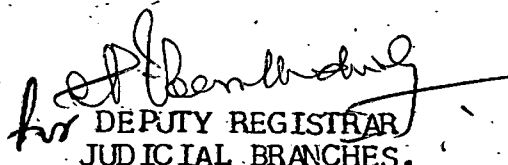
To

1. **Dr.M.S.Nagaraja, Advocate, No.11,
Sujatha Complex, Second Floor,
First Cross, Gandhinagar, Bangalore-9.**
2. **Smt.M.V.Nirmala, Advocate,
No.53, N.S.Iyengar Street,
Sehadripuram, Bangalore-20.**

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 15-11-1995.


DEPUTY REGISTRAR
JUDICIAL BRANCHES.

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BANGALORE

CONTEMPT PETITION NO.90/1995

WEDNESDAY THIS THE FIFTEENTH DAY OF NOVEMBER, 1995.

MR. JUSTICE P.K. SHYAMSUNDAR
MR. T.V. RAMANAN

VICE CHAIRMAN
MEMBER(A)

Shri C.S. Subba Rao,
aged 60 years,
S/o Suryanarayan Shastry,
1063/27, Ist Main Road,
4th Cross, Vidyaranyapura,
Mysore - 570008

Applicant

(By Advocate Dr.M.S. Nagaraja)

v.

1. Shri M.B. Ramaswamy,
Divisional Personnel Officer,
Southern Railway,
Regional Office,
Mysore

2. Shri K. Murugesan,
Chief Personnel Officer,
Southern Railway Building,
Park Street,
Madras - 600003

3. Shri N. Ramaswamy,
Chairman,
Railway Board,
Rail Bhavan,
New Delhi

Respondents

(By learned Standing Counsel)
Smt. M.V. Nirmala

ORDER

MR. JUSTICE P.K. SHYAMSUNDAR, VICE CHAIRMAN

We find that the non-compliance complained of in the contempt petition has since been complied with by passing an order produced at Annexure R-1 along with the reply statement filed on behalf of the Railway Administration. R-1 indicates that there is total compliance with the directions given while disposing of O.A.No.1125/94



dated 9.2.1995. Dr. Nagaraja, learned counsel for the applicant says that his client will, however, be satisfied only when the payment contemplated under R-5 is made. That goes without saying. Railway Administration will follow up R-1 by ensuring payment^{to be followed} of all financial benefits accruing under R-1 within three weeks. Contempt proceedings dropped.



Sd-

Sd-

MEMBER(A)

VICE CHAIRMAN

TRUE COPY

[Signature]

Section Officer
Central Administrative Tribunal
Bangalore Bench
Bangalore

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