

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

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

Dated: 28 FEB 1995

APPLICATION NO: 1708 of 1994.

APPLICANTS:- Sri. Kuppuswamy, Bangalore.

V/S.

RESPONDENTS:- Secretary, Deptt. of Telecommunications,
New Delhi and four others.,

To

1. Sri. P.A. Kulkarni, Advocate, No. 47,
Second Floor, 57th-A-Cross,
Fourth Block, Rajajinagar, Bangalore-10.
2. Sri. M. Vasudeva Rao, Addl. C.G.S.C.
High Court Bldg, Bangalore-1.

*one copy received
on 13/9/95
for P.A. Kulkarni.*

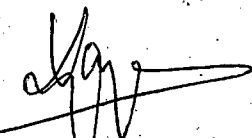
Subject:- Forwarding of copies of the Order passed by the
Central Administrative Tribunal, Bangalore.

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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 06-02-1995.

*Issued on
28/02/95*

o/c

for 
DEPUTY REGISTRAR
JUDICIAL BRANCHES.

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: : BANGALORE

ORIGINAL APPLICATION NO.1708/94

MONDAY, THE SIXTH DAY OF FEBRUARY, 1995

SHRI V.RAMAKRISHNAN, MEMBER (A)

SHRI A.N.VUJJANARADHYA, MEMBER (J)

Sri Kuppuswamy, S/o late P.Doraiswamy,
aged about 46 years,
Telecom Office Assistant,
O/o the General Manager,
Bangalore Telecom District
Bangalore-560 009.

....Applicant

By Advocate Shri P.A.Kulkarni.

Versus

1. Union of India,
represented by its Secretary,
Department of Telecommunications,
No.20, Sanchar Bhavan,
Ashoka Road, New Delhi-110 001.
2. Department of Telecommunications,
by its Head of the Department,
No.20 Ashoka Road,
Sanchar Bhavan, New Delhi/110 001.
3. Chief General Manager Telecom,
Karnataka Telecom Circle,
No.1 Old Madras Road,
Ulsoor, Bangalore-560 008.
4. General Manager,
Bangalore Telephones,
Chamber of Commerce Building,
Kempegowda Road,
Bangalore-560 009.
5. High Power Committee
for review of the results
of failed SC/ST candidates,
represented by its Chairman &
Head of Circle, O/o the C.G.M.T.,
Karnataka Telecom Circle,
No.1, Old Madras Road,
Ulsoor, Bangalore-560 008.

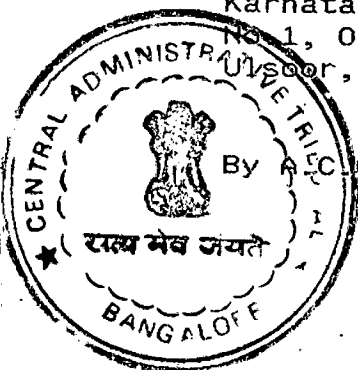
Respondents

By A.C.G.S.C. Shri M.V.Rao

O R D E R

Shri V.RAMAKRISHNAN, MEMBER (A)

Contd...2



1. The applicant who is presently a Telecom Office Assistant in Bangalore serving under Respondent No.4 and who had appeared for Part-I of the examination for promotion as Junior Accounts Officer, has prayed that he should be declared as qualified in Junior Accounts Officer Part-I examination held during October, 1992 despite the fact that he has failed in two subjects and further that he should be allowed to appear in ~~the~~ Part-II of the examination scheduled to *be* held in March, 1995.

2. The applicant who belongs to SC community had appeared in the Departmental Junior Accounts Officer Part-I Qualifying Examination, Telecom Wing held in October, 1992. The exam consists of four subjects and broken up into six papers. The minimum for passing the examination is 35% in each of the subject. The marks secured by the applicant is at Annexure A1, which encloses a letter dated 15.10.93 showing the mark list issued by the department, which has not been denied by the department. From this, we find that the applicant had secured 46/150 marks in Part-I as against the minimum of 52.5 marks and also in second subject consisting of papers 4 and 5, he had secured

17% as against the minimum of 35% The applicant relies on the circular of the department dated 4th May, 1981 as at Annexure 3, which prescribes the relaxed standard for SC/ST candidates in respect of qualifying/departmental/promotional examination. We may with advantage reproduce para 2 of the circular.

