

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

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

Dated: 22 DEC 1994

APPLICATION NO: 790 of 1994.

APPLICANTS:- Sri.M.Chinnaiah,
V/S.

RESPONDENTS:- The Chief Post Master, General Post Office,
Bangalore-1., and three Others.,

To

1. Dr.M.S.Nagaraja, Advocate,
No.11, Second Floor, I-Cross,
Sujatha Complex, Gandhinagar,
Bangalore-9.
2. Sri.G.Shanthappa, Addl.Stng.Counsel
for Central Govt.High Court Bldg,
Bangalore-1.

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 12-12-1994.

Issued on

22/12/94 


for DEPUTY REGISTRAR
JUDICIAL BRANCHES.

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CENTRAL ADMINISTRATIVE TRIBUNAL,
BANGALORE BENCH.

ORIGINAL APPLICATION NO. 790/ 1994

MONDAY, THE 12TH DAY OF DECEMBER, 1994

SHRI V. RAMAKRISHNAN ... MEMBER (A)

SHRI A.N. VUJJANARADHYA ... MEMBER (J)

Shri M. Chinnaiah,
Aged 52 years,
S/o Shri N. Madaiah,
C-4/60, P&T Staff quarters,
Kavala Byrasandra,
Bangalore - 560 032. ... Applicant

(By Advocate Dr. M.S. Nagaraja)

Vs.

1. The Chief Post Master,
Office of the General Post Office,
Bangalore - 560 001.

2. The Chief Post Master General,
Karnataka Circle,
Bangalore - 560 001.

3. The Director General of Posts,
Dak Bhavan,
Government of India,
Department of Posts,
New Delhi.

4. Union of India,
represented by
Secretary to Government of India,
Ministry of Communications,
New Delhi. ... Respondents

(By Advocate Shri E. Shanthappa, Additional
Standing Counsel for Central Govt.)

ORDER

Shri V. Ramakrishnan, Member (A)

The applicant has challenged the order as at Annexure A-2 which was received by the applicant on 6.1.94, retiring him with effect from 23.4.94 under Rule 48 of the CCS Pension Rules. The



main grounds taken by the applicant in support of his contention are the following:

- (i) The notice was issued in early January 1994 whereas the applicant completes 30 years of service only on 23.4.94.
- (ii) He was promoted in April 1993 under the TBOOP scheme by an order dated 27.9.93 as at Annexure A-1 but within a few months thereafter he has been made to retire invoking provisions of Rule 48 of CCS Pension Rules.

2. The learned counsel for the applicant, Dr. M.S. Nagaraja draws our attention to the decision of the Ernakulam Bench of this Tribunal in M.J. Kunjukunju vs. Union of India reported in 1991 (17) ATC 738. In this case the Ernakulam Bench had interpreted Rule 48 in such a manner that three months notice required under proviso (b) of Rule 48(1) can be issued only after completion of 30 years of service and not earlier. The Ernakulam Bench also had gone into the administrative instructions, particularly the instruction contained in para 8 of the Ministry of Home Affairs OM which is reproduced in appendix 10 of the Pension Manual and held that administrative instructions cannot override the statutory rules. On this ^{ground} ~~account~~ the Ernakulam Bench quashed the notice issued under Rule 48 in that case on a date earlier than the date of completion of 30 years of service. Dr. Nagaraja submits that the present case ^{is} ~~in~~ all ^{four} ~~four~~ forms as the case of Kunjukunju. Dr. Nagaraja argues that the applicant in the present case is also entitled ^{to} ~~with~~ the same relief as the notice was issued on a date prior to completion of 30 years of service by the applicant and this fact is not in dispute.

3. The department had filed an SLP against this decision of Ernakulam Bench and the Supreme Court by its order dated 29.5.91 had dismissed the SLP. The Supreme Court observed as follows:

"In our opinion the impugned order passed by the Tribunal can be sustained on merits without going into the question of construction of Rule 48 of the CCS (Pension) Rules as well as the effect of the Govt. instruction No.8 referred to in the order. Accordingly, we express no opinion about the correctness of the construction made by the Tribunal of the said Rule 48 or the Govt. of India instructions relating to it.

With these observations the SLP is dismissed leaving the question of construction of Rule 48 open."

4. The learned counsel also forcefully contends that it is totally incongruous that the applicant was found fit by order dated 27.9.93 to be granted promotion with effect from 8.4.93 but should suddenly be regarded as unfit for continuance in service and made to retire in early January 1994 as at Annexure A-2. While granting promotion under TBOP scheme, the department would have gone into service records of the applicant and if there had been any adverse remarks, the applicant would not have been given promotion. There is also no other ACR which would have been available to the department subsequent to September, 1993 and prior to issue of the order as at Annexure A-1. On this ground also Dr. Nagaraja submits that the applicant is entitled to the relief sought for.

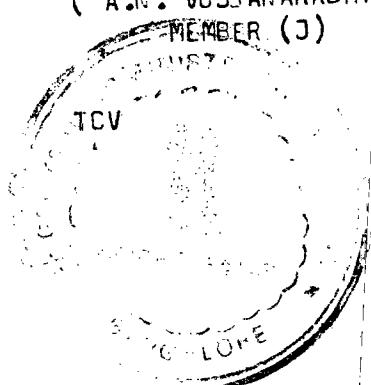
5. We were intrigued by the order dated 27.9.93 as at Annexure A-1 which granted promotion to the applicant under the TBOP which was just a few months earlier to issue of order as at Annexure A-2. We accordingly called for the file which deals with the representation submitted by the applicant. We find from the file that while considering the representation of the applicant there is a noting that though the decision to retire the applicant prematurely appeared to be justified

but this decision soon after promotion under TBOP may look inconsistent. This point has not been gone into by the members of the representation committee, namely, DDC(P), DDC (V) and Member (Personnel) as also the Secretary, Department of Posts. We are of the opinion that this point urged by the learned counsel for the applicant has considerable force. The representation committee had not touched on the specific question though raised and it would be evident that they had not carefully applied their minds to the representation.

6. For the reasons stated above and taking into account the decision of the Ernakulam Bench and the Supreme Court orders thereafter, we hold that this application deserves to be allowed. We, accordingly quash the order as at Annexure A-2 prematurely retiring the applicant and direct that the applicant shall be immediately reinstated in service with all consequential benefits. The department will implement this direction within three months from the date of receipt of a copy of this order. No costs.

Sd/-

(A.N. VUJJANARADHYA)
MEMBER (J)



Sd/-

MEMBER (A)

22/12/94
Section Officer
Central Administrative Tribunal
Bangalore Bench
Bangalore