

CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH

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

Dated: 6 APR 1995

APPLICATION NO. 1104 of 1994.

APPLICANTS: Kum. B.V. Suma, Bangalore

V/S.

RESPONDENTS: The Divisional Personnel Officer,
Southern Railway, Bangalore and another.

To

1. Sri.K.R.Bhavani Shankar, Advocate,
No.75, New No.64, Fifth Cross,
Mallewaram, Bangalore-560 003.
2. Sri.N.S.Prasad, Advocate,
No.29. Fifth Main,
Gandhinagar, Bangalore-560 009.

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 23-03-1995.

Issued on

6/4/95

9/4

for DEPUTY REGISTRAR
JUDICIAL BRANCHES.

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BANGALORE

ORIGINAL APPLICATION NO. 1104/1994

DATED THIS THE TWENTYTHIRD DAY OF MARCH, 1995

MR. JUSTICE P.K. SHYAMSUNDAR, VICE CHAIRMAN

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

Kum. B.V. Suma
D/o. B. Venkata Rao
Aged about 27 years
Senior Commercial Clerk
Booking Office, Southern Railway
Bangalore City. Applicant

(By Advocate Mr. K.R. Bhavani Shankar)

Vs.

1. The Divisional Personnel Officer
Southern Railway, Bangalore City.
2. The Senior Divisional Commercial
Manager, Southern Railway
Bangalore City. Respondents

(By Mr. M.S. Prasad, Standing Counsel for the Railways)

O. R. D. F. R.

Mr. Justice P.K. Shyamsundar, Vice Chairman

Heard. Admit.

This application arises from and is directed against a Memo dated 15.7.1994 purportedly issued by one of the respondents herein notifying applicant that an order made on the 11th of July, 1994 has been kept in abeyance and is directed to go back to her original place of posting held by her earlier. The facts of the case are in a very short compass and make somewhat interesting reading. The applicant was one of the Senior



Clerks in the Railway. She volunteered to take a chance for selection as ex-cadre Commercial Controller, a higher position in the pay scale of Rs 1400-2300 and thereupon she was permitted to take the examination which permission however, was qualified by a condition that she would be taking the selection course at her own risk and responsibility as agreed to by her. We are told about all that there is no dispute.

2. It has transpired that when the department called for volunteers from people aspiring for the ex-cadre post of Commercial Controller stipulating a time limit within which they should express their willingness for consideration, the applicant herein did not actually apply at the right time but instead offered her candidature at a later date, i.e., virtually on the eve of the selection examination. However, despite the belated approach the authorities did give her the chance for appearing for selection circumscribed by a direction that she would be taking the selection course at her own risk vide Annexure-A1 dated 16.5.1994.

3. It so happened that the applicant did so well in the written examination, she was thereafter summoned for an interview and later on for a viva voce on 31.5.1994. There also she did quite well so that the authorities were left with no option but to select her. Accordingly, the applicant along with another Shri S.N. Vashishta was selected to the post of Commercial Controller as per Annexure-A3. This was followed by a letter of appointment as per Annexure-A4 dated 11th July, 1994 which reads:

* No. B/P/608/II/Coml.Controller Dt.11.07.1994.

OFFICE ORDER NO.89/Coml.Controller/94

Having been provisionally selected by a duly constituted selection board to the post of Commercial Controller in scale Rs 1400-2300 vide this office letter No. B/P.608/Coml.Controller of 8.6.94, the following Commercial Clerks in Scale Rs 1200-2040 are promoted to officiate as Commercial Controller in Scale Rs 1400-2300 and their pay fixed at Rs 1400/-.

1. Sri S.N. Vashishta, Sr.CC, DCS/O/SBC
2. Miss Suma B.V. Sr.CC, RD/SBC

The above promotion is subject to the following conditions:-

1. The promotion will take effect from the date of shouldering higher responsibility.
2. They will be on trial for a period of six months and their continuance in the selection grade will be subject to review at the end of the period. The controlling officer will please send a report about their performance on completion of six months.
3. They are allowed to exercise option within a period of one month from the date of issue of Office order for fixation of pay in the higher grade under Rule 1313/R-II.

This has the approval of competent authority. "

On receipt of the order of appointment, the applicant got herself relieved from her parent office as per Annexure-A5 and went on to report to the other authority for joining the post of Commercial Controller to which post she was appointed under Annexure-A4. But to her great surprise when she went to join the new place, the department by Annexure-A7 told her that the appointment to the post of Commercial Controller is kept in abeyance and she should thereafter go back to her parent office. Annexure-A7 reads:



* B/C 415 Comml.Clerk/Controller Dated 15.7.94.