The matter has been further examined by the P&T Board. It is observed that the basic objective in such cases is to decide whether SCs & STs candidates who take departmental exams are fit (atleast not "unfit") to hold the post for which they are competing rather than going only by their percentage of marks. Accordingly the following decisions have been taken:

177
i) No special action is called for where adequate number of SC/ST candidates qualify for the reserved posts.

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ii) In examinations where the required number of candidates do not qualify even according to the relaxed standards, the cases of failed candidates should be reviewed on the basis of confidential report, the overall performance in the examination, etc., by a Committee of Senior Officers so as to assess their suitability / unsuitability. The Committee will consist of the Head of the Circle and a Director of ~~of~~ Postal Services/Telecom. Director in the District nominated by the Head of the Circle in Civil Wing, the concerned Superintending Engineer may be included in the Committee instead of a Director. As regards Gp "D" posts, the Committee will consist of the Director-in-Charge of the Region concerned and a senior Time Scale Officer as may be nominated by the Head of the Circle. In the case of Civil Wing, the concerned Suptd. Engineer and A Senior Time Scale Officer, nominated by the Head of the Circle will form the Committee.

iii) In the case of candidates considered not unfit for promotion, grace marks should be added to bring up to the qualifying standard. There will be no limit to giving grace marks to the candidates who are not otherwise unsuitable. Grace marks in more than one paper will be permissible. Inter se position of these candidates will be determined by their aggregate marks. In order, however to maintain parity ~~however to maintain parity~~ among the recipient of grace marks for the purpose of determining inter se seniority the minimum of the grace marks that are required to be given to any candidate will be given to all other candidates who need some grace marks. For example, if the maximum grace marks given is 10 and two other candidates need three and four grace marks each, they will also be given a total of ten marks each.

Contd.....6..




iv) Candidates who qualify according to the minimum percentage laid down for the examination will get seniority enbloc above all those who require grace marks, irrespective of the aggregate marks of two groups. In other words, a candidate having higher aggregate marks but requiring even one grace mark will be placed below one who has got lower aggregate marks but has secured minimum qualifying marks in each paper.

v) Results of those who qualify in normal course will not be withheld pending decision on SC/ST candidates who fail to qualify by securing the minimum number of qualifying marks in each paper. The result of all the candidates who need and are given grace marks will be declared as supplementary result.

17
D.G.P & T NEW DELHI Lr. No.26-2/81
SPB-I, 4th May 1981."

Contd....70



This has been further amplified by the Department of Telecom letter dated 14.2.92 as at Annexure 2a. This subsequent letter lays down the procedure, which has to be followed while reviewing the case of SC/ST candidates in conformity with the provisions of the earlier circular dated 4.5.81. This circular specifies the following procedure to be adopted:

The first step is to assess the ACR of the failed SC/ST candidates taking into account their performance during the preceding five years. On the basis of such scrutiny, the committee should grade them as fit or as unfit. The unfit candidates shall be excluded from the list of consideration. The maximum grace marks required for qualifying in a particular paper may be ascertained for all the papers in respect of fit candidates only. The maximum grace marks as ascertained above may be awarded to all the fit candidates. Selection depending on number of vacancies may be made purely on merit basis. Annexure to the letter dated 14.2.92 indicates what it calls "sample of procedure to be adopted while reviewing the cases of all SC/ST candidates". It is seen



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from this annexure that candidate "C" who secured two marks in paper 4 was awarded 31 marks to receive the the minimum of 33% in that paper. From the illustration given by the department in their circular dated 14.2.92, it is clear that there is no limit to the extent of grace marks to be awarded.

