

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Second Floor,
Commercial Complex,
Indiranagar,
BANGALORE - 560 030.

Dated: 6 APR 1995

APPLICATION NO. 1299 of 1994.

APPLICANTS: Shri.C.V.Manimaran, Bangalore.

V/S.

RESPONDENTS: The Senior Superintendent of Post Offices,
Bangalore West Division, and three others.,

To

1. Dr.M.S.Nagaraja, Advocate,
No.11, Second Floor, First Cross,
Sujatha Complex, Gandhinagar,
Bangalore-560 009.
2. Sri.M.Vasudeva Rao, Additional
Central Govt. Standing Counsel,
High Court Bldg, 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 24-03-1995.

Issued on
6/4/95

1/2 DEPUTY REGISTRAR
JUDICIAL BRANCHES.

CENTRAL ADMINISTRATIVE TRIBUNAL,
BANGALORE BENCH.

ORIGINAL APPLICATION NO. 1299/ 1994

FRIDAY, THE 24TH DAY OF MARCH, 1995

SHRI V. RAMAKRISHNAN

...

MEMBER (A)

SHRI A.N. VUJJANARADHYA

...

MEMBER (J)

Shri C.V. Manimaran,
Aged 35 years,
S/o Shri C. Vadi Vel,
6/14, K.W. 5th Street,
Ashok Nagar,
Bangalore - 560 025.

...

Applicant

(By Advocate Dr. M.S. Nagaraja)

Vs.

1. The Sr. Superintendent of Post Offices,
Bangalore West Division,
Bangalore - 560 010.

2. The Chief Post Master General,
Karnataka Circle,
Bangalore - 560 001.

3. The Director General of Posts,
Dak Bhavan,
New Delhi-110 001.

4. Union of India,
represented by the Secretary to
Govt., Department of Posts,
Sanchar Bhavan,
New Delhi - 110 001.

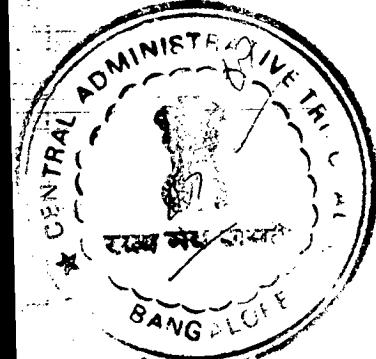
... Respondents

(By Addl. Central Govt. Standing Counsel,
Shri M.V. Rao)

ORDER

Shri V. Ramakrishnan, Member (A)

The applicant, Shri Manimaran, who belongs to Scheduled Caste is aggrieved by the action of the Postal Department in reverting him from the Lower Selection Grade (LSG) under the Time Bound Operative Promotion (TBOP) Scheme. The applicant, who was working in Bangalore



South Division, had requested for a mutual transfer with one Smt. Shakuntala and on the basis of this request was transferred to Bangalore West Division. As this was a mutual transfer at own request, the department was required to follow the provisions of Rule 38 of the P&T Manual Vol.IV. The relevant portion of the Rule reads as follows:

"Transfer of officials when desired for their own convenience should not be discouraged if they can be made without injury to the rights of others. However, as a general rule, an official should not be transferred from one unit to another, either within the same circle or to another circle unless he is permanent. As it is not possible to accommodate an official borne on one gradation list into another gradation list without injury to the other members in that gradation list such transfers should not ordinarily be allowed except by way of mutual exchange. Transfers by way of mutual exchange, if in themselves inherently unobjectionable, should be allowed, but in order to safeguard the rights of men borne in the gradation lists of both the offices, the official brought in should take the place, in the new gradation list, that would have been assigned to him had he been originally recruited in that unit or the place vacated by the official with whom he exchanges appointment, whichever is lower."

