

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

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

Dated: **2 JAN 1995**

APPLICATION NO: 215 6 f 1994.

APPLICANTS:- Sri.P.K.Nagaraj, Bangalore.

V/S.

RESPONDENTS:- Secretary, Ministry of Defence, N.Delhi & Others.,

I.

1. Sri.A.S.Natarajan, Advocate, No.25, Fourth-B-Street,
Chandni Chowk Road Cross, Shivajinagar Bustand,
Behind St.Mary's Church, Bangalore-560 051.
2. Sri.M.Vasudeva Rao, Additional Central Government
Standing Counsel, High Court Building, Bangalore-1.
3. The Commandant Five One Five Army Base Workshop,
Ulsoor, Bangalore-560 008.

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 16th December, 1994.

Issued on
03/01/95

[Signature]

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% for DEPUTY REGISTRAR
JUDICIAL BRANCHES.

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: :BANGALORE

ORIGINAL APPLICATION NO.215/94.

FRIDAY, THE SIXTEENTH DAY OF DECEMBER, 1994

SHRI V.RAMAKRISHNAN.

...MEMBER (A)

SHRI K.N.VUJJANARADHYA.

...MEMBER (J)

F.K.Nagaraj,
S/o F.Kattaiah,
aged 32 years,
T.No.2986, Fitter,
M.A.D. Fitting Shop,
515, Army Base Workshop,
Ulsoor, Bangalore-560 008.

...Applicant

By Advocate Shri A.S.Natarajan.

Versus

1. The Secretary,
Ministry of Defence,
Government of India,
New Delhi.
2. The Director General,
EME Civil,
Army Headquarters,
D.Hq. P.O.
New Delhi.
3. The Commander,
Takaniki Group Vaidut Aur
Yantrik Injineyari Mukhyalaya,
Headquarters Technical Group (EME),
Delhi Cantt. 10.
4. The Commandant,
515, Army Base Workshop,
Ulsoor,
Bangalore-560 008.

T.P.Bhaskar, T.No:2656, Fitter,
Fitter, 515, Army Base Workshop,
Ulsoor, Bangalore-560 008.

...Respondents

By Advocate Shri N.Vasudeva Rao,
A.C.G.S.C. for R1 to R4.

....2/-



O R D E R

V.Ramakrishnan, Member (A)

The applicant, who is a tradesman in 515 Army Base Workshop, Bangalore and who belongs to the ST Community is aggrieved by the action of the department in not giving him promotion to the level of Highly Skilled Grade-II category. He contends that he became eligible for promotion to the HS Grade-II on 24th August, 1992 and in that year, according to the roster point, there was a vacancy reserved for ST candidate. In the normal course, he should have been considered for such vacancy and he should have been promoted, but the same has not been done. The department does not dispute that the applicant is the senior most ST employee and that he became eligible for promotion on 24.8.1992. They, however, take the plea that when the DFC met on 4th August, 1992 he had still a few days left before he would become eligible for promotion and accordingly he was not considered. They further take the stand that the vacancy which was point No.4 of cycle 6 of the roster point, which had fallen due in 1992 was filled by Shri Bhaskar, who belongs to SC category, (who has been impleaded as respondent No.5) by taking pre-course to the Government instructions, which provides for exchange of reservation between SC and ST. The department further contends that a ST vacancy had been carried over for three years and they could fill up the same by a SC candidate, as no ST candidate was available, as the applicant had still a few days left on the date the DFC met before he could become eligible for

consideration for promotion to HS Grade-II. The department took the view that there was non-availability of ST candidate and that there was adequate justification to fill up the vacancy earmarked for ST by exchanging it to SC candidate and Shri Bhaskar accordingly got appointed.

2. We have heard Shri A.S.Natarajan for the applicant and Shri M.V.Rao for the official respondents. Private respondent Shri Bhaskar was given notice on 1st November, 94 but the postal authorities after waiting for 7 days had returned the notice with a remark "not claimed returned to sender". In view of this, we hold that the service on Shri Bhaskar is sufficient.