M E M O

As per DPO/SBC Memorandum no.B/P 608/II/
Comml.Controller dated 15.7.94, the D.O. no.89/
Comml.Controller/94 dated 11.7.94 has been
kept in abeyance.

Accordingly you are hereby directed to
report back to CBSR/SBC today itself.

sd/-
Sr.DCM/SBC.

Aggrieved by the same she made a representation to the
higher-ups as per Annexure-A9 in which she made a detailed
reference to the several stages she had passed through before
lending with an order of appointment to the post of
Commercial Controller. The representation having made no
impression on the authorities, ~~and~~ she has come to this
Tribunal and seeks for quashing the memo - Annexure-A7
which turned her out and asked to go back to the parent
office as also for a further direction to permit the applicant to
report as Commercial Controller.

4. After an somewhat longish period of gestation
the railway authorities have now come forward with a counter
statement today in which they have justified their action in
not permitting the applicant to seek further the
order appointing her to the post of Commercial Controller.

The Railway administration has come up with some kind of a
statement and that was only after we imposed costs the
Railway administration energised itself to file a statement
in which we find there is little substance or justification
accounting for turning out the applicant from the new post.
It tells us that the appointment order has been kept in abeyance

and therefore, she cannot be permitted to assume charge of the higher post. The said decision it seems to us to be somewhat vague. This is what it says:-

* 7. Thus, the respondents submit that the selection was scrapped purely due to reasons based on the oral complaints received in the conduct of the selection and the mode of conduct of the written examination and certain other technical infirmities to avoid further complications. A fresh selection is being initiated to fill up the post of the Commercial Controllers in the scale of Rs 1400-2300. In as much as the entire selection has been scrapped due to administrative reasons, the question of quashing the impugned order Annexure-A7 which only a letter to keep the selection in abeyance does not arise. "

We are somewhat puzzled by the very vague reasons adduced therein for not honouring the order of appointment made and therefore we had asked the Standing Counsel to throw more light in the matter. Accordingly, Shri Prasad, Standing Counsel produced today all the records before us inviting our attention to the orders of authorities which do not say anything other than what is mentioned in the objection statement, that is, referring to some irregularities, some inconveniences, some complaints etc. etc., The Standing Counsel pleaded his inability to improve matters beyond what was mentioned in the records. While one must suspect that there must be something more for the tenuous statement made ascribing inability on the part of the administration

to implement the order of appointment, *but it is all a case for the Standing Counsel to his government*

5. As things stand we are not able to see any valid reason on the basis of which the applicant could be denied the post of Commercial Controller. It is somewhat



curious to notice that even today the order appointing the applicant as Commercial Controller has not been cancelled and that order is still in tact. On the contrary, the statement mentions that a decision was taken to scrap the panel.

6. We, however, fail to see the relevance of that step. Things have graduated from the panel stage long back and the entire issue has been crystallised and we have on record an order of appointment duly communicated to the applicant as per Annexure-A-4. In that situation little or no purpose is served in cancelling the panel of selection for appointment to the post of Commercial Controller. We need hardly add that cancelling the selection or cancelling the panel after an order of appointment has been issued will not invalidate the appointment order at Annexure-A4 and its prevalence even today is not denied apart from identifying/faux pas the administration has committed. It is however true that under the law ^{they had the right even to cancel the order of appointment.} But that should have been done after taking appropriate measures according to law and as we have pointed out earlier, the appointment order still holds the field. In this circumstance, we think it was inept on the part of the authority to have settled down the very complacent but ineffective step of scrapping the empanelment in the forelong hope that it would lead to the cancellation of the appointment order but that is not the end result. Scrapping of the empanelment order has no effect and the appointment order having not been cancelled, it has to be given effect to.

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7. Hence, it is this application succeeds and is accordingly allowed. The Memo dated 15.7.1994 which is impugned herein stands quashed. We direct the railway authorities to give effect to the order of appointment at Annexure-A4 with effect from the date the applicant reports for duty as Commercial Controller.
No costs.

Sri

Sri

(T.V. RAMANAN)
MEMBER(A)

(P.K. SHYAMSUNDAR)
VICE CHAIRMAN



TRUE COPY


Section Officer

Central Administrative Tribunal
Bangalore Bench
Bangalore