

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

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

Dated: 30 SEPT'94

APPLICATION NO.

771 of 1994

APPLICANTS:- Sri.G.Louis Raj, Bangalore

V/S.

RESPONDENTS:- The Director General of Employment and Training,
Ministry of Labour, New Delhi and two others.

To

1. Sri.S.Ranganatha Jois,
Advocate, No.36,
Vagdevi, Shankarapark,
Shankara Puram, Bangalore-4.
2. Sri.M.S.Padmarajaiah,
Senior Central Government
Standing Counsel,
High Court Building,
Bangalore-1.
3. Sri M.S.Nagaraja, Advocate,
No.11, Second Floor, Frist Cross,
Sujatha Complex, Gandhinagar,
Bangalore-560 009.

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 19th September, 1994.

Issued on

30/9/94 R

9c for DEPUTY REGISTRAR
JUDICIAL BRANCHES.

gm*

CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH

ORIGINAL APPLICATION No.771 OF 1994

MONDAY, THIS THE 19TH DAY OF SEPTEMBER, 1994

SHRI JUSTICE P.K.SHYAMSUNDAR .. VICE CHAIRMAN

SHRI T.V. RAMANAN ... MEMBER (A)

G. Louis Raj,
S/o M.D.G. Raj,
Aged 45 years,
Working as Maintenance in
Mill Wright,
Foreman Training Institute,
Tumkur Road, Bangalore. Applicant

(By Advocate Shri S. Ranganatha Jois)

Vs.

1. The Director General of
Employment and Training,
Ministry of Labour,
'Shrama Mantralaya', New Delhi.

2. The Director,
Foreman Training Institute,
Tumkur Road, Bangalore.

3. Sri R.S. Manuel, Major,
Senior Draughtsman,
Foreman Training Institute,
Tumkur Road, Bangalore.

Respondents

(By Advocate Shri M.S. Padmarajaiah,
Senior Central Govt. Standing Counsel for
R-1 and 2 and Dr. M.S. Nagaraja for R-3).

ORDER

Shri T.V. Ramanan, Member (A) :

We have heard the learned counsel for the applicant, the learned Senior Central Govt. Standing Counsel and the learned counsel appearing for Respondent No.3.

2. The applicant has prayed for quashing the order at Annexure-A4, by which he was reverted from the post of Maintenance Millwright (MM for short) to the post of Skilled Worker with effect

from 21.11.1988 and A-6, by which R-3 stands promoted to the post of MM with effect from 1.1.1989.

3. The applicant was promoted as MM in 1988 on the basis of the recommendation of the Departmental Promotion Committee (DPC for short) which had met on 10.11.1988. The DPC had reckoned the Recruitment Rules of 1980 in which the qualifying service for promotion as MM was prescribed as 5 years. However, in 1986, the Recruitment Rules had been amended to provide for a qualifying service of 7 years for promotion as MM. The applicant's promotion was challenged before this Tribunal by one R. Francis, a Skilled Worker in the same organisation and the applicant was a party to that application bearing No. 148/93 as Respondent No.3. Very rightly, this Tribunal set aside the appointment of the applicant to the post of MM because on the date of his consideration for promotion to the post, he had not put in the qualifying service of 7 years on the lower post. This Tribunal also directed that a review/fresh DPC be held to select a suitable person. Accordingly, a review DPC took place on 3.3.1994. A perusal of the minutes of the review DPC shows that apart from the applicant, who was in any case not eligible for being considered by the Review DPC, even Shri R. Francis, the applicant in O.A. No. 148/93 was also not eligible and that only Shri R.S. Manuel, Senior Draughtsman was eligible to be considered by DPC having put in more than 13 years of service as on the date of consideration in 1988. As such, Shri Manuel alone was considered for the post by the DPC which categorised him as 'Good' and recommended his appointment. Consequently, the applicant was reverted by the order dated 17.3.1994 (Annexure-A4) and Shri Manuel was appointed as MM with effect from 1.1.1989 (Annexure-A6).

4. Learned counsel for the applicant argued that Shri R.S. Manuel, R-3, his senior, was also considered along with the applicant for promotion to the post of MM by the original DPC held on 10.11.1988, but, he was not considered fit for promotion as there were adverse entries in the Annual Confidential Reports (ACRs) and instead the applicant was selected and promoted as MM. Therefore, a person with adverse entries had been selected by the Review DPC which was not correct, especially when the post of MM happens to be a selection post. If Shri Manuel had not been selected by the Review DPC owing to his past record, the post would still be available for being filled up at a later date by which time the applicant too would have become eligible having completed the requisite years of qualifying service for being considered for promotion to the post of MM and with his better records, there was every possibility of his being selected for promotion to the post.

5. In order to set all controversy relating to this plea at rest, we perused the original minutes of the meeting of the DPC held on 10.11.1988. We find that Shri Manuel was nowhere graded as 'Below Average' or 'Unfit' for the reason that he had received adverse ACRs. On the contrary, Shri Manuel was graded at that time as follows:

1985 - Good

1986 - Good

1987 - Average

Certainly, 'Average' is not adverse. If Shri Manuel had received adverse entries in his ACRs, he would not have been classified as 'Good' or even as 'Average'. There is, thus, no substance in the argument advanced by learned counsel for the applicants as regards the selection and appointment of Shri R.S. Manuel who was graded as 'Good' by the Review DPC, minutes whereof have also been produced before us. Learned Counsel for the applicant invited our attention to the decision of this Tribunal in O.A.No.566/93, disposed of on 8.9.1993, wherein the

department was directed to relax the requirement of educational qualification in so far as the applicant in that O.A. was concerned. The decision relied upon admits of a distinction in that the educational qualification was directed to be relaxed whereas here, we are asked to direct relaxation of tenure prescription. We cannot do that because the facts and circumstances in both the cases are different and any relaxation of tenure requirement reflects on the quality and out-turn of the service to be rendered if the employee is not sufficiently experienced. In this context, Shri R.S. Manual had over 13 years of experience in the lower post which the applicant did not have. Any relaxation would, therefore, result in a less experienced person to triumph over a more experienced person. As such, this plea stands rejected.

6. We are, however, taken in by the argument advanced by the learned counsel for the applicant that the applicant, though wrongly promoted to the post of MM in 1988, had discharged higher responsibilities as MM to the satisfaction of the authorities of the Institute and as such, the employer should not recover from his salary the excess salary drawn by him on the higher post consequent upon his reversion as Skilled Worker. This plea is tenable because due to the mistake committed by the official respondents, who were not aware of the amendment made in the Recruitment Rules in 1986, raising the qualifying years of service from 5 years to 7 years, the DPC selected the applicant for the post of MM and he was appointed. Now, after six years the applicant has been reverted as his promotion to the said post was not in accordance with the Rules. It is not the case of the official respondents that the applicant did not perform his duties well on the higher post or that they had

any complaints against him during the period he held this post and discharged higher responsibilities. As he held the higher post and discharged higher responsibilities to the satisfaction of the Institute authorities and got paid for doing so, we find it just and proper that no recovery should be made from his salary on account of the excess payment of salary etc. made to him on the post of MM.

7. We, therefore, allow this application in part as indicated above and direct the official respondents not to recover from the applicant the excess payment of salary etc. made to him on the post of MM. No order as to costs.

Sd/-

(T.V. RAMANAN)
MEMBER (A)

(P.K. SHYAMSUNDAR)
VICE CHAIRMAN

Sd/-

TRUE COPY

ppr.
Sectional Officer
Central Administrative Tribunal
Bangalore Bench
Bangalore