3. We enquired from the standing counsel as to the necessity for the DFC to fix the eligibility date as on 4.8.1992, which is a few days before the applicant became eligible for consideration for promotion. We also enquired as to whether the DFC had taken into account the fact that the applicant would become eligible for promotion from 24th August, 1992 and that if calendar year is the basis for filling the vacancy, the applicant would have been eligible well before the end of 1992. The DFC, however, did not seem to have considered the case of the applicant and the department had straightaway taken the line that the applicant was not eligible on the date of DFC and therefore he was not considered for promotion. Shri Rao had made available to us the relevant documents leading to calling the meeting of the DFC and the decision of the department to exchange the vacancy. We have gone through the file. We find from the file No.



50615/A/LB on page 1A and 1B there was a draft order to convene the board for considering eligible people for promotion. In the list of eligible candidates for taking trade test for promotion to HS Grade-II as at page 1B of the file, we notice that *the applicant was found at Sl No 7 with an indication that he will complete three years on 24.8.92.* In other words, initially the department had taken the view that the applicant was eligible for being considered for promotion. There is, however, an interpolation in ink showing that "7A T.No.2656 Fitter Skilled T.F.Bhaskar (SC)". This is clearly a subsequent addition. Shri Rao also made available to us another file bearing the same number namely 50615/A/LB. We find from this that on 20th July, 92 Shri Bhaskar made a representation to the Commandant 515 Army Base Workshop where he had contended that his junior Shri M.Kuppulingam who ~~also~~ belongs to SC was promoted to Grade-II, whereas Shri Bhaskar, who also belongs to SC was not promoted. The department replied to Shri Bhaskar vide letter dated 28th July, 1992 where inter alia it was mentioned as follows:-

"In the year 1991 before conducting necessary trade test in respect of Fitters for promotion to HS grade II, the seniority roll of fitters was circulated to all concerned. It is observed from the seniority roll that you have signed against Col.9 after seeing your position and the particulars reflected in the seniority roll and you have not raised any query till 20 Jul 92 that you belong to SC. T No 2517 Fitter Shri M.Kuppulingam being SC as per seniority roll was promoted as HS Grade II wef 2.11.91. Therefore your contention that your seniority has been ignored and your junior was called for the trade test and promoted is not acceptable at this belated stage, since you have failed to intimate that you belong to SC community all these days. You should have raised this point when T No 2517 Fitter Shri Kuppulingam was called for the trade test and you were not called for the same. However, since you have now pointed out that you belong to SC Community necessary arrangements are being made for you to

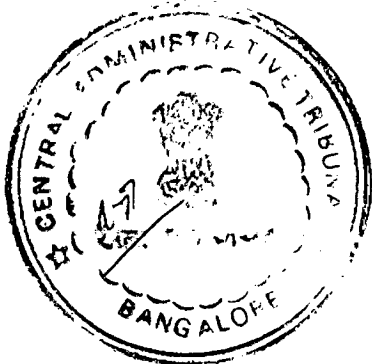
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appear for the trade test. On passing the trade test you will be considered for promotion to HS Grade II against a future vacancy."

The matter has been considered by the department further on 30th July, 1992 where it was brought out that Shri Bhaskar was assured that he will be considered for promotion to HS Grade-II against future vacancy, and that vacancy arises in August, 1992 on the promotion of Shri M. Krishnan to HS Grade-I~~X~~ consequent on the retirement of Shri Palani on 1.8.1992. It will be useful to reproduce paras 3, 4 and 5 of this note dated 30.7.1992, which read as follows:

"3. It may be seen from the concluding sentence in para 3 of ION ibid that the individual has been informed that on passing the trade test, he will be considered for promotion to HS Grade II against a future vacancy. In this connection, it is stated that T No 1636 Fitter HS Grade II Shri M. Krishnan is being proposed for promotion as HS Grade I consequent on the retirement of T.No.1121 Fitter HS Grade II Shri R Palani wef 01 Aug 92. Due to promotion of T No 1636 Ftr HS Grade II Shri M Krishnan, the resultant vacancy of HS Gde II falls vacant. The resultant vacancy of HS Gde II will have to be filled up out of the eligible candidate of the trade of fitter (Skilled) according to their seniority.

