

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

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

Dated: 6 OCT 1994

APPLICATION NO(s). 639;1130 and 1131 of 1994. /

Applicant(s)

Respondent(s)

Sri.S.Nagaraju in OA No.639/94,
Sri.M.Marappa, in OA No.1130/94 and
Sri.C.K.Ramachandra in OA No.1131/94 v/s. Cheif Gene.Manager,
Karnataka Telecom Circle,
and ahothor.

To

1. Dr.M.S.Nagaraja,Advocate,No.11,Second Floor,
First Cross,Sujatha Complex,Gandhinagar,
Bangalore-560009.
2. Sri.M.S.Padmarajaiah,Senior Central Government
Standing Counsel,High Court Building,Bangalore-1.

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

Please find enclosed herewith a copy of the ORDER/
STAY/INTERIM ORDER passed by this Tribunal in the above said
application(s) on 29th September,1994.

Issued on
6/10/94

o/c

[Signature]
06/10/94
for DEPUTY REGISTRAR
JUDICIAL BRANCHES.

CENTRAL ADMINISTRATIVE TRIBUNAL,
BANGALORE BENCH.

ORIGINAL APPLICATION NOS. 639, 1130 & 1131/ 1994

THURSDAY, THE 29TH DAY OF SEPTEMBER, 1994

| | | |
|-------------------------|-----|------------|
| SHRI V. RAMAKRISHNAN | ... | MEMBER (A) |
| SHRI A.N. VUJJANARADHYA | ... | MEMBER (J) |

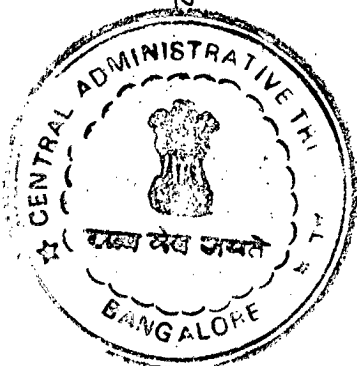
Between

1. Shri S. Nagaraju,
Aged about 34 years,
S/o Shri Siddiah,
Hotel Vardhaman Lodge,
Gulbarga.
(DA No. 639/ 1994)
2. Shri M. Marappa,
Aged about 38 years,
S/o Shri Muniyappa,
C/o Divisional Engineer,
Telecommunications,
Bidar.
(DA No. 1130/ 1994)
3. Shri C.K. Ramachandra,
Aged about 31 years,
Office of the Divisional Engineer,
Telecommunications,
Raichur.
(DA No. 1131/ 1994) ... Applicants
(By Advocate Dr. M.S. Nagareja)

And

1. Chief General Manager,
Karnataka Telecom Circle,
Ulsoor,
Bangalore - 560 008.
2. Union of India,
Represented by its
Secretary,
Ministry of Communications,
New Delhi. ... Respondents

(By Advocate Shri M.S. Padmarajaiah, Senior
Standing Counsel for Central Govt.)



ORDER

Shri V. Ramakrishnan, Member (A)

The applicants who are serving in the Accounts Wing in the Telecommunications Department and are members of the Scheduled Caste are aggrieved at the action of the department in terminating the ad hoc promotion given to them as Accounts Officers.

2. The applicants joined service as Accountants and after qualifying in the requisite examination, they were appointed to the cadre of Junior Accounts Officer. The 1st applicant was appointed as JAO on 24.5.93, the 2nd applicant on 31.3.93 and the 3rd applicant on 1.10.92 and they were on probation for a period of two years from the date of initial appointment. The recruitment rules provide for promotion of Junior Accounts Officers with 5 years of regular service in the grade to the level of Accounts Officers. With the introduction of the intermediate tier of Assistant Accounts Officers with effect from 1.4.87, the present position is that Assistant Accounts Officers with a combined service of 5 years as AAO/ JAO, are eligible for consideration for promotion to the grade of Accounts Officers. We are informed that recruitment rules are being amended to that effect. The applicants were given ad hoc promotion as Accounts Officers by making local officiating arrangement by the Chief General Manager. Orders were issued on 21.10.93, 8.12.93 and 21.2.94 giving them these ad hoc promotion as Accounts Officers. The order made clear that the officiating arrangement was made purely on temporary and ad hoc basis for a period not exceeding 180 days or till the joining of regular incumbents whichever is earlier and it also did not confer any claim on regular absorption in the grade/ seniority etc. The Telecom Directorate, New Delhi apparently had come to know of these orders in February, 1994.

The department by its letter dated 23.2.94 addressed to Chief General Manager informed him that it was improper to promote Junior Accounts Officers who are still on probation as Accounts Officers. The letter further stated that the feeder cadre for promotion to the grade of Accounts Officer is now Assistant Accounts Officer and no Junior Accounts Officers could be promoted directly to the grade of Accounts Officers. This letter directed the Chief General Manager to terminate any ad hoc promotion given to persons who have not fulfilled the eligibility criteria. On receipt of this letter the Chief General Manager issued orders on 7.3.94 terminating the local officiating arrangements involving the applicants. The applicants have challenged this termination.