There is, however, a further circular issued on 30.11.92/28.12.92 which reads as follows:

"I am directed to say that in accordance with this office letter No.20 2/01-SPD-1 dated 4.5.91 failed SC/ST candidates can be awarded grace marks without any limit after conducting enquiry of all such candidates. While reviewing such cases at Directorate, it has been noticed that cases of even those SC/ST candidates who have secured zero marks have been recommended for declaring them successful. It has now been

Contd.....9.

decided that results of only those failed scheduled caste candidates who have secured at least 20% marks and scheduled tribes candidates who have secured at least 15% marks in each paper should be reviewed.

The procedure outlined in this office letter No.77-5/97-NCB (which may be corrected as 22-5/91/NCB dated 14.2.92) is modified only to the extent mentioned above and the rest remains unchanged.

These orders come into force w.e.f. the examinations conducted on or after 1.12.92."

3. We have heard Shri P.A.Kulkarni for the applicant and Shri M.V.Rao for the respondents.

4. Shri Kulkarni submits that as there is no limit for awarding grace marks, the department was in error in not considering ^{the applicant's} his case on the ground that he has not secured the minimum passing marks. He further contends

Contd.....10.



that the department circular dated 04.5.81 will apply to all SC/ST candidates, who appeared for the examination ~~for~~ promotion to the level of JTO or JAO and this circular read with the clarification letter dated 14.2.92 would make it abundantly clear that there is no limit in giving grace marks. The learned counsel also argues that the department cannot rely on the later letter dated 30.11.92/28.12.92 as the subsequent circular is in the nature of a new decision and it also makes it clear that this order will apply only for the future examination, conducted on or after 1.12.92 whereas the applicant had taken the examination in October, 92 Shri M.V.Rao for the respondents says that as the applicant has not secured the minimum prescribed marks, he cannot be taken as qualified and the question of his being permitted to appear for the Part-II examination does not arise. Shri M.V.Rao states that the Appointing Authority in respect of JOAs is Member Finance, Telecom Commission and he has decided that the results of only those SC/ST candidates, who are qualified in three subjects in Part-I and secured 30% marks (now reduced to

Contd.....11.



25) in the fourth paper shall be eligible for such review. Shri M.V.Rao also tells us ^{that} the department had filed SLP against the order of the Ernakulam Bench and also the decision of Bangalore Bench in OA984/93, but he is not aware of the present position with regard to the SLP.

5. We have carefully considered the submissions of both sides. It is clear that the instructions contained in letter dated 4.5.81 will apply to the present case. As such we are unable to appreciate the submission in para 14 of the reply statement, which states the results of failed SC/ST candidates are reviewed only on the basis of the parameters evolved with the approval of the appointing authority. The Member Finance cannot lay down parameters different from the Government directions of the relevant period, which do not prescribe any limit for awarding grace marks. The department has to necessarily follow the instructions, which were current at the time when the applicant appeared for the examination. We also notice that in a similar case of Tulasiramaiah and R.V.Hegde, who were also TOA and who were appearing for the JAO

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departmental examination, the Bangalore Bench of the Tribunal by order dated 15th April, 94 in OA 984/93 and following the earlier decision in OA 344/93 decided on 6.1.94, directed the department to give grace marks to the applicants upto passing level, provided they are otherwise found to be fit for promotion. It is no doubt anomalous that SC/ST candidates, who secures very low marks for example 02/100 should be awarded grace marks without any limit and declared qualified in the examination, but that was the explicit instruction of the department as seen from the circular dated 14.2.92. The department seems to have woken up to the anomaly only later and prescribed a minimum of 20% marks to be secured by SC candidates before they can be awarded grace marks. This was done by their letter dated 30.11.92/28.12.92. But this is in the nature of a new decision and the letter itself makes it clear that it will apply to the examination conducted on or after 1.12.92.