4. According to 40 point roster maintained by this office for the purpose of implementing the reservation quota for SC/ST a vacancy for ST of 1984 has been carried forward till date due to non-availability of ST candidates. As per Chapter 11, para 11.2 of Brochure on reservation for SC & ST in services, while vacancies reserved for Scheduled Castes and Scheduled Tribes may continue to be treated as reserved for the respective community only, Scheduled Tribes candidates may also be considered for appointment against a vacancy reserved for Scheduled Castes candidates and vice versa where such a vacancy could not be filled by Scheduled Caste or Scheduled Tribe candidate even in the third year to which the reservation is carried forward.



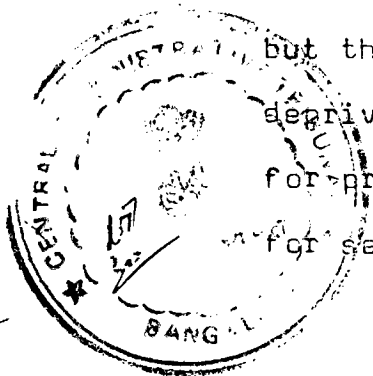
5. In view of the rule position as explained above regarding exchange of reservation of vacancy between SC/ST, T No 2656 Fitter Shri TP Bhaskar (SC) may be considered against the carried forward vacancy of ST of 1984."

The Commandant by his minutes dated 31.7.1992 raised the question whether Shri Bhaskar has submitted documentary proof to substantiate his claim that he belongs to SC. He was informed that Shri Bhaskar had done so. The Commandant seems to have seen this on 3rd August, 1992 but has not passed any specific order on the question of exchange of vacancy. The DFC met on the next date.

4. It is clear from the perusal of this note dated 30.7.92 that the Commandant was not informed at all about the fact that the applicant becomes eligible for promotion to HS Grade-II in August, 1992 itself. The list of eligible candidates at 1B referred to supra was not brought to his notice. It is reasonable to presume that the Commandant was not aware of the fact that the applicant was eligible in August, 1992 itself and in any case there is no clear approval of the Commandant for the exchange of ST vacancy to SC. We have to observe that the members of ST and SC are entitled to preferential treatment in the matter of appointment including promotion and that any action which would deprive a member of either ST or SC of promotion to which he has legitimate expectation cannot be countenanced. The instructions which the department says that they have relied upon namely exchange of ST vacancy to SC are not intended to be so operated as to deprive a ST candidate or SC

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candidate of an opening, which is normally due to ^{him} them. It is not the position here that the ST vacancy of August, 1992 cannot be filled by a ST candidate in that year. In any case from the noting, it is clear that the department had initially thought of considering the applicant for promotion to HS Grade-II, ^{whereas} ~~whereas~~ ^{there} ~~there~~ is lapse in giving promotion in November, 1991 (Point No.1 of sixth cycle) to Shri M. Kuppulingam against the SC vacancy instead of to Shri Bhaskar who was also SC but ^{who} ~~also~~ was senior to Shri Kuppulingam came to light, the department at some level seems to have decided to give ST vacancy to Shri Bhaskar rather than to the applicant. The vacancy at the Grade-II level arose only in August, 1992 on account of retirement of Shri Palani as Grade I fitter on 1.8.92 to which Shri Krishna of Grade-II was proposed to be promoted, thus releasing a post at Grade-II level. The department was clearly at fault in ignoring the claim of the applicant, who became eligible for promotion to Grade-II in that month itself. There is no satisfactory explanation from the department as to why they did not take into account the fact that the applicant became eligible for consideration for promotion well before the end of calendar year 1992. Shri Bhaskar was not given his due for the reason that the department lost sight of the fact that he belonged to the SC community but the redressal of his grievance cannot be done by depriving a member of a Scheduled Tribe of his chance for promotion. The department has to look elsewhere for setting right the wrong done to Shri Bhaskar.



5. In the light of the foregoing, we direct the department to consider the fitness for promotion of the applicant against the ST vacancy namely roster point No.4 of cycle 6 of 1992 and if he is found fit, the department should promote him from 24th August, 1992 with all consequential benefits. This exercise should be completed by the department within a period of three months from the date of receipt of a copy of this order. No costs.

Sd-

(A.N.VUJJANARACHYA)
MEMBER (J)

Sd-

(V.RAMAKRISHNAN)
MEMBER (A)



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[Signature]
Section Officer
Central Administrative Tribunal
Bangalore Bench
Bangalore

2/1/95