The department, while fixing the seniority of the applicant had allotted him a slot vacated by Smt. Shakuntala, who was appointed to the grade on 19.4.78 whereas the applicant himself was appointed on 20.8.79. As per the provisions of Rule 38, the seniority that would have been assigned to him had he been actually recruited in Bangalore West Division would have been not in the slot vacated by Smt. Shakuntala which is ^{1/} ~~immediately below~~ ^{1/} immediately below one Susheelamma, but would have been below one Shri G.N. ^K Shankaranarayana, who was also recruited on 20.8.79, i.e. the same day as the applicant. The department, initially committed the mistake in giving him seniority immediately below Susheelamma, but, later on when they detected the mistake, issued a revised seniority as on 1.7.90 dated 10.9.91. As per the ^{Final list} ~~Final list~~ whereas his seniority had been shown below Smt. Susheelamma, he was promoted to LSC under the TBOP Scheme with effect from 26.3.91 against the SC quota. But, on the fixation

of his seniority vide his gradation list dated 10.9.91, the Department found that there were a number of SC candidates who are senior to him starting with one Smt. P. Chitrakala, who was appointed to the grade of PA with effect from 4.2.77. In addition to this lady, there were also others viz., Shri P. Gangadhara, Shri G. Venkataramappa and Shri Lakshmi-pathi who also belong to SC and who are all seniors to him as per the revised gradation list. The department, accordingly issued an order dated 3.8.93 reverting him as PA with effect from 26.3.91 and sought to recover the excess paid to him in the higher scale. He had approached the Tribunal in O.A. No. 618/93 against this order. But, the department itself informed the Tribunal that the impugned order in OA No. 618/93 was withdrawn by them because certain inaccuracies were noticed in that order. In view of this, the application was disposed of with the observation that the application stood dismissed as it had become infructuous. The department, was, however given liberty to take any action according to law and the applicant was also given liberty to challenge any order if he felt aggrieved.

After this, the department issued a show cause notice to the applicant by its order dated 6.7.94 as at Annexure A-7 informing him that they proposed to revert him as PA with effect from 26.3.91. After considering the representation of the applicant as at Annexure A-8 the department issued orders on 21.7.94 reverting the applicant as PA with effect from 26.3.91.

Aggrieved by this order, the present application has been filed.

2. We have heard Dr. Nagaraja for the applicant and Shri M.V. Rao for the respondent department.



3. Dr. Nagaraja, the learned counsel for the applicant submitted that the manner of disposal by the department of the applicant's representation was very sketchy. The applicant is not aware as to the circumstances leading to refixation of his seniority and as to when the department came to know of the irregularity, etc. Shri M.V. Rao submits that the seniority of the applicant has necessarily to be fixed in accordance with the relevant rule viz., Rule 38. He demonstrates with reference to the seniority list as at Annexure A-2 that the applicant's seniority has to be fixed only below Shri G.N. Shankaranarayana and that there are four SC candidates who are above him and whose cases have to be considered prior to that of the applicant. This revised seniority list was published on 10.9.91 and the applicant had not filed any objection to this list so far. Shri Rao tells us that in the context of the revised seniority list, those of the SC officials who are seniors to the applicant had since received promotion to the LSC cadre and the applicant is likely to be promoted soon ^{in his turn} against the next roster point.

4. After considering the submissions of both sides, we find that the action of the department in promoting the applicant with effect from 26.3.91 was a mistake and after following the procedure of issuing show cause notice, etc., the department has issued an order reverting him to the lower level. While, the order at Annexure A-9 does not spell out in detail as to the reasons which led to the bringing down of the seniority of the applicant, the same has been explained by the respondents before us. In view of this position, we hold that the action of the department in reverting him to the post of PA is in order. However, as he had been drawing pay in the higher scale with effect

from 26.3.91 on account of a mistake committed by the department itself to which he had not contributed, it is not fair to seek to recover the over payment of Rs. 9,244/- for the period from 26.3.91 to 30.6.94 as per the order dated 29.7.94 as at Annexure A-10. We quash this order and direct that reduction of pay on reversion of the applicant would take effect from July, 1994. The applicant shall be considered for promotion to LSG as per his turn in accordance with his revised seniority as indicated in Annexure A-2.

5. With the above observations, this application is finally disposed of. No costs.

Sd/-

19/10/94

(A.N. VUJJANARADHYA)
MEMBER (J)

Sd/-

24/10/94

(V. RAMAKRISHNAN)
MEMBER (A)

TRUE COPY

20/10/94
Section Officer
Central Administrative Tribunal
Bangalore Bench
Bangalore

