

CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH

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

Dated: 2 JAN 1995

APPLICATION NO: 323 of 1994.

APPLICANTS:- Sri.B.S.Srikanta, Bangalore.

V/S.

RESPONDENTS:- The Dy.General Manager, Karnataka Telecom Circle,  
Bangalore-8 and five others.,

To

1. Dr.M.S.Nagaraja, Advocate, No.11, Secod Floor, First Madras,  
Sujatha Complex, Gandhinagar, Bangalore-560009.
2. Sri.M.S.Padmarajaiah, Senior Central Government  
Standing Counsel, High Court Builising, Bangalore-1.
3. Sri.S.K.Mohiyuddin, Advocate for Resp-6, No.11,  
Jeevan Buildihgs, Kumarapark Est, Bangalore-2.
4. Deputy General Manager, Office of the Chief General Manager,  
Karnataka Telecom Circle, Old Madras Road No.1, Ulsoor,  
Bangalore-560 008.

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 20th December, 1994.

Issued on  
03/01/95

*[Signature]*

*[Signature]*  
o/c for DEPUTY REGISTRAR  
JUDICIAL BRANCHES.

CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH, BANGALORE

ORIGINAL APPLICATION NO.323/1994

TUESDAY THIS THE TWENTIETH DAY OF DECEMBER, 1994

MR. JUSTICE P.K. SHYAMSUNDAR  
VICE CHAIRMAN

MR. T.V. RAMAMAN  
MEMBER (A)

Shri B.S. Srikanta,  
aged 43 years,  
No.4, 2nd Cross, South Main Road,  
Kathriguppa Main Road,  
Bangalore - 560 085  
Applicant

( By Advocate Dr.M.S. Nagaraj )

v.

1. Dy.General Manager,  
O/o Chief General Manager,  
Telecom, Karnataka Circle,  
No.1, Old Madras Road,  
Bangalore - 8

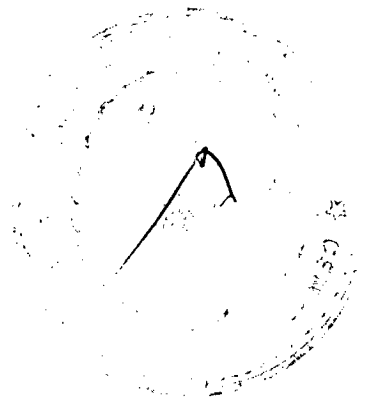
2. Union of India  
represented by its  
Secretary to Government,  
Ministry of Communications,  
Government of India,  
New Delhi

3. Shri B. Hanumatah,  
TOA IV,  
Office of Chief General Manager,  
Telecom,  
Maruthi Complex,  
Bangalore - 560009

4. Smt. B.N. Indira,  
TOA IV,  
Office of the Director Telecom,  
Bangalore Area,  
Bangalore - 560009

5. Shri S. Kannan,  
TOA IV,  
Office of the Chief General Manager,  
Telecom, Telecom Centre,  
No.1, Old Madras Road,  
Bangalore - 560008

6. Shri B. Ramdas Nayak,  
Sr. Section Supervisor Gr.III  
O/o Chief General Manager, Telecom,  
Maruthi Complex,  
No.325, 5th Main,  
Gandhi Nagar, Bangalore  
Respondents



( By Learned Standing Counsel )  
Shri M.S. Padmarajah for R-1&2  
Shri S.K. Mohiuddin for R-6

O R D E R

MR. JUSTICE P.K. SHYAMSUNAR, VICE CHAIRMAN

The applicant who belongs to the Scheduled Tribe category was due for promotion to a higher position in the year 1988 according to the roster scheme.

2. There is no dispute that in the year 1988, 8 vacancies being available in the higher category, the applicant who by virtue of having completed 10 years of tenure in the Department and belonging to a Scheduled Tribe category was entitled to and eligible for consideration to the higher position along with others in the 1988 batch. The Departmental Promotion Committee(DPC for short) which is said to have met in 1988 to consider promotions to the higher category found the applicant unfit for promotion as he involved in the Departmental Enquiry. Therefore, the Committee after considering the cases of the other candidates whose names had come up for consideration placed the name of the applicant in a 'sealed cover' in view of the pendency of the Departmental Enquiry. The result was 7 others who were in the field were promoted on 17.5.88 as could be seen from Annexure A-3 produced by the applicant. He alone languished till he was cleared at the departmental enquiry which however ended in total exoneration of the applicant, an aspect which is admitted by Government. The position then arose

of putting the applicant back into the position which he would otherwise have occupied had it not been for the pendency of the departmental enquiry, in that he could have been considered for promotion in the year 1988 itself <sup>but</sup> ~~when~~ <sup>his</sup> ~~case~~ <sup>was</sup> ~~due~~ <sup>for</sup> consideration <sup>by</sup> ~~by~~ virtue of the roster scheme. We find that in the year 1988 the vacancy position was - 6 for general candidates, 1 Scheduled Caste and one for Scheduled Tribe. The applicant being the lone Scheduled Tribe candidate, it is natural to assume that he would have been cleared for promotion but for the pendency of the departmental enquiry which took some time to conclude and thereafter ended in total exoneration of the applicant.