6. In the light of position brought out above, we hold that the department's stand that the applicant is not eligible as he had to

confirm to the parameter evolved by the Member Finance is not tenable when the same is inconsistent with Govt. instructions as contained in the concerned circulars applicable during the relevant period namely the circulars dated 4.5.81 and 14.2.92. Following the decision in OA 984/93 and OA 344/93 decided by the Bangalore Bench, we issue the following direction. if adequate number of SC candidates had not qualified in the examinations:

1. The department will first assess the fitness of the applicant on the basis of his ACR, which is the first step as brought out in the letter dated 14.2.92. On scrutiny, if the applicant is found fit, the department will give grace marks to the applicant in the subjects he had failed without any limit, so as to bring him to the passing standard.

2. While doing so, if there is any other SC/ST candidates, who had appeared for the same examination in October, 92, the department will follow the instructions contained in letter dated 4.5.81 as amplified by letter dated 14.2.92.



3. If on the basis of exercise referred to in the direction above, in pursuance of the instructions contained in letter dated 4.5.81 and 14.2.92 the applicant is declared as qualified in part-I, the department should communicate to the applicant within 15 days from the date of receipt of this order and the applicant should be allowed to appear in the ensuing part-II examination scheduled to held in March, 95, if he applies for the same immediately on receipt of the communication.



The application is allowed on the above lines with no orders as to cost.

TRUE COPY

Section Officer

Central Administrative Tribunal
Bangalore Bench
Bangalore

(A.N. VUJJANARADHYA)

MEMBER(J)

Sd/-

Sd/-

(V. RAMAKRISHNAN)

MEMBER(A)

In the Central Administrative Tribunal
Bangalore Bench
Bangalore

Sri. Kuppuswamy, v/s Secy. D/o. Telecommunications, New Delhi

Application No. **1708** of 199**4**.

ORDER SHEET (Contd.)

Date	Office Notes	Orders of Tribunal
		<p><u>PKS (VE)/VR (MA)</u></p> <p>22-6-1995.</p> <p><u>ORDERS ON M.A. 264/1995</u></p> <p>Shri M.V. Rao, Standing Counsel for the respondents produces a stay order of the Supreme Court in SLP NO.10359/95 and request that the same may be placed on record. We direct the stay order to be placed on record.</p> <p>Shri Rao seeks leave to with draw this M.A. He is permitted to do so. <i>affectional decision on leave draw</i></p> <p>Sd- Sd</p> <p>TRUE COPY</p> <p><i>[Signature]</i> 03/7/95 Section Officer Central Administrative Tribunal Bangalore Bench Bangalore</p>



CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

13-783

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

Contempt Petition No.66 of 1995 in

Dated: 26 DEC 1995

Application No. 1708 of 1994.

Applicant(s) : Sri.Kuppuswamy,

V/s.

Respondents : Sri.Thakkar, Secretary, Deptt. of Telecommunications,
New Delhi and others.,

To

1. Sri.P.A.Kulkarni, Advocate,
No.47, Second Floor, 57th-A-Cross,
Fourth Block, Rajajainagar, Bangalore-10.

2. Sri.M.Vasudeva Rao, Addl.CGSC,
High Court Bldg, Bangalore-1.

Subject:- Forwarding of copies of the Orders passed by
Central Administrative Tribunal, Bangalore-38

-x-x-x-

A copy of the Order/Stay Order/Interim Order,
passed by this Tribunal in the above mentioned application(s)
is enclosed for information and further necessary action.
The Order was pronounced on- 18-12-1995.


Deputy Registrar
Judicial Branches.