3. We have heard Dr. M.S. Nagaraja for the applicants and Shri M.S. Padmarajaiah, the learned Senior Standing Counsel. We have also perused the relevant files where the promotions of the applicants as Accounts Officers were initially ordered and subsequently terminated.

4. The main grounds urged by Dr. Nagaraja in support of the application are the following:

- (1) The appointment orders contained a clear promise that the tenure of the applicants would continue till regular incumbents join subject to an outer limit of 180 days. No regular incumbents had joined and the ad hoc promotion was terminated before the expiry of the period of 180 days. As the ad hoc promotion was terminated in violation of the conditions stipulated in the order, the applicant should have been given a show cause notice before giving effect to the order.



(ii) The applicants belonged to the protected category of Scheduled Caste. Reference has been made to the relevant guidelines issued by the Department of Personnel in their OM dated 30.4.83. Dr. Nagaraja contends that as per the instructions when ad hoc vacancies are likely to continue for more than 45 days the roster points should apply and so long as the SC candidates are not adjudged unfit, they should be promoted to the higher level without insisting on any eligibility criteria.

(iii) It is further argued that termination of the applicants' ^{promotion} should have been reported to the Secretary to Government as also to the Liaison Officer. Omission to do so has vitiated the whole process.

5. Shri M.S. Padmarajiah opposes the application and states that the Chief General Manager, Telecom, Karnataka Circle had inadvertently promoted the applicants as Accounts Officers when they were not at all eligible. The Standing Counsel further submits that there is no requirement of reporting the termination to the Secretary to the Government as the present case is not one of supersession of a Scheduled Caste candidate. According to the Standing Counsel what had happened was that the applicants who had not even completed the probation period as Junior Accounts Officers were given ad hoc promotion on a local officiating basis to the level of Accounts Officer when the feeder channel for Accounts Officers was that of Assistant Accounts Officers. As per the Rules, the applicants were required to put in three years of service as Junior Accounts Officers before they can be considered for promotion as Assistant Accounts Officers. They can be considered for the post of Accounts Officers only after they passed through the stage of AAO. As

such, according to the Standing Counsel, their promotion as AAOs when they were probationary JAOs which was done inadvertently was irregular and was rightly terminated. Shri Padmarajaiah states that the instruction quoted by Dr. Nagaraja makes it obligatory that SC/ ST employee should be eligible before they can be considered for ad hoc promotion and as the applicants were not at all eligible for promotion even as AAOs, the order terminating their ad hoc promotion as Accounts Officers is totally justified.

6. It is not in dispute that the applicants are still on probation as JAOs and they are not eligible for regular promotion as AAOs. The main ground adduced by Dr. Nagaraja is that there are no Rules which regulate ad hoc promotions and in terms of the various instructions, a SC employee should be given ad hoc promotion if he is not unfit. Dr. Nagaraja refers in this connection to the following guidelines as contained in DOPT OM dated 30.4.83:

"Since ad hoc promotions are made on the basis of seniority-cum-fitness, all the Scheduled Castes/ Scheduled Tribes candidates covered in the relevant seniority list within the total number of such vacancies against which ad hoc promotions are to be made, should be considered in the order of their general seniority as per the gradation list, on the principle of seniority-cum-fitness and if they are not adjudged unfit, they should all be promoted on ad hoc basis."

We, however, notice that the next sub-para of this OM reads as follows:

"If, however, the number of S.C./ S.T. candidates found fit within the range of actual vacancies is less than the number of vacancies identified as falling to their share if the vacancies were filled on a regular basis vide (2) above then additional S.C./ S.T. candidates to the extent required should be located by going down the seniority list, provided they are eligible and found fit for such ad hoc appointment. This procedure should be adopted on every occasion on which ad hoc appointment is resorted to.

(Emphasis supplied)

It is, therefore, clear that the eligibility criteria cannot be ignored while considering ad hoc promotions. It is not the case of applicants that any person junior to them has been given ad hoc promotion as Accounts Officer or continued as such. It has also not been brought out that the department has given ad hoc promotions to any ineligible persons other than the applicants or have continued ad hoc promotion of any such ineligible candidates. In view of this position and as the applicants are clearly not eligible, for consideration for promotion as AOs, we see nothing wrong in the order terminating the ad hoc promotions. The earlier orders which had stipulated a period of 180 days were issued inadvertently and were not in conformity with the relevant instructions. They do not give any vested rights to the applicants to continue in such higher post till the expiry of 180 days and there is no merit in the contention that the applicants should have been given a show cause notice before the ad hoc promotions were terminated.

7. Dr. Nagaraja also made a point that the department should follow the roster point and should not dereserve vacancies meant for protected categories. All we say at this stage is that the department should strictly conform to the various rules/ instructions issued by the government from time to time safeguarding the interest of SC & STs while making appointments/ promotions etc.

8. In the light of the foregoing discussions, we find no merit in the application and we dismiss the same with no order as to costs.



(A.N. Vujjanaradhya)
Member (J)

TCV

TRUE COPY

Section Officer
Central Administrative Tribunal
Bangalore Bench
Bangalore

(V. Ramakrishnan)
Member (A)