3. After the enquiry proceedings stood terminated the 'sealed cover' was opened and the applicant <sup>was</sup> ~~was~~ found fit for promotion in all ways. The position was he had to be promoted with effect from the date on which his other colleagues stood promoted in the year 1988 but instead he was promoted with effect from 16.6.89 and thereafter even that promotion took a drubbing in that it was turned back to 4.4.1991. He represented against the two orders supra claiming that he should have been promoted along with the rest of the candidates who were in the field in 1988 and that his promotion in the year 1989 was wrong and a grievous error. The Department rejected the representation and we find reasons therefor to be somewhat queer vide Annexure A-6.



4. But then the question raised for consideration is covered by the decision of the Supreme Court in the case of Union of India v. K.V. Janakiraman - (1993)23 ATC 322. The relevant dicta of the court which is at para 25 reads as follows:

"26. We are, therefore, broadly in agreement with the finding of the Tribunal that when an employee is completely exonerated meaning thereby that he is not found blameworthy in the least and is not visited with the penalty even of censure, he has to be given the benefit of the salary of the higher post along with the other benefits from the date on which he would have normally been promoted but for the disciplinary/criminal proceedings..."

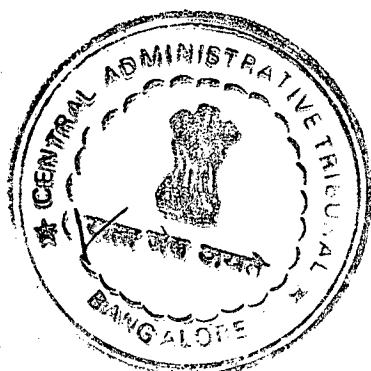
5. The position in law having been stated by Supreme Court as aforesaid clearly indicating that an official who suffered because of no reasons of his, <sup>an</sup> being under the shadow of <sup>a</sup> departmental enquiry which later ended in total exoneration, should win back the position to which he would have been otherwise entitled to and should be given an appropriate place treating him as if he was not under any kind of a shadow or eclipse. If that is the legal position, it becomes clear the applicant, who has since been cleared at the departmental enquiry without any hiccup, is liable to be promoted with effect from the date on which his other colleagues were considered along with him in 1988 and promoted as per Annexure A-3. We are informed by the Government <sup>that</sup> ~~and~~ subsequently the applicant had been offered ad hoc promotion with effect from 1991 and he had turned it down on the ground that he should have been promoted



from 1988 and he cannot therefore be asked to reconcile to a promotion with effect from 1991.

6. The argument of the learned Standing Counsel suggesting that the man declining promotion once should not be considered for promotion again until an year had lapsed, we think has no substance. The promotion in 1991 was declined, in our view, rightly on the ground that the applicant being entitled for promotion from 1988 could not be asked to accept same promotion three years later without any benefit. Even otherwise as on this day, there is no move to consider his promotion again albeit, the declining of such promotion in the year 1991.

7. We see absolutely no reason either ~~in~~ facts or in law why the applicant should be denied promotion w.e.f. 17.5.88 when his colleagues and companions were promoted as per Annexure A-3. In that view of the matter, we allow this application and quash the promotion made on later day as per Annexures A-1 and A-2 and further direct the Department to restore the applicant to the position in which he would have been placed in the usual course in the year 1988 along with others. The Department will now make an order including him in the list of promotees cited in Annexure A-3 dated 17.5.88 and give him the benefit of such promotion with all financial benefits accruing since 17.5.88.



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The question of interse seniority placing the applicant and the others in the 1988 list is left open. Department to pass necessary orders as indicated herein within two months from the date of receipt of a copy of this order. No costs.

Sd-  
m/  
MEMBER (A)

Sd-  
VICE CHAIRMAN

TRUE COPY

*[Signature]*  
2/11/95  
Section Officer  
Central Administrative Tribunal  
Bangalore Bench  
Bangalore