4. C.P. 66/95

Sri Kuppuswamy V.S. Secretary, Deptt of Telecom, New Delhi

Date

Office Notes

Orders of Tribunal

PKS(VC)/TVR(MA)

18.12.1995

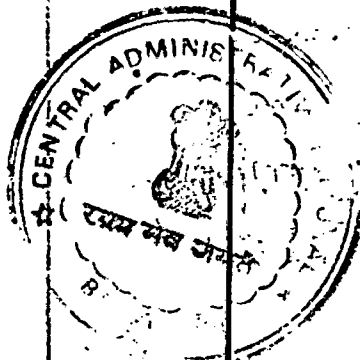
We have heard both sides. All that we need do is to direct the Department to implement the orders of the Tribunal subject to the outcome of the decision in the SLP filed in the Supreme Court in the case of Director General (ST), Ministry of Communication and Others Vs. H.M. Tulaseiramaiah and Another. We direct compliance of this order within 2 months from the date of receipt of a copy of this order. We, however, mention this is without prejudice to the rights of the Department to review the position after the orders of the Supreme Court in the aforesaid SLP.

Sd-

Sd-

MEMBER (A)

VICE CHAIRMAN



TRUE COPY

[Signature]
24/12/95
Section Officer
Central Administrative Tribunal
Bangalore Bench
Bangalore

783

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

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

Dated: **11 JUN 1996**

APPLICATION NO.

MA 173/96

in
(CP 66/95 in OA 1708/94)

APPLICANT(S) : Shri. D. Kuppuswamy

V/s.,

RESPONDENTS : UOI & ors.

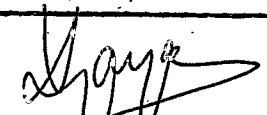
To.

1. Shri. S. Sugumaran, Advocate,
No. 1, Osborne Road Cross,
Bangalore - 560042
2. Shri. M. V. Rao, Adl. C.G. SC.
High Court Bldg
Bangalore - 1

Subject:- Forwarding of copies of the Orders passed by
Central Administrative Tribunal, Bangalore-38.

-x-x-x-

A copy of the Order/Stay Order/Interim Order,
passed by this Tribunal in the above stated applicatio(s)
is enclosed for information and further necessary action.
The Order was pronounced on 07-6-96


Deputy Registrar
Judicial Branches.

for

In the Central Administrative Tribunal
Bangalore Bench
Bangalore

C.P.
Application No. 66 of 1995

ORDER SHEET (Contd.)

Date	Office Notes	Orders of Tribunal
		(DPH)VC/(TVR)M(A) JUNE 7, 1996. <u>ORDER ON M.A.NO. 173 OF 1996</u> No question of revival as the C.P. has been disposed of finally with certain directions. If the petitioner finds that certain directions are not complied with, he is at liberty to move the Tribunal with a fresh contempt petition. M.A.No.173 of 1996 is disposed of accordingly. Sd- Sd- MEMBER(A) VICE-CHAIRMAN.



TRUE COPY

[Signature]
Section Officer
Central Administrative Tribunal
Bangalore Bench
Bangalore

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

B-783

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

Contempt Petition No.50 of 1996 in

Dated:

APPLICATION NO. 1708 of 1994.

APPLICANT(S) : D.Kuppuswamy,

V/s.,

RESPONDENTS : Sri.M.P.Modi, Secretary, Deptt. of Telecommunications,
New Delhi and others.,

To.

1. Sri.S.Sugumaran, Advocate,
No.1, Osborne Road Cross,
Bangalore-560 042.
- 2- Sri.M.Vasudeva Rao, Addl.CGSC,
High Court Bldg, Bangalore-1.

Subject:- Forwarding of copies of the Orders passed by
Central Administrative Tribunal, Bangalore-38.

-X-X-X-

A copy of the Order/Stay Order/Interim Order,
passed by this Tribunal in the above stated applicatio(s)
is enclosed for information and further necessary action.
The Order was pronounced on Eighth August, 1996.


Deputy Registrar
Judicial Branches.

-2-

CP.No. 50/96

Date

Office Notes

Orders of Tribunal

DPH (VC)/TVR (MA)

8.8.1996

Shri M.V. Rao, Standing Counsel undertakes to appear for respondents. He shall file Memo of Appearance in the office.

In view of the submission made by the Petitioner's counsel that the relief claimed has been granted, these proceedings are dropped.

Sd/-

Sd/-

MEMBER (A)

VICE CHAIRMAN

True Copy

[Signature] 12/